EX. 205

Message

From: Rogers, Michael H. [MRogers@labaton.com]
Sent: 5/27/2014 4:27:11 PM
To: Lieff, Robert L. [/O=LCHB/OU=First Administrative Group/cn=Recipients/cn=RLIEFF]; Michael Thornton [MThornton@tenlaw.com]; Chiplock, Daniel P. [/O=LCHB/OU=First Administrative Group/cn=Recipients/cn=DCHIPLOCK]; Michael Lesser [MLesser@tenlaw.com]
CC: Sucharow, Lawrence [LSucharow@labaton.com]; Belfi, Eric J. [EBelfi@labaton.com]; Goldsmith, David [dgoldsmith@labaton.com]
Subject: State Street T&E - 3/31/14
Attachments: Billing Memo 20519.pdf

As requested, Labaton Sucharow's lodestar and expenses through March 31, 2014. Lieff Cabraser (as sent to us by Dan Chiplock) and Thornton Naumes to follow.

LABATON SUCHAROW LLP
Billing Memorandum
Thru March 31, 2014

Billing Employee: Christopher Keller
Resp Employee: Eric J Belfi

Client: 016576 State Street Corporation

* * * Client Summary * * *

Matter		Unbilled Disbursements	Unbilled Time Hours	Unbilled Time Value	Unapplied Retainer	Open A/R
016576.0001	State Street Corporation-Class Action	146,345.27	13,180.20	5,761,775.63	0.00	0.00
	Totals	146,345.27	13,180.20	5,761,775.63	0.00	0.00

Billing Employee: Christopher Keller
Client: 016576 State Street Corporation
Resp Employee: Eric J Belfi

* * * Employee Summary * * *

Employee		First Entry	Last Entry	Avg Rate	Hours	Fee
0019	Joseph H Einstein	03/06/2013	03/06/2013	550.00	0.70	385.00
0023	Eric J Belfi	11/05/2009	03/25/2014	717.96	538.50	386,620.00
0103	Lawrence A Sucharow	03/26/2011	03/04/2014	970.69	224.50	217,919.50
0366	Ira A Schochet	02/09/2011	06/06/2012	785.56	32.90	25,845.00
0436	Howard E Goldberg	11/01/2010	12/26/2013	329.79	4.80	1,583.00
0446	Joel H Bernstein	02/10/2011	06/20/2012	884.08	125.60	111,041.00
0479	Jonathan Gardner	09/10/2010	06/14/2012	647.61	73.50	47,599.50
0493	Hollis L Salzman	07/13/2011	07/13/2011	710.00	0.10	71.00
0571	David J Goldsmith	02/15/2011	03/26/2014	691.00	779.30	538,500.00
0625	Christopher Keller	10/30/2009	06/15/2011	735.66	119.30	87,764.50
0693	Christopher J McDonald	03/24/2011	03/24/2011	650.00	0.20	130.00
0706	Natalie W Ching	10/30/2009	02/03/2010	383.96	45.50	17,470.00
0712	Cindy Chan	10/29/2009	07/13/2011	261.05	37.70	9,841.50
0742	Craig A Martin	09/20/2010	01/31/2011	490.00	320.00	156,800.00
0751	Amy N Greenbaum	09/15/2010	02/21/2014	390.57	181.50	70,889.00
0754	Alan E Gumeny	11/13/2009	11/12/2010	425.72	51.80	22,052.50
0767	Michael W Stocker	02/07/2011	03/30/2011	675.00	6.00	4,050.00
0822	Mathew Yan	05/06/2011	12/20/2012	288.48	6.60	1,904.00
0826	Francisco R Malonzo	09/15/2010	01/25/2011	325.00	9.00	2,925.00
0842	Nicholas R Hector	01/25/2011	02/11/2011	340.00	47.70	16,218.00
0849	Stefanie J Sundel	11/01/2009	08/05/2011	474.01	111.50	52,852.50
0865	Martis Alex	04/29/2011	07/12/2011	747.69	1.30	972.00
1013	Jean H Bliss	06/08/2011	06/09/2011	340.00	5.00	1,700.00
1018	Diana M Cordoba-Riera	03/18/2011	04/22/2011	280.00	2.30	644.00
1054	Cheryl J Boria	11/30/2010	01/05/2011	265.00	0.30	79.50
1057	Joseph Fonti	02/01/2011	04/12/2013	626.01	18.40	11,518.50
1086	Thomas Chianelli	10/30/2009	12/30/2009	270.00	17.70	4,779.00
1101	Edward Moy	11/04/2009	11/17/2009	260.00	5.00	1,300.00

Billing Employee: Christopher Keller
Client: 016576 State Street Corporation Resp Employee: Eric J Belfi

1104	Javier Bleichmar	04/12/2013	04/12/2013	750.00	0.10	75.00	
1115	Eunice Ahn	11/16/2009	03/28/2011	226.53	12.10	2,741.00	
1127	Ted Polk	11/13/2009	11/20/2009	350.00	12.20	4,270.00	
1151	Serena Hallowell	11/08/2010	11/30/2010	490.00	8.90	4,361.00	
1153	Felicia Mann	06/09/2011	06/20/2012	408.60	53.50	21,860.00	
1179	Michael H Rogers	02/10/2011	03/26/2014	570.83	1,164.10	664,504.00	
1193	Chris Capuozzo	12/29/2009	04/01/2010	271.46	15.70	4,262.00	
1225	Stacy Auer	02/11/2011	11/18/2013	284.70	121.50	34,591.00	
1267	Yoko Goto	11/30/2010	11/30/2010	390.00	0.10	39.00	
1314	Stuart H Cooper	11/16/2009	11/17/2009	350.00	2.50	875.00	
1319	Dominic J Auld	03/31/2010	03/31/2010	67.63	1.00	67.63	
1331	Carol C Villegas	09/28/2010	01/25/2011	415.00	1.20	498.00	
1337	Angelina Nguyen	09/15/2010	01/25/2011	490.00	1.60	784.00	
1355	Peter J Bertuglia	10/29/2009	01/26/2010	271.47	46.00	12,487.50	
1389	Mathew C Moehlman	02/05/2011	02/08/2011	490.00	5.60	2,744.00	
1406	Mindy S Dolgoff	09/15/2010	01/25/2011	390.00	0.70	273.00	
1411	Rebecca R Warner	11/13/2009	12/03/2009	350.00	33.60	11,760.00	
1414	David V Sack	11/18/2009	11/20/2009	365.00	16.70	6,095.50	
1415	Jordan Green	11/13/2009	11/17/2009	275.00	11.40	3,135.00	
1424	Victor Chan	01/21/2010	02/02/2010	260.00	2.00	520.00	
1429	Phillip Smith	09/15/2010	01/25/2011	400.00	1.40	560.00	
1436	Rachel A Avan	05/11/2010	04/07/2011	301.25	6.40	1,928.00	
1439	Rian Wroblewski	02/24/2011	04/12/2011	365.00	50.50	18,432.50	
1440	Iona M Evans	01/25/2011	04/17/2012	569.00	2.50	1,422.50	
1441	Jerome C Pontrelli	02/11/2011	06/01/2011	440.00	113.30	49,852.00	
1442	Stephen Krasner	03/25/2011	03/31/2011	280.00	10.60	2,968.00	
1443	Matthew Giles	06/03/2011	06/30/2011	190.00	2.00	380.00	
1449	Steven Wattenberg	05/26/2011	08/08/2011	280.00	1.10	308.00	
1450	Reka Viczian	06/10/2011	11/19/2013	254.09	82.20	20,886.00	
1451	Jeffrey R Alexander	12/02/2011	12/02/2011	350.00	5.50	1,925.00	
1454	Mathew Appenfeller	06/08/2011	07/14/2011	265.00	42.00	11,130.00	
1455	Kan Zhang	06/08/2011	06/09/2011	265.00	6.60	1,749.00	
1459	Edward Muchmore	10/13/2011	10/13/2011	375.00	3.30	1,237.50	

Billing Employee: Christopher Keller
Client: 016576 State Street Corporation Resp Employee: Eric J Belfi

1480	Rodney Joyner	12/16/2011	12/16/2011	250.00	1.00	250.00	
1491	Katie Good	01/23/2012	08/17/2012	295.00	2.50	737.50	
1513	Elizabeth R. Wierzbowski	07/26/2013	08/13/2013	665.00	27.20	18,088.00	
1523	Shella C. Mundo	09/12/2012	02/01/2013	290.00	16.80	4,872.00	
4071	Charles L Pietrofesa	12/20/2012	12/21/2012	325.00	5.00	1,625.00	
4089	Todd S Kussin	12/12/2012	03/31/2014	389.78	468.10	182,457.00	
4110	Daniel Murro	02/01/2013	02/01/2013	390.00	1.00	390.00	
4124	Terrence D Fernando	12/20/2012	12/20/2012	400.00	2.30	920.00	
4214	Allison Tierney	05/28/2013	06/21/2013	390.00	150.20	58,578.00	
4227	John Kosa	12/20/2012	12/21/2012	325.00	4.00	1,300.00	
4240	Eddie Shrem	02/04/2013	05/24/2013	335.00	555.20	185,992.00	
4257	Orlando Perez	02/04/2013	03/31/2014	335.00	2,122.70	711,104.50	
4263	Zeev Kirsh	02/04/2013	08/15/2013	360.00	1,036.90	373,284.00	
4268	Robert Tzall	12/20/2012	12/20/2012	350.00	6.00	2,100.00	
4341	Frantzgermain Bernadin	02/04/2013	03/31/2014	335.00	2,320.40	777,334.00	
4369	David Pospischil	02/04/2013	03/31/2014	410.00	1,854.20	760,222.00	
5204	Margo Penn-Taylor	11/10/2010	11/12/2010	165.00	2.10	346.50	
	Totals			437.15	13,180.20	5,761,775.63	

* * * Disbursement Summary * * *

Class		Amount
101	S-IN-HOUSE SERVICES	16.00
102	S-DUPLICATING IN-HOUSE	686.80
105	S-TELEPHONE	448.76
107	S-WORD PROCESSING	715.00
108	S-PRINTING - IN HOUSE	2,703.40
109	S-DATA PROCESSING	428.00
110	S-IN-HOUSE CATERING	132.00
209	H-OVERTIME MEALS	253.28
210	H-LOCAL MEALS	1,995.75

Billing Employee: Christopher Keller
Resp Employee: Eric J Belfi

Client: 016576 State Street Corporation

211	H-COURT REP-SERVICES orTRANSCRIPT FEE	23.40
215	H-EXPERT FEES	37,124.82
216	H-CO-COUNSEL FEES	200.00
239	H-PARKING & TOLLS	367.90
241	H-AIRFARE	18,147.32
242	H-RAIL FARE	2,034.00
243	H-PERSONAL CAR USAGE	32.03
244	H-OUT OF TOWN TAXIS	1,420.03
245	H-LOCAL TRANSPORTATION	3,644.43
246	H-CAR RENTAL	850.98
247	H-HOTEL	9,840.07
248	H-OUT OF TOWN MEALS	1,378.92
249	H-MISC TRAVEL	122.00
250	H-FILING AND MISC. FEES	0.00
258	H-MISC. SEARCH FEES or COMPTR RESEARCH	506.59
261	H-OUTSIDE DUPLICATING	20.83
265	H-FEDERAL EXPRESS & OTHER MAIL SVCS	444.83
272	H-CONTRIB. LIT. COMM	48,000.00
273	H-LEXIS OR WESTLAW	11,194.64
285	H-CONFERENCE CALL - TELEPHONE REIMBSMT EXP	794.63
287	H-OVERTIME TRANSPORTATION	2,818.86
	Totals	146,345.27

Billing Employee: Christopher Keller
Resp Employee: Eric J Belfi
Department: 05 Securities

Client: 016576 State Street Corporation
Matter: 016576.0001 State Street Corporation-Class Action

* * * Employee Summary * * *

Employee		First Entry	Last Entry	Avg Rate	Hours	Fee
0019	Joseph H Einstein	03/06/2013	03/06/2013	550.00	0.70	385.00
0023	Eric J Belfi	11/05/2009	03/25/2014	724.12	538.50	386,620.00
0103	Lawrence A Sucharow	03/26/2011	03/04/2014	970.35	224.50	217,919.50
0366	Ira A Schochet	02/09/2011	06/06/2012	785.45	32.90	25,845.00
0436	Howard E Goldberg	11/01/2010	12/26/2013	325.83	4.80	1,583.00
0446	Joel H Bernstein	02/10/2011	06/20/2012	884.43	125.60	111,041.00
0479	Jonathan Gardner	09/10/2010	06/14/2012	643.47	73.50	47,599.50
0493	Hollis L Salzman	07/13/2011	07/13/2011	710.00	0.10	71.00
0571	David J Goldsmith	02/15/2011	03/26/2014	702.44	779.30	538,500.00
0625	Christopher Keller	10/30/2009	06/15/2011	735.33	119.30	87,764.50
0693	Christopher J McDonald	03/24/2011	03/24/2011	650.00	0.20	130.00
0706	Natalie W Ching	10/30/2009	02/03/2010	387.50	45.50	17,470.00
0712	Cindy Chan	10/29/2009	07/13/2011	262.25	37.70	9,841.50
0742	Craig A Martin	09/20/2010	01/31/2011	490.00	320.00	156,800.00
0751	Amy N Greenbaum	09/15/2010	02/21/2014	391.05	181.50	70,889.00
0754	Alan E Gumeny	11/13/2009	11/12/2010	426.67	51.80	22,052.50
0767	Michael W Stocker	02/07/2011	03/30/2011	675.00	6.00	4,050.00
0822	Mathew Yan	05/06/2011	12/20/2012	290.00	6.60	1,904.00
0826	Francisco R Malonzo	09/15/2010	01/25/2011	325.00	9.00	2,925.00
0842	Nicholas R Hector	01/25/2011	02/11/2011	340.00	47.70	16,218.00
0849	Stefanie J Sundel	11/01/2009	08/05/2011	467.92	111.50	52,852.50
0865	Martis Alex	04/29/2011	07/12/2011	750.00	1.30	972.00
1013	Jean H Bliss	06/08/2011	06/09/2011	340.00	5.00	1,700.00
1018	Diana M Cordoba-Riera	03/18/2011	04/22/2011	280.00	2.30	644.00
1054	Cheryl J Boria	11/30/2010	01/05/2011	265.00	0.30	79.50
1057	Joseph Fonti	02/01/2011	04/12/2013	639.50	18.40	11,518.50

Billing Employee: Christopher Keller
Client: 016576 State Street Corporation
Resp Employee: Eric J Belfi
Matter: 016576.0001 State Street Corporation-Class Action
Department: 05 Securities

1086	Thomas Chianelli	10/30/2009	12/30/2009	270.00	17.70	4,779.00	
1101	Edward Moy	11/04/2009	11/17/2009	260.00	5.00	1,300.00	
1104	Javier Bleichmar	04/12/2013	04/12/2013	750.00	0.10	75.00	
1115	Eunice Ahn	11/16/2009	03/28/2011	223.00	12.10	2,741.00	
1127	Ted Polk	11/13/2009	11/20/2009	350.00	12.20	4,270.00	
1151	Serena Hallowell	11/08/2010	11/30/2010	490.00	8.90	4,361.00	
1153	Felicia Mann	06/09/2011	06/20/2012	395.83	53.50	21,860.00	
1179	Michael H Rogers	02/10/2011	03/26/2014	588.32	1,164.10	664,504.00	
1193	Chris Capuozzo	12/29/2009	04/01/2010	272.00	15.70	4,262.00	
1225	Stacy Auer	02/11/2011	11/18/2013	287.99	121.50	34,591.00	
1267	Yoko Goto	11/30/2010	11/30/2010	390.00	0.10	39.00	
1314	Stuart H Cooper	11/16/2009	11/17/2009	350.00	2.50	875.00	
1319	Dominic J Auld	03/31/2010	03/31/2010	67.63	1.00	67.63	
1331	Carol C Villegas	09/28/2010	01/25/2011	415.00	1.20	498.00	
1337	Angelina Nguyen	09/15/2010	01/25/2011	490.00	1.60	784.00	
1355	Peter J Bertuglia	10/29/2009	01/26/2010	272.50	46.00	12,487.50	
1389	Mathew C Moehlman	02/05/2011	02/08/2011	490.00	5.60	2,744.00	
1406	Mindy S Dolgoff	09/15/2010	01/25/2011	390.00	0.70	273.00	
1411	Rebecca R Warner	11/13/2009	12/03/2009	350.00	33.60	11,760.00	
1414	David V Sack	11/18/2009	11/20/2009	365.00	16.70	6,095.50	
1415	Jordan Green	11/13/2009	11/17/2009	275.00	11.40	3,135.00	
1424	Victor Chan	01/21/2010	02/02/2010	260.00	2.00	520.00	
1429	Phillip Smith	09/15/2010	01/25/2011	400.00	1.40	560.00	
1436	Rachel A Avan	05/11/2010	04/07/2011	353.75	6.40	1,928.00	
1439	Rian Wroblewski	02/24/2011	04/12/2011	365.00	50.50	18,432.50	
1440	Iona M Evans	01/25/2011	04/17/2012	500.00	2.50	1,422.50	
1441	Jerome C Pontrelli	02/11/2011	06/01/2011	440.00	113.30	49,852.00	
1442	Stephen Krasner	03/25/2011	03/31/2011	280.00	10.60	2,968.00	
1443	Matthew Giles	06/03/2011	06/30/2011	190.00	2.00	380.00	
1449	Steven Wattenberg	05/26/2011	08/08/2011	280.00	1.10	308.00	

Billing Employee: Christopher Keller
Client: 016576 State Street Corporation
Resp Employee: Eric J Belfi
Matter: 016576.0001 State Street Corporation-Class Action
Department: 05 Securities

1450	Reka Viczian	06/10/2011	11/19/2013	260.00	82.20	20,886.00	
1451	Jeffrey R Alexander	12/02/2011	12/02/2011	350.00	5.50	1,925.00	
1454	Mathew Appenfeller	06/08/2011	07/14/2011	265.00	42.00	11,130.00	
1455	Kan Zhang	06/08/2011	06/09/2011	265.00	6.60	1,749.00	
1459	Edward Muchmore	10/13/2011	10/13/2011	375.00	3.30	1,237.50	
1480	Rodney Joyner	12/16/2011	12/16/2011	250.00	1.00	250.00	
1491	Katie Good	01/23/2012	08/17/2012	295.00	2.50	737.50	
1513	Elizabeth R. Wierzbowski	07/26/2013	08/13/2013	665.00	27.20	18,088.00	
1523	Shella C. Mundo	09/12/2012	02/01/2013	290.00	16.80	4,872.00	
4071	Charles L Pietrofesa	12/20/2012	12/21/2012	325.00	5.00	1,625.00	
4089	Todd S Kussin	12/12/2012	03/31/2014	389.89	468.10	182,457.00	
4110	Daniel Murro	02/01/2013	02/01/2013	390.00	1.00	390.00	
4124	Terrence D Fernando	12/20/2012	12/20/2012	400.00	2.30	920.00	
4214	Allison Tierney	05/28/2013	06/21/2013	390.00	150.20	58,578.00	
4227	John Kosa	12/20/2012	12/21/2012	325.00	4.00	1,300.00	
4240	Eddie Shrem	02/04/2013	05/24/2013	335.00	555.20	185,992.00	
4257	Orlando Perez	02/04/2013	03/31/2014	335.00	2,122.70	711,104.50	
4263	Zeev Kirsh	02/04/2013	08/15/2013	360.00	1,036.90	373,284.00	
4268	Robert Tzall	12/20/2012	12/20/2012	350.00	6.00	2,100.00	
4341	Frantzgermain Bernadin	02/04/2013	03/31/2014	335.00	2,320.40	777,334.00	
4369	David Pospischil	02/04/2013	03/31/2014	410.00	1,854.20	760,222.00	
5204	Margo Penn-Taylor	11/10/2010	11/12/2010	165.00	2.10	346.50	
	Totals			437.15	13,180.20	5,761,775.63	

* * * Disbursement Summary * * *

Class		Amount
101	S-IN-HOUSE SERVICES	16.00
102	S-DUPLICATING IN-HOUSE	686.80

Billing Employee: Christopher Keller
Client: 016576 State Street Corporation
Resp Employee: Eric J Belfi
Matter: 016576.0001 State Street Corporation-Class Action
Department: 05 Securities

105	S-TELEPHONE	448.76
107	S-WORD PROCESSING	715.00
108	S-PRINTING - IN HOUSE	2,703.40
109	S-DATA PROCESSING	428.00
110	S-IN-HOUSE CATERING	132.00
209	H-OVERTIME MEALS	253.28
210	H-LOCAL MEALS	1,995.75
211	H-COURT REP-SERVICES orTRANSCRIPT FEE	23.40
215	H-EXPERT FEES	37,124.82
216	H-CO-COUNSEL FEES	200.00
239	H-PARKING & TOLLS	367.90
241	H-AIRFARE	18,147.32
242	H-RAIL FARE	2,034.00
243	H-PERSONAL CAR USAGE	32.03
244	H-OUT OF TOWN TAXIS	1,420.03
245	H-LOCAL TRANSPORTATION	3,644.43
246	H-CAR RENTAL	850.98
247	H-HOTEL	9,840.07
248	H-OUT OF TOWN MEALS	1,378.92
249	H-MISC TRAVEL	122.00
250	H-FILING AND MISC. FEES	0.00
258	H-MISC. SEARCH FEES or COMPTR RESEARCH	506.59
261	H-OUTSIDE DUPLICATING	20.83
265	H-FEDERAL EXPRESS & OTHER MAIL SVCS	444.83
272	H-CONTRIB. LIT. COMM	48,000.00
273	H-LEXIS OR WESTLAW	11,194.64
285	H-CONFERENCE CALL - TELEPHONE REIMBSMT EXP	794.63
287	H-OVERTIME TRANSPORTATION	2,818.86
	Totals	146,345.27

Billing Employee: Christopher Keller
Resp Employee: Eric J Belfi
Department: 05 Securities

Client: 016576 State Street Corporation
Matter: 016576.0001 State Street Corporation-Class Action

Total Billed To-Date		Total Paid To-Date	
Fees	Costs	Fees	Costs
0.00	0.00	0.00	0.00

EX. 206

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 05/21/2015 11:24:15 AM

From inception
To 05/21/15

Matter Number: 3344-0002 **STATE STREET - ARKANSAS TEACHERS**

PARTNER

NAME	HOURS	RATE	TOTAL
ELIZABETH CABRASER	18.10	975.00	17,647.50
RICHARD HEIMANN	22.60	975.00	22,035.00
STEVEN FINEMAN	71.20	850.00	60,520.00
ROBERT NELSON	0.50	850.00	425.00
DAVID STELLINGS	8.10	775.00	6,277.50
KATHRYN BARNETT	1.60	750.00	1,200.00
DANIEL CHIPLOCK	1,113.50	650.00	723,775.00
NICHOLAS DIAMAND	16.30	600.00	9,780.00
RACHEL GEMAN	0.70	675.00	472.50
LEXI HAZAM	53.00	625.00	33,125.00
JOY KRUSE	174.40	800.00	139,520.00
MICHAEL MIARMI	118.20	550.00	65,010.00
DANIEL SELTZ	0.20	580.00	116.00
	1,598.40		**1,079,903.50**

ASSOCIATE

NAME	HOURS	RATE	TOTAL
TANYA ASHUR	643.50	515.00	331,402.50
JOSHUA BLOOMFIELD	1,787.20	515.00	920,408.00
ELIZABETH BREHM	1,682.90	415.00	698,403.50
JADE BUTMAN	24.00	650.00	15,600.00
NANCY CHUNG	3.30	490.00	1,617.00
JAMES GILYARD	650.00	515.00	334,750.00
KELLY GRALEWSKI	1,478.90	515.00	761,633.50
JENNIFER GROSS	7.90	425.00	3,357.50
LEXI HAZAM	0.30	360.00	108.00
CHRISTOPHER JORDAN	661.50	515.00	340,672.50
JASON KIM	664.00	415.00	275,560.00
MARISSA LACKEY	644.30	515.00	331,814.50
DANIEL LEATHERS	20.90	435.00	9,091.50
SHARON LEE	0.40	470.00	188.00
JAMES LEGGETT	638.00	375.00	239,250.00
COLEEN LIEBMANN	24.00	490.00	11,760.00
ANDREW MCCLELLAND	58.00	415.00	24,070.00
MICHAEL MIARMI	83.80	460.00	38,548.00
SCOTT MILORO	636.10	515.00	327,591.50
LEAH NUTTING	1,707.10	515.00	879,156.50

PETER ROOS	564.00	515.00	290,460.00
RYAN STURTEVANT	668.00	515.00	344,020.00
ANN L. TEN EYCK	290.70	515.00	149,710.50
VIRGINIA WEISS	233.50	465.00	108,577.50
RACHEL WINTTERLE	373.60	515.00	192,404.00
JONATHAN ZAUL	614.70	415.00	255,100.50
	14,160.60		**6,885,255.00**

LAW CLERK

NAME	HOURS	RATE	TOTAL
NEHA GUPTA	44.10	330.00	14,553.00
	44.10		**14,553.00**

PARALEGAL/CLERK

NAME	HOURS	RATE	TOTAL
RICHARD ANTHONY	2.50	325.00	812.50
DAWN BEHRMANN	1.40	325.00	455.00
TODD CARNAM	3.40	325.00	1,105.00
SHANDA CHAPIN-RIENZO	2.00	215.00	430.00
ROBIN KUPERSMITH	2.30	270.00	621.00
MELISSA MATHENY	12.80	270.00	3,456.00
JLE TARPEH	0.60	325.00	195.00
ALEXANDER ZANE	0.10	325.00	32.50
	25.10		**7,107.00**

OF COUNSEL

NAME	HOURS	RATE	TOTAL
ROBERT LIEFF	447.60	975.00	436,410.00
NICHOLAS DIAMAND	11.40	550.00	6,270.00
LYDIA LEE	36.50	475.00	17,337.50
BRUCE LEPPLA	2.80	685.00	1,918.00
	498.30		**461,935.50**

LITIGATION SUPPORT / RESEARCH

NAME	HOURS	RATE	TOTAL
SCOTT ALAMEDA	1.00	260.00	260.00
MARGIE CALANGIAN	1.20	340.00	408.00
ROBERT DE MARIA	30.00	335.00	10,050.00
KIRTI DUGAR	249.00	430.00	107,070.00
SAT KRIYA KHALSA	2.40	285.00	684.00
ARRA KHARARJIAN	116.90	270.00	31,563.00
MAJOR MUGRAGE	17.40	320.00	5,568.00
RENEE MUKHERJI	6.90	290.00	2,001.00
ANIL NAMBIAR	38.00	330.00	12,540.00
CYRUS YAMAT	3.00	320.00	960.00

	465.80	171,104.00
MATTER TOTALS	16,792.30	8,619,858.00

EX. 207

State Street FX

April 7 2010 [redacted] 2 hours

April 8 2010 [redacted] 4.7 hours

4-14-2010
- Chart for Mike
- 93A stuff 3.7 hours

4-15-2010
- Fresh Dm chart 3.2 hours

4-20-2010
FORMAT SST DATA 7.2 hours

4-21-10 " " 6.6

4-22-10 DATA 5.9

CHF BRL USD
SDR ZAR GBP

4-23-10
DATA
3 hours

4-28-2010
CROSS DATA " " 2.9

4-29-10 " " 2

6/8 8/8 8/9

5-11-10
DATA SORT 2.2

5-12-10 8
DATA

5-13-10
DATA 8

5-24-10
[redacted] 6

SFT FX

9-7-2010 [redacted] 2 hour

9-17-10 Lexis Research for COMPLAINT 2

9-20-10 [redacted] 1

+ COMPLAINT INTO DRAFTS 3.3

= 4.3

9-21-10 CALL w/ Lawyer for COMPLAINT 2

MAL GOES MTD

9-27-10 DRAFT complaint 4.9

9-28-10 " " 4.4

10-26-10	— EMAILS RE 93A —	1
10-27-10	[redacted]	.2-.2
11-11-10	— MAL w/ Witnesses	1 hour
11/16/10	— w/ Witnesses	.4
11-22-10	CALC / EMAILS COMPLAINT	.6
11.23.2010	Witness Questions w/ MAL	3.9
12-2-10	Responses to STT's Position	1.8
12-3-10	" " + DRAFT COMPLAINT	5.5
12-6-10	DRAFT COMPLAINT	2
12-8-10	" "	3.3
12-9-10	" "	5.9

12-10-10 Draft Edit 3

12-15-10 93A Letter Demand w/ GJB + MAC 6-9

George Homes

12-20-10 93A S. 9 + 11 3/4-6

12-21-2010 93A 9+11 Memo Research 5-6

2 of 5 MAC GJB

12-22-10 finish 93a memo Sent to Mac + GJB 7-8

12-23-10 [redacted] 7

GJB

DOJ / SEC

DOJ 5 — SEC Interview 5

1-6-11 — Summarize DM Convos — 3

1-7-11 — [redacted] — 2

1-10-11 — Complaint Drafts — MAC — 2

1-13-11 — Edit DM Convos Chart — 4.4

1/25/11 — DM Convos Project 99 → for MAC — 7.3

1-26-11 — Annotate Complaint w/ AFIs for MTD with MAC — 4.9

1-28-11 — Review [illegible] — 1.1

2-2-11 93A Demand Letter 2

EMAILS BETWEEN GJB / MAS

2-3-11 - MEET w/ GJB
- DRAFT LETTER TO GJB REVIEWS AND REVISES RE 9 U.S. 11 4.3

2-4-11 ANSWER COMPLAINT 1.7

2-6-11 REVIEW 93A LETTER DEMAND 3

2-7-11 CALL w/ LCHB 2.2

GJB MEET AND CONFER

[redacted]

2-8-11 CALLS w/ CO-COUNSEL RE DRAFT COMPLAINT 2.5

2-9-11 CALLS RE: FILING .4

2-10-11 CIVIL COVER SHEET PRO

2-17-11 Call w/ co-counsel GOB / MPT / MAE 1.1 hrs

ALL ALAN

2/24/11 Draft discovery Review w/ MAE GOB 1.3

2-28-11 Call w/ co Counsel MPT 0.5

3/7/11 — Review IM Guide — Memo to MPT 6.9

3-8-11 DOJ Calls + meetings MPT - GOB MAE 2.5

3-10-11 IM Guide Editing 2.3

3-11-11 Start Firenze MAE FNT MTC 8.5

STT

3-17-11 → 9/A emails with client Tarbox .8

3-16-11 Calls w/ Consuelo re: GDB MAC case .9

3-17-11 — FXT data emails w/ MAC .5

3-24-11 EOP Docs emails GDB Assist (1)

4-7-11 — file class motions .4

4-12-11 [redacted] 2.1

4-13-11 Amended complaint research + facts / emails 5.3

4-14-11 Calls + emails w/ client + Larbox 6.4

4-15-4 Review + File Answer

MAL GSR COMPLAINT 5.6

5/4/201 [redacted] 4

5/6/11 — Waive Defense for Now 2

6/2/11 → Emails re: MTD #3

6/8/11 → Meeting re: GSR/MAL Assignments for MTD 7

6-22-11 Rev opp research 6.5

6.24-11 Conf call w/ Expert re: MTD 1.1

6-27-11 Call with co counsel for Assignments 2.5
Meet w/ MAL

7-6-11 MTD Call Re: Progress .2

7-7-11 → Rev opp MTD MSJ → 5

7-9-11 → Review Sections of MSJ By Client 3.7
w/ MAL

7-11-11 → Edits to Rev opp sections 4.2

7-12-11 – Call w/ Client → .8
Update re: MTD

7-14-11 Call with Counsel .5

7-15-11 → Edits to Res Mis
Opp section
Following Research memo! → 6.9

7-18-11 — Finish draft
Res Misrep. Opp to MTD 5
Send to Counsel

7-19-11 → Edit draft
Opp w/ edits from
Co-counsel

7-20-11 → Finish draft 2.9
Email to Counsel

8/4/2011 → Memo re draft
MAL → H.D 6.4

8/5/2011 → ~~Email w/~~ Email w/ 3
Comments on Draft of
Opp from Melissa
MAT
MAL

9/2/11 Emails Re: Wolf .4

9-15-11 → [redacted] 3

9-16-11 Emails – co counsel .4
MAL Re: MPT
MPT

9-20-11 → → → [redacted] 1-9

10-14-11 [redacted] ~~1~~

10-17-11 Mail MDC .6
MPT

2012

~~2/[illegible]~~
1/12/12 → EMAILS RE ORAL ARGUMENT .2
GUS MAC

2-16-12 → CALLS CANCEL ORAL ARGUMENT / MAT MAC GUS → .4 + LIEDL (ANDRE)

2-17-12 CALLS RE: STATUS OF MD .2
All

2-~~[illegible]~~28-12 → EMAILS ABOUT SJT RECS .1
MAT / MAC

4-13-12 — Emails re Hearing Date + time — .1
All

4-25-12 — Oral Argument Emails — .2
MPT/MAC

5-1-12 → Conference Call for MTD Hearing (Lien / Location) — .5
MPT / GTS / MAC

5-8-12 — Wolf MTD Hearing Prep + Attend — 6
All

5-10-12 — Call for settlement — .5

5-15-12 → Chilocco Hearing Transcript — .6
GTS / MPT / MAC → Strategy Call w/ co-counsel

5-17-12 Emails re Mediation .4

6-24-12 → Emails + Calls re Mediation .3

5-29-12 All — Emails + Calls re Mediation .5

6-20-12 → Calls re Draft settlement } Settlement Modifications .5
GJB/MPT/MAL Docs

6-21-12 → Calls re: Mediation 1.1

6-22-12 → Meet w/ Wilbur Hale / Conference with co-counsel re GJB/MPT/MAL .6

6-24-12 Ext Data Calls → .2

7-2-12 → Calls Mediation & Tasers } .8

7-5-12 → Calls for Mediation } .1
MAL APT'd

7-10-12
→ Emails and calls for mediation dates / Data Analysis → d.j

7-11-12 → Request not done by STT | (1)

7-13-12 Emails to co-counsel (.1)

7-16-12 Emails for Mediation (.6)

7-22-12 → Emails Mediation (.3)

8-1-12 Memo ⇒ Heritage MAT + MAL (3.4)

8-8-12 DATA Request 1.8

8-9-12 DATA Requests
Calls to Wilmer → 1.5
(Ess not Appl)

8-15-12 → DATA Request . 2.3
Emails + Calls

1

2.5

8-23-12 → Call with Lehr
Case / ERISA Emails
↳ Not Appl 2.5

[redacted]

8-24-12 → CA Documents Emails 1

8-27-12 — [redacted] Mediation
Not Emails + Calls 6.5

8-29-12 Emails Mediation .8
Co-counsel

8.30-12 EMAILS ABOUT ERISA .8

8.31-12 ERISA EMAILS → .1

9-4-12 → CALL ABOUT MPT/GJS/MAC MEDIATION CONTINUED → 1

9-5-12 CALLS W/ LO- CLOSING ERISA ETC.. .1
(EJS) (MAC) (MPT)

9-10-12 → CALL WITH CO-COUNSEL DAMAGES 2.5

9-11-12 - NYC MEDIATION 2 - TO NYC
- PREP MEETING 2 - TO BOS
↓ - MEET WITH MEDIATOR & PREP
9-13-12 → 5
MPT/GJS/MAC = (13) TOTAL

9/26/12 — ADR Bills — .3

10/2/12 — Emails (AI's) / mediation appt — .5

10/9/12 → mediation appt MAC — mediation + settlement calls — 1.7

10-10-12 — compile docs w/ MAC — 3.9

10-11-12 — [redacted] — $2

10/12/12 → [redacted] — 2.2

10-15-12 → STI DATA emails — .6

10-16-12 DATA — call w/ Wilmer Hale — 3.3

10-17-12 → emails → mediation — .2

10-19-12 → Damages Chart 1.3
w/ MAL

10-22-12 Prep for 3.1
GJB/MAL Mediation

10-23-12 → Meet w/ Counsel 1
Before Mediation
→ Mediation w/ Guilmet 6
In Boston
Continue
10-24-12 → Mediation w/ SST 3
10

10-25-12 Emails About Data 1

10-26-12 → Emails; Info exchange 3.9
Draft Requests for Exchange

10-30-12 Email call w/ 8
Client w/ GJB
MAL

11-1-12 → Review Status Report — 1

11-2-12 → Edit Status Report + Prot. Order w/ Mac — 3

11-8-12 → Call with co-counsel
↳ Mediation
→ Discovery
- Mot. to

11-12-12 → Emails + Calls
↳ 11/14 Hearing — 2
Mac MPT
Strategy

11-13-12 Emails
↳ Joint Status Report 1.2

11/15/12 – Pre meeting w/ cc
GSB MPT (COUNSEL)
MAL + Liebert / Carafa
→ 1

11-16-12 → EMAILS
↳ OMC
– STAY
– DISCUSS
1.5

11-19-12 → EMAILS
→ Meeting
.5

11-27-12 Doc Request
EMAILS
EMAILS → Mediator
1

11-29-12 → Doc Review CALLS
+ EMAILS
→ Mediator
1.1

12-5-12 → EMAIL
↳ Doc Review
.8

12/6/12 EMAILS → MARGINS 1.5

12-10-12 → EMAILS + CALLS → DOC REVIEW

12-11-12 → CALL → ERISA → DOC REVIEW 1.9

12-17-12 → EMAILS ABOUT STRATEGY + DOCKETS 1

12/18/12 → EMAILS → DOC PRODUCTION .9

12/26/12 → STT → CD → EMAILS 1

EX. 208

SST ARRS

4/26/10	emails re data/experts	.2
4/27/10	emails w/ cc/ex re data	.3
4/30/10	emails FXT re data	1
5/5/10	" " "	.3
5/6/10	review FXT analysis	1.2
5/10/10	emails/prep/call re data w/cc	1
5/11/10	emails/review FXT analysis	1.5
5/12/10	emails/review ARRS Contract/RAP	2.7
5/13/10	class research	.8
5/14/10	emails cc re class	.5
5/17/10	emails re class + ARRS (E)	1.6
5/18/10	emails re class	.1
5/19/10	review S+P re custody	2
5/19/10	emails w/ cc re class	.5
5/20/10	class research	.2
5/21/10	" " "	1.5
5/24/10	[redacted]	2.5
5/25/10	class research/emails FXT	.3
5/27/10	emails FXT	.1
5/29/10	" "	.1
6/1/10	emails cc/FXT	.3
6/2/10	" "	.2
6/3/10	" " "	.3
6/4/10	" " "	.5
6/7/10	emails w/ cc/FXT	.2
6/8/10	emails/call cc re Rev	1.2
6/9/10	emails w/LH re data	.4
	draft Taft-H List clients NA S+P	1.1
	research Rev class	1.5
6/10/10	~~Class~~ Research/Rev	5.2
6/11/10	Draft (E) Pres. /Res.	8
6/12/10	SAT " " "	10
6/13/10	SUN " " "	2.5
6/14/10	" " " emails	5.5

6/15/10	meet w/ FXT / emails w/ cc	2.3
6/16/10	Research / emails w cc	5
6/17/10	" " "	1
6/18/10	" " "	2.2
6/21/10	" " "	2.1
6/23/10	" " "	1.3
6/24/10	Review WSJ0 Memo; emails/calls Lieff	2.9
6/25/10	emails / cc	1.8
6/26/10	" " "	.5
6/30/10	emails w/ cc	.4
7/2/10	emails FXT re data	.9
7/7/10	" " "	.3
7/8/10	emails w/ cc + prep/call	1.7
7/12/10	emails w/ cc	.2
7/13/10	[redacted]	.8
7/14/10		.4
7/15/10		1.5
7/16/10	review FXT data / call FXT	1.7
7/19/10	emails FXT	.3
7/20/10	emails to ARNDS/cc re data	1.1
7/27/10	" " "	.1
7/28/10	" " "	1.1
7/29/10	emails w/ cc re data	.3
8/2/10	Meeting w/ prof. client/call re data	2.3
8/3/10	emails re FXT re client Q	.3

SST ARNDS
8/11/10
emails w/ LCMB re client .4

SST ARNDS
7/26/10
emails ARNDS re data .2

9/9/10 SST
ARRIVES
Chicago TRIP
10.5
BRUSK. White Pay

9/9/10 SST
[redacted] .1
[redacted] 3

9/14/10 SST
ARRIVES
Meeting w/
to-counsel re
class case Prep
8.2

SST ARMS

8/30/10	[redacted]	1.4
8/31/10	emails w/ cc + FxT re data	1
9/1/10	emails w/ FxT/cc re data pres.	1.4
9/2/10	" " " "	1.1
	[redacted]	.4
9/3/10	review FxT analysis + Agreement/emails	2.5
9/6/10	emails FxT re ARMS Data	.2
9/7/10	prep/review for Data pres. to client/emails	6
9/8/10	" " "	4
~~9/9/10~~		
9/10/10	emails w/ cc re data	.5
9/13/10	[redacted]	.7
		.6
9/15/10	Draft summary Client △s	3.2
	emails w/cc re △s	.5
9/16/10	Draft Client △ summary	3.5
	emails w/ FxT re △ data	1.2
9/17/10	email/research Complaint facts	3.0
	emails FxT + cc △s pres.	1.5
9/20/10	Draft Complaint fn/ho	4.0
	[redacted]	1.5
9/21/10	Draft Complaint/all emails	2.1
9/23/10	[redacted]	.4
9/24/10	email w/ cc re (K)	.1
9/27/10	DRAFT complaint facts	5
9/28/10	DRAFT/EDIT Complaint	6.5
9/29/10	Draft damages Model/emails cc re (K)	2.2

10/21/10 SST
emails w/cc
re Rep.
2

SST

10/6/10	revise Excel ⇔ / emails FXT	.9
10/7/10	edit/Revise Excel ⇔s/ ~~emails~~	1.0
	emails FXT	.3
10/8/10	[redacted]	1.8
10/13/10	Review/edit [redacted] ⇔; CC	1.5
10/14/10	" " "	1
10/15/10	" " "	1.2
10/18/10	Call w FXT + ARMS re data	1.1
10/20/10	emails w/ expert + CC re data	.8
10/26/10	review QA cases / email	1
10/27/10	[redacted]	2.5
10/28/10		1.5
		.3
10/30/10		1.5
11/1/10		.3
		1.1
11/2/10	emails w/ CC re (L)	.3
11/3/10	DRAFT client ⇔ Analysis / Email CC	3.5
	emails to CC re client Q	.3
11/5/10	emails w/ CC + FXT re data req.	1.1
11/8/10	Emails w/ CC re client Q	.2
11/10/10	emails w/ CC re custodian	.1
11/11/10	emails re witness	.3
11/12/10	Review witness infor emails	.5
	Review client email to SST	.2
11/16/10	Review witness info	.4
11/17/10	EMAILS w/ FXT re Trade forms	.3
	Review Trade info / emails w/ CC FXT	1.6
11/18/10	emails w/ CC re next steps	.3
11/19/10	email re witness	.1

SST ARMS

11/21/10	CALL + emails w/cc re complaint	.6
11/23/10	DRAFT Questions for witness interviews / emails to cc	5.6
11/24/10	Review witness info	.2
11/29/10	emails w/FXT; Review DATA	2.5
12/1/10	Barnes w/ cc Re 3 Trade analysis	.8
	" " " "	.6
12/2/10	Review/Research "Inventory" claim	.3
	Emails w/ cc Re witness	.4
	DRAFT response to BANK Ref.	2.5
12/3/10	DRAFT EDIT Complaint FACTS	2
	DRAFT Response to SST Refuses	1
	emails to client +cc	.5
	Emails TO LA re FX proc.	.5
12/6/10	CALL w/ LA re Complaint	.5
12/7/10	Review witness notes / DRAFT summary	1.5
12/8/10	DRAFT / EDIT Complaint	4
12/9/10	" " "	6.5
12/10/10	DRAFT/edit Complaint Facts	3.2
	emails to cc	.2
	Review investigator Memo / emails	.3
12/13/10	EMAILS/CALL w/FXT data	.7
	review investigator W. Intvs Lists	.1
	Research AK Fund - emails	.2
12/14/10	EMAILS w/ FXT re call data	.2
	EMAILS w/ FXT/ARMS re MOGul/Banks	.3
12/15/10	emails w/ FXT/cc re data review	1.5
	emails +CALL w/ client re Docs	.5
12/16/10	Review FXT analysis - Trades / emails cc	.7
12/17/10	emails to FXT +cc re Consultant	.5
12/18/10	emails w/cc Re complaint	.1

12/26/10 SST ARMS

emails /cc re Pricing Method 1.1

SST

12/20/10	Prep/Meet w/ FXT, CC, George	1
	Review IM Funds rec'd Client	1.0
	[MEETING w/ SST !!!]	
12/21/10	Emails w/ FXT/CC re data format	.3
	Emails w/ CC re Bank Responses	.2
12/22/10	Review c.9BA Memo	.5
	emails w/ FXT/ARMS re IM convo	.4
	Emails w/ LA re Complaint	
12/23/10	REVIEW SST letters of Direction w/FXT	1.5
	Request to ARMS for IM Funds	.2
	emails w/ expert + client re (FX)	1.2
	Review 93A Memo - Evan	2
12/27/10	emails w/ FXT + CC re FX trade proc.	.7
12/28/10	emails w/ FXT re data + Respond Client Qs	1.5
12/29/10	Emails w/ FXT + CC re Bank mtg	.3
1/3/10	Review FX Trading Report; Emails w/ FXT	1.6
1/4/10	emails w/ LA re class reps	.3
1/5/11	Meeting w/ MPT GS + FXT	
	CALL/Emails w/CC re Complaint	
	Review of IM Funds	2.5
1/6/11	Review IM Funds; Prepare Summary for CC	3
	Emails w/ CC re client data	.4
1/7/11	[redacted]	1.2
1/10/11	DRAFT/EDIT Complaint FACTS	6
1/11/11	emails w/ CC re FXT/ARMS MTG	.3
	emails w/ FXT re FX Procedure	.3
	Emails; Review Draft of 93A claim	.8
1/12/11	Emails w/ FXT re Request	.2
1/13/11	Create IM Funds language Chart	1.3

1/26/11 SST ARR

Draft/Edits IM

Trade DOC

1.2

2/17/11 SST ARRES

CONF CALL/CC

Re case strategy

1.2

[redacted] SSBT ARTRS

1/18/11	DRAFT IM fee explanation; emails w/ FXT, ARTRS, CC re same [11/04 change is an ADMISSION!!]	2.0
1/19/11	Review Complaint redlines	2
1/21/11	emails re ARTRS Board Presentation	.2
1/24/11	EMAILS w/ LA re IM fee changes	
	edit IM fee summary	1.2
1/28/11	Review CC 93A Memo / MA claims	1.1
1/29/11	email w/ CC Re client	.1
2/1/11	Review JV agreement Draft	.6
	Emails w/ CC re client Qs	.4
2/2/11	Review/edit 93A Demand memo / emails	1.3
2/4/11	EDIT Complaint Facts V2	1.4
	Email to CC re client	.1
2/6/11	Review/EDIT Draft 93A Demand Letter	4.5
	Revise Complaint	.8
	emails re Complaint	.2
2/7/11	REVIEW/EDIT 93A letter/Complaint	3.4
	CALL w/ LCHB re Complaint	.3
	[redacted]	.2
2/8/11	Review/EDIT Complaint	1
	11 11 11 11	1.5
2/9/11	Emails w/ [redacted] CC re Complaint	.4
2/10/11	EMAILS w/ LA re expert	.2
	Review/EDIT/emails re Complaint	1.7
	Prepare Final Complaint/Cover Sheets	1.1
	Emails w/ CC re Filing/Assignment	.7
2/11/11	Review Custom (K) emails/CC	.8
2/15/11	93A Demand LOR	1
2/16/11	CALL/Emails w/ CC Re Class Q	1.2
	EMAILS w/ CC Re New? client	.2

EX. 209

From: Chiplock, Daniel P. <DCHIPLOCK@lchb.com>
Sent: Tuesday, April 15, 2014 5:12 PM
To: Michael Lesser
Subject: RE: BNYM: Phillips depo 4/22
Attachments: 3344-0002 Summary.pdf; 3344-0002 Detail.pdf

Attached are a summary and detailed report that we ran in State Street late last year. It's for State Street but you get a sense of what these are supposed to look like.

-----Original Message-----
From: Michael Lesser [mailto:MLesser@tenlaw.com]
Sent: Tuesday, April 15, 2014 5:09 PM
To: Chiplock, Daniel P.
Subject: RE: BNYM: Phillips depo 4/22

I have rough manual records. Please send your samples.

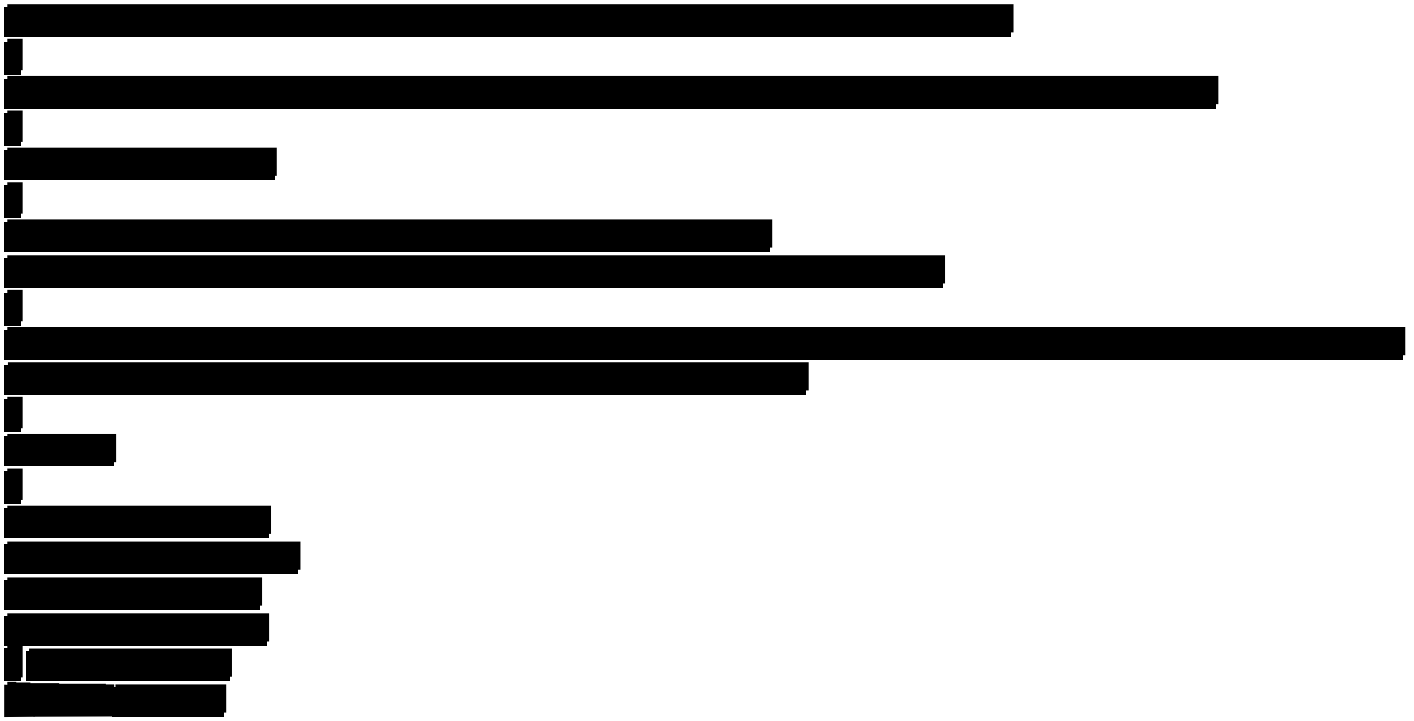
Thanks,

Mike

-----Original Message-----
From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Tuesday, April 15, 2014 5:08 PM
To: Michael Lesser
Subject: RE: BNYM: Phillips depo 4/22

I've been meaning to check in with you guys and make sure you are keeping adequate time records for all of the good work you are doing -- class action fee requests require time reports, and you don't want to be creating those after the fact. We can chat about it and I can send you samples if you like, just let me know. Thanks, Mike.

[redacted]



>
>
>
>
>
> 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.

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.

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

EX. 210

From: Michael Lesser
Sent: Tuesday, May 20, 2014 1:22 PM
To: Evan Hoffman
Subject: Work from this
Attachments: 3344-0002 Detail.pdf; 3344-0002 Summary.pdf

Enter the hours you have into forms like this – though for today, we can probably just give totals.

&

M

&

Michael A. Lesser, Esq.

Thornton &&Naumes LLP

100 Summer St.

Boston, MA 02110

617-720-1333

800-431-4600

mlesser@tenlaw.com

&

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/2/2008	NELSON, ROBERT	Telephone conference with Robert Lieff re new case.	0.50	
4/15/2008	CHIPLOCK, DANIEL	State Street: Group call.	1.00	
4/15/2008	KRUSE, JOY	Legal research re potential case against State Street	1.80	
4/15/2008	KRUSE, JOY	Securities Practice Group meeting and State Street	1.50	
4/16/2008	CHIPLOCK, DANIEL	Conference with J. Gross and J.A. Kruse re State Street, legal research assignments; emails re same.	0.70	
4/16/2008	KRUSE, JOY	Conference call with J. Gross and D. Chiplock re State Street	0.80	
4/16/2008	KRUSE, JOY	Research re possible State Street claims	4.00	
4/17/2008	GROSS, JENNIFER	State Street research	3.00	
4/21/2008	KRUSE, JOY	Research re State Street	2.00	
4/21/2008	MUKHERJI, RENEE	Research corporate status of State Street Bank and its foreign exchange operations, for J.A. Kruse.	1.00	
4/22/2008	GEMAN, RACHEL	Conference with J. Gross re State Street investigation, banking preemption.	0.30	
4/23/2008	KRUSE, JOY	Research for State Street	2.00	
4/28/2008	GROSS, JENNIFER	Research and draft memo.	2.50	
4/29/2008	DUGAR, KIRTI	Review documents re foreign exchange case against State Street; meetings with J.A. Kruse and R. Heimann re same.	3.50	
4/29/2008	KRUSE, JOY	Legal research re claims against State Street	2.30	
4/29/2008	KRUSE, JOY	Review J. Gross' email re presumption	0.30	
4/29/2008	KRUSE, JOY	Review State Street disclosure statement (77 pages)	2.00	
4/29/2008	MUKHERJI, RENEE	Research state pension funds managed by State Street Global Advisors, for K. Dugar.	2.50	
4/30/2008	KRUSE, JOY	List of states doing business with State Street but notice having qui tam statements and list of states serviced by same.	0.20	
5/1/2008	KRUSE, JOY	Legal research re claims against State Street	2.50	
5/2/2008	CHIPLOCK, DANIEL	Review State Street disclosure statement; telephone conference with J.A. Kruse re same.	1.90	
5/2/2008	MUGRAGE, MAJOR	Research regarding State Street Investors.	1.90	
5/5/2008	CHIPLOCK, DANIEL	Review disclosure statement re State Street for State Street case investigation.	2.60	
5/29/2008	CHIPLOCK, DANIEL	Emails to J.A. Kruse and J. Gross re State Street research.	0.40	
7/7/2008	KRUSE, JOY	State Street research.	10.00	
7/8/2008	KRUSE, JOY	State Street - legal research.	10.00	
7/9/2008	KRUSE, JOY	State Street legal research.	10.00	
7/10/2008	CHIPLOCK, DANIEL	Review disclosure statement re State Street and draft memo re same; telephone conferences and emails with J.A. Kruse, J. Gross and K. Dugar re same.	5.00	
7/10/2008	HEIMANN, RICHARD	State Street - Telephone conference with J.A. Kruse.	0.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/10/2008	HEIMANN, RICHARD	Telephone conference with Mike Thornton	0.30	
7/10/2008	HEIMANN, RICHARD	Telephone conference with S. Fineman.	0.20	
7/10/2008	KRUSE, JOY	State Street legal research.	12.00	
7/10/2008	MUGRAGE, MAJOR	Research States Street Global and Golden West Financial's SEC filings.	1.40	
7/11/2008	CHIPLOCK, DANIEL	Research and draft sections of State Street memo relating to introduction and preemption; emails to team re same.	4.80	
7/11/2008	GROSS, JENNIFER	Research for client memo.	2.40	
7/11/2008	KRUSE, JOY	State Street legal research.	12.00	
7/14/2008	CHIPLOCK, DANIEL	Do legal research and draft State Street memo sections [redacted]; emails to J.A. Kruse, K. Dugar and J. Gross re same.	6.20	
7/14/2008	MATHENY, MELISSA	Research State Street Bank and Trust for J.A. Kruse.	0.50	
7/14/2008	MUKHERJI, RENEE	Research existing litigation involving State Street Bank entities, for J.A. Kruse.	1.00	
7/14/2008	MUKHERJI, RENEE	Research foreign currency exchange rate cases for J.A. Kruse.	0.60	
7/15/2008	CHIPLOCK, DANIEL	Research and draft sections of State Street memo [redacted]; emails to J.A. Kruse and K. Dugar re same.	8.40	
7/15/2008	KRUSE, JOY	State Street legal research.	8.00	
7/16/2008	CHIPLOCK, DANIEL	Emails with J.A. Kruse and K. Dugar re State Street memo.	0.40	
7/16/2008	DUGAR, KIRTI	Research re State Street foreign exchange case. Emails from D. Chiplock and J.A. Kruse re same.	2.00	
7/16/2008	HEIMANN, RICHARD	Review cases.	1.60	
7/16/2008	KRUSE, JOY	Legal research	9.00	
7/17/2008	CHIPLOCK, DANIEL	Do research on [redacted] for State Street memo; revise same.	2.80	
7/17/2008	CHIPLOCK, DANIEL	Email J.A. Kruse re State Street memo.	0.20	
7/17/2008	KRUSE, JOY	Legal research	10.00	
7/18/2008	CHIPLOCK, DANIEL	Research [redacted] for State Street memo; edit same and email J.A. Kruse and K. Dugar re same.	2.80	
7/18/2008	KRUSE, JOY	Legal research.	9.00	
7/19/2008	CHIPLOCK, DANIEL	Email J.A. Kruse and K. Dugar re State Street memo and 10K review.	0.10	
7/22/2008	ALAMEDA, SCOTT	Research and print out information re Yield Plus funds from State Street Funds.	0.60	
7/22/2008	CHIPLOCK, DANIEL	Email J.A. Kruse re State Street memo [redacted]	0.10	
7/22/2008	KHALSA, SAT KRIYA	Work on State Street spreadsheets of contact information and investment profiles.	2.40	
7/22/2008	KRUSE, JOY	Research statements on foreign currency exchange in SEC filing	2.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/22/2008	MUKHERJI, RENEE	Research State Street annual reports for specific language, for J.A. Kruse.	1.50	
7/28/2008	MATHENY, MELISSA	Search for investigation of State Street fund (SSgA).	1.50	
7/28/2008	MUGRAGE, MAJOR	Designate which states have qui tam legislation in spreadsheet of State Street clients.	0.40	
7/31/2008	CHIPLOCK, DANIEL	Emails to J.A. Kruse and R. Heimann re State Street memo.	0.20	
7/31/2008	MUGRAGE, MAJOR	Edit client investment chart and summary for State Street Global Advisors.	2.50	
8/4/2008	CHAPIN-RIENZO, SHANDA	Research desk request: search for State Street Bank place of incorporation and headquarters.	2.00	
8/4/2008	CHIPLOCK, DANIEL	Edit and revise State Street memo [redacted] email same to team for review.	3.90	
8/5/2008	CHIPLOCK, DANIEL	Revise and edit State Street memo [redacted] email R. Heimann, S. Fineman and J.A. Kruse re same.	3.20	
8/6/2008	CHIPLOCK, DANIEL	Email J.A. Kruse re State Street memo.	0.20	
8/6/2008	KRUSE, JOY	Review memorandum.	1.00	
8/7/2008	KRUSE, JOY	Research.	5.00	
8/8/2008	CHIPLOCK, DANIEL	Emails to J.A. Kruse re State Street [redacted].	0.20	
8/8/2008	KRUSE, JOY	PowerPoint.	3.00	
8/11/2008	CHIPLOCK, DANIEL	Conference with S. Fineman and R. Heimann re [redacted]; do edits to same.	1.80	
8/11/2008	CHIPLOCK, DANIEL	Follow-up emails to D. Clevenger and J.A. Kruse re State Street memo and materials.	0.30	
8/11/2008	FINEMAN, STEVEN	Review background material re potential litigation; discuss potential case with R. Heimann; telephone conference with Mike Lesser and R. Heimann; telephone conference with Robert Lieff re potential case; [redacted] discuss with D. Chiplock.	3.50	
8/12/2008	CHIPLOCK, DANIEL	Edit State Street [redacted]; confer with R. Heimann re same.	1.20	
8/12/2008	CHIPLOCK, DANIEL	Emails to team re State Street [redacted].	0.20	
8/12/2008	KRUSE, JOY	Review PowerPoint and evaluation memorandum.	0.50	
8/13/2008	CHIPLOCK, DANIEL	Confer with R. Heimann re State Street [redacted].	2.90	
8/13/2008	CHIPLOCK, DANIEL	Emails to G. Balko re [redacted].	0.20	
8/13/2008	FINEMAN, STEVEN	Email exchanges with R. Heimann and Lydia Lee re scheduling meetings with [redacted] discuss with R. Heimann and D. Chiplock.	1.60	
8/14/2008	CHIPLOCK, DANIEL	Edit [redacted] re State Street and emails with R. Heimann, J.A. Kruse and S. Fineman re same.	2.50	
8/14/2008	FINEMAN, STEVEN	[redacted]	0.60	
8/15/2008	CHIPLOCK, DANIEL	Emails with R. Heimann et al., re State Street [redacted]; revise and redistribute same.	1.10	
8/15/2008	KRUSE, JOY	Memos; Prepare for meeting.	4.00	
8/16/2008	KRUSE, JOY	Prepare for meeting in [redacted]; Organize materials and PowerPoint projection and laptop.	3.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception
Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
8/17/2008	FINEMAN, STEVEN	[redacted]	5.00	
8/17/2008	KRUSE, JOY	Travel to [redacted]	10.50	
8/18/2008	CHIPLOCK, DANIEL	Do additional research [redacted] and edit [redacted] re same; emails to team re same.	3.40	
8/18/2008	CHIPLOCK, DANIEL	Telephone conference with R. Heimann and emails to Word Processing re edits to [redacted]	0.80	
8/18/2008	FINEMAN, STEVEN	[redacted] exchange with D. Chiplock [redacted]	6.30	
8/18/2008	KRUSE, JOY	Attend meeting with [redacted] to San Francisco	12.00	
8/19/2008	CHIPLOCK, DANIEL	Additional edits to [redacted]	0.90	
8/19/2008	CHIPLOCK, DANIEL	Conference and email re State Street memo with M. Miarmi.	0.20	
8/19/2008	CHIPLOCK, DANIEL	Emails to R. Heimann re State Street memo and [redacted]; edit same.	0.30	
8/19/2008	CHIPLOCK, DANIEL	Finish revising [redacted]; research [redacted]	1.60	
8/19/2008	KRUSE, JOY	Memorandum	1.00	
8/19/2008	MIARMI, MICHAEL	Speak with D. Chiplock and S. Fineman; research to search for provision in [redacted]	1.10	
8/20/2008	CHIPLOCK, DANIEL	Prepare for [redacted] re State Street.	1.10	
8/20/2008	KRUSE, JOY	State Street memorandum; Review emails re funds to contact.	2.00	
8/21/2008	CHIPLOCK, DANIEL	[redacted]	19.00	
8/21/2008	FINEMAN, STEVEN	Review memorandum prepared by N. Chung concerning public record exceptions for attorney-client privilege/work product, and forward to State Street team; email exchange with R. Heimann [redacted] representation.	0.60	
8/22/2008	MIARMI, MICHAEL	Research to search for provision in [redacted]; speak with D. Chiplock re same.	0.30	
8/26/2008	KHARARJIAN, ARRA	State Street Forex analysis per J.A. Kruse.	1.50	
8/26/2008	KRUSE, JOY	Review [redacted]; Instruct re initial analysis	1.80	
9/2/2008	KRUSE, JOY	Review [redacted] to Lydia Lee	0.20	
9/4/2008	FINEMAN, STEVEN	Meeting with Robert Lieff and L. Hazam re status and strategy; telephone conference with R. Heimann re same	1.50	
9/9/2008	CHIPLOCK, DANIEL	Email R. Heimann re [redacted]	0.10	
9/9/2008	DUGAR, KIRTI	State Street currency fraud case. Review [redacted]. Meeting with A. Kharajian re same.	1.00	
9/9/2008	FINEMAN, STEVEN	Review materials in preparation for September 10 meeting with co-counsel	1.30	
9/10/2008	CHIPLOCK, DANIEL	Prepare for and attend meeting with possible co-counsel on State Street case; conference and emails with S. Fineman and K. Dugar re same.	3.50	
9/11/2008	CHIPLOCK, DANIEL	Conference with co-counsel re potential State Street matter, emails with L. Hazam and S. Fineman re same.	1.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/11/2006	DUGAR, KIRTI	Further calls to and from Standard and Poors re queries to be done for currency fraud case against State Street.	1.00	
9/11/2006	DUGAR, KIRTI	Review State Street [redacted] with A. Kharajian re same.	2.00	
9/16/2006	CHIPLOCK, DANIEL	Telephone conference with K. Dugar re State Street [redacted]	0.10	
9/17/2006	KHARARJIAN, ARRA	European pension chart information research per K. Dugar; State Street analysis per K. Dugar.	1.50	
9/18/2006	FINEMAN, STEVEN	Review additional spreadsheets for entities for which State Street was investment manager or custodian and forward to potential co-counsel.	0.50	
9/22/2006	KRUSE, JOY	State Street and [redacted]: Review Lydia Lee's emails	0.10	
9/25/2006	DUGAR, KIRTI	Review Italian funds' spreadsheets; revise same.; review State Street spreadsheets.	1.00	
9/26/2006	CHIPLOCK, DANIEL	Email State Street memo and PowerPoint to J.A. Kruse [redacted]	0.20	
9/26/2006	KRUSE, JOY	Prepare for meeting; provide R. Heimann with materials	0.20	
9/26/2006	MUGRAGE, MAJOR	Prepare and send State Street memoranda to R. Heimann at home.	0.50	
10/7/2006	CHIPLOCK, DANIEL	Conference with co-counsel re State Street potential case; prepare for same.	2.20	
10/7/2006	FINEMAN, STEVEN	Meeting with R. Lieff and potential co-counsel re foreign exchange litigation (at LCHB).	1.50	
10/8/2006	CHIPLOCK, DANIEL	Telephone conference with co-counsel re potential State Street case; conference and email with S. Fineman and K. Dugar re same.	1.80	
10/8/2006	FINEMAN, STEVEN	Revise and edit memorandum from K. Dugar re foreign exchange data [redacted] forward to prospective co-counsel.	0.70	
10/9/2006	CHIPLOCK, DANIEL	Review email from K. Dugar re State Street and evidence necessary to prove fraud; telephone conference re same.	0.60	
10/9/2006	MUGRAGE, MAJOR	Research clients of State Street Global Advisors.	0.80	
10/10/2006	CHIPLOCK, DANIEL	Email L. Hazam re [redacted] on State Street.	0.20	
10/10/2006	CHIPLOCK, DANIEL	Emails to team re State Street research [redacted]	0.60	
10/16/2006	CHIPLOCK, DANIEL	Email K. Dugar re State Street case and [redacted]; attend call with S. Fineman, R. Heimann and L. Hazam re status of California Attorney General investigation.	1.20	
10/16/2006	FINEMAN, STEVEN	Telephone conference with R. Heimann, D. Chiplock and L. Hazam re status and strategy.	0.50	
10/16/2006	HEIMANN, RICHARD	Telephone conference with S. Fineman, D. Chiplock and L. Hazam.	0.70	
10/20/2006	FINEMAN, STEVEN	Telephone conference with co-counsel re status and strategy.	0.70	
11/21/2006	CHIPLOCK, DANIEL	Emails to L. Hezam and R. Heimann, S. Fineman re [redacted]	0.20	
11/24/2006	HAZAM, LEXI	Call with Mike Lesser re status of approaches to funds to obtain foreign exchange data.	0.30	
11/25/2006	CHIPLOCK, DANIEL	Review past research [redacted] and prepare for co-counsel call; attend same to discuss status; follow-up telephone conferences and emails with K. Dugar re State Street contacts with [redacted]	1.40	
12/4/2006	CHIPLOCK, DANIEL	Emails to S. Fineman and K. Dugar re custodial contracts with [redacted].	0.20	
12/5/2006	CHIPLOCK, DANIEL	Email J.A. Kruse re State Street custodial contracts.	0.10	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
12/8/2008	CHIPLOCK, DANIEL	Emails to L. Hazam, et al., re [redacted] custodial contracts.	0.20	
12/10/2008	CHIPLOCK, DANIEL	Review State Street custodial contracts with [redacted] and email team re same; telephone conference with K. Dugar re same.	2.80	
12/12/2008	CHIPLOCK, DANIEL	Review 2002 custodial contract with [redacted] and email team re same.	2.00	
7/16/2009	FINEMAN, STEVEN	Review list of union funds associated with target custodian banks; email to Mike Thornton re [redacted]	0.50	
10/2/2009	FINEMAN, STEVEN	Email exchange with Mike Lesser re strategic approach to filing class cases.	0.30	
10/6/2009	FINEMAN, STEVEN	Complete and circulate to litigation team LCHB client contacts information; telephone conference with LCHB team and co-counsel re status and strategy for communicating with potential clients.	1.00	
10/6/2009	HEIMANN, RICHARD	Telephone conference with Mike Thorton, et al.	0.60	
10/6/2009	STELLINGS, DAVID	Conference call, preparation, strategy	1.10	
10/7/2009	BARNETT, KATHRYN	Receive data disks, emails with co counsel regarding distribution of same and arrange for copying of same.	0.40	
10/7/2009	STELLINGS, DAVID	Telephone conferences and meeting with potential experts/investigators; client identification.	4.70	
10/13/2009	CHIPLOCK, DANIEL	Email Help Desk re creating email list.	0.10	
10/13/2009	CHIPLOCK, DANIEL	Email team re email distribution list.	0.10	
10/13/2009	FINEMAN, STEVEN	Read ERISA preemption memorandum prepared by Mike Lesser and forward to LCHB team.	0.50	
10/20/2009	LEE, LYDIA	Emails re [redacted] on State Street; telephone call to former [redacted] re attendees [redacted] meeting; telephone calls with [redacted] and follow-up emails.	2.40	
10/20/2009	MATHENY, MELISSA	Draft memos and cover letters to [redacted] Attached amended complaint. FedEx.	2.00	
10/21/2009	CHIPLOCK, DANIEL	Emails and conference with S. Fineman, R. Heimann and J.A. Kruse re client outreach; [redacted]	1.10	
10/21/2009	CHUNG, NANCY	Work on memorandum to send to others funds regarding State Street.	1.50	
10/21/2009	KRUSE, JOY	Review State Street memorandum regarding [redacted]	0.30	
10/21/2009	LEE, LYDIA	Review State Street memo for [redacted] meeting	0.80	
10/21/2009	MATHENY, MELISSA	Call Lydia Lee with J.A. Kruse and revise memo for [redacted]	0.50	
10/22/2009	CHIPLOCK, DANIEL	Conference calls and emails with S. Fineman and co-counsel re client outreach; emails to J.A. Kruse and K. Dugar re same.	1.10	
10/22/2009	CHIPLOCK, DANIEL	Confer with S. Fineman re client outreach; draft email to Equity Partners re same.	0.30	
10/22/2009	CHIPLOCK, DANIEL	Emails with [redacted] and K. Dugar; telephone conferences with K. Dugar re chart of [redacted]	0.60	
10/22/2009	CHIPLOCK, DANIEL	Email team re edits to memo to clients.	0.10	
10/22/2009	CHIPLOCK, DANIEL	Follow-up emails to [redacted] re [redacted] exposure; emails to K. Dugar re same.	0.20	
10/22/2009	CHUNG, NANCY	Work on State Street memorandum.	1.80	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
10/22/2009	KRUSE, JOY	Revise memo and email to funds re State Street Forex; emails with Lydia Lee, B. Leppla	2.80	
10/22/2009	LEE, LYDIA	Emails re State Street memos and upcoming [redacted] meeting; research and identify additional State Street clients - [redacted] telephone call to arrange lunch meeting with [redacted]	2.30	
10/23/2009	FINEMAN, STEVEN	Telephone conference with [redacted] telephone conference with [redacted] telephone conference with [redacted]	1.30	
10/23/2009	KRUSE, JOY	Review State Street complaints; contact funds; send memoranda.	7.00	
10/23/2009	LEE, LYDIA	Lunch meeting with [redacted] emails re [redacted] report on lunch meeting.	2.20	
10/26/2009	CHIPLOCK, DANIEL	Confer with S. Fineman re drafting complaint.	0.10	
10/26/2009	CHIPLOCK, DANIEL	Email S. Fineman re [redacted]	0.10	
10/26/2009	CHIPLOCK, DANIEL	Emails to Lydia Lee re [redacted] meeting.	0.10	
10/26/2009	KRUSE, JOY	Contact funds regarding State Street class case.	3.00	
10/26/2009	LEE, LYDIA	Emails re arrangements for meeting in [redacted]	0.80	
10/27/2009	CHIPLOCK, DANIEL	Conference call with team re [redacted]	0.30	
10/27/2009	CHIPLOCK, DANIEL	Draft potential class complaint; research re same.	6.10	
10/27/2009	CHIPLOCK, DANIEL	Email Lydia Lee re [redacted]	0.10	
10/27/2009	CHIPLOCK, DANIEL	Emails to M. Macatee re travel plans to [redacted], telephone conference with S. Fineman re same.	0.30	
10/27/2009	CHIPLOCK, DANIEL	Print materials for [redacted]	0.20	
10/27/2009	FINEMAN, STEVEN	Email to LCHB team and co-counsel re status of client retention; email exchange with LCHB team and co-counsel re scheduling a status call; telephone conference with LCHB team and co-counsel re [redacted]	1.50	
10/27/2009	KRUSE, JOY	Discuss State Street with B. Leppla and K. Dugar; contacts of clients, data gathering.	0.60	
10/28/2009	CHIPLOCK, DANIEL	Emails and conference with G. Balko re travel to [redacted] for client meeting.	0.20	
10/28/2009	CHIPLOCK, DANIEL	Email S. Fineman, R. Heimann re Boston venue and plaintiff.	0.10	
10/28/2009	CHIPLOCK, DANIEL	[redacted] with S. Fineman.	1.50	
10/28/2009	CHIPLOCK, DANIEL	Travel to and from [redacted] meeting with S. Fineman.	6.50	
10/28/2009	FINEMAN, STEVEN	[redacted]	7.60	
10/28/2009	KRUSE, JOY	Prepare memo for [redacted]	0.20	
10/28/2009	KRUSE, JOY	Review email response from [redacted] regarding State Street.	0.20	
10/28/2009	LEE, LYDIA	Emails re upcoming meeting in [redacted]	0.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
10/28/2009	MATHENY, MELISSA	Prepare memo to be sent to [redacted]	0.20	
10/28/2009	STELLINGS, DAVID	Document review, strategy re new cases.	1.80	
10/29/2009	CHIPLOCK, DANIEL	Email D. Stellings re B. Leppla's email on potential contact.	0.10	
10/29/2009	KHARARJIAN, ARRA	State street and general securities news research per K. Dugar.	1.00	
10/29/2009	KRUSE, JOY	Review B. Leppla email re State Street contacts.	0.20	
11/2/2009	CHIPLOCK, DANIEL	Email Forex article to [redacted]	0.10	
11/2/2009	CHIPLOCK, DANIEL	Email G. Balko re [redacted] travel.	0.10	
11/2/2009	CHIPLOCK, DANIEL	Email to Lydia Lee re [redacted] meeting.	0.20	
11/2/2009	DUGAR, KIRTI	Review complaint and transactions from portfolio monitoring clients; attend conference call with S. Fineman re case.	2.50	
11/25/2009	KHARARJIAN, ARRA	[redacted] data analysis and chart creation per K. Dugar.	4.50	
12/2/2009	FINEMAN, STEVEN	Email to co-counsel and LCHB team re summary of LCHB's review of the Forex trading data for [redacted], and suggestion of conference call; read K. Dugar's analysis of [redacted]	0.40	
12/2/2009	LEPPLA, BRUCE	Outreach to potential clients including [redacted]	1.00	
12/3/2009	CHIPLOCK, DANIEL	Confer with S. Fineman re investigation.	0.20	
12/3/2009	FINEMAN, STEVEN	Email exchanges with K. Dugar and Mike Lesser re LCHB data analysis methodology.	0.30	
12/11/2009	CHIPLOCK, DANIEL	Conference call with co-counsel re status of investigation and data review.	0.50	
12/11/2009	FINEMAN, STEVEN	Telephone conference with LCHB team and co-counsel re status of litigation and LCHB's review of client data.	0.70	
12/11/2009	HEIMANN, RICHARD	Telephone conference with S. Fineman re conference call; telephone conference with State Street team.	0.40	
12/11/2009	STELLINGS, DAVID	Team call.	0.50	
12/16/2009	CHIPLOCK, DANIEL	Forward [redacted] to team.	0.20	
12/21/2009	CHIPLOCK, DANIEL	Review Glancy Binkow complaint for PSLRA violations and email to team.	0.40	
12/21/2009	LEE, SHARON	Review newly filed complaint and email to securities group.	0.40	
12/24/2009	DUGAR, KIRTI	Review and analyze [redacted] Forex transactions.	3.00	
12/24/2009	KHARARJIAN, ARRA	[redacted] Forex analysis per K. Dugar.	2.50	
12/29/2009	KHARARJIAN, ARRA	[redacted] foreign exchange analysis per K. Dugar.	3.10	
12/30/2009	BARNETT, KATHRYN	Review draft supplement statement of case; email with team regarding same.	1.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
12/30/2009	KHARARJIAN, ARRA	[redacted] Forex analysis per K. Dugar.	3.00	
1/4/2010	DUGAR, KIRTI	Further review and checking of [redacted] Forex transactions.	2.50	
1/4/2010	HEIMANN, RICHARD	Telephone conference with Mike Thornton and S. Fineman.	0.30	
1/4/2010	KHARARJIAN, ARRA	[redacted] Forex analysis per K. Dugar	1.50	
1/5/2010	CHIPLOCK, DANIEL	Update call with K. Dugar, Lydia Lee, R. Heimann and S. Fineman re [redacted]	0.40	
1/5/2010	KHARARJIAN, ARRA	[redacted] Forex analysis per K. Dugar.	1.50	
1/5/2010	MATHENY, MELISSA	Pull Coughlin's derivative State Street complaint for S. Lee.	0.50	
1/6/2010	CHIPLOCK, DANIEL	Emails to K. Dugar re State Street and [redacted]	0.20	
1/6/2010	KHARARJIAN, ARRA	[redacted] analysis per K. Dugar.	1.00	
1/8/2010	CHIPLOCK, DANIEL	Email Lydia Lee re status of data from [redacted]	0.10	
1/12/2010	CHIPLOCK, DANIEL	Telephone conference with [redacted] email team re same	0.50	
1/19/2010	CHIPLOCK, DANIEL	Email L. Hazam re [redacted]	0.10	
1/20/2010	HAZAM, LEXI	Email Robert Lieff re status o[redacted] decision re intervention.	0.20	
1/20/2010	HAZAM, LEXI	Review State Street contract with [redacted]; review emails re same; review findings re fund's cata.	0.80	
1/22/2010	FINEMAN, STEVEN	Email exchange with co-counsel and LCHB team re scheduling group call.	0.20	
1/25/2010	CHIPLOCK, DANIEL	Email re status call.	0.10	
1/27/2010	CHIPLOCK, DANIEL	Conference with S. Fineman and L. Hazam re draft complaint; review Supreme Court RICO decision and email team re same; research venue.	1.60	
1/27/2010	FINEMAN, STEVEN	Email exchanges with LCHB team re possible involvement of [redacted], email exchange with [redacted] re seeking trading data from [redacted]	0.50	
1/27/2010	HEIMANN, RICHARD	Review ERISA memorandum.	0.80	
1/28/2010	CHIPLOCK, DANIEL	Conference call with team and co-counsel re status of case; draft complaint.	0.80	
1/28/2010	CHIPLOCK, DANIEL	Review and edit draft class complaint; search for past research on RICO in First Circuit.	0.80	
1/28/2010	FINEMAN, STEVEN	Telephone conference with LCHB team and co-counsel re status of client retention and complaint drafting for class litigation; discuss same with D. Chiplock.	0.50	
1/28/2010	HAZAM, LEXI	Call with team, including co-counsel re status of efforts to file class action complaint.	0.40	
1/28/2010	HEIMANN, RICHARD	Team telephone conference	0.40	
1/29/2010	FINEMAN, STEVEN	Read memorandum on ERISA requirements for Forex trading.	0.70	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/1/2010	CHIPLOCK, DANIEL	Email S. Fineman re team status call.	0.10	
2/2/2010	CHIPLOCK, DANIEL	Telephone conference with [redacted] re State Street case and email team re same.	0.40	
2/8/2010	CHIPLOCK, DANIEL	Emails to attorneys re sample RICO allegations.	0.20	
2/10/2010	HEIMANN, RICHARD	Review ERISA complaint.	0.80	
2/11/2010	CHIPLOCK, DANIEL	Emails to team re ERISA action and Shapiro Haber firm.	0.30	
2/16/2010	CHIPLOCK, DANIEL	Email M. Macatee re State Street call.	0.10	
2/17/2010	MATHENY, MELISSA	Create competing movant chart for State Street case.	1.50	
2/18/2010	CHIPLOCK, DANIEL	Review lead plaintiff chart and conference with S. Fineman, R. Heimann re same; email Lydia Lee re same.	0.30	
2/18/2010	MATHENY, MELISSA	Check docket for further lead plaintiff movant filings then circulate chart for State Street case. Answer follow-up question for S. Fineman.	0.80	
2/23/2010	CHIPLOCK, DANIEL	Email with team re status call.	0.10	
2/24/2010	HEIMANN, RICHARD	Team telephone conference.	0.40	
2/24/2010	KHARARJIAN, ARRA	[redacted] data entry per K. Dugar.	2.50	
2/24/2010	KHARARJIAN, ARRA	[redacted] data organization per K. Dugar.	0.50	
2/25/2010	CHIPLOCK, DANIEL	Telephone conference with team re status of case, strategy; email to team re same.	0.60	
2/25/2010	FINEMAN, STEVEN	Telephone conference with LCHB team and co-counsel re status of potential non-qui tam litigation.	0.50	
2/25/2010	KHARARJIAN, ARRA	[redacted] Forex templates and data entry per K. Dugar.	5.00	
2/26/2010	DUGAR, KIRTI	Review [redacted] data; organize work flow for data entry.	2.00	
2/26/2010	KHARARJIAN, ARRA	[redacted] data entry per K. Dugar.	2.70	
2/26/2010	MUGRAGE, MAJOR	Initiate data entry project and prepare transaction information for review.	2.30	
3/1/2010	DUGAR, KIRTI	Review data entered for [redacted] re State Street Forex transactions.	1.50	
3/2/2010	KHARARJIAN, ARRA	[redacted] data entry and quality control per K. Dugar.	4.00	
3/3/2010	DUGAR, KIRTI	Conference calls with database expert re creation of SQL database with daily Forex rates and matching of transactions.	3.50	
3/4/2010	CHIPLOCK, DANIEL	Conference and emails with S. Fineman re [redacted] and State Street; forward K. Dugar chart to S. Fineman and R. Heimann.	0.20	
3/4/2010	DUGAR, KIRTI	Review Forex transactions for [redacted]; organize data for analysis.	3.50	
3/4/2010	FINEMAN, STEVEN	Email exchange with LCHB team and co-counsel re [redacted] investment forum speaker invitation to Harry Markopolous.	0.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/8/2010	DUGAR, KIRTI	Review and revise [redacted] Forex data sheets for analysis. Compare SQL database results with hard copy entries.	2.00	
3/8/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis per K. Dugar.	2.50	
3/10/2010	DUGAR, KIRTI	[redacted] Forex transactions review; test damages results with 24 hour market opening and New York opening.	2.00	
3/10/2010	KHARARJIAN, ARRA	[redacted] data sort and organization per K. Dugar.	2.00	
3/11/2010	DUGAR, KIRTI	Review [redacted] Forex transactions data.	1.00	
3/11/2010	DUGAR, KIRTI	Review [redacted] Forex transactions for damages analysis.	3.00	
3/11/2010	KHARARJIAN, ARRA	[redacted] data organization per K. Dugar.	1.50	
3/11/2010	KHARARJIAN, ARRA	[redacted] data analysis per K. Dugar.	2.00	
3/12/2010	ALAMEDA, SCOTT	CD duplications.	0.40	
3/12/2010	KHARARJIAN, ARRA	[redacted] data organization from SQL database per K. Dugar.	1.00	
3/15/2010	KHARARJIAN, ARRA	[redacted] Forex transactions analysis per K. Dugar.	2.00	
3/15/2010	KHARARJIAN, ARRA	[redacted] Forex transactions data analysis per K. Dugar.	3.00	
3/16/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis per K. Dugar	2.90	
3/16/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis per K. Dugar	2.30	
3/17/2010	DUGAR, KIRTI	[redacted] Forex data for State Street; revise damages for analysis by the year.	3.50	
3/17/2010	FINEMAN, STEVEN	Review email exchanges re [redacted] losses in Forex trades; email exchange with K. Dugar and R. Heimann re same; email exchange with Mike Thornton re same.	0.40	
3/17/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis per K. Dugar.	1.50	
3/17/2010	KHARARJIAN, ARRA	[redacted] Forex damages summary and analysis per K. Dugar.	3.00	
3/18/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis per K. Dugar.	3.00	
3/18/2010	KHARARJIAN, ARRA	[redacted] data subtotals per K. Dugar.	2.00	
3/18/2010	KHARARJIAN, ARRA	[redacted] data verification per K. Dugar.	0.50	
3/19/2010	DUGAR, KIRTI	Recalculate [redacted] Forex transactions by broker; review data and calculations spreadsheets; conference call with Lydia Lee re same. Conference with L. Hazam re same.	1.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/19/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis per K. Dugar.	3.00	
3/22/2010	DUGAR, KIRTI	Review [redacted] data and calculations; prepare for conference call with [redacted]	1.50	
3/22/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis per K. Dugar.	1.20	
3/23/2010	DUGAR, KIRTI	Conference call with [redacted], R. Heimann and Lydia Lee re [redacted] Forex data review and conclusions.	0.50	
3/23/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis per K. Dugar.	1.70	
3/23/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis and print sheets per K. Dugar.	2.00	
3/24/2010	CHIPLOCK, DANIEL	Email team re status call.	0.10	
3/24/2010	KHARARJIAN, ARRA	[redacted] Forex summary by broker per K. Dugar.	2.50	
3/24/2010	KHARARJIAN, ARRA	[redacted] Forex data alternative analysis per K. Dugar.	3.00	
3/25/2010	CHIPLOCK, DANIEL	Prepare for, and attend status call with team and co-counsel; emails to team thereafter re legal research and memoranda; do additional research on RICO and revise memo.	3.80	
3/25/2010	DUGAR, KIRTI	Team conference call with R. Heimann re [redacted]ard; follow up re same and preparation of same.	3.50	
3/25/2010	HAZAM, LEXI	Call with team and co-counsel re movement towards [redacted] serving as class representative in class action.	0.70	
3/25/2010	HEIMANN, RICHARD	Telephone conference with team.	0.40	
3/25/2010	KHARARJIAN, ARRA	[redacted] alternative method loss calculations per K. Dugar.	2.80	
3/25/2010	KHARARJIAN, ARRA	[redacted] data summary per K. Dugar	0.50	
3/25/2010	KHARARJIAN, ARRA	[redacted] PowerPoint slides per K. Dugar.	0.70	
3/25/2010	MATHENY, MELISSA	Look up and pull document from docket.	0.40	
3/26/2010	CHIPLOCK, DANIEL	Research re jurisdictional issues and update memo to [redacted] same.	0.60	
3/26/2010	CHIPLOCK, DANIEL	Review and respond to emails from L. Hazam and K. Dugar re statute of limitations and RICO.	0.40	
3/26/2010	HAZAM, LEXI	Preliminary review of K. Dugar's data findings; ask him questions re same.	0.20	
3/26/2010	KHARARJIAN, ARRA	[redacted] data analysis per K. Dugar.	2.00	
3/26/2010	KHARARJIAN, ARRA	[redacted] preparation per K. Dugar	1.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/26/2010	KHARARJIAN, ARRA	[redacted] per K. Dugar.	1.50	
3/29/2010	CHIPLOCK, DANIEL	Research re RICO and statute of limitations issues; emails to L. Hazam and K. Dugar re same; review chart prepared for [redacted]	3.90	
3/30/2010	DUGAR, KIRTI	Prepare for and attend conference call with [redacted] staff re Forex data; follow up re same.	1.50	
3/31/2010	KHARARJIAN, ARRA	[redacted] PowerPoint creation and edits per K. Dugar	4.50	
4/1/2010	DUGAR, KIRTI	Work on PowerPoint slides for [redacted] presentation.	2.00	
4/1/2010	KHARARJIAN, ARRA	[redacted] alternative loss calculations per K. Dugar.	2.00	
4/1/2010	KHARARJIAN, ARRA	[redacted] Forex PowerPoint presentation per K. Dugar.	6.00	
4/2/2010	DUGAR, KIRTI	Emails to and from team counsel re [redacted] PowerPoint presentation; conference call with L. Hazam re same.	2.00	
4/2/2010	KHARARJIAN, ARRA	[redacted] PowerPoint presentation per K. Dugar.	1.00	
4/5/2010	CHIPLOCK, DANIEL	Research re RICO and Massachusetts law for complaint.	4.00	
4/5/2010	CHIPLOCK, DANIEL	Review PowerPoint to [redacted] and emails to team re same.	0.70	
4/6/2010	CHIPLOCK, DANIEL	Emails with team re forum selection choice [redacted] and [redacted] law re same; do research re same and RICO, other causes of action; emails to team re breach of contract claims	4.60	
4/6/2010	FINEMAN, STEVEN	Review PowerPoint presentation for [redacted]; discuss legal claims with D. Chiplock	0.70	
4/6/2010	HAZAM, LEXI	Emails with D. Chiplock and further research on Class Action Fairness Act and potential class case.	1.00	
4/6/2010	HAZAM, LEXI	Review questions/comments from [redacted] and research; draft report to team in response	3.00	
4/6/2010	HEIMANN, RICHARD	Review memorandum; team telephone conference.	0.80	
4/7/2010	CHIPLOCK, DANIEL	Emails to team re [redacted] presentation and conference call, do legal research re potential claims, review contract language.	4.40	
4/7/2010	CHIPLOCK, DANIEL	Memo to team re potential claims and follow-up emails to L. Hazam re same.	1.60	
4/7/2010	HAZAM, LEXI	Review various pension fund contracts for forum selection clauses; emails with D. Chiplock re same; call him.	1.30	
4/8/2010	CHIPLOCK, DANIEL	Emails to Mike Lesser re Ch. 93A research.	0.20	
4/8/2010	CHIPLOCK, DANIEL	Review [redacted] contract and do research re potential claims; telephone conferences and emails with team re same; memo to team re same.	6.80	
4/8/2010	DUGAR, KIRTI	Follow up on [redacted] potential case.	1.50	
4/8/2010	HAZAM, LEXI	Emails with Mike Lesser re forum selection clauses in other pension fund contracts; email to team re same; emails with Mike Lesser re settlement language in [redacted] contract.	0.80	
4/8/2010	HAZAM, LEXI	Report to team on findings re forum selection clauses for various pension fund contracts	1.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/8/2010	HAZAM, LEXI	Research First Circuit law on forum selection clauses and non-contract claims; send team report re same; call with team re issues above, possible claims by [redacted]	1.80	
4/9/2010	KHARARJIAN, ARRA	[redacted] trade ticket extraction and print per K. Dugar.	0.30	
4/12/2010	CHIPLOCK, DANIEL	Research re potential claims and statutes of limitations; emails with team re same; attend call with [redacted] office.	4.30	
4/12/2010	DUGAR, KIRTI	Prepare for and attend conference call with R. Heimann and [redacted] office re potential class case. Follow up re same. Revise PowerPoint presentation; revise graphics and review damages analysis; conference call with L. Hazam re same.	5.50	
4/12/2010	HAZAM, LEXI	Call with [redacted] to answer their legal and factual questions re possible class claim; prepare for above call, review memo, complaints, disclosure statement.	1.70	
4/12/2010	HAZAM, LEXI	Pull and review cases from First Circuit re forum selection clauses in contracts.	1.50	
4/12/2010	HAZAM, LEXI	Review and edit PowerPoint presentation for possible meeting with [redacted] in light of research above, emails re same	1.80	
4/12/2010	HEIMANN, RICHARD	Telephone conference with [redacted]	0.60	
4/12/2010	KHARARJIAN, ARRA	[redacted] presentation update and edits per K. Dugar.	3.00	
4/13/2010	CHIPLOCK, DANIEL	Email to Mike Lesser re Ch. 93A research.	0.10	
4/13/2010	CHIPLOCK, DANIEL	Research re potential claims	4.10	
4/13/2010	HAZAM, LEXI	Further emails with team re assumptions in PowerPoint and revisions to same.	0.40	
4/13/2010	KHARARJIAN, ARRA	[redacted] preparation per K. Dugar.	1.00	
4/13/2010	KHARARJIAN, ARRA	[redacted] PowerPoint presentation edits per K. Dugar	2.50	
4/13/2010	KHARARJIAN, ARRA	[redacted] PowerPoint presentation update per K. Dugar.	1.50	
4/13/2010	MATHENY, MELISSA	Per L. Hazam, put binder together for R. Heimann to take to meeting with [redacted]	1.50	
4/14/2010	CHIPLOCK, DANIEL	Continue searching for other Ch. 93A cases certifying national class.	2.20	
4/14/2010	CHIPLOCK, DANIEL	Emails to Mike Lesser and team re Ch. 93A claims; research re same.	1.60	
4/14/2010	CHIPLOCK, DANIEL	Review dockets from other State Street litigation and report to team.	1.90	
4/14/2010	DUGAR, KIRTI	Travel to Seattle for meeting with [redacted] prepare for same, meetings with R. Heimann and Lydia Lee re same; conference calls with L. Hazam re case.	7.50	
4/14/2010	HEIMANN, RICHARD	Travel to [redacted].	3.50	
4/14/2010	KHARARJIAN, ARRA	[redacted] per K. Dugar	1.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/14/2010	MATHENY, MELISSA	Update lead plaintiff movant chart for State Street securities class case.	1.00	
4/15/2010	CHIPLOCK, DANIEL	Emails to co-counsel and team re Ch. 93A claim; research re class treatment of same.	0.80	
4/15/2010	CHIPLOCK, DANIEL	Research breach of contract, statutes of limitations, and email memo to team re same; confer with S. Fineman re same.	3.10	
4/15/2010	DUGAR, KIRTI	Prepare for and attend presentation before [redacted] with R. Heimann; data analysis presentation before [redacted] travel back to San Francisco from Seattle.	7.50	
4/15/2010	HEIMANN, RICHARD	Meeting with [redacted] travel to San Francisco.	8.00	
4/16/2010	CHIPLOCK, DANIEL	Draft memo to [redacted] re potential claims and venue; research re same; emails to team re same.	2.80	
4/18/2010	CHIPLOCK, DANIEL	Email K. Dugar re [redacted] contract terms.	0.10	
4/19/2010	CHIPLOCK, DANIEL	Draft memo to [redacted] re potential claims; do research re same.	4.40	
4/19/2010	CHIPLOCK, DANIEL	Review addenda to 2002 [redacted] n contract.	0.60	
4/20/2010	CHIPLOCK, DANIEL	Research and draft memo to [redacted] re claims and venue; emails to team re same.	4.60	
4/21/2010	CHIPLOCK, DANIEL	Email Lydia Lee re [redacted] memo.	0.10	
4/21/2010	CHIPLOCK, DANIEL	Research and draft memo to [redacted] re claims and venue; emails to team re same.	1.60	
4/21/2010	HEIMANN, RICHARD	Telephone conference with [redacted]	0.30	
4/22/2010	HAZAM, LEXI	Emails with D. Chiplock and others re strategy and legal rules in various possible venues for class action.	0.90	
4/23/2010	CHIPLOCK, DANIEL	Research and draft memo to [redacted]	2.80	
4/27/2010	CHIPLOCK, DANIEL	Research breach [redacted]	1.80	
4/28/2010	CHIPLOCK, DANIEL	Emails to team re memo to [redacted]	0.30	
4/28/2010	FINEMAN, STEVEN	Review revised memorandum prepared by D. Chiplock re evaluation of claims and venue; discuss same with D. Chiplock.	1.80	
4/29/2010	CHIPLOCK, DANIEL	Research re exceptions to statute of limitations provision for state actions, update memo and send to team for review.	3.40	
4/30/2010	CHIPLOCK, DANIEL	Additional research re potential claims, edit memo to [redacted], emails to team re follow-up questions.	6.90	
5/3/2010	CHIPLOCK, DANIEL	Conference and emails with S. Fineman, R. Heimann, L. Hazam and Lydia Lee re memo to [redacted] re legal options; finalize same and forward to Lydia Lee.	1.10	
5/3/2010	CHIPLOCK, DANIEL	Research re contractual forum selection clauses and "waiver"; email to team re same.	0.70	
5/4/2010	HAZAM, LEXI	Review memo by D. Chiplock re potential claims by [redacted], give comments on same; review cases for above and forward to D. Chiplock; emails with D. Chiplock, Lydia Lee and R. Heimann debating arguments in memo above; call with S. Fineman and D. Chiplock re above.	2.10	
5/10/2010	CHIPLOCK, DANIEL	Email Lydia Lee re status of [redacted]	0.10	
5/13/2010	KHARARJIAN, ARRA	[redacted] per K. Dugar.	2.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From | Inception

Timekeeper: ALL | To | Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
5/14/2010	KHARARJIAN, ARRA	[redacted] Forex data analysis per K. Dugar.	4.00	
5/25/2010	CHIPLOCK, DANIEL	Emails re team call on client outreach.	0.20	
5/26/2010	CHIPLOCK, DANIEL	Conference with team re client outreach; update memo re same.	1.20	
5/26/2010	CHIPLOCK, DANIEL	Emails to S. Fineman re team meeting.	0.20	
5/26/2010	HEIMANN, RICHARD	Lieff, Cabraser, et al. conference call.	0.30	
5/26/2010	KRUSE, JOY	Conference call.	0.50	
5/27/2010	CHIPLOCK, DANIEL	Emails to Lydia Lee re client outreach contact memo.	0.20	
5/27/2010	CHIPLOCK, DANIEL	Revise and resend memo to Lydia Lee re client contact.	0.40	
6/1/2010	CHIPLOCK, DANIEL	Email Lydia Lee and update memo re potential client contact, email team re same.	0.80	
6/1/2010	LEE, LYDIA	Emails discussing State Street memo; meeting with [redacted], arrangements for conference calls in preparation of meeting; edit State Street contact memo.	3.40	
6/2/2010	FINEMAN, STEVEN	Email exchange with Mike Thornton and Chris Keller re status of efforts to identify appropriate clients.	0.30	
6/2/2010	LEE, LYDIA	Emails re State Street meeting with [redacted] call to Attorney General in preparation of meeting.	0.60	
6/3/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton re status of efforts to obtain clients.	0.30	
6/3/2010	LEE, LYDIA	Emails re State Street meeting with [redacted]	0.30	
6/4/2010	LEE, LYDIA	Emails re State Street meeting with [redacted] lodging, travel arrangements	0.40	
6/7/2010	CHIPLOCK, DANIEL	Telephone conference with R. Heimann re potential client contacts chart; update same and email to team; review State Street docket in [redacted] and email order approving lead plaintiff to R. Heimann.	0.90	
6/7/2010	LEE, LYDIA	Emails discussing State Street meeting with [redacted]; final edit for State Street contact memo; make and coordinate travel arrangements.	1.40	
6/8/2010	CHIPLOCK, DANIEL	Check State Street docket in [redacted] for Bernstein Litowitz Berger & Grossman lawyers' names and email S. Fineman re same.	0.20	
6/8/2010	FINEMAN, STEVEN	Telephone conference with Mike Lesser, Phil Michael and [redacted] lawyers re potential action on behalf of [redacted].	0.50	
6/9/2010	HAZAM, LEXI	Emails with Mike Lesser re netting issue in foreign exchange data analysis	0.30	
6/9/2010	HAZAM, LEXI	Review experts' report re [redacted]; send comments to team.	0.40	
6/11/2010	FINEMAN, STEVEN	Email exchanges with R. Lieff, R. Heimann and L. Hazam and telephone conference with L. Hazam, re scheduling meeting with [redacted] telephone conference with Mike Thornton re status.	0.50	
6/12/2010	CHIPLOCK, DANIEL	Email S. Fineman re meeting with [redacted].	0.10	
6/15/2010	LEE, LYDIA	Emails re travel arrangements and final preparation for [redacted] meeting.	0.50	
6/16/2010	MATHENY, MELISSA	Make binder with materials for L. Hazam to take to meeting with [redacted]	1.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From | Inception

Timekeeper: ALL | To | Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/17/2010	LEE, LYDIA	Travel to [redacted] re State Street; meet with [redacted]	9.00	
6/18/2010	LEE, LYDIA	Meeting with [redacted], Attorney General, Treasurer and staff; return travel to [redacted]	11.00	
6/21/2010	CHIPLOCK, DANIEL	Emails to Lydia Lee re [redacted] meeting and National Association of Public Pension Attorneys (NAPPA).	0.20	
6/21/2010	HAZAM, LEXI	Draft report to team re meeting held with [redacted] in Seattle.	1.20	
6/22/2010	HAZAM, LEXI	Answer follow-up questions from team re report on meeting with [redacted] in Seattle.	0.50	
6/23/2010	CHIPLOCK, DANIEL	Research re res judicata and breach of contract claims in [redacted]	3.10	
6/23/2010	FINEMAN, STEVEN	Email exchange with Mike Thornton re request for information from Bernstein Litowitz and strategy re the firm's involvement	0.30	
6/24/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton, Mike Lesser, R. Heimann and R. Lieff re status and strategy, including reaching out to Bernstein Litowitz; voicemail message for Max Berger.	0.60	
6/24/2010	HAZAM, LEXI	Call with team re status of case, [redacted] meeting.	0.50	
6/28/2010	CHIPLOCK, DANIEL	Research re contract law and forum selection clauses in [redacted]	2.00	
6/28/2010	HEIMANN, RICHARD	Review legal memorandum re [redacted]; research re same.	0.70	
6/28/2010	LEE, LYDIA	Emails re [redacted] legal memo.	0.20	
6/29/2010	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Heimann and L. Hazam re contracts and forum selection clause research.	0.80	
6/29/2010	CHIPLOCK, DANIEL	Research re Blue Sky laws and forward to L. Hazam.	0.90	
6/29/2010	CHIPLOCK, DANIEL	Review research re contract claim and forward to team.	1.00	
6/29/2010	LEE, LYDIA	Emails re [redacted] legal memo.	0.30	
6/29/2010	LEPPLA, BRUCE	Emails to [redacted] and others to discuss being a class lead plaintiff.	0.80	
6/30/2010	CHIPLOCK, DANIEL	Emails to Mike Lesser re Bernstein, Litowitz slide show; email Lydia Lee re same and review same.	0.40	
6/30/2010	FINEMAN, STEVEN	Email to Max Berger and Jerry Silk re follow-up re cooperation on litigation.	0.20	
6/30/2010	LEE, LYDIA	Locate, scan and emails re Bernstein, Litowitz PowerPoint presentation on State Street, emails re [redacted] interview.	0.60	
7/2/2010	CHIPLOCK, DANIEL	Research re breach of covenant and class claims; draft memo re same.	5.30	
7/6/2010	CHIPLOCK, DANIEL	Email L. Hazam re research on contract and class claims.	0.20	
7/6/2010	FINEMAN, STEVEN	Telephone conference with R. Heimann re status; leave voicemail message for Mike Thornton; email exchange with Jerry Silk re continuing discussion on working cooperatively.	0.50	
7/7/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton re status of client development; telephone conference with Jerry Silk re working arrangement with Bernstein, Litowitz.	0.80	
7/8/2010	HAZAM, LEXI	Initial research on collateral estoppel, res judicata re class claim and contract claim.	0.60	
7/9/2010	FINEMAN, STEVEN	Email exchanges with co-counsel and LCHB team re status of client duration-retention, and class case analytic memo	0.40	
7/13/2010	HAZAM, LEXI	Call with team and co-counsel re possibility of [redacted] serving as class representative.	0.40	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** **Inception**

Timekeeper: ALL **To** **Present**

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/13/2010	HEIMANN, RICHARD	Team conference call.	0.40	
7/14/2010	HAZAM, LEXI	Review expert report on [redacted]; write Mike Lesser re same.	0.40	
7/14/2010	HAZAM, LEXI	Review website of firm that may have connection to [redacted] send same to R. Heimann.	0.30	
7/15/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton, Mike Lesser [redacted] in class case; email to R. Heimann and L. Hazam re same.	0.80	
7/19/2010	CHIPLOCK, DANIEL	Emails and telephone conferences with L. Hazam re State Street research.	0.40	
7/20/2010	CHIPLOCK, DANIEL	Email S. Fineman State Street memo for Bernstein, Litowitz.	0.10	
7/20/2010	FINEMAN, STEVEN	Review memorandum re possible class legal theories; forward memorandum to Jerry Silk at Bernstein, Litowitz; discuss same with D. Chiplock.	0.50	
7/20/2010	KHARARJIAN, ARRA	[redacted] data check and summary sheet per K. Dugar.	1.00	
7/21/2010	CHIPLOCK, DANIEL	Email L. Hazam re research on res judicata.	0.20	
7/23/2010	HAZAM, LEXI	Research claim by [redacted] against defendant re securities lending; send team article with notes re same.	0.40	
7/23/2010	HAZAM, LEXI	Research issue of collateral estoppel, res judicata between contract and consumer protection claim under First Circuit law; write D. Chiplock with finding and cases re same; call with D. Chiplock re above.	2.30	
7/30/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton re status of client generation efforts.	0.40	
8/4/2010	FINEMAN, STEVEN	Email exchange with Jerry Silk re Bernstein, Litowitz's non-interest in participating in the potential litigation; email to R. Heimann, D. Chiplock and L. Hazam re same.	0.30	
8/9/2010	HAZAM, LEXI	Emails with D. Chiplock, Lydia Lee re letter describing case that can be sent to [redacted]	0.40	
8/10/2010	CHIPLOCK, DANIEL	Emails with Lydia Lee and L. Hazam re State Street memo to [redacted] edit same.	0.60	
8/11/2010	FINEMAN, STEVEN	Email exchange with Mike Lesser re client retention; telephone conference with Mike Thornton re same.	0.40	
8/24/2010	MATHENY, MELISSA	Search for and pull sample memos on case for J.A. Kruse to send to [redacted].	0.20	
8/25/2010	KRUSE, JOY	Prepare letter for [redacted]	3.00	
8/25/2010	MATHENY, MELISSA	Pull and send operative complaint to J.A. Kruse. Proofread letter. Discuss with J.A. Kruse.	0.40	
9/8/2010	KRUSE, JOY	Pitch case to [redacted]	0.30	
9/8/2010	MATHENY, MELISSA	Search for number for [redacted] for J.A. Kruse.	0.30	
9/10/2010	DUGAR, KIRTI	Review [redacted] damages estimates and compare results from State Street v. other brokers; meeting with R. Heimann re same; call from S. Fineman; conference call with Lydia Lee re results.	3.50	
9/10/2010	FINEMAN, STEVEN	Email exchange with R. Heimann re status of client retention.	0.30	
9/13/2010	DUGAR, KIRTI	Finalize damages estimates and broker comparisons for [redacted]	1.50	
9/14/2010	CHIPLOCK, DANIEL	Meet with team members and potential co-counsel re State Street client retention efforts; emails with team re same.	3.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/14/2010	FINEMAN, STEVEN	Prepare for and participate in meeting with co-counsel re potential class litigation against State Street and other custodial banks; follow-up internal emails re client generation.	2.50	
9/14/2010	KRUSE, JOY	Update State Street contacts memorandum; exchange emails re [redacted] with S. Finerman and R. Heimann.	0.20	
9/14/2010	MATHENY, MELISSA	Look up information on memo to [redacted]	0.20	
9/15/2010	CHIPLOCK, DANIEL	Emails to J.A. Kruse re State Street client update; emails to co-counsel re same.	0.30	
9/15/2010	KRUSE, JOY	Contact [redacted] fund re State Street, get information from Secretary of board's office.	0.30	
9/20/2010	CHIPLOCK, DANIEL	Revise client contact memo and send to team.	0.60	
9/20/2010	FINEMAN, STEVEN	Review email from Mike Lesser re composition of drafting team for class complaint; email exchange with D. Chiplock and L. Hazam re same; email response to Mike Lesser re same.	0.30	
9/20/2010	KRUSE, JOY	Update Forex client contact memorandum.	0.10	
9/21/2010	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel and LCHB team re plans for complaint and strategy.	1.40	
9/21/2010	HAZAM, LEXI	Call with Mike Lesser, D. Chiplock, Labaton firm re class complaint drafting; email with S. Fineman and D. Chiplock re above; review LCHB memo with legal theories as preparation for above.	1.10	
9/22/2010	HAZAM, LEXI	Email and call with S. Fineman re hearings in Sacramento; email Mike Lesser re clauses to look for in [redacted] contract in re legal claims in class action.	0.50	
9/30/2010	CHIPLOCK, DANIEL	Emails to S. Fineman and Labaton firm re marketing to potential clients; email J.A. Kruse re [redacted]	0.30	
10/1/2010	CHIPLOCK, DANIEL	Email Eric Belfi re [redacted] status.	0.10	
10/4/2010	CHIPLOCK, DANIEL	Email S. Fineman re conference call with Labaton firm.	0.10	
10/5/2010	HAZAM, LEXI	Emails with co-counsel re breach of fiduciary duty in class claim.	0.20	
10/6/2010	CHIPLOCK, DANIEL	Emails with Labaton re strategy call.	0.20	
10/11/2010	CHIPLOCK, DANIEL	Emails to L. Hazam re conference call with co-counsel.	0.10	
10/14/2010	CHIPLOCK, DANIEL	Conference with co-counsel and L. Hazam re research issues and potential claims; emails re same.	0.70	
10/14/2010	HAZAM, LEXI	Prepare for call with Labaton re legal theories to be used in class complaint, review past research, telephone conference with Labaton and D. Chiplock re above.	0.80	
10/15/2010	CHIPLOCK, DANIEL	Emails with L. Hazam re prior research on fiduciary duty	0.30	
10/21/2010	CHIPLOCK, DANIEL	Emails with team and co-counsel re status of [redacted] as potential plaintiff	0.20	
10/25/2010	CHIPLOCK, DANIEL	Email Labaton re Chapter 93A; review memo re causes of action.	0.20	
10/26/2010	CHIPLOCK, DANIEL	Research on 93A class cases; emails to co-counsel re same.	2.20	
10/27/2010	CHIPLOCK, DANIEL	Emails to S. Fineman and L. Hazam re [redacted].	0.20	
10/28/2010	HAZAM, LEXI	Call with R. Lieff re status of class case, [redacted] settlement.	0.30	
10/28/2010	HAZAM, LEXI	Emails with team re damages for [redacted] (class cases).	0.20	
11/8/2010	LIEFF, ROBERT	Travel to New York for meetings re case status	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
11/9/2010	LIEFF, ROBERT	Meetings with Mike Thornton and Lawrence Sucharow to discuss the case	4.00	
11/10/2010	CABRASER, ELIZABETH	Conference with Robert Lieff and conference with Robert Lieff and S. Fineman re status and strategy, Boston filing	1.50	
11/10/2010	LIEFF, ROBERT	Conference with E. Cabraser and conference with E. Cabraser and S. Fineman re status and strategy, Boston filing.	1.50	
11/11/2010	CABRASER, ELIZABETH	Conference with Robert Lieff, et al., re joint agreement [redacted].	0.30	
11/11/2010	LIEFF, ROBERT	Conference with E. Cabraser, et al., re joint agreement.	0.30	
11/11/2010	LIEFF, ROBERT	Travel from New York to Los Angeles.	8.00	
11/12/2010	CABRASER, ELIZABETH	Legal research.	0.40	
12/1/2010	CHIPLOCK, DANIEL	Review and forward press on State Street layoffs to team.	0.20	
12/1/2010	LIEFF, ROBERT	Review email from D. Chiplock re press on State Street layoffs.	0.10	
12/2/2010	CHIPLOCK, DANIEL	Email R. De Maria re employee interviews.	0.20	
12/3/2010	CHIPLOCK, DANIEL	Emails to L. Hazam re complaint drafting and exemplars.	0.30	
12/3/2010	HAZAM, LEXI	Review statement from State Street explaining its foreign exchange procedures, emails with Mike Lesser re same.	0.40	
12/6/2010	HAZAM, LEXI	Call with Mike Lesser re status of drafting of class complaint; then review and edit his email to team re same; write D. Chiplock re issues arising with above.	0.70	
12/13/2010	HAZAM, LEXI	Draft various sections of class complaint for [redacted] legal counts, class allegations, substantially revise rest; research legal counts in above; required elements to recite; circulate draft complaint above, with comments, to co-counsel.	7.30	
12/13/2010	LIEFF, ROBERT	Review draft complaint from L. Hazam.	0.50	
12/22/2010	HAZAM, LEXI	Emails with Mike Lesser re reactions to draft complaint.	0.20	
1/4/2011	HAZAM, LEXI	Emails with Mike Lesser re status of potential class representatives for class action.	0.30	
1/21/2011	HAZAM, LEXI	Review memo re potential class claims to be brought under 93(a) in [redacted]; send comments to co-counsel.	0.30	
1/24/2011	HAZAM, LEXI	Review State Street IM guide changes from before and after 2009, write Michael Lesser re same.	0.30	
1/26/2011	DE MARIA, ROBERT	Begin investigation and research to identify former employees, especially foreign exchange traders.	1.90	
1/26/2011	DE MARIA, ROBERT	Read complaint and first amended complaint.	0.50	
1/28/2011	CHIPLOCK, DANIEL	Email S. Fineman re status of case.	0.10	
1/28/2011	DE MARIA, ROBERT	Begin research to identify former employees.	1.50	
1/28/2011	FINEMAN, STEVEN	Email exchange with L. Hazam and D. Chiplock re status of efforts to get class action complaint on file.	0.30	
2/1/2011	HAZAM, LEXI	Meet with R. Lieff and Michael Thornton re status of Forex cases; potential new filings; prepare for same by reading [redacted] case.	1.50	
2/1/2011	LIEFF, ROBERT	Meeting with Mike Thornton in LCHB [redacted] office to discuss case status.	2.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/3/2011	CHIPLOCK, DANIEL	Conference with S. Fineman and L. Hazam re case status; emails re same.	0.50	
2/3/2011	CHIPLOCK, DANIEL	Email S. Fineman re status call.	0.10	
2/3/2011	DE MARIA, ROBERT	Continue to locate former employees.	1.50	
2/3/2011	FINEMAN, STEVEN	Telephone conference with D. Chiplock and L. Hazam re status of litigation.	0.30	
2/3/2011	HAZAM, LEXI	Call with S. Fineman and D. Chiplock re status of Forex cases.	0.10	
2/4/2011	HAZAM, LEXI	Resend draft class complaint with [redacted] to team with note; write D. Chiplock re inclusion of certain causes of action in complaint above.	0.40	
2/4/2011	LIEFF, ROBERT	Review revised draft complaint from L. Hazam.	0.50	
2/7/2011	CABRASER, ELIZABETH	Correspondence with L. Hazam et al., re class action complaint	1.00	
2/7/2011	CABRASER, ELIZABETH	Correspondence with L. Hazam, Robert Lieff re status and strategy.	0.50	
2/7/2011	CHIPLOCK, DANIEL	Emails to L. Hazam re draft complaint review same and prepare for team call on strategy.	2.50	
2/7/2011	CHIPLOCK, DANIEL	Research re equitable claims and emails with Labaton and team re same.	3.00	
2/7/2011	HAZAM, LEXI	Call with Robert Lieff, Mike Thornton re [redacted] complaint.	0.30	
2/7/2011	HAZAM, LEXI	Conference call with Labaton, D. Chiplock re complaint.	0.90	
2/7/2011	HAZAM, LEXI	Emails with Robert Lieff, Mike Lesser re possible plaintiff [redacted] for class action.	0.20	
2/7/2011	HAZAM, LEXI	Follow up emails with Paul Scarlato and D. Chiplock re viability of 93(A) claim, research into other claims for [redacted] complaint	0.60	
2/7/2011	HAZAM, LEXI	Review draft [redacted] complaint, send comments to D. Chiplock; emails after re same .	0.60	
2/7/2011	HAZAM, LEXI	Send comments on complaint above to Labaton, Thornton firms.	0.40	
2/7/2011	HAZAM, LEXI	Write and call K. Barnett re [redacted] of upcoming filing of [redacted] class complaint.	0.20	
2/7/2011	LIEFF, ROBERT	Call with Mike Thornton and L. Hazam re [redacted]) complaint.	0.30	
2/7/2011	LIEFF, ROBERT	Conference call with E. Cabraser and L. Hazam re status and strategy.	0.50	
2/7/2011	LIEFF, ROBERT	Review email from D. Chiplock on research re equitable claims.	0.20	
2/7/2011	LIEFF, ROBERT	Review email from L. Hazam re possible plaintiff [redacted] for class action.	0.10	
2/8/2011	CABRASER, ELIZABETH	Conference call and review class action complaint.	1.30	
2/8/2011	CABRASER, ELIZABETH	Correspondence and conference call re class definition	0.50	
2/8/2011	CABRASER, ELIZABETH	Legal research; Correspondence re class definition and allegations	1.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/8/2011	CHIPLOCK, DANIEL	Emails and telephone conferences with team and co-counsel re draft complaint review and edit same; research [redacted] law re same.	3.90	
2/8/2011	HAZAM, LEXI	Additional call with Labaton re status of complaint, claims therein.	0.50	
2/8/2011	HAZAM, LEXI	Call with Robert Lieff, call with D. Chiplock re above.	0.40	
2/8/2011	HAZAM, LEXI	Call with team working on complaint above.	0.50	
2/8/2011	HAZAM, LEXI	Emails with complaint team re class definition, whether to include qui tam states. Suggest new one.	0.40	
2/8/2011	HAZAM, LEXI	Review Labaton memo re claims to raise in [redacted] class complaint, review cases cited in same.	0.80	
2/8/2011	HAZAM, LEXI	Review new draft of [redacted]) complaint, send comments to D. Chiplock, send line edits to team.	0.70	
2/8/2011	HAZAM, LEXI	Send my comments and records re above to Paul Scarlato, D. Chiplock.	0.50	
2/8/2011	HAZAM, LEXI	Send update on where things stand with complaint to E. Cabraser, Robert Lieff.	0.50	
2/8/2011	LIEFF, ROBERT	Conference call with team and co-counsel re draft complaint.	1.30	
2/10/2011	CABRASER, ELIZABETH	Correspondence with co-counsel re revisions to class complaint.	0.50	
2/10/2011	CABRASER, ELIZABETH	Telephone conference with Robert Lieff re status and strategy; Review complaint.	0.70	
2/10/2011	CHIPLOCK, DANIEL	Conference calls and emails with co-counsel re filing of [redacted] complaint and next steps; review demand letter.	2.40	
2/10/2011	CHIPLOCK, DANIEL	Review and edit draft [redacted] complaint; email co-counsel re same.	2.80	
2/10/2011	FINEMAN, STEVEN	Discussion with D. Chiplock re filing of complaint against State Street on behalf of [redacted] with the Labaton firm; brief review of complaint.	0.80	
2/10/2011	HAZAM, LEXI	Emails with D. Chiplock filling him in on status of qui tam	0.20	
2/10/2011	HAZAM, LEXI	Emails with D. Chiplock, Michael Lesser re getting ethics opinion on doing class and qui tam cases.	0.20	
2/10/2011	LIEFF, ROBERT	Conference call with team and co-counsel re filing of complaint and next steps.	1.00	
2/10/2011	MIARMI, MICHAEL	Email with D. Chiplock (others included) re research assistance; research re proper time to file motion to establish counsel leadership structure; email to D. Chiplock, providing analysis; read email among team members re same.	2.50	
2/11/2011	CHIPLOCK, DANIEL	Conference and emails with D. Leathers re drafting discovery requests and case background	0.70	
2/11/2011	CHIPLOCK, DANIEL	Edit 93(A) demand letter and email co-counsel re same.	0.30	
2/11/2011	CHIPLOCK, DANIEL	Emails re draft discovery and associate assignments.	0.20	
2/11/2011	CHIPLOCK, DANIEL	Telephone conferences with co-counsel re media issues; emails with S. Fineman re same	0.60	
2/11/2011	FINEMAN, STEVEN	Email exchange with D. Chiplock re assignment of case to Judge Wolf, Chief Judge of the District of [redacted]	0.20	
2/11/2011	HAZAM, LEXI	Emails with D. Chiplock re edits to 93(A) letters.	0.20	
2/11/2011	HAZAM, LEXI	Email with Labaton, D. Chiplock re handling press calls in response to filing, take call from Dan Levine at Reuters	0.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/11/2011	LEATHERS, DANIEL	Case introduction and first assignment information from D. Chiplock; begin to review case introduction materials D. Chiplock forwarded.	0.70	
2/12/2011	CHIPLOCK, DANIEL	Email L. Hazam re sample discovery from California qui tam case.	0.20	
2/13/2011	CHIPLOCK, DANIEL	Email L. Hazam re draft discovery requests.	0.10	
2/13/2011	LEATHERS, DANIEL	Brainstorm possible discovery requests/refer to requests in other materials	0.90	
2/13/2011	LEATHERS, DANIEL	Finish reviewing materials D. Chiplock sent to me re introduction to case.	1.60	
2/14/2011	CHIPLOCK, DANIEL	Emails to D. Leathers re draft discovery.	0.20	
2/14/2011	CHIPLOCK, DANIEL	Emails to team re draft discovery requests	0.20	
2/14/2011	FINEMAN, STEVEN	Email to Executive Committee seeking approval for filing [redacted] complaint.	0.50	
2/14/2011	LEATHERS, DANIEL	Review request for production of documents forwarded by D. Chiplock to re-tool for us; prepare request for production of documents as to each defendant.	4.30	
2/15/2011	ANTHONY, RICHARD	Search for information on former employees: Dmitri (Dmitri) Prianjinski, Mark Lacoy and Kimberly Walski.	0.70	
2/15/2011	CABRASER, ELIZABETH	Legal research re class definition and claims.	0.70	
2/15/2011	CHIPLOCK, DANIEL	Emails to D. Leathers and L. Hazam re draft discovery to State Street.	0.30	
2/15/2011	CHIPLOCK, DANIEL	Emails to team re employee interviews.	0.30	
2/15/2011	CHIPLOCK, DANIEL	Review demand letter and email John Gardiner re same	0.40	
2/15/2011	DE MARIA, ROBERT	Identify [redacted]	1.90	
2/15/2011	HAZAM, LEXI	Emails with Mike Lesser re discovery models, status of calls re class cases.	0.30	
2/15/2011	HAZAM, LEXI	Review past discovery with eye to class discovery; ask [redacted] for additional discovery documents; write D. Chiplock re same.	1.00	
2/16/2011	LIEFF, ROBERT	Review email from D. Chiplock re employee interviews.	0.10	
2/15/2011	MUKHERJI, RENEE	Research job histories of three former State Street employees for R. De Maria.	0.30	
2/16/2011	CHIPLOCK, DANIEL	Edit demand letter and send to Labaton.	1.10	
2/16/2011	CHIPLOCK, DANIEL	Email L. Hazam re draft discovery.	0.20	
2/16/2011	CHIPLOCK, DANIEL	Emails to co-counsel re employee interviews.	0.20	
2/16/2011	CHIPLOCK, DANIEL	Emails to L. Hazam re matter status.	0.10	
2/16/2011	CHIPLOCK, DANIEL	Emails with co-counsel re demand letter and telephone conference with defense; emails re draft discovery demands.	0.30	
2/16/2011	DE MARIA, ROBERT	Continue to research former employees.	2.00	
2/16/2011	HAZAM, LEXI	Exchange messages, emails with D. Chiplock re timing and content of disk in qui tam cases, for reference in class cases send him examples of former	0.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/16/2011	LEATHERS, DANIEL	Emails with L. Hazam and D. Chiplock re draft interrogatories and document requests.	0.10	
2/16/2011	LEATHERS, DANIEL	Review our demand letter.	0.30	
2/17/2011	CHIPLOCK, DANIEL	Conferences and emails with co-counsel re case status and next steps.	1.10	
2/17/2011	FINEMAN, STEVEN	Meeting with Mike Thornton, D. Chiplock and Robert Lieff re status and strategy.	0.30	
2/17/2011	LEATHERS, DANIEL	Edit our requests for production of documents based on California action second set.	1.40	
2/17/2011	LEATHERS, DANIEL	Review California qui tam action interrogatories and corresponding responses and objections.	0.30	
2/17/2011	LEATHERS, DANIEL	Review California qui tam action second set of requests for production of documents and corresponding responses and objections	0.70	
2/17/2011	LIEFF, ROBERT	Conference call with Mike Thornton, S. Fineman and D. Chiplock re status and strategy.	0.30	
2/18/2011	CHIPLOCK, DANIEL	Emails to Labaton re strategy meeting on March 4, 2011.	0.20	
2/18/2011	CHIPLOCK, DANIEL	Emails to S. Fineman and team re marketing and press inquiries.	0.30	
2/18/2011	LEATHERS, DANIEL	Create interrogatories in our case based off of California action interrogatories.	2.80	
2/18/2011	LEATHERS, DANIEL	Go back and edit requests for documents.	0.80	
2/18/2011	LIEFF, ROBERT	Review emails from D. Chiplock re marketing and press inquiries.	0.10	
2/22/2011	CHIPLOCK, DANIEL	Review and edit draft discovery requests; emails to team re same	2.80	
2/22/2011	LIEFF, ROBERT	Review emails from D. Chiplock re edit draft discovery	1.00	
2/24/2011	CHIPLOCK, DANIEL	Edit and revise draft discovery request and send to co-counsel.	1.00	
2/24/2011	CHIPLOCK, DANIEL	Emails re matter number assignment.	0.10	
2/24/2011	DE MARIA, ROBERT	Continue to locate former employees.	1.30	
2/25/2011	CHIPLOCK, DANIEL	Review letter to Professor Rubinstein from Mike Thornton and forward to team.	0.30	
2/25/2011	LEATHERS, DANIEL	Review letter forwarded by D. Chiplock.	0.10	
2/25/2011	LIEFF, ROBERT	Review email from D. Chiplock re letter to Professor Rubinstein from Mike Thornton.	0.10	
2/28/2011	CABRASER, ELIZABETH	Conference call with Robert Lieff L. Hazam and co-counsel re class issues and strategy.	0.50	
2/28/2011	LIEFF, ROBERT	Conference call with E. Cabraser, L. Hazam and co-counsel re class issues and strategy.	0.50	
3/3/2011	CHIPLOCK, DANIEL	Emails to Paul Scarlato re 3/4 status and strategy meeting.	0.20	
3/3/2011	CHIPLOCK, DANIEL	Emails to S. Fineman re Labaton meeting on 3/4.	0.20	
3/3/2011	CHIPLOCK, DANIEL	Review State Street email to [redacted]; emails to team re same and possibly amending complaint; do research re declaratory relief claim.	2.20	
3/3/2011	LEATHERS, DANIEL	Review exchanged emails with D. Chiplock and co-counsel re information sent to Pension Funds; review email send to Pension Funds	0.60	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/4/2011	CHIPLOCK, DANIEL	Conference with Labaton attorneys and S. Fineman re amending complaint; follow-up emails re investigating work; research re legal issues and emails to team re same.	4.10	
3/4/2011	FINEMAN, STEVEN	Meeting with Labaton lawyers and D. Chiplock re status and strategy for proceeding with litigation	1.50	
3/4/2011	LEATHERS, DANIEL	Review investigations emails.	0.20	
3/4/2011	LIEFF, ROBERT	Review emails from D. Chiplock re amended complaint, investigative work and research on legal issues.	0.50	
3/7/2011	CHIPLOCK, DANIEL	Email Mike Lesser re class representative issues.	0.10	
3/9/2011	ANTHONY, RICHARD	Search for former employees of State Street Corporation that worked with Forex accounts.	1.80	
3/9/2011	CHIPLOCK, DANIEL	Confer with S. Fineman and emails with D. Leathers, David Goldsmith re Friday meeting with Forex Transparency.	0.50	
3/9/2011	CHIPLOCK, DANIEL	Email K. Dugar re voicemail from [redacted] re State Street data.	0.10	
3/9/2011	CHIPLOCK, DANIEL	Email R. De Maria re State Street employee interviews.	0.20	
3/9/2011	CHIPLOCK, DANIEL	Emails with K. Dugar; telephone conferences and emails with [redacted] re State Street data.	0.50	
3/9/2011	DE MARIA, ROBERT	Continue research to locate and identify former State Street employees.	3.00	
3/9/2011	DE MARIA, ROBERT	Develop spreadsheet for information on former State Street employees.	1.50	
3/9/2011	LEATHERS, DANIEL	Emails with D. Chiplock re meeting with case experts Friday.	0.10	
3/10/2011	CHIPLOCK, DANIEL	Review and modify draft discovery.	1.00	
3/10/2011	DE MARIA, ROBERT	Develop list of potential interviewees and witnesses.	3.50	
3/11/2011	CHIPLOCK, DANIEL	Forward Forex Transparency presentation to team	0.10	
3/11/2011	CHIPLOCK, DANIEL	Meet at Labaton with expert re [redacted] data analysis; conference and emails with co-counsel and S. Fineman re same; follow-up research re same.	4.20	
3/11/2011	DE MARIA, ROBERT	Continue to develop list of high volume targets for interview from former State Street employees.	3.00	
3/11/2011	FINEMAN, STEVEN	Read email from D. Chiplock re meeting wth Labaton lawyers [redacted]; telephone conference with Mike Thornton re same	0.50	
3/14/2011	CHIPLOCK, DANIEL	Emails with Mike Lesser re employee interview memos; review same and forward to R. De Maria; email R. De Maria with other background information.	1.10	
3/14/2011	CHIPLOCK, DANIEL	Review docket from Securities Class Action and review amended complairt from same re factual investigation and confidential witnesses.	2.40	
3/14/2011	DE MARIA, ROBERT	Advise co-counsel (Labaton) of findings thus far (spreadsheet of names of former employees).	0.50	
3/14/2011	DE MARIA, ROBERT	Continue to research former State Street bank employees.	1.50	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/14/2011	DE MARIA, ROBERT	Discussion with L. Hazam.	0.30	
3/14/2011	DE MARIA, ROBERT	Read qui tam complaint and other documents.	1.10	
3/15/2011	CHIPLOCK, DANIEL	Emails to co-counsel re Chapter 93A; research re same; emails re discovery and amending complaint; research re motion for lead counsel appointment and emails re same; modify discovery requests and send to co-counsel	3.90	
3/15/2011	CHIPLOCK, DANIEL	Emails to M. Miarmi and D. Leathers re motion for lead counsel appointment; do research re same and draft same, send to Paul Scarlato.	1.20	
3/15/2011	CHIPLOCK, DANIEL	Follow-up emails to Paul Scarlato and M. Miarmi re lead counsel motion.	0.50	
3/15/2011	CHIPLOCK, DANIEL	Review list of interview targets prepared by R. De Maria; forward same to S. Fineman and to [redacted] counsel; emails re same.	0.60	
3/15/2011	LEATHERS, DANIEL	Research re appointment of interim co-lead counsel for D. Chiplock.	2.00	
3/15/2011	LEATHERS, DANIEL	Review expert's analysis; review D. Chiplock's forwarded emails.	0.50	
3/15/2011	MIARMI, MICHAEL	Issues re brief in support of motion for appointment as lead counsel, including research re LCHB firm description.	1.50	
3/16/2011	CHIPLOCK, DANIEL	Conference call with Labaton re complaint and discovery.	0.60	
3/16/2011	CHIPLOCK, DANIEL	Email Paul Scarlato re firm resume.	0.10	
3/16/2011	CHIPLOCK, DANIEL	Research re local rules on discovery and email co-counsel re timing of same.	1.20	
3/16/2011	CHIPLOCK, DANIEL	Review draft lead counsel motion and email Paul Scarlato re same.	0.60	
3/16/2011	DE MARIA, ROBERT	Finish research for former State Street employees.	1.30	
3/16/2011	LEATHERS, DANIEL	Research re case management sequencing	0.80	
3/16/2011	LEATHERS, DANIEL	Research re discovery sequencing	0.30	
3/16/2011	LEATHERS, DANIEL	Telephone conference with co-counsel, also with D. Chiplock, M. Miarmi.	0.80	
3/16/2011	MIARMI, MICHAEL	Email with D. Chiplock re call with co-counsel re case status; participate in call with co-counsel; email with D. Chiplock and D. Leathers re timing of discovery, read email among co-counsel and D. Chiplock re timing of discovery and other issues.	0.90	
3/17/2011	CHIPLOCK, DANIEL	Emails with team re custody fee agreement for [redacted]	0.40	
3/17/2011	CHIPLOCK, DANIEL	Review correspondence between Forex Transparency re [redacted] fee schedules; emails to co-counsel re discovery plan.	0.50	
3/17/2011	DE MARIA, ROBERT	Continue research for other former employees.	0.50	
3/17/2011	DE MARIA, ROBERT	Review qui tam and class complaints.	1.00	
3/17/2011	DE MARIA, ROBERT	Telephone call to [redacted], telephone call to [redacted]	0.50	
3/17/2011	LEATHERS, DANIEL	Review D. Chiplock/team emails	0.20	
3/17/2011	LIEFF, ROBERT	Review emails from team re custody fee agreement for [redacted]	0.40	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/18/2011	CHIPLOCK, DANIEL	Research re Chapter 93A.	2.40	
3/18/2011	CHIPLOCK, DANIEL	Review letter from William Paine and email team re same; edit proposed response and send to team	1.20	
3/18/2011	DE MARIA, ROBERT	Continue to develop sources.	1.00	
3/18/2011	LEATHERS, DANIEL	Review response to our demand letter.	0.40	
3/18/2011	LIEFF, ROBERT	Review emails re letter from William Paine and proposed response.	0.30	
3/18/2011	MIARMI, MICHAEL	Read email among team members re letter from State Street's counsel re [redacted]	0.10	
3/21/2011	CHIPLOCK, DANIEL	Do Chapter 93A research	1.60	
3/21/2011	CHIPLOCK, DANIEL	Review Michael Rogers' correspondence with Forex Transparency.	0.40	
3/21/2011	DE MARIA, ROBERT	Continue to research for former employees.	0.40	
3/21/2011	DE MARIA, ROBERT	Telephone call to [redacted]	0.10	
3/21/2011	DE MARIA, ROBERT	Telephone call to [redacted]	0.20	
3/22/2011	CHIPLOCK, DANIEL	Review Labaton's revised lead counsel papers and emails and conference with team re same; emails with B. Leppla and S. Lee re same.	1.80	
3/22/2011	FINEMAN, STEVEN	Review draft interim lead counsel motion prepared by the Labaton firm; discuss same with D. Chiplock; email to Joel Bernstein and co-counsel re same.	0.80	
3/22/2011	LIEFF, ROBERT	Read emails and conference calls with team re Labaton Sucharow's revised lead counsel papers.	0.50	
3/23/2011	CHIPLOCK, DANIEL	Conference call with team and co-counsel re lead counsel papers; telephone conferences with Mike Thornton re same.	1.00	
3/23/2011	CHIPLOCK, DANIEL	Emails and conference with Lydia Lee and S. Fineman re [redacted] contacts.	0.30	
3/23/2011	FINEMAN, STEVEN	Telephone conference with co-counsel and D. Chiplock re motion for appointment of lead counsel and co-counsel and role of LCHB; follow-up telephone conference with Chris Keller re same; follow-up discussion with D. Chiplock.	1.00	
3/23/2011	LIEFF, ROBERT	Conference with team and co-counsel re lead counsel papers.	0.50	
3/24/2011	CHIPLOCK, DANIEL	Review and edit draft papers in support of lead counsel structure; forward to S. Fineman for approval and then email co-counsel re same.	1.00	
3/24/2011	CHIPLOCK, DANIEL	Telephone conferences and emails with Labaton (Paul Scarlato) re legal claims and research; do additional research on Chapter 93A claims.	3.20	
3/25/2011	CHIPLOCK, DANIEL	Chapter 93A research; re-review William Paine letter (response to demand) and do research re sufficiency of demand; email team re same; emails with co-counsel re discovery stay proposal and emails and telephone conferences with L. Hazam re same; do research on breach of contract claim and interaction with Chapter 93A; emails to team re same.	4.20	
3/25/2011	CHIPLOCK, DANIEL	Emails to D. Leathers and M. Miarmi re declaratory relief research.	0.30	
3/25/2011	MIARMI, MICHAEL	Read email exchange among team members re case issues; email with D. Chiplock (D. Leathers included) re research re claim for declaratory judgment in complaint; begin research re same.	0.70	
3/27/2011	LEATHERS, DANIEL	Read through Friday's emails on case between co-counsel.	0.70	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/28/2011	CHIPLOCK, DANIEL	Continue Chapter 93A research for complaint.	4.20	
3/28/2011	CHIPLOCK, DANIEL	Email Labaton Sucharow re State Street counsel.	0.10	
3/28/2011	CHIPLOCK, DANIEL	Review California discovery and email team re same.	1.50	
3/28/2011	CHIPLOCK, DANIEL	Review co-counsel discovery proposal and emails to team re same.	0.30	
3/28/2011	LIEFF, ROBERT	Review email re co-counsel discovery proposal.	0.10	
3/28/2011	MIARMI, MICHAEL	Research re declaratory judgment claim, in connection with amended complaint to be filed.	5.00	
3/30/2011	CHIPLOCK, DANIEL	Email M. Miarmi re status of research on declaratory relief.	0.10	
3/30/2011	MIARMI, MICHAEL	Research re declaratory judgment claim, in connection with amended complaint to be filed; email with D. Chiplock re same.	3.40	
3/31/2011	CHIPLOCK, DANIEL	Email Paul Scarlato re draft complaint.	0.10	
3/31/2011	CHIPLOCK, DANIEL	Review emails from defense counsel and Joel Bernstein re [redacted] respond to same.	0.20	
3/31/2011	CHIPLOCK, DANIEL	Review M. Miarmi's research on declaratory relief claim; email co-counsel re same.	0.60	
3/31/2011	MIARMI, MICHAEL	Research re declaratory judgment claim; email to D. Chiplock containing analysis and conclusions; read response email from D. Chiplock re same; read email exchange among team members re case issues.	4.80	
4/1/2011	CHIPLOCK, DANIEL	Emails to S. Fineman and co-counsel re schedule on discovery and motions to dismiss.	1.10	
4/1/2011	FINEMAN, STEVEN	Email exchange with D. Chiplock re our proposal to defendants' preliminary pleading and discovery schedule.	0.30	
4/1/2011	LEATHERS, DANIEL	Review case emails from prior two days.	0.30	
4/1/2011	LIEFF, ROBERT	Review emails from D. Chiplock re schedule on discovery and motions to dismiss.	0.20	
4/5/2011	CHIPLOCK, DANIEL	Emails re pretrial scheduling.	0.30	
4/5/2011	CHIPLOCK, DANIEL	Emails to team re foreign exchange expert review of client data.	0.20	
4/5/2011	CHIPLOCK, DANIEL	Telephone conferences and emails with Paul Scarlato re Chapter 93A claims.	0.50	
4/5/2011	LIEFF, ROBERT	Review emails re foreign exchange expert review of client data.	0.10	
4/5/2011	LIEFF, ROBERT	Review emails re pretrial scheduling.	0.10	
4/11/2011	CHIPLOCK, DANIEL	Review Chapter 93A decision from Judge Saris and email to team, emails with Paul Scarlato re Chapter 93A claims; emails with R. De Mana re factual investigation.	1.10	
4/12/2011	CHIPLOCK, DANIEL	Emails to R. De Maria re employee interviews.	0.20	
4/12/2011	CHIPLOCK, DANIEL	Emails to team re draft amended complaint; review same and draft claims re 93A; research re same.	2.40	
4/12/2011	LIEFF, ROBERT	Review emails re draft amended complaint.	0.20	
4/13/2011	CHIPLOCK, DANIEL	Revise and edit draft amended complaint; research re same; emails and telephone conferences with co-counsel re same; confer with S. Fineman re same.	5.80	
4/13/2011	FINEMAN, STEVEN	Read draft amended complaint, provide comments to D. Chiplock.	1.50	
4/13/2011	LIEFF, ROBERT	Review edited draft amended complaint from D. Chiplock.	0.50	
4/14/2011	CHIPLOCK, DANIEL	Review and edit amended complaint; emails and telephone conferences with co-counsel re same; research re same.	4.90	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/15/2011	CHIPLOCK, DANIEL	Review and edit amended complaint; emails with co-counsel re same.	4.80	
4/18/2011	MIARMI, MICHAEL	Look at amended complaint.	0.10	
4/19/2011	CABRASER, ELIZABETH	Legal research (pleading standards and recent cases.)	1.30	
4/19/2011	CHIPLOCK, DANIEL	Email R. De Maria re confidential witnesses.	0.10	
4/20/2011	CHIPLOCK, DANIEL	Emails with E. Cabraser and M. Miarmi re complaint and jurisdictional allegations, research re same.	1.00	
4/20/2011	MIARMI, MICHAEL	Email with E. Cabraser and other team members re jurisdictional and class allegations in amended complaint; confer with D Chiplock re same.	0.30	
5/4/2011	MIARMI, MICHAEL	Read email from D. Chiplock re forthcoming motion to dismiss.	0.10	
5/11/2011	CHIPLOCK, DANIEL	Email team re press on SEC investigation of State Street.	0.20	
5/11/2011	LIEFF, ROBERT	Review email from D. Chiplock re press on SEC investigation of State Street.	0.10	
5/26/2011	CHIPLOCK, DANIEL	Emails to co-counsel re briefing stipulation	0.20	
6/2/2011	CHIPLOCK, DANIEL	Emails to team re motion to dismiss briefing.	0.30	
6/2/2011	LIEFF, ROBERT	Review emails from D. Chiplock re motion to dismiss briefing	0.20	
6/3/2011	CHIPLOCK, DANIEL	Email team re briefing on motion to dismiss.	0.20	
6/3/2011	CHIPLOCK, DANIEL	Prepare pro hac forms and email to Garrett Bradley; review [redacted] docket for updates.	1.00	
6/3/2011	LIEFF, ROBERT	Review emails from D. Chiplock re briefing on motion to dismiss.	0.10	
6/6/2011	BEHRMANN, DAWN	Get pleadings and create binders for S. Fineman, D. Chiplock and M. Miarmi.	0.70	
6/6/2011	CHIPLOCK, DANIEL	Email Garrett Bradley re pro hac motion.	0.10	
6/6/2011	CHIPLOCK, DANIEL	Emails to team re motion to dismiss briefing; emails to M. Miarmi re same; review same.	2.00	
6/6/2011	CHIPLOCK, DANIEL	Emails with co-counsel re argument assignments.	0.20	
6/6/2011	CHIPLOCK, DANIEL	Emails with team re press inquiries on motions to dismiss; telephone conferences with S. Fineman re same.	0.50	
6/6/2011	FINEMAN, STEVEN	Review proposed press statements re State Street's motions to dismiss; telephone conference with D. Chiplock re same.	0.50	
6/6/2011	LIEFF, ROBERT	Review emails from D. Chiplock re press inquiries on motions to dismiss.	0.20	
6/6/2011	LIEFF, ROBERT	Review emails re motion to dismiss briefing.	0.30	
6/6/2011	MIARMI, MICHAEL	Issues re opposition to defendants' motion to dismiss.	0.30	
6/7/2011	CHIPLOCK, DANIEL	Emails with team re ethics opinions.	0.20	
6/7/2011	LIEFF, ROBERT	Review emails from D. Chiplock re ethics opinions.	0.10	
6/8/2011	CHIPLOCK, DANIEL	Meet with co-counsel re argument on motions to dismiss; conference with S. Fineman and M. Miarmi re same; research re same.	2.00	
6/8/2011	FINEMAN, STEVEN	Discussion with D. Chiplock re briefing on State Street motions to dismiss; participate in telephone conference with Labaton attorneys and D. Chiplock re same.	0.50	
6/8/2011	MIARMI, MICHAEL	Issues re opposition to defendants' motion to dismiss.	0.50	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/10/2011	CHIPLOCK, DANIEL	Emails to L. Hazam and co-counsel re California briefing on demurrers.	0.20	
6/10/2011	CHIPLOCK, DANIEL	Emails to M. Miarmi re briefing assignment; review cases re same.	2.40	
6/10/2011	HAZAM, LEXI	Emails and calls with Michael Lesser re plan for supplementing interrogatory responses; review past responses and defendants' letter re same.	0.90	
6/10/2011	KUPERSMITH, ROBIN	Print Westlaw cases and prepare binder of cases for D. Chiplock.	2.30	
6/10/2011	MIARMI, MICHAEL	Email with D. Chiplock re opposition to defendants' motion to dismiss.	0.10	
6/14/2011	DUGAR, KIRTI	Review Forex data from [redacted]	1.50	
6/14/2011	NAMBIAR, ANIL	Prepare Forex spreadsheet for [redacted] per K. Dugar	2.00	
6/14/2011	ZANE, ALEXANDER	Email Records re plaintiffs' supplemental interrogatory responses.	0.10	
6/16/2011	CHIPLOCK, DANIEL	Emails to K. Dugar re [redacted] requests.	0.20	
6/17/2011	CHIPLOCK, DANIEL	Emails to K. Dugar re [redacted]	0.20	
6/17/2011	DUGAR, KIRTI	Continue analysis of [redacted] State Street Forex data for damages analysis	5.00	
6/20/2011	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re [redacted] State Street losses.	0.50	
6/20/2011	CHIPLOCK, DANIEL	Emails with [redacted] loss estimates on State Street.	0.40	
6/21/2011	CHIPLOCK, DANIEL	Emails with co-counsel re conference call with foreign exchange expert re motion to dismiss.	0.50	
6/21/2011	LIEFF, ROBERT	Review emails from D. Chiplock re conference call with foreign exchange expert re motion to dismiss.	0.50	
6/21/2011	MIARMI, MICHAEL	Email with D. Chiplock re team calls scheduled for 6/22/11.	0.10	
6/22/2011	CHIPLOCK, DANIEL	Review letter from Mike Lesser to Relators re class case; email comments to L. Hazam.	0.80	
6/23/2011	CHIPLOCK, DANIEL	Emails re consulting experts and discovery in California case.	0.40	
6/23/2011	CHIPLOCK, DANIEL	Emails with team re draft complaint.	0.20	
6/24/2011	CHIPLOCK, DANIEL	Telephone conference with foreign exchange expert and co-counsel re motion to dismiss arguments; emails re same	1.10	
6/24/2011	LIEFF, ROBERT	Telephone conference with foreign exchange expert and co-counsel re motion to dismiss arguments.	0.50	
6/27/2011	CHIPLOCK, DANIEL	Telephone conference with co-counsel re motion to dismiss opposition arguments; emails re same.	1.00	
6/27/2011	LIEFF, ROBERT	Telephone conference with co-counsel re motion to dismiss opposition arguments.	0.50	
6/30/2011	CHIPLOCK, DANIEL	Conference with M. Miarmi re status of motion to dismiss opposition briefing.	0.20	
6/30/2011	CHIPLOCK, DANIEL	Research and draft opposition to 93(A) motion to dismiss arguments.	5.00	
7/1/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition.	2.00	
7/2/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition; emails with M. Miarmi re same.	7.00	
7/2/2011	MIARMI, MICHAEL	Email with D. Chiplock re opposition to defendants' motion to dismiss.	0.10	
7/3/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition	8.50	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From | Inception

Timekeeper: ALL | To | Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/5/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition; emails re same.	8.50	
7/5/2011	MIARMI, MICHAEL	Email with D. Chiplock re opposition to defendants' motion to dismiss	0.10	
7/5/2011	MIARMI, MICHAEL	Research re statute of limitations section of opposition to defendants' motion to dismiss.	5.10	
7/6/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition and draft same; telephone conference and emails with co-counsel re same.	8.80	
7/6/2011	LIEFF, ROBERT	Review emails from D. Chiplock re research on motion to dismiss opposition; telephone conference with co-counsel re same.	1.50	
7/6/2011	MIARMI, MICHAEL	Research re statute of limitations section of opposition to defendants' motion to dismiss.	3.10	
7/7/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; email and telephone conferences re same.	9.00	
7/7/2011	MIARMI, MICHAEL	Work on statute of limitations section of opposition to defendants' motion to dismiss.	8.50	
7/8/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; emails re same.	9.00	
7/8/2011	MIARMI, MICHAEL	Work on statute of limitations section of opposition to defendants' motion to dismiss.	6.70	
7/9/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss.	7.50	
7/10/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; emails re same.	8.00	
7/10/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	13.40	
7/11/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; emails with team re same.	8.50	
7/11/2011	LIEFF, ROBERT	Review emails from D. Chiplock re draft opposition to motion to dismiss.	0.50	
7/11/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	5.00	
7/12/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; emails and telephone conferences with co-counsel re same.	8.80	
7/12/2011	LIEFF, ROBERT	Review emails from D. Chiplock re reach and draft opposition to motion to dismiss; conference call with co-counsel re same.	1.00	
7/13/2011	CHIPLOCK, DANIEL	Edit and revise opposition to motion to dismiss; send edits to Labaton.	3.10	
7/13/2011	HEIMANN, RICHARD	Review draft brief.	0.90	
7/13/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	0.30	
7/14/2011	CHIPLOCK, DANIEL	Edit and revise opposition to motion to dismiss; emails to team re same.	4.70	
7/14/2011	LIEFF, ROBERT	Review revised opposition to motion to dismiss from D. Chiplock	0.20	
7/15/2011	CHIPLOCK, DANIEL	Edit opposition to motion to dismiss and emails to team re same.	4.30	
7/15/2011	LIEFF, ROBERT	Review emails from D. Chiplock re opposition to motion to dismiss.	0.20	
7/15/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	3.20	
7/16/2011	MIARMI, MICHAEL	Look at opposition to defendants' motion to dismiss.	0.10	
7/18/2011	CHIPLOCK, DANIEL	Edits to whole opposition to motion to dismiss; emails to co-counsel re same.	4.80	
7/18/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	2.10	
7/19/2011	CHIPLOCK, DANIEL	Edit and revise opposition to motion to dismiss; emails to S. Fineman and M. Miarmi and co counsel re same.	3.90	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/19/2011	FINEMAN, STEVEN	Read draft opposition to motion to dismiss; provide comments to D. Chiplock and M. Miarmi.	2.50	
7/19/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	2.50	
7/20/2011	CHIPLOCK, DANIEL	Edit opposition to motion to dismiss and emails with David Goldsmith re same.	2.90	
7/20/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	1.00	
7/21/2011	CHIPLOCK, DANIEL	Email M. Miarmi re pro hac application.	0.10	
7/21/2011	CHIPLOCK, DANIEL	Obtain and distribute motion to dismiss opposition papers to team.	0.20	
7/21/2011	LIEFF, ROBERT	Review motion to dismiss opposition papers.	0.50	
7/22/2011	CHIPLOCK, DANIEL	Email S. Fineman and co-counsel re costs request.	0.20	
7/22/2011	MIARMI, MICHAEL	Look at as-filed opposition to defendants' motion to dismiss.	0.10	
8/5/2011	CHIPLOCK, DANIEL	Emails to team re notice of supplemental authority on Judge Gertner's decision.	0.30	
8/5/2011	LIEFF, ROBERT	Review emails from D. Chiplock re notice of supplemental authority on Judge Gertner's decision.	0.20	
8/5/2011	MIARMI, MICHAEL	Read motion to dismiss decision in Hill v. State Street.	0.50	
8/8/2011	CHIPLOCK, DANIEL	Confer with S. Fineman re cost accounts with co-counsel.	0.20	
8/8/2011	CHIPLOCK, DANIEL	Review M. Miarmi's proposed edits to notice of supplemental authority; email David Goldsmith at Labaton re same.	1.00	
8/8/2011	MIARMI, MICHAEL	Edits to draft notice of supplemental authority re motion to dismiss decision in Hill v. State Street.	1.80	
8/9/2011	CHIPLOCK, DANIEL	Review notice of supplemental authority and email team re same.	0.40	
8/9/2011	LIEFF, ROBERT	Review email from D. Chiplock re notice of supplemental authority.	0.20	
8/18/2011	CHIPLOCK, DANIEL	Email Garrett Bradley re team meeting on 8/29.	0.10	
8/22/2011	CHIPLOCK, DANIEL	Emails with S. Fineman re status meeting at Labaton.	0.20	
8/22/2011	CHIPLOCK, DANIEL	Review State Street reply brief on motion to dismiss.	1.10	
8/27/2011	CHIPLOCK, DANIEL	Email Mike Lesser re status meeting at Labaton.	0.10	
8/29/2011	CHIPLOCK, DANIEL	Emails re case status meeting.	0.20	
9/2/2011	CHIPLOCK, DANIEL	Emails to team re Judge Wolf and case status; check docket.	0.40	
9/2/2011	LIEFF, ROBERT	Review emails from D. Chiplock re Judge Wolf and case status.	0.10	
9/15/2011	CHIPLOCK, DANIEL	Email Garrett Bradley re co-counsel meeting on case status.	0.20	
9/16/2011	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re case strategy meeting.	0.40	
9/16/2011	CHIPLOCK, DANIEL	Emails with Labaton re Monday strategy session; emails to team re same.	0.30	
9/16/2011	LIEFF, ROBERT	Review emails re strategy session.	0.30	
9/16/2011	LIEFF, ROBERT	Telephone conference with D. Chiplock and co-counsel re case strategy meeting.	0.40	
9/19/2011	CHIPLOCK, DANIEL	Prepare for and attend strategy meeting with co-counsel and S. Fineman; emails to team re same.	2.60	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/19/2011	FINEMAN, STEVEN	Meeting with Thornton and Labaton firm attorneys, and D. Chiplock, re status and strategy.	0.50	
9/19/2011	LIEFF, ROBERT	Review emails from D. Chiplock re strategy meeting with co-counsel.	0.20	
9/22/2011	FINEMAN, STEVEN	Telephone conference with Robert Lieff, R. Heimann and D. Chiplock re status and strategy.	0.30	
9/22/2011	LIEFF, ROBERT	Telephone conference with S. Fineman, R. Heimann and D. Chiplock re status and strategy.	0.30	
9/27/2011	CHIPLOCK, DANIEL	Email Garrett Bradley re pro hac status.	0.10	
9/28/2011	FINEMAN, STEVEN	Review email from Garrett Bradley re status of schedule docket; discuss same with D. Chiplock.	0.40	
10/14/2011	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re ERISA complaint filed in Maryland or Virginia; review complaint and send memo re same.	2.20	
10/14/2011	LIEFF, ROBERT	Conference calls with co-counsel re ERISA complaint filed in Maryland or Virginia.	1.00	
10/17/2011	CHIPLOCK, DANIEL	Prepare for and attend call with co-counsel to discuss potential MDL strategy; email with S. Fineman re same.	0.80	
10/18/2011	CHIPLOCK, DANIEL	Emails to Mike Lesser re client information in District of Maryland case; comparisons of fact patterns and ERISA ramifications.	0.50	
10/18/2011	CHIPLOCK, DANIEL	Emails with team re Eastern District of Virginia/District of Maryland action.	0.20	
10/18/2011	LIEFF, ROBERT	Review emails from D. Chiplock re Eastern District of Virginia, District of Maryland action.	0.10	
12/16/2011	CHIPLOCK, DANIEL	Emails to S. Fineman and M. Miarmi re new court orders.	0.20	
12/16/2011	MIARMI, MICHAEL	Issues re status of motion to dismiss ruling.	0.10	
1/5/2012	CHIPLOCK, DANIEL	Conference with D. Seltz and email re background of case.	0.20	
1/12/2012	CHIPLOCK, DANIEL	Email R. Lieff with update on case.	0.10	
1/12/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re oral argument date set and strategy; review court orders re same.	1.00	
1/12/2012	LIEFF, ROBERT	Review email from D. Chiplock re update on case.	0.10	
1/12/2012	MIARMI, MICHAEL	Emails to S. Fineman and D. Chiplock re Court's order granting motion for appointment of interim lead counsel and setting hearing on motion to dismiss; participate in team conference call re same.	0.40	
1/24/2012	CHIPLOCK, DANIEL	Email to Garrett Bradley re oral argument preparation.	0.10	
2/15/2012	CHIPLOCK, DANIEL	Review draft notice of supplemental authority and emails to team re same.	1.00	
2/15/2012	LIEFF, ROBERT	Review emails from D. Chiplock re draft notice of supplemental authority.	0.20	
2/16/2012	CHIPLOCK, DANIEL	Emails to team re 2/24/2012 hearing cancellation.	0.40	
2/16/2012	LIEFF, ROBERT	Review emails re 2/24/2012 hearing cancellation.	0.10	
2/17/2012	CHIPLOCK, DANIEL	Emails to team re status of motion to dismiss hearing.	0.20	
2/17/2012	LIEFF, ROBERT	Review email from D. Chiplock re status of motion to dismiss hearing.	0.10	
2/27/2012	FINEMAN, STEVEN	Read news articles concerning investigations and lawsuits against State Street re Forex.	0.30	
2/28/2012	CHIPLOCK, DANIEL	Emails to team re State Street press.	0.10	
2/28/2012	LIEFF, ROBERT	Review emails from D. Chiplock re State Street press.	0.10	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/29/2012	CHIPLOCK, DANIEL	Email S. Fineman re hearing date.	0.10	
2/29/2012	CHIPLOCK, DANIEL	Review and forward defense's response to plaintiff's notice of supplemental authorities.	0.40	
2/29/2012	LIEFF, ROBERT	Review email re defense's response to plaintiff's notice of supplemental authorities.	0.40	
4/13/2012	CHIPLOCK, DANIEL	Email team re new hearing date.	0.10	
4/13/2012	LIEFF, ROBERT	Review email re new hearing date.	0.10	
4/23/2012	CHIPLOCK, DANIEL	Email team re 5/8/2012 hearing.	0.10	
4/23/2012	LIEFF, ROBERT	Review email re 5/8/2012 hearing.	0.10	
4/24/2012	CHIPLOCK, DANIEL	Email co-counsel re 5/8/2012 argument.	0.10	
4/24/2012	CHIPLOCK, DANIEL	Emails to R. Lieff and L. Simms re pro hac admission.	0.20	
4/24/2012	CHIPLOCK, DANIEL	Emails with L. Simms re pro hac for R. Lieff.	0.20	
4/24/2012	LIEFF, ROBERT	Emails from D. Chiplock re pro hac admission.	0.10	
4/24/2012	LIEFF, ROBERT	Review email from D. Chiplock to L. Sims re pro hac.	0.10	
4/25/2012	CHIPLOCK, DANIEL	Email co-counsel re call for 5/8/2012 argument.	0.10	
4/27/2012	CHIPLOCK, DANIEL	Email co-counsel re pro hac for R. Lieff.	0.10	
4/30/2012	CHIPLOCK, DANIEL	Emails to G. Balko re Boston travel.	0.10	
4/30/2012	CHIPLOCK, DANIEL	Review reply brief and read cases cited therein for oral argument.	1.20	
5/1/2012	CHIPLOCK, DANIEL	Emails with team re 5/8/2012 hearing; conference call re same.	0.70	
5/1/2012	LIEFF, ROBERT	Conference call with co-counsel re 5/8/2012 hearing.	0.50	
5/4/2012	CHIPLOCK, DANIEL	Email L. Simms re counsel list.	0.10	
5/7/2012	LIEFF, ROBERT	Travel to Boston for hearing.	8.00	
5/8/2012	CABRASER, ELIZABETH	Correspondence with D. Chiplock and telephone conference with R. Lieff re hearing motion to dismiss, chambers conference, strategy.	1.20	
5/8/2012	CHIPLOCK, DANIEL	Attend motion to dismiss hearing; conference and emails with team re same.	5.50	
5/8/2012	CHIPLOCK, DANIEL	Emails to team re hearing; emails to colleagues re settlement issue and case law on same	0.80	
5/8/2012	CHIPLOCK, DANIEL	Return travel from Boston for motion to dismiss hearing.	3.00	
5/8/2012	CHIPLOCK, DANIEL	Travel to Boston for motion to dismiss hearing.	3.00	
5/8/2012	FINEMAN, STEVEN	Email exchange and telephone conference with D. Chiplock re outcome of hearing on motion to dismiss.	0.40	
5/8/2012	LIEFF, ROBERT	Hearing before Judge Wolf.	5.00	
5/8/2012	LIEFF, ROBERT	Telephone conference with E. Cabraser re hearing, motion to dismiss, chambers conference and strategy.	1.00	
5/8/2012	LIEFF, ROBERT	Travel from Boston to Los Angeles.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception
Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
5/9/2012	CABRASER, ELIZABETH	Conference with R. Lieff, D. Chiplock re strategy.	0.50	
5/9/2012	CHIPLOCK, DANIEL	Email R. Lieff re meeting to discuss hearing.	0.10	
5/9/2012	CHIPLOCK, DANIEL	Emails to co-counsel re plan of action following hearing.	0.80	
5/9/2012	LIEFF, ROBERT	Call with Mike Thornton re strategy.	0.50	
5/9/2012	LIEFF, ROBERT	Conference with E. Cabraser and D. Chiplock re strategy.	0.50	
5/9/2012	LIEFF, ROBERT	Review email from D. Chiplock re meeting to discuss hearing	0.10	
5/9/2012	LIEFF, ROBERT	Review email from D. Chiplock re plan of action following hearing	0.20	
5/10/2012	CABRASER, ELIZABETH	Conference with R. Lieff, D. Chiplock and telephone conference with co-counsel re status and strategy (settlement and class issues).	0.50	
5/10/2012	CHIPLOCK, DANIEL	Emails and conference with R. Lieff and E. Cabraser re State Street hearing and plans for discussions with defense and other plaintiffs' counsel.	1.00	
5/10/2012	CHIPLOCK, DANIEL	Emails to team re discovery schedule.	0.30	
5/10/2012	CHIPLOCK, DANIEL	Research re Chapter 93A and email to team re same.	1.10	
5/10/2012	LIEFF, ROBERT	Conference call with E. Cabraser and D. Chiplock re State Street hearing and plans for discussions with defense and other plaintiffs' counsel.	0.50	
5/10/2012	LIEFF, ROBERT	Review emails re discovery schedule.	0.20	
5/11/2012	CHIPLOCK, DANIEL	Email S. Fineman re [redacted] and possibly as class representative.	0.20	
5/11/2012	CHIPLOCK, DANIEL	Emails to team re 5/15/2012 call to discuss mediation.	0.20	
5/11/2012	LIEFF, ROBERT	Review emails re 5/15/2012 call to discuss mediation.	0.20	
5/15/2012	CHIPLOCK, DANIEL	Calendar response date for complaint	0.10	
5/15/2012	CHIPLOCK, DANIEL	Email local counsel re transcript of hearing.	0.10	
5/15/2012	CHIPLOCK, DANIEL	Emails and conference with co-counsel re next steps after hearing; proposed mediation; email [redacted]	1.40	
5/15/2012	CHIPLOCK, DANIEL	Emails to K. Dugar and Eric Belfi re [redacted] data; telephone conference with Eric Belfi re same.	0.90	
5/15/2012	FINEMAN, STEVEN	Telephone conference with LCHB team and co-counsel re strategy in light of denial of motion to dismiss and direction that lead plaintiff and State Street hold settlement talks; email exchange with [redacted] re developing Taft Hartley clients for State Street litigation; discuss same with D. Chiplock.	1.00	
5/15/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and co-counsel re next steps after hearing.	0.30	
5/16/2012	CARNAM, TODD	Find email address of Executive Director of [redacted]	0.20	
5/16/2012	CHIPLOCK, DANIEL	Email [redacted] re State Street investigation.	0.40	
5/17/2012	CHIPLOCK, DANIEL	Emails to S. Fineman re [redacted] contact.	0.20	
5/17/2012	CHIPLOCK, DANIEL	Emails to team re mediation and [redacted] issue.	0.40	
5/17/2012	FINEMAN, STEVEN	Telephone conference with [redacted] re potential clients; email exchange with D. Chiplock re forward information about the litigation to [redacted]	0.50	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
5/18/2012	CHIPLOCK, DANIEL	Email [redacted] re hearing transcript and other questions from IAM.	0.70	
5/18/2012	CHIPLOCK, DANIEL	Email R. Lieff re mediation plan.	0.10	
5/18/2012	CHIPLOCK, DANIEL	Email team re SEC presence at hearing.	0.10	
5/18/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation plan.	0.50	
5/18/2012	LIEFF, ROBERT	Review email from D. Chiplock re SEC presence at hearing.	0.10	
5/21/2012	CHIPLOCK, DANIEL	Emails to K. Dugar and co-counsel re [redacted], emails to Lydia Lee re same.	0.60	
5/22/2012	CHIPLOCK, DANIEL	Email Eric Belfi re [redacted] call.	0.10	
5/22/2012	LEPPLA, BRUCE	Prepare emails seeking additional class lead plaintiffs; telephone calls to potential plaintiffs' counsel.	1.00	
5/22/2012	LIEFF, ROBERT	Meeting with Larry Sucharow re case status.	1.00	
5/23/2012	CHIPLOCK, DANIEL	Email Lou Malone re [redacted] and question concerning class case.	0.30	
5/23/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar and Lydia Lee re [redacted] data; review correspondence re same.	1.00	
5/23/2012	DUGAR, KIRTI	Review data and analysis history of [redacted] transactions per D. Chiplock.	1.50	
5/24/2012	CHIPLOCK, DANIEL	Emails to team re mediation meeting.	0.30	
5/24/2012	CHIPLOCK, DANIEL	Prepare for and attend call with [redacted] and Labaton re class case; emails re same.	1.80	
5/24/2012	CHIPLOCK, DANIEL	Telephone conference with R. Lieff re mediation; email team re same.	0.20	
5/24/2012	DUGAR, KIRTI	Emails to and from D. Chiplock re [redacted] data and previous analysis.	1.00	
5/24/2012	LIEFF, ROBERT	Call with D. Chiplock re mediation.	0.20	
5/24/2012	LIEFF, ROBERT	Email exchange with S. Fineman re potential mediators.	0.20	
5/24/2012	LIEFF, ROBERT	Review email re mediation meeting.	0.10	
5/25/2012	CHIPLOCK, DANIEL	Emails to G. Balko re [redacted] contracts.	0.20	
5/25/2012	CHIPLOCK, DANIEL	Review [redacted] contracts.	1.00	
5/25/2012	FINEMAN, STEVEN	Email exchange with R. Lieff re potential mediators.	0.20	
5/29/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Lieff and team re mediation meeting.	0.50	
5/29/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team re mediation meeting.	0.50	
5/30/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re [redacted] losses.	0.30	
5/31/2012	CHIPLOCK, DANIEL	Email Lydia Lee re [redacted] status.	0.10	
5/31/2012	CHIPLOCK, DANIEL	Emails with [redacted] re State Street class case.	0.20	
5/31/2012	CHIPLOCK, DANIEL	Review email from Sucharow re mediation and forward to team.	0.10	
5/31/2012	DUGAR, KIRTI	Reorganize [redacted] data for revised damages analysis.	4.50	
5/31/2012	LIEFF, ROBERT	Review email from Larry Sucharow re mediation.	0.10	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception
Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/1/2012	DUGAR, KIRTI	Re-analyze [redacted] data and compute potential damages.	4.50	
6/1/2012	DUGAR, KIRTI	Review non-U.S. cross trades for [redacted]	2.50	
6/4/2012	CHIPLOCK, DANIEL	Email [redacted] re client search.	0.10	
6/4/2012	DUGAR, KIRTI	Follow up on State Street production drive received from California Attorney General's office; further review of [redacted] data.	3.00	
6/6/2012	CHIPLOCK, DANIEL	Emails to team re mediation and media reports.	0.20	
6/6/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation and media reports.	0.10	
6/7/2012	DUGAR, KIRTI	Conference call with D. Chiplock re calculations for losses for [redacted]; prepare summary.	1.50	
6/7/2012	DUGAR, KIRTI	Review non-U.S. cross trades for [redacted]	1.50	
6/8/2012	CHIPLOCK, DANIEL	Email co-counsel re [redacted]; emails with K. Dugar re same; emails re mediation date.	0.40	
6/11/2012	CHIPLOCK, DANIEL	Emails re mediation.	0.20	
6/11/2012	LIEFF, ROBERT	Travel to New York for meeting at Labaton Sucharow.	8.00	
6/12/2012	CHIPLOCK, DANIEL	Emails and telephone conferences re [redacted] data with K. Dugar and team; review [redacted] contract and email team re same.	1.60	
6/12/2012	DUGAR, KIRTI	Finalize [redacted] estimated losses based on new midpoint damages formula; communications with D. Chiplock re same.	2.00	
6/13/2012	CHIPLOCK, DANIEL	Emails with team and [redacted] re data analysis and comparison with other custodians/brokers.	0.80	
6/13/2012	DUGAR, KIRTI	Estimate spread costs for all other brokers (non-State Street brokers) for [redacted]	1.50	
6/13/2012	LIEFF, ROBERT	Meetings with Mike Thornton and D. Chiplock re meeting with Labaton Sucharow.	3.00	
6/13/2012	LIEFF, ROBERT	Meeting with Larry Sucharow.	1.00	
6/13/2012	LIEFF, ROBERT	Review emails re data analysis and comparison with other custodians/brokers.	0.50	
6/13/2012	LIEFF, ROBERT	Travel from New York to Los Angeles.	8.00	
6/15/2012	CHIPLOCK, DANIEL	Emails to team re [redacted] meeting.	0.10	
6/15/2012	LIEFF, ROBERT	Review email from Dan Chiplock re [redacted]	0.10	
6/18/2012	CHIPLOCK, DANIEL	Email Eric Belfi re [redacted] inquiry	0.10	
6/21/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with co-counsel re mediation meeting with defense; telephone conferences with R. Lieff re same.	1.90	
6/21/2012	LIEFF, ROBERT	Call with Dan Chiplock and co-counsel re mediation meeting with defense.	1.00	
6/22/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with team re mediation meeting and follow-up.	1.70	
6/22/2012	LIEFF, ROBERT	Telephone conference and email with D. Chiplock and team re mediation meeting and follow-up.	1.30	
6/24/2012	CHIPLOCK, DANIEL	Email team re conference call to discuss mediation.	0.10	
6/24/2012	LIEFF, ROBERT	Review email re conference call with team to discuss mediation.	0.10	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/27/2012	CHIPLOCK, DANIEL	Email [redacted] re [redacted] client.	0.10	
7/2/2012	CHIPLOCK, DANIEL	Emails to team re mediation and hearing statements.	0.80	
7/2/2012	CHIPLOCK, DANIEL	Telephone conference with [redacted], emails re same; draft confidentiality letter; emails re same.	1.30	
7/2/2012	FINEMAN, STEVEN	Email exchange with [redacted] re review of [redacted] data; email exchange with D. Chiplock re same.	0.30	
7/2/2012	LIEFF, ROBERT	Review emails from D. Chiplock re mediation and hearing statements.	0.20	
7/3/2012	CHIPLOCK, DANIEL	Print and review new clients for [redacted] transactions.	0.70	
7/5/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team re new damages chart for [redacted]	1.00	
7/5/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team re new damages chart for [redacted]	1.00	
7/9/2012	CHIPLOCK, DANIEL	Edit letter to defense and proposed mediation statement; email team re same.	0.60	
7/9/2012	CHIPLOCK, DANIEL	Email [redacted] contact.	0.20	
7/9/2012	LIEFF, ROBERT	Review email from D. Chiplock re letter to defense and proposed mediation statement.	0.20	
7/10/2012	CHIPLOCK, DANIEL	Emails to team re request for more information from defendants.	0.20	
7/10/2012	LIEFF, ROBERT	Meeting with Mike Thornton re case status.	2.00	
7/10/2012	LIEFF, ROBERT	Review email from D. Chiplock re request for more information from defendants.	0.10	
7/11/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with team re requests for follow-up information from State Street.	1.00	
7/11/2012	LIEFF, ROBERT	Telephone conferences with D. Chiplock and team re requests for follow-up information from State Street.	0.30	
7/13/2012	CHIPLOCK, DANIEL	Emails to team re status reports to court.	0.10	
7/13/2012	LIEFF, ROBERT	Review emails from D. Chiplock re status reports to Court.	0.10	
7/16/2012	CHIPLOCK, DANIEL	Emails to team re potential mediators.	0.60	
7/16/2012	LIEFF, ROBERT	Review emails from D. Chiplock re potential mediators.	0.50	
7/17/2012	CHIPLOCK, DANIEL	Email [redacted] re case; email [redacted] re same.	0.30	
7/23/2012	CHIPLOCK, DANIEL	Emails to team and co-counsel re mediation dates.	0.40	
7/23/2012	FINEMAN, STEVEN	Email exchange with D. Chiplock re mediation and mediator.	0.20	
7/23/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation dates.	0.20	
7/24/2012	CHIPLOCK, DANIEL	Emails to team re mediators.	0.20	
7/24/2012	LIEFF, ROBERT	Review emails from D. Chiplock re mediators.	0.20	
7/27/2012	CHIPLOCK, DANIEL	Emails to team re mediation.	0.30	
7/27/2012	LIEFF, ROBERT	Review emails from D. Chiplock re mediation.	0.20	
7/31/2012	CHIPLOCK, DANIEL	Email team re order on motion to seal status report.	0.10	
7/31/2012	LIEFF, ROBERT	Review email re order on motion to seal status report.	0.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception
Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
8/7/2012	CHIPLOCK, DANIEL	Conference call with co-counsel, mediator and defense re plan for mediation; follow-up emails re same.	1.40	
8/7/2012	LIEFF, ROBERT	Conference call with D. Chiplock and co-counsel, mediator and defense re plan for mediation.	1.00	
8/8/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re data requests in advance of mediation; review and edit proposal re same.	1.80	
8/9/2012	CHIPLOCK, DANIEL	Telephone conference with team and defense counsel re data requests in advance of mediation; emails re same.	1.50	
8/9/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team and defense counsel re data requests in advance of mediation.	1.00	
8/10/2012	CHIPLOCK, DANIEL	Voicemail and email for [redacted] re class case.	0.10	
8/13/2012	CHIPLOCK, DANIEL	Email team re mediation and status report to Court.	0.20	
8/13/2012	CHIPLOCK, DANIEL	Email to team re status report to Court.	0.10	
8/13/2012	CHIPLOCK, DANIEL	Review State Street documents from Mike Thornton.	0.40	
8/13/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation and status report to Court.	0.20	
8/14/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with R. Lieff re mediation meeting on 9/13/2012.	0.60	
8/14/2012	LIEFF, ROBERT	Calls with D. Chiplock re mediation meeting on 9/13/2012.	0.40	
8/15/2012	CHIPLOCK, DANIEL	Email [redacted] contact.	0.10	
8/15/2012	CHIPLOCK, DANIEL	Emails re calls with defense re data exchange.	0.30	
8/15/2012	LIEFF, ROBERT	Review emails re calls with defense re data exchange.	0.10	
8/16/2012	CHIPLOCK, DANIEL	Telephone conference and emails with K. Dugar and [redacted] re data requests.	0.60	
8/20/2012	CHIPLOCK, DANIEL	Review press on Forex investigation and forward to co-counsel.	0.20	
8/21/2012	CHIPLOCK, DANIEL	Change calendar for status conference.	0.10	
8/21/2012	CHIPLOCK, DANIEL	Email R. Geman re Jonathan Marks.	0.10	
8/22/2012	CHIPLOCK, DANIEL	Emails to co-counsel re mediation.	0.10	
8/22/2012	CHIPLOCK, DANIEL	Telephone conference with Mike Thornton and email S. Fineman re case status.	0.20	
8/23/2012	CHIPLOCK, DANIEL	Conference with S. Fineman and Mike Thornton re case status and mediation; emails re same.	1.00	
8/23/2012	CHIPLOCK, DANIEL	Email team re case status and ERISA case; review complaint.	1.80	
8/23/2012	LIEFF, ROBERT	Review email from D. Chiplock re case status and ERISA case.	0.50	
8/24/2012	CHIPLOCK, DANIEL	Email R. Lieff re pre-mediation.	0.20	
8/24/2012	CHIPLOCK, DANIEL	Emails to team re California documents produced in 10(b) case, review 10(b) docket re same	1.10	
8/24/2012	FINEMAN, STEVEN	Email exchange with R. Lieff re my participation in meetings of September 11 and 13, 2012 re fee arrangements and mediation.	0.30	
8/24/2012	LIEFF, ROBERT	Email exchange with S. Fineman re his participation in meetings on September 11 and 13 re fee arrangements and mediation.	0.30	
8/24/2012	LIEFF, ROBERT	Review email from D. Chiplock re pre-mediation.	0.10	
8/24/2012	LIEFF, ROBERT	Review emails re California documents produced at 10(b) case	0.50	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
8/27/2012	CHIPLOCK, DANIEL	Telephone conference with R. Geman re State Street ERISA case.	0.20	
8/29/2012	CHIPLOCK, DANIEL	Emails with co-counsel re extension of time for defendants to respond to complaint; mediation logistics and Henriquez case.	0.80	
8/29/2012	LIEFF, ROBERT	Review emails re extension of time for defendants to respond to complaint, mediation logistics and Henriquez case.	0.50	
8/30/2012	CHIPLOCK, DANIEL	Email team re document review in California.	0.10	
8/30/2012	LIEFF, ROBERT	Review email re document review in California.	0.10	
8/31/2012	CHIPLOCK, DANIEL	Email team re call to discuss mediation logistics and ERISA plaintiffs.	0.10	
8/31/2012	LIEFF, ROBERT	Review email re call to discuss mediation logistics and ERISA plaintiffs.	0.10	
9/4/2012	CHIPLOCK, DANIEL	Emails to team re mediation logistics; telephone conference re same.	1.00	
9/4/2012	LIEFF, ROBERT	Review email re mediation logistics and telephone conference.	0.50	
9/5/2012	CHIPLOCK, DANIEL	Emails re conference call with Henriquez plaintiff; telephone conference re same.	1.00	
9/5/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team re conference call with Henriquez plaintiff.	0.30	
9/6/2012	CHIPLOCK, DANIEL	Emails to S. Fineman re ERISA case.	0.20	
9/9/2012	LIEFF, ROBERT	Travel from Los Angeles to New York for meeting re mediation.	8.00	
9/10/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Lieff and S. Fineman re mediation.	0.40	
9/10/2012	LIEFF, ROBERT	Call with D. Chiplock and S. Fineman re mediation.	0.40	
9/11/2012	CHIPLOCK, DANIEL	Emails to team re The Wall Street Journal press on Forex litigation.	0.20	
9/11/2012	FINEMAN, STEVEN	Discussion with R. Lieff, E. Cabraser and Mike Thornton re status and strategy of case and settlement discussions, including addition of ERISA claims.	0.50	
9/11/2012	LIEFF, ROBERT	Discussion with S. Fineman, E. Cabraser and Mike Thornton re status and strategy of case and settlement discussions, including addition of ERISA claims.	0.50	
9/11/2012	LIEFF, ROBERT	Meetings with Labaton Sucharow and Thornton & Naumes re mediation.	4.00	
9/11/2012	LIEFF, ROBERT	Review emails from D. Chiplock re The Wall Street Journal press on Forex litigation.	0.10	
9/12/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with Keller Rohrbach re ERISA claims and motion to dismiss class case.	0.40	
9/13/2012	LIEFF, ROBERT	Pre-mediation meeting with mediator Jonathan Marks at Labaton Sucharow.	3.00	
9/13/2012	LIEFF, ROBERT	Travel from New York to Los Angeles.	8.00	
9/14/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Lieff re State Street mediations.	0.40	
9/14/2012	LIEFF, ROBERT	Calls with D. Chiplock re State Street mediations.	0.40	
9/18/2012	CHIPLOCK, DANIEL	Emails re mediation and ERISA litigation.	0.20	
9/20/2012	CHIPLOCK, DANIEL	Review correspondence re McTigue and motion to intervene.	0.30	
9/26/2012	CHIPLOCK, DANIEL	Emails to team re Alternative Dispute Resolution bills.	0.30	
9/26/2012	LIEFF, ROBERT	Review emails re Alternative Dispute Resolution bills.	0.10	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception

Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/27/2012	CHIPLOCK, DANIEL	Emails re mediation invoice.	0.20	
9/27/2012	LIEFF, ROBERT	Review emails re mediation invoice.	0.10	
9/28/2012	CHIPLOCK, DANIEL	Emails and telephone conferences re mediation and ERISA case.	0.60	
9/28/2012	LIEFF, ROBERT	Telephone conference re mediation and ERISA case.	0.60	
10/1/2012	CHIPLOCK, DANIEL	Emails to team re mediation.	0.30	
10/1/2012	FINEMAN, STEVEN	Read email from Larry Sucharow re mediation procedure; email exchange with D. Chiplock re same.	0.30	
10/1/2012	LIEFF, ROBERT	Review emails re mediation.	0.20	
10/2/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation.	0.50	
10/2/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team re mediation.	0.40	
10/10/2012	CHIPLOCK, DANIEL	Emails to K. Dugar re Forex trading data from State Street.	0.30	
10/11/2012	CHIPLOCK, DANIEL	Emails to Mike Lesser re [redacted] status.	0.30	
10/11/2012	CHIPLOCK, DANIEL	Review Forex data from State Street, conference and emails with team re same.	1.30	
10/11/2012	LIEFF, ROBERT	Conference with D. Chiplock and team re Forex data from State Street.	0.50	
10/12/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re State Street Forex data.	0.40	
10/12/2012	CHIPLOCK, DANIEL	Emails to team re [redacted] contracts.	0.60	
10/12/2012	DUGAR, KIRTI	Conference call with D. Chiplock re Washington State Investment Board agreements; search for same and transmit copies; review damages estimates by Mike Lesser.	1.50	
10/12/2012	LIEFF, ROBERT	Review emails from D. Chiplock re [redacted] contracts.	0.30	
10/15/2012	CHIPLOCK, DANIEL	Emails to team re public records request to Washington State Investment Board re 2012 contract.	0.50	
10/15/2012	CHIPLOCK, DANIEL	Sort and file documents.	0.40	
10/15/2012	CHIPLOCK, DANIEL	Telephone conferences with Laura Gerber re mediation; emails to team re same	0.90	
10/15/2012	LIEFF, ROBERT	Review email from D. Chiplock re conferences with Laura Gerber re mediation.	0.20	
10/15/2012	LIEFF, ROBERT	Review emails re public records request to [redacted] re 2012 contract.	0.30	
10/16/2012	CHIPLOCK, DANIEL	Conference call with team re mediation; telephone conference with defense re same; prepare for same and follow-up re same	1.50	
10/16/2012	CHIPLOCK, DANIEL	Email re Judge Wolf status.	0.10	
10/16/2012	CHIPLOCK, DANIEL	Emails to co-counsel re mediation.	0.30	
10/16/2012	CHIPLOCK, DANIEL	Emails to Lydia Lee re [redacted] contract status.	0.30	
10/16/2012	LIEFF, ROBERT	Conference call with D. Chiplock and team re mediation.	0.30	
10/16/2012	LIEFF, ROBERT	Review email from D. Chiplock re Judge Wolf status.	0.10	
10/17/2012	CHIPLOCK, DANIEL	Email re mediation and data exchange.	0.10	
10/17/2012	CHIPLOCK, DANIEL	Emails to G. Balko re travel to Boston for mediation.	0.40	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
10/17/2012	CHIPLOCK, DANIEL	Emails with co-counsel re mediation.	0.20	
10/18/2012	CHIPLOCK, DANIEL	Emails re public records request to [redacted] re State Street contracts; submit same.	1.20	
10/19/2012	CHIPLOCK, DANIEL	Emails to team re mediation.	0.30	
10/19/2012	CHIPLOCK, DANIEL	Emails to team re [redacted] response to public records request; review documents received.	2.00	
10/19/2012	HAZAM, LEXI	Respond to D. Chiplock's email with information on Washington State Investment Board (WSIB) contract language after looking up old emails re same.	0.20	
10/19/2012	LIEFF, ROBERT	Review emails re mediation.	0.20	
10/20/2012	LIEFF, ROBERT	Travel to Boston for mediation.	8.00	
10/22/2012	CHIPLOCK, DANIEL	Emails to team re mediation; review documents and prepare for same.	2.50	
10/22/2012	LIEFF, ROBERT	Meeting with Lynn Sarko re ERISA.	2.00	
10/22/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation.	0.10	
10/23/2012	CHIPLOCK, DANIEL	Emails to [redacted] re case status.	0.20	
10/23/2012	CHIPLOCK, DANIEL	Emails to [redacted] re public records request.	0.10	
10/23/2012	CHIPLOCK, DANIEL	Travel to and attend mediation, conference with co-counsel re same, emails re same and review documents re same.	12.00	
10/23/2012	LIEFF, ROBERT	Attend mediation sessions.	5.00	
10/23/2012	LIEFF, ROBERT	Meeting at Thornton & Naumes re pre-mediation.	1.00	
10/24/2012	CHIPLOCK, DANIEL	Attend mediation sessions; conference and emails with team re same; email mediator re same; return travel from Boston	11.00	
10/24/2012	LIEFF, ROBERT	Attend mediation sessions.	3.00	
10/24/2012	LIEFF, ROBERT	Return travel from Boston to Los Angeles.	8.00	
10/25/2012	CHIPLOCK, DANIEL	Draft stipulated protective order; emails to team re same.	2.80	
10/25/2012	CHIPLOCK, DANIEL	Review data request to State Street and email to co-counsel re same.	0.40	
10/25/2012	CHIPLOCK, DANIEL	Review draft motion to extend time for answer, email team re same.	0.20	
10/25/2012	CHIPLOCK, DANIEL	Telephone conference and email with [redacted] re case, email S. Fineman and R. Lieff re same.	0.40	
10/25/2012	CHIPLOCK, DANIEL	Telephone conference and email with R. Lieff re mediation and follow-up with Lynn Sarko	0.50	
10/25/2012	CHIPLOCK, DANIEL	Telephone conference with L. Hazam re mediation and document review project.	0.60	
10/25/2012	FINEMAN, STEVEN	Email exchange with Joel Rochon, Vince Genova and D. Chiplock re identifying potential Canadian clients.	0.30	
10/25/2012	LIEFF, ROBERT	Review email from D. Chiplock re telephone conference and email with [redacted] re case.	0.10	
10/25/2012	LIEFF, ROBERT	Review email re draft stipulated protective order.	0.50	
10/25/2012	LIEFF, ROBERT	Telephone call and review email from D. Chiplock re mediation, and follow-up with Lynn Sarko.	0.50	
10/26/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re information exchange with State Street, edit re same, draft requests re same, edit protective order and send to defense.	5.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception
Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
10/29/2012	CHIPLOCK, DANIEL	Telephone conference and email with R. Lieff re agreed upon points with defense counsel and discovery process.	0.50	
10/29/2012	LIEFF, ROBERT	Telephone call and review email from D. Chiplock re agreed upon points with defense ccunsel and discovery process.	0.50	
10/30/2012	CHIPLOCK, DANIEL	Emails to all counsel re call to Judge Wolf clerk; emails re information exchange.	0.80	
10/30/2012	CHIPLOCK, DANIEL	Emails to J. Dragicevic and R. Lieff re timekeeping and administration.	0.20	
10/30/2012	LIEFF, ROBERT	Review emails from D. Chiplock re timekeeping and administration.	0.20	
10/30/2012	LIEFF, ROBERT	Review emails to all counsel re call to Judge Wolf's clerk.	0.40	
10/31/2012	LIEFF, ROBERT	Call to Judge Wolf's clerk.	0.50	
11/1/2012	CHIPLOCK, DANIEL	Review draft status report and emails to team re same; comments to defendant's draft; emails re draft protective order; emails to [redacted] re class case.	1.80	
11/1/2012	LIEFF, ROBERT	Call to Judge Wolf's clerk.	0.50	
11/1/2012	LIEFF, ROBERT	Review letter to Judge Wolf requesting status conference.	1.00	
11/2/2012	CHIPLOCK, DANIEL	Emails to team re draft status report to Court; edit same.	1.60	
11/2/2012	CHIPLOCK, DANIEL	Review defendant's comments to draft protective order and email team re same.	0.70	
11/2/2012	LIEFF, ROBERT	Review email from D. Chiplock re draft status report to Court.	0.20	
11/2/2012	LIEFF, ROBERT	Review email re defendant's comments to draft protective order.	0.20	
11/5/2012	CHIPLOCK, DANIEL	Emails to G. Balko re non-disclosure agreement with [redacted]	0.20	
11/6/2012	CHIPLOCK, DANIEL	Edit non-disclosure agreement with [redacted] and email to S. Fineman and [redacted]	0.60	
11/6/2012	CHIPLOCK, DANIEL	Emails to team re draft protective order.	0.50	
11/7/2012	CHIPLOCK, DANIEL	Edit draft non-disclosure agreement fo[redacted] and email [redacted] re same.	1.00	
11/7/2012	CHIPLOCK, DANIEL	Emails re document requests from defendants.	0.30	
11/8/2012	CHIPLOCK, DANIEL	Emails and telephone conferences re draft protective order; edit same	1.00	
11/8/2012	CHIPLOCK, DANIEL	Emails to team and telephone conference with R. Lieff re status conference.	0.20	
11/8/2012	CHIPLOCK, DANIEL	Prepare for and attend call re discovery and schedule; emails re same; review defendant's discovery requests.	1.00	
11/8/2012	CHIPLOCK, DANIEL	Research re attorney fees and lodestar in class cases; conference and emails with M. Miarmi re same.	2.20	
11/8/2012	LIEFF, ROBERT	Telephone conference re draft protective order.	0.50	
11/8/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock re status conference.	0.20	
11/8/2012	MIARMI, MICHAEL	Speak with D. Chiplock about research project re method of determining fees with respect to Chapter 93A claims; begin research.	1.40	
11/8/2012	SELTZ, DANIEL	Review discovery requests.	0.20	
11/9/2012	CHIPLOCK, DANIEL	Email Dan Halston re protective order	0.20	
11/12/2012	CHIPLOCK, DANIEL	Email [redacted] non-disclosure agreement.	0.20	
11/12/2012	CHIPLOCK, DANIEL	Emails re edits to draft joint status report	1.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
11/12/2012	CHIPLOCK, DANIEL	Emails to R. Lieff and Mike Thornton re 11/14/2012 hearing; telephone conferences re same.	0.30	
11/12/2012	LIEFF, ROBERT	Conference call to discuss the scope of discussions with Judge Wolf on 11/15/2012 in Boston.	1.00	
11/12/2012	LIEFF, ROBERT	Review emails from D. Chiplock re 11/14/2012 hearing.	0.20	
11/12/2012	MIARMI, MICHAEL	Research re method of determining fees with respect to Chapter 93A claims.	0.90	
11/13/2012	CHIPLOCK, DANIEL	Emails with team re draft status report; emails to defense re same.	1.40	
11/13/2012	CHIPLOCK, DANIEL	Telephone conference and email with R. Lieff re status conference and status statement.	0.30	
11/13/2012	LIEFF, ROBERT	Telephone conference and email from D. Chiplock re status conference and status statement.	0.30	
11/14/2012	LIEFF, ROBERT	Travel to Boston for meeting with Judge Wolf on 11/15/2012.	8.00	
11/15/2012	CHIPLOCK, DANIEL	Email S. Fineman re document review.	0.10	
11/15/2012	LIEFF, ROBERT	Meeting with Judge Wolf.	1.00	
11/15/2012	LIEFF, ROBERT	Preparation meeting for meeting with Judge Wolf at Thornton & Naumes.	1.00	
11/16/2012	CHIPLOCK, DANIEL	Email M. Miarmi re research on settlement approvals.	0.20	
11/16/2012	CHIPLOCK, DANIEL	Emails re [redacted] public records request.	0.20	
11/16/2012	CHIPLOCK, DANIEL	Emails to E. Cabraser re background materials for status call.	0.60	
11/16/2012	CHIPLOCK, DANIEL	Emails to other counsel re order and stay; edits re same.	0.90	
11/16/2012	CHIPLOCK, DANIEL	Emails to team re status call and discovery.	0.60	
11/16/2012	LIEFF, ROBERT	Return travel from Boston to Los Angeles from meeting with Judge Wolf.	8.00	
11/16/2012	LIEFF, ROBERT	Review emails from D. Chiplock re status call and discovery.	0.20	
11/16/2012	MIARMI, MICHAEL	Email with D. Chiplock re research re method of determining fees with respect to Chapter 93A claims.	0.10	
11/19/2012	CHIPLOCK, DANIEL	Emails re meeting amongst plaintiffs' counsel and logistics.	0.50	
11/19/2012	LIEFF, ROBERT	Review emails re meeting amongst plaintiffs' counsel and logistics.	0.30	
11/20/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re document review platform.	0.50	
11/20/2012	CHIPLOCK, DANIEL	Meeting with other plaintiffs' counsel and conferences with David Goldsmith and Michael Rogers and Mike Thornton re same; prepare for same; emails re discovery to other plaintiffs' counsel	3.80	
11/20/2012	LIEFF, ROBERT	Conference call to discuss class certification and upcoming discovery issues in New York.	0.50	
11/21/2012	CABRASER, ELIZABETH	Correspondence with plaintiffs' counsel re discovery.	0.50	
11/21/2012	CHIPLOCK, DANIEL	Emails to other plaintiffs' counsel re discovery and schedule.	0.20	
11/21/2012	CHIPLOCK, DANIEL	Review M. Miarmi's analysis re fee awards and settlement approval and respond to same.	0.40	
11/21/2012	LIEFF, ROBERT	Review email from E. Cabraser re discovery.	0.20	
11/21/2012	MIARMI, MICHAEL	Research on applying percentage of fund or lodestar method to determine attorneys' fees in cases involving Chapter 93A claims; email to D. Chiplock providing analysis	5.40	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
11/22/2012	MIARMI, MICHAEL	Email with D. Chiplock re research on applying percentage of fund or lodestar to method to determine attorneys' fees in cases involving Chapter 93A claims	0.10	
11/25/2012	LIEFF, ROBERT	Review emails from other plaintiffs' counsel re meeting with mediator and defense in January 2013.	0.20	
11/26/2012	CHIPLOCK, DANIEL	Email [redacted] data.	0.10	
11/26/2012	CHIPLOCK, DANIEL	Emails with other plaintiffs' counsel re meeting with mediator and defense in January 2013.	0.60	
11/27/2012	CHIPLOCK, DANIEL	Emails to team re document review platforms and document review, settlement laws and fee awards, research re same.	0.80	
11/27/2012	CHIPLOCK, DANIEL	Email to all counsel re January 2013 mediation	0.50	
11/27/2012	CHIPLOCK, DANIEL	Research re ERISA preemption and Chapter 93A.	1.00	
11/27/2012	CHIPLOCK, DANIEL	Review defendant's template request for third parties and email to team re same.	0.90	
11/27/2012	LIEFF, ROBERT	Review email from D. Chiplock re document review platforms and document review, settlement laws and fee awards.	0.50	
11/27/2012	LIEFF, ROBERT	Review email to all counsel re January 2013 mediation.	0.10	
11/28/2012	CHIPLOCK, DANIEL	Emails to [redacted] data.	0.20	
11/28/2012	CHIPLOCK, DANIEL	Emails to other counsel and mediator re mediation dates; emails to team re document review.	1.40	
11/28/2012	CHIPLOCK, DANIEL	Research re ERISA preemption and Chapter 93A.	3.00	
11/28/2012	LIEFF, ROBERT	Review emails re mediation date.	0.10	
11/29/2012	CHIPLOCK, DANIEL	Email co-counsel re Court transcript.	0.10	
11/29/2012	CHIPLOCK, DANIEL	Emails and conference with team re document review and mediation schedule and logistics.	1.10	
11/29/2012	CHIPLOCK, DANIEL	Emails to defense counsel and team re identifying class members.	0.20	
11/29/2012	CHIPLOCK, DANIEL	Emails to team re ERISA plaintiffs' discovery requests; research re ERISA preemption issue and emails to team re same	4.80	
11/29/2012	LIEFF, ROBERT	Review emails and conference with team re document review and mediation schedule and logistics.	0.50	
11/29/2012	LIEFF, ROBERT	Review emails from D. Chiplock re ERISA plaintiffs' discovery requests and research re ERISA preemption issue.	0.20	
11/29/2012	LIEFF, ROBERT	Review emails re identifying class members.	0.10	
11/30/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team, ERISA counsel re discovery coordination; email to team re strategy.	1.70	
11/30/2012	CHIPLOCK, DANIEL	Emails with team and mediator re January 2013 session	0.60	
11/30/2012	LIEFF, ROBERT	Review emails and telephone conferences with team, ERISA counsel re discovery coordination and strategy.	0.20	
11/30/2012	LIEFF, ROBERT	Review emails re January 2013 session with mediator.	0.10	
12/4/2012	CHIPLOCK, DANIEL	Review lodestar reports and shift appropriate time from 3344-0001.	1.40	
12/4/2012	CHIPLOCK, DANIEL	Telephone conference with R. Lieff; email defense re mediation in Washington, D.C.	0.50	
12/4/2012	LIEFF, ROBERT	Call with D. Chiplock confirming the meeting with Jonathan Marks on January 24, 2013.	0.50	
12/4/2012	LIEFF, ROBERT	Call with Lynn Sarko to discuss meeting with Jonathan Marks on January 24, 2013.	1.00	
12/5/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team re document review and mediation.	0.80	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
12/5/2012	CHIPLOCK, DANIEL	Emails to team re Arkansas Teacher Retirement System document production and strategy.	0.60	
12/6/2012	CHIPLOCK, DANIEL	Email Laura Gerber re Forex mediation discovery.	0.20	
12/6/2012	CHIPLOCK, DANIEL	Emails to defense and team re class and margin information.	0.40	
12/6/2012	CHIPLOCK, DANIEL	Email to team re calls to discuss document review and ERISA concerns.	0.90	
12/6/2012	CHIPLOCK, DANIEL	Review defendant's discovery request 'templates' for non-parties and email team re same.	0.80	
12/7/2012	CHIPLOCK, DANIEL	Email with K. Dugar re mediation and discovery.	0.10	
12/7/2012	CHIPLOCK, DANIEL	Prepare defendant's correspondence re profit/spread and class identification issue and forward to team.	0.20	
12/7/2012	DUGAR, KIRTI	Review spread/margin document.	2.00	
12/10/2012	BEHRMANN, DAWN	Attempt to open disk of documents for D. Chiplock. Download encryption software. Work with Help Desk. Emails to K. Dugar regarding documents.	0.70	
12/10/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re document review platforms.	0.40	
12/10/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team re document review procedure and mediation discovery; emails re CD production.	2.20	
12/11/2012	CHIPLOCK, DANIEL	Draft "cheat sheet" for document review issue coding, emails to team re same.	1.50	
12/11/2012	CHIPLOCK, DANIEL	Prepare for and attend call with co-counsel re ERISA claims and document review protocols, emails re same, telephone conferences and emails with K. Dugar re same	2.80	
12/11/2012	DUGAR, KIRTI	Conference call with [redacted] re document review platform; follow up with D. Chiplock and Catalyst re fields and check boxes.	2.00	
12/11/2012	MUGRAGE, MAJOR	Unencrypt document production, deliver to database administrators and create production binder.	1.30	
12/12/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with K. Dugar re document review platform.	0.40	
12/12/2012	DUGAR, KIRTI	Review hosting contracts from Catalyst; create database fields; conference call with D. Chiplock.	3.00	
12/13/2012	CHIPLOCK, DANIEL	Review document platform format and issue codes; email K. Dugar re same.	0.20	
12/13/2012	MUGRAGE, MAJOR	Create production index and disk binder for new case.	0.80	
12/14/2012	DUGAR, KIRTI	Follow up on database creation with Catalyst.	1.00	
12/14/2012	LIEFF, ROBERT	Review emails re Arkansas and related cases; send email re same.	0.20	
12/17/2012	CHIPLOCK, DANIEL	Emails with team re mediation strategy and deadlines; do research re same; review and sign Catalyst contract.	2.80	
12/17/2012	LIEFF, ROBERT	Review emails re discovery production to California Attorney General on 12/14/2012.	0.30	
12/17/2012	LIEFF, ROBERT	Review emails re mediation strategy and deadlines.	0.20	
12/18/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar, co-counsel, defense counsel re California document production; send documents to Catalyst re same.	1.40	
12/18/2012	DUGAR, KIRTI	Emails and conference call with D. Chiplock re incoming production from State Street and issues related thereto; test database	1.50	
12/20/2012	CHIPLOCK, DANIEL	Emails to team re third party discovery strategy and responses to subpoena, meet and confers.	1.60	
12/20/2012	CHIPLOCK, DANIEL	Review draft email to defense re meet and confer and respond to same.	0.10	
12/20/2012	LIEFF, ROBERT	Review emails re third party, discovery strategy and responses to subpoena.	0.10	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception

Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
12/21/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with K. Dugar re [redacted] inquiry and data collection.	0.60	
12/21/2012	DUGAR, KIRTI	Emails and call from [redacted] re data collection; call to D. Chiplock re same.	0.50	
12/23/2012	CHIPLOCK, DANIEL	Emails with co-counsel and Catalyst re document production from defendants.	0.30	
12/26/2012	CHIPLOCK, DANIEL	Emails to Catalyst re document production and database for review.	0.20	
12/27/2012	CHIPLOCK, DANIEL	Emails re meet and confer with defense on document review	0.20	
12/27/2012	CHIPLOCK, DANIEL	Emails with team re document review.	0.20	
12/27/2012	LIEFF, ROBERT	Review emails re document review	0.10	
1/3/2013	CHIPLOCK, DANIEL	Calendar mediation date.	0.10	
1/3/2013	DUGAR, KIRTI	Travel to Denver for meeting with Catalyst re State Street production and setup of database.	3.50	
1/4/2013	CHIPLOCK, DANIEL	Emails to team re mediation logistics.	0.20	
1/4/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with defense and co-counsel re damage data requests and third party discovery.	1.30	
1/4/2013	CHIPLOCK, DANIEL	Telephone conference with K. Dugar and email team re status of document review.	0.40	
1/4/2013	DUGAR, KIRTI	Review production from State Street and discuss loadfile and other problems with loading documents into database, resolve issues to move forward.	2.50	
1/4/2013	LIEFF, ROBERT	Review emails re mediation logistics; email team re same.	0.20	
1/5/2013	DUGAR, KIRTI	Travel back to San Francisco from Denver following database problems meeting with Catalyst.	3.50	
1/7/2013	CHIPLOCK, DANIEL	Emails with K. Dugar re document review platform and issues.	0.40	
1/8/2013	CHIPLOCK, DANIEL	Telephone conference with Dwight Bostwick and email team re 1/24/2013 mediation strategy follow-up emails re same.	1.00	
1/8/2013	DUGAR, KIRTI	Follow up on State Street Forex production issues and creation of review database; calls to Catalyst.	2.00	
1/8/2013	LIEFF, ROBERT	Review email from D. Chiplock re 1/24/2013 mediation strategy.	0.20	
1/9/2013	CHIPLOCK, DANIEL	Emails to team re 1/24/2013 mediation preparation.	0.40	
1/9/2013	LIEFF, ROBERT	Review emails re 1/24/2013 mediation preparation.	0.20	
1/10/2013	CHIPLOCK, DANIEL	Emails to K. Dugar and defense re document production problems and issues; review same.	0.70	
1/10/2013	DUGAR, KIRTI	Follow up on document production problems from State Street productions; emails to and from D. Chiplock re same.	1.50	
1/11/2013	CHIPLOCK, DANIEL	Email S. Fineman re case status.	0.20	
1/11/2013	CHIPLOCK, DANIEL	Emails to team and defense re mediation; emails to team re damages discovery and review same.	1.40	
1/11/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with K. Dugar re document production by State Street; emails to defense re problems with same.	1.00	
1/11/2013	DUGAR, KIRTI	Follow up on problems with document production disks from defense; calls with D. Chiplock re same; follow up with Catalyst re same.	1.00	
1/11/2013	LIEFF, ROBERT	Review emails re mediation and damages discovery.	0.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
1/14/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team and defense re mediation and damages questions; review materials provided by State Street.	1.60	
1/14/2013	DUGAR, KIRTI	Review loading progress; follow up with Catalyst on issues.	2.00	
1/14/2013	LIEFF, ROBERT	Review emails re mediation and damages questions; telephone conference re same.	1.00	
1/15/2013	CHIPLOCK, DANIEL	Conference with S. Fineman re case status.	0.20	
1/15/2013	CHIPLOCK, DANIEL	Emails to G. Balko re travel to Washington, DC for mediation	0.20	
1/15/2013	CHIPLOCK, DANIEL	Emails with K. Dugar re document review status.	0.40	
1/15/2013	CHIPLOCK, DANIEL	Review Forex volume reports for ERISA funds	0.50	
1/15/2013	DUGAR, KIRTI	Further follow up with Catalyst re database issues	0.50	
1/15/2013	FINEMAN, STEVEN	Read memorandum from D. Chiplock re status; discuss same with D. Chiplock.	0.30	
1/16/2013	CHIPLOCK, DANIEL	Emails and telephone conferences re mediation and discovery.	1.60	
1/17/2013	CHIPLOCK, DANIEL	Emails with K. Dugar and defense re document review and status of same.	0.60	
1/18/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with ERISA counsel and co-ccunsel re mediation strategy.	1.30	
1/18/2013	CHIPLOCK, DANIEL	Review and comment on follow-up questions for State Street re damages, emails to team re same.	0.80	
1/18/2013	LIEFF, ROBERT	Review emails re comments on follow up questions for State Street re damages.	0.20	
1/21/2013	DUGAR, KIRTI	Call from Catalyst re loading update; review same and follow up re same	1.50	
1/22/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with mediator and co-counsel re mediation issues; conference with defense re document production issues; conference and emails with ERISA counsel re mediation issues; research re same.	4.00	
1/22/2013	DUGAR, KIRTI	Conference call with defense team re production issues.	0.50	
1/22/2013	LIEFF, ROBERT	Telephone conference with mediator and co-counsel re preparation for 1/24/2013 mediation.	1.00	
1/23/2013	CHIPLOCK, DANIEL	Emails to team re agenda for mediation and preparation for same.	2.60	
1/23/2013	LIEFF, ROBERT	Review emails and agenda for mediation.	0.20	
1/23/2013	LIEFF, ROBERT	Travel to Washington, DC for mediation on 1/24/2013.	8.00	
1/24/2013	CHIPLOCK, DANIEL	Attend mediation in Washington, DC; emails and conferences re same.	4.50	
1/24/2013	CHIPLOCK, DANIEL	Return travel from Washington, DC; emails with K. Dugar and team re document review; organize logistics for same	4.00	
1/24/2013	CHIPLOCK, DANIEL	Travel to, and prepare for mediation session with defendants and Jonathan Mark; emails re same.	4.00	
1/24/2013	LIEFF, ROBERT	Attend mediation in Washington, DC.	4.00	
1/24/2013	LIEFF, ROBERT	Return travel from Washington, DC.	8.00	
1/24/2013	MILORO, SCOTT	Review of complaint.	0.50	
1/24/2013	NUTTING, LEAH	Review case materials in preparation for document review.	4.50	
1/25/2013	CHIPLOCK, DANIEL	Conference with S. Fineman re mediation; emails with team re spread calculations	1.40	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
1/25/2013	LIEFF, ROBERT	Review emails re spread calculations.	0.30	
1/25/2013	NUTTING, LEAH	Review case materials in preparation for document review.	2.80	
1/28/2013	CHIPLOCK, DANIEL	Document review administration and emails to K. Dugar and team re same.	1.60	
1/28/2013	CHIPLOCK, DANIEL	Review David Goldsmith's comment to agenda and email re same.	0.20	
1/28/2013	DUGAR, KIRTI	Emails and follow up re production data problems.	1.00	
1/28/2013	DUGAR, KIRTI	Review documents in database; follow up with Catalyst re issues to be resolved.	1.00	
1/28/2013	LIEFF, ROBERT	Review emails re document review administration.	0.20	
1/29/2013	CHIPLOCK, DANIEL	Emails to defense re document review questions; emails to team re same.	0.60	
1/29/2013	CHIPLOCK, DANIEL	Emails to K. Dugar re document review training.	0.20	
1/29/2013	CHIPLOCK, DANIEL	Telephone conference with Dwight Bostwick re mediation.	0.30	
1/29/2013	LIEFF, ROBERT	Review emails to defense re document review questions.	0.30	
1/30/2013	CHIPLOCK, DANIEL	Emails to K. Dugar re document review training; emails to team re same.	0.60	
1/30/2013	CHIPLOCK, DANIEL	Emails to team re document review platform.	0.30	
1/30/2013	LIEFF, ROBERT	Review emails re document review platform.	0.10	
1/31/2013	CHIPLOCK, DANIEL	Emails to team re document review and training; telephone conferences with K. Dugar re same and follow-up emails re same.	1.80	
1/31/2013	DIAMAND, NICHOLAS	Send background materials to L. Nutting pre-document review traning per D. Chiplock.	0.20	
1/31/2013	DUGAR, KIRTI	Organize Catalyst training and agenda for training for users.	1.00	
1/31/2013	LIEFF, ROBERT	Review emails re document review and training.	0.10	
1/31/2013	MUGRAGE, MAJOR	Review a sampling from two boxes of compact discs and analyze contents	1.70	
2/1/2013	CHIPLOCK, DANIEL	Conference and emails re document review; attend training for same.	2.40	
2/1/2013	GRALEWSKI, KELLY	Install document review software in preparation of reviewing defendants' documents.	0.50	
2/1/2013	MILORO, SCOTT	Conference call re production.	1.00	
2/1/2013	NUTTING, LEAH	Catalyst training in preparation for document review.	1.00	
2/4/2013	MILORO, SCOTT	Review of complaint and pertinent law.	0.50	
2/5/2013	CHIPLOCK, DANIEL	Emails and confer with D. Stellings re document review staffing.	0.60	
2/5/2013	CHIPLOCK, DANIEL	Emails re conference with ERISA lawyers.	0.20	
2/5/2013	DUGAR, KIRTI	Follow up on data loading issues with Catalyst; conference call re same; review current loads.	1.00	
2/5/2013	LIEFF, ROBERT	Call with Larry Sucharow re Steering Committee.	0.30	
2/5/2013	LIEFF, ROBERT	Call with Michael Thornton re Steering Committee.	0.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/5/2013	LIEFF, ROBERT	Conference call with ERISA lawyers.	0.50	
2/6/2013	CHIPLOCK, DANIEL	Emails to co-counsel re damages estimates; review charts.	0.80	
2/6/2013	CHIPLOCK, DANIEL	Emails to D. Stellings and K. Dugar re document review staffing.	0.30	
2/6/2013	CHIPLOCK, DANIEL	Emails to Dwight Bostwick re lunch.	0.20	
2/6/2013	LIEFF, ROBERT	Call with William Paine re mediator's suggestion re Steering Committee.	0.20	
2/7/2013	CHIPLOCK, DANIEL	Conference and lunch with Dwight Bostwick re State Street claims and strategy; review loss calculations re same and email team.	2.50	
2/7/2013	CHIPLOCK, DANIEL	Emails re contract attorney hires and document review.	0.30	
2/7/2013	CHIPLOCK, DANIEL	Emails with K. Dugar and team re document review training.	0.60	
2/7/2013	DUGAR, KIRTI	Review document loads in database; conference calls with Catalyst project manager and processing head regarding loading issues and allocation of work assignments between counsel firms.	1.50	
2/7/2013	LIEFF, ROBERT	Review emails re document review training.	0.10	
2/8/2013	CHIPLOCK, DANIEL	Emails to team re document review training; telephone conferences re same and logistics; emails to Mike Lesser re Executive Summary on damages.	0.90	
2/8/2013	DUGAR, KIRTI	Follow up on documents loading issues; review special transactions disks; check data loads in Catalyst; organize new training sessions for group.	2.00	
2/8/2013	LIEFF, ROBERT	Review emails re document review training.	0.10	
2/8/2013	MUGRAGE, MAJOR	Continue review of two boxes of compact discs and analyze contents.	1.20	
2/8/2013	MUGRAGE, MAJOR	Make arrangements for web-based reviewer training session.	1.20	
2/8/2013	YAMAT, CYRUS	Attended training session for Catalyst database program.	1.00	
2/11/2013	CHIPLOCK, DANIEL	Emails to team re document review training and video conference.	0.80	
2/11/2013	DUGAR, KIRTI	Review documents loaded and prepare for live training.	2.00	
2/11/2013	LIEFF, ROBERT	Review emails re document review training and video conference on March 13, 2013.	0.30	
2/12/2013	CHIPLOCK, DANIEL	Emails re document review training.	0.20	
2/12/2013	CHIPLOCK, DANIEL	Emails with co-counsel re document review and mediation.	0.30	
2/12/2013	CHIPLOCK, DANIEL	Review and edit Executive Summary on loss calculations; emails to Mike Lesser re same.	0.50	
2/12/2013	DIAMAND, NICHOLAS	Catalyst document review training.	1.00	
2/12/2013	DUGAR, KIRTI	Follow up with reviewers and Catalyst re bulk tagging issues.	1.00	
2/12/2013	GRALEWSKI, KELLY	Attend Catalyst Insight training with K. Dugar and LCHB review team for defendant's production of documents.	1.30	
2/12/2013	LIEFF, ROBERT	Review emails re document review training.	0.10	
2/12/2013	MILORO, SCOTT	Telephone conference re Catalyst.	1.30	
2/12/2013	MUGRAGE, MAJOR	Attend web-based training for Catalyst database users.	1.40	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception
Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/12/2013	NUTTING, LEAH	Catalyst training in preparation for document review.	1.30	
2/13/2013	CHIPLOCK, DANIEL	Attend Catalyst document review training; emails to team re same.	1.60	
2/13/2013	GRALEWSKI, KELLY	Attend Catalyst Insight training session for defendant's production of documents.	1.00	
2/13/2013	LIEFF, ROBERT	Review emails re document review training.	0.10	
2/14/2013	CHIPLOCK, DANIEL	Document review and administration, emails re same.	1.20	
2/14/2013	CHIPLOCK, DANIEL	Edit Mike Lesser's memo re damages summary and emails re same; emails to ERISA counsel re same.	1.80	
2/14/2013	DUGAR, KIRTI	Follow up on database and creation of review folders; emails to and from group	2.00	
2/14/2013	LIEFF, ROBERT	Review email from Jonathan Marks re 60-day agenda.	0.30	
2/14/2013	LIEFF, ROBERT	Review emails re ERISA arguments.	0.20	
2/14/2013	LIEFF, ROBERT	Review emails re memo re damages summary.	0.30	
2/14/2013	LIEFF, ROBERT	Send email re meeting with mediator.	0.30	
2/14/2013	MILORO, SCOTT	Review of State Stree documents.	3.30	
2/15/2013	CHIPLOCK, DANIEL	Document review and administration, conflicts check for contract attorneys re same.	1.60	
2/15/2013	CHIPLOCK, DANIEL	Review damages summary prepared by Mike Lesser and emails re same.	0.50	
2/15/2013	DUGAR, KIRTI	Review family and other overlay problems in database; conference calls with Catalyst re same; plan for fixing same; review transactions data disks.	3.50	
2/15/2013	LIEFF, ROBERT	Review email re data breach.	0.10	
2/15/2013	LIEFF, ROBERT	Review revised damages charts.	0.20	
2/15/2013	MILORO, SCOTT	Review of State Street documents.	7.80	
2/18/2013	DUGAR, KIRTI	Follow up with Catalyst on database matters; train E. Brehm on using review system and coding.	2.00	
2/19/2013	BREHM, ELIZABETH	Introductory calls and training; background reading to familiarize with case.	6.00	
2/19/2013	CHIPLOCK, DANIEL	Document review administration; emails re search terms.	0.70	
2/19/2013	CHIPLOCK, DANIEL	Telephone conferences with document reviewers and emails re training of same	1.40	
2/19/2013	DUGAR, KIRTI	Emails to and from D. Chiplock and co-counsel team re document review process and issue fields; review field description memo.	1.50	
2/19/2013	DUGAR, KIRTI	Train contract attorney on Catalyst system for document review.	1.00	
2/19/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	2.30	
2/19/2013	GRALEWSKI, KELLY	Review pleadings in preparation for document review of defendants' documents.	1.30	
2/19/2013	MILORO, SCOTT	Review of State Street documents.	8.00	
2/19/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	6.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From | Inception

Timekeeper: ALL | To | Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/20/2013	BREHM, ELIZABETH	Document review.	9.30	
2/20/2013	CHIPLOCK, DANIEL	Document review and administration; emails and telephone conferences with reviewers re same.	1.20	
2/20/2013	CHIPLOCK, DANIEL	Emails with defense and co-counsel re 3/13/2013 video conference.	0.30	
2/20/2013	CHIPLOCK, DANIEL	Telephone conference with ERISA counsel and email team re California data.	0.30	
2/20/2013	DIAMAND, NICHOLAS	Email D. Chiplock and K. Dugar re Catalyst issues.	0.30	
2/20/2013	DUGAR, KIRTI	Numerous emails from users re database and family documents issues; troubleshoot same and follow up with Catalyst to apply fixes	3.00	
2/20/2013	DUGAR, KIRTI	Train contract attorneys on use of Catalyst for document review.	1.00	
2/20/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	3.50	
2/20/2013	MILORO, SCOTT	Review of State Street documents.	8.00	
2/20/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
2/21/2013	BLOOMFIELD, JOSHUA	Review emails, pleadings and memoranda in connection with case project and assignment	4.50	
2/21/2013	BLOOMFIELD, JOSHUA	Telephone conference with K. Dugar re Catalyst training; familiarize with Catalyst Insight review tool and database.	1.50	
2/21/2013	BREHM, ELIZABETH	Read opposition to motion to dismiss; document review.	4.00	
2/21/2013	CHIPLOCK, DANIEL	Email and conference with team re document review and administration; training re same.	1.70	
2/21/2013	CHIPLOCK, DANIEL	Emails to team and defense re 3/13/2013 video conference.	0.80	
2/21/2013	DUGAR, KIRTI	Follow up with contract attorneys on document review and training; test database for errors; review transactions data disks	1.50	
2/21/2013	DUGAR, KIRTI	Review transactions data disks received from State Street.	2.50	
2/21/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	3.50	
2/21/2013	MILORO, SCOTT	Review of State Street documents.	8.00	
2/21/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
2/21/2013	YAMAT, CYRUS	Created training conference to outside counsel on Catalyst software.	2.00	
2/22/2013	BLOOMFIELD, JOSHUA	Document review.	5.00	
2/22/2013	BLOOMFIELD, JOSHUA	Review emails, pleadings and memoranda in connection with case project and assignment.	2.80	
2/22/2013	BLOOMFIELD, JOSHUA	Telephone conference with D. Chiplock re case overview	0.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
2/22/2013	BREHM, ELIZABETH	Document review of State Street documents.	7.50	
2/22/2013	BREHM, ELIZABETH	Weekly report for D. Chiplock.	0.50	
2/22/2013	CHIPLOCK, DANIEL	Document review and administration; emails to team re same.	0.50	
2/22/2013	CHIPLOCK, DANIEL	Email K. Dugar re [redacted] data transmission.	0.10	
2/22/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with document reviewers re training.	0.50	
2/22/2013	DUGAR, KIRTI	Review questions and issues; follow up with team; train J. Bloomfield on Catalyst review and coding.	2.50	
2/22/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.50	
2/22/2013	MILORO, SCOTT	Review of State Street documents.	8.00	
2/22/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
2/23/2013	BREHM, ELIZABETH	Document review and communication with other document reviewers.	3.00	
2/25/2013	BLOOMFIELD, JOSHUA	Document review	7.00	
2/25/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	1.00	
2/25/2013	BREHM, ELIZABETH	Document review and communication with other document reviewers.	7.30	
2/25/2013	CHIPLOCK, DANIEL	Document review and administration.	0.30	
2/25/2013	CHIPLOCK, DANIEL	Emails to defense re 3/13/2013 video conference.	0.20	
2/25/2013	DUGAR, KIRTI	Follow up with Catalyst on revised creation of review batches with family members; check database for same.	1.50	
2/25/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
2/25/2013	MILORO, SCOTT	Review of State Street documents.	5.30	
2/25/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
2/26/2013	BLOOMFIELD, JOSHUA	Document review.	7.50	
2/26/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.50	
2/26/2013	BREHM, ELIZABETH	Document review.	6.80	
2/26/2013	CHIPLOCK, DANIEL	Emails re California data production.	0.30	
2/26/2013	DUGAR, KIRTI	Further review of transactions data disks, conference call with D. Chiplock re same	2.50	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From | Inception

Timekeeper: ALL | To | Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/13/2013	LIEFF, ROBERT	Video conference with State Street to go over their spreadsheet data methodologies.	1.00	
3/13/2013	MILORO, SCOTT	Review of State Stree documents.	3.50	
3/14/2013	BLOOMFIELD, JOSHUA	Document review.	7.50	
3/14/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.50	
3/14/2013	BREHM, ELIZABETH	Document review; email communication with review team and Catalyst support.	6.50	
3/14/2013	LIEFF, ROBERT	Travel from New York to Los Angeles.	4.00	
3/14/2013	MILORO, SCOTT	Review of State Stree documents.	4.30	
3/15/2013	BLOOMFIELD, JOSHUA	Document review.	5.80	
3/15/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.30	
3/15/2013	BREHM, ELIZABETH	Document review.	4.50	
3/15/2013	CHIPLOCK, DANIEL	Emails re damages estimates for different custodial populations.	0.40	
3/15/2013	CHIPLOCK, DANIEL	Emails to team re plaintiffs' document production.	0.20	
3/17/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
3/17/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	3.50	
3/18/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	4.30	
3/18/2013	CHIPLOCK, DANIEL	Review damages chart from Mike Lesser; email re same.	0.20	
3/18/2013	LIEFF, ROBERT	Review damages chart from Mike Lesser.	0.30	
3/18/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
3/19/2013	BLOOMFIELD, JOSHUA	Document review.	7.80	
3/19/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.30	
3/19/2013	BREHM, ELIZABETH	Document review.	5.50	
3/19/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	4.80	
3/19/2013	LIEFF, ROBERT	Email to Michael Thornton re proposed meeting with Larry Sucharow.	0.20	
3/19/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/20/2013	BLOOMFIELD, JOSHUA	Document review.	4.80	
3/20/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.30	
3/20/2013	BREHM, ELIZABETH	Document review.	5.30	
3/20/2013	CHIPLOCK, DANIEL	Emails re document review and administration and allocation issues.	0.60	
3/20/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.30	
3/20/2013	LIEFF, ROBERT	Review emails re document review, administration and allocation issues.	0.20	
3/20/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
3/21/2013	BLOOMFIELD, JOSHUA	Document review.	7.80	
3/21/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.30	
3/21/2013	BREHM, ELIZABETH	Document review	6.30	
3/21/2013	CHIPLOCK, DANIEL	Emails to team re document review questions.	0.30	
3/21/2013	DUGAR, KIRTI	Prepare for and attend conference call with D. Chiplock and vendor re defendants' reproduction and issues related thereto.	1.00	
3/21/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	8.00	
3/21/2013	LIEFF, ROBERT	Review emails re document review questions.	0.10	
3/21/2013	NUTTING, LEAH	Review defendants' documents for relavance and issue coding	8.00	
3/22/2013	BLOOMFIELD, JOSHUA	Document review.	7.80	
3/22/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.30	
3/22/2013	BREHM, ELIZABETH	Document review.	3.50	
3/22/2013	CHIPLOCK, DANIEL	Emails to team re plan of allocation ideas; research re same	2.20	
3/22/2013	DIAMAND, NICHOLAS	Logistics reviewing coders' time.	0.20	
3/22/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	2.00	
3/22/2013	LIEFF, ROBERT	Review emails re plan of allocation ideas.	0.20	
3/23/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/24/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
3/25/2013	BLOOMFIELD, JOSHUA	Document review.	5.50	
3/25/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.50	
3/25/2013	BREHM, ELIZABETH	Document review.	3.00	
3/25/2013	DIAMAND, NICHOLAS	Review coders' time.	0.10	
3/25/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.80	
3/25/2013	MILORO, SCOTT	Review of State Street documents.	8.00	
3/26/2013	BLOOMFIELD, JOSHUA	Document review.	7.80	
3/26/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.30	
3/26/2013	BREHM, ELIZABETH	Document review.	3.00	
3/26/2013	CHIPLOCK, DANIEL	Emails to Mike Lesser re fee agreement.	0.20	
3/26/2013	DIAMAND, NICHOLAS	Work with S. Miloro re coding issues.	0.50	
3/26/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.00	
3/26/2013	MILORO, SCOTT	Review of State Street documents.	8.00	
3/26/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
3/27/2013	BLOOMFIELD, JOSHUA	Document review.	5.80	
3/27/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.30	
3/27/2013	BREHM, ELIZABETH	Document review.	5.50	
3/27/2013	CHIPLOCK, DANIEL	Email team re Carver complaint	0.10	
3/27/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.50	
3/27/2013	MILORO, SCOTT	Review of State Street documents.	6.00	
3/27/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
3/28/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
3/28/2013	BREHM, ELIZABETH	Document review.	5.50	
3/28/2013	CHIPLOCK, DANIEL	Emails to team re mediation statements and possible plans of allocation.	0.40	
3/28/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
3/28/2013	LIEFF, ROBERT	Review emails re confidential mediation communication.	0.30	
3/28/2013	MILORO, SCOTT	Review of State Street documents.	2.00	
3/28/2013	NAMBIAR, ANIL	Review IAM National Pension Fund data for Forex analysis and review per K. Dugar.	7.00	
3/28/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
3/29/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
3/29/2013	BREHM, ELIZABETH	Document review.	4.50	
3/29/2013	DUGAR, KIRTI	Organize IAM National Pension Fund data for loss analysis, review spreadsheet.	4.50	
3/29/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.00	
3/29/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
3/30/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
3/30/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.00	
4/1/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
4/1/2013	BREHM, ELIZABETH	Document review.	5.30	
4/1/2013	CHIPLOCK, DANIEL	Email co-counsel re litigation fund.	0.10	
4/1/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team re Chapter 93A and suggestions for plan of allocation in any settlement.	1.00	
4/1/2013	CHIPLOCK, DANIEL	Emails to team re mediation issues.	0.20	
4/1/2013	LIEFF, ROBERT	Review memo containing excerpts for briefing on the motion to dismiss.	0.30	
4/1/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/2/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
4/2/2013	BREHM, ELIZABETH	Document review.	5.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/2/2013	CHIPLOCK, DANIEL	Email and telephone conferences with team re mediation issues to raise with Jonathan Marks; email and conference re document review.	1.60	
4/2/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
4/2/2013	LIEFF, ROBERT	Review possible plans of allocation to be send to Jonathan Marks.	0.40	
4/2/2013	LIEFF, ROBERT	Send email re deadline for submitting suggestions for initial framework to Jonathan Marks.	0.20	
4/2/2013	NAMBIAR, ANIL	Review transactions on program disc per K. Dugar.	5.00	
4/2/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/3/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
4/3/2013	BREHM, ELIZABETH	Document review.	6.80	
4/3/2013	CHIPLOCK, DANIEL	Emails to team re document review issues and concerns.	0.30	
4/3/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
4/3/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.80	
4/4/2013	BLOOMFIELD, JOSHUA	Document review.	7.80	
4/4/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.30	
4/4/2013	BREHM, ELIZABETH	Document review.	3.30	
4/4/2013	CHIPLOCK, DANIEL	Edit case description for firm website and resume	0.40	
4/4/2013	CHIPLOCK, DANIEL	Review and comment on suggested parameters for mediation and plan of allocation	0.50	
4/4/2013	DIAMAND, NICHOLAS	Email with K. Dugar and coding team re hot documents folder	0.20	
4/4/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	1.30	
4/4/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/5/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
4/5/2013	BREHM, ELIZABETH	Document review.	5.30	
4/5/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
4/5/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/7/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
4/7/2013	BREHM, ELIZABETH	Document review.	0.30	
4/7/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
4/8/2013	BREHM, ELIZABETH	Document review.	6.80	
4/8/2013	CHIPLOCK, DANIEL	Emails to team re mediation document for Jonathan Marks.	0.30	
4/8/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.50	
4/8/2013	LIEFF, ROBERT	Review draft bullet point memo to be submitted to Jonathan Marks re settlement class/plan of allocation.	0.30	
4/8/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/9/2013	BLOOMFIELD, JOSHUA	Document review.	3.80	
4/9/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment	0.30	
4/9/2013	BREHM, ELIZABETH	Document review.	4.30	
4/9/2013	CHIPLOCK, DANIEL	Email team re ERISA and mediation statement; emails to R. Lieff re same.	0.90	
4/9/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
4/9/2013	LIEFF, ROBERT	Review edited draft bullet point memo to Jonathan Marks re settlement class/plan of allocation.	0.20	
4/9/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/10/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
4/10/2013	BREHM, ELIZABETH	Document review.	1.30	
4/10/2013	CHIPLOCK, DANIEL	Review bullet point list for mediator and emails to team and R. Lieff re same.	0.90	
4/10/2013	DIAMAND, NICHOLAS	Coding logistics.	0.30	
4/10/2013	LIEFF, ROBERT	Review final bullet point memo to Jonathan Marks re settlement class/plan of allocation.	0.20	
4/10/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/11/2013	BLOOMFIELD, JOSHUA	Document review.	7.80	
4/11/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/11/2013	BREHM, ELIZABETH	Document review.	3.00	
4/11/2013	CHIPLOCK, DANIEL	Emails to team re mediation submission and ERISA concerns.	0.60	
4/11/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
4/11/2013	LIEFF, ROBERT	Review emails re mediation submission and ERISA concerns.	0.30	
4/11/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/12/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
4/12/2013	BREHM, ELIZABETH	Document review.	5.30	
4/12/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	2.00	
4/12/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.50	
4/13/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
4/15/2013	BREHM, ELIZABETH	Document review.	3.50	
4/15/2013	CHIPLOCK, DANIEL	Emails to team re communications with ERISA attorneys on mediation issues.	0.20	
4/15/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
4/15/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
4/15/2013	LIEFF, ROBERT	Review emails re communications with ERISA attorneys on mediation issues.	0.20	
4/15/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/16/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
4/16/2013	BREHM, ELIZABETH	Document review.	6.30	
4/16/2013	CHIPLOCK, DANIEL	Emails and conference with N. Diamand and team re document review status.	0.90	
4/16/2013	CHIPLOCK, DANIEL	Emails to Catalyst re document review status	0.40	
4/16/2013	DUGAR, KIRTI	Follow up on document review.	1.50	
4/16/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
4/16/2013	LIEFF, ROBERT	Review emails re document review status.	0.10	
4/16/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/17/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
4/17/2013	BREHM, ELIZABETH	Document review.	4.00	
4/17/2013	CHIPLOCK, DANIEL	Email Mike Lesser re mediation.	0.10	
4/17/2013	DIAMAND, NICHOLAS	Coder logistics	0.20	
4/17/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	1.50	
4/17/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/18/2013	BLOOMFIELD, JOSHUA	Document review.	7.00	
4/18/2013	BLOOMFIELD, JOSHUA	Telephone conference with review team re review status.	1.00	
4/18/2013	BREHM, ELIZABETH	Document review; call with D. Chiplock and review team.	6.50	
4/18/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with co-counsel and team re document review status and issues.	1.80	
4/18/2013	DIAMAND, NICHOLAS	Team call.	0.80	
4/18/2013	DUGAR, KIRTI	Review database; attend team conference call re document review progress.	1.50	
4/18/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	2.00	
4/18/2013	LIEFF, ROBERT	Telephone conference with co-counsel and team re document review status and issues; review emails re same	1.00	
4/18/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.20	
4/18/2013	NUTTING, LEAH	Telephone conference with D. Chiplock and N. Diamand regarding document review status.	0.80	
4/19/2013	BLOOMFIELD, JOSHUA	Document review.	5.50	
4/19/2013	BLOOMFIELD, JOSHUA	Draft email re Catalyst performance.	0.30	
4/19/2013	BLOOMFIELD, JOSHUA	Telephone call with K. Dugar re Catalyst performance.	0.30	
4/19/2013	BREHM, ELIZABETH	Document review.	5.30	
4/19/2013	CHIPLOCK, DANIEL	Email K. Dugar re [redacted] data.	0.10	
4/19/2013	CHIPLOCK, DANIEL	Emails to co-counsel re document review.	0.20	
4/19/2013	DUGAR, KIRTI	Follow up with reviewers re coding progress.	1.50	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/19/2013	GRALEWSKI, KELLY	Prepare and review email to and from technical support of document review software.	0.30	
4/19/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	3.30	
4/19/2013	GRALEWSKI, KELLY	Telephone call with K. Dugar regarding issues with document software.	0.30	
4/19/2013	GRALEWSKI, KELLY	Telephone conference with review team regarding review of defendants' documents.	0.80	
4/19/2013	LIEFF, ROBERT	Review emails re document review.	0.10	
4/19/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.30	
4/20/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
4/20/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	5.50	
4/21/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
4/22/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	4.00	
4/22/2013	CHIPLOCK, DANIEL	Emails to Mike Lesser re document review.	0.20	
4/22/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	4.00	
4/22/2013	NAMBIAR, ANIL	Review pension data for fx transactions and summary of gains and losses per K. Dugar.	6.00	
4/22/2013	NUTTING, LEAH	Meet with K. Dugar regarding Catalyst performance and document review.	1.80	
4/22/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	5.50	
4/23/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
4/23/2013	BREHM, ELIZABETH	Document review.	5.30	
4/23/2013	CHIPLOCK, DANIEL	Emails to plaintiffs with team re update on mediation.	0.50	
4/23/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	4.50	
4/23/2013	LIEFF, ROBERT	Review emails to plaintiffs re update on mediations.	0.10	
4/23/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/24/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
4/24/2013	BREHM, ELIZABETH	Document review.	5.80	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/24/2013	CHIPLOCK, DANIEL	Emails re contract attorney document review status.	0.30	
4/24/2013	CHIPLOCK, DANIEL	Emails to K. Dugar re [redacted] data.	0.20	
4/24/2013	CHIPLOCK, DANIEL	Emails to team re Department of Justice opinion in Bank of New York Mellon and mediation status.	0.50	
4/24/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with team re mediation and clients; potential additional clients.	0.40	
4/24/2013	LIEFF, ROBERT	Review emails re Department of Justice opinion in Bank of New York Mellon and mediation status.	0.20	
4/24/2013	LIEFF, ROBERT	Telephone conference with team re mediation and clients; potential additional clients; review emails re same.	0.20	
4/24/2013	NAMBIAR, ANIL	Review pension data for fx transactions and summary of gains and losses per K. Dugar.	6.00	
4/24/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/25/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
4/25/2013	BREHM, ELIZABETH	Document review.	2.00	
4/25/2013	CHIPLOCK, DANIEL	Emails to team re case submissions to mediator.	0.60	
4/25/2013	DUGAR, KIRTI	Damages analysis for IAMS Pension Fund.	7.00	
4/25/2013	LIEFF, ROBERT	Review emails re case submissions to mediator.	0.30	
4/25/2013	NAMBIAR, ANIL	Review pension data for fx transactions and summary of gains and losses per K. Dugar.	7.00	
4/25/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/26/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
4/26/2013	BREHM, ELIZABETH	Document review.	4.50	
4/26/2013	CHIPLOCK, DANIEL	Email [redacted] re [redacted] loss analysis.	0.20	
4/26/2013	CHIPLOCK, DANIEL	Emails to K. Dugar re [redacted] data analysis.	0.80	
4/26/2013	DUGAR, KIRTI	Continue analysis and review of I.A.M Pension funds transactions; prepare initial damages spreadsheet; communications with D. Chiplock re same; meetings and joint data and results verifications of results with A. Nambiar re same.	6.00	
4/26/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
4/28/2013	DUGAR, KIRTI	Cross check damages analysis for I.A.M Pension Funds correct for possible data errors.	2.00	
4/29/2013	BREHM, ELIZABETH	Document review.	7.00	
4/29/2013	CHIPLOCK, DANIEL	Telephone conference with K. Dugar re [redacted] nd loss calculations and emails to client re same; review same.	0.70	
4/29/2013	DUGAR, KIRTI	Review transactions fro I.A.M Pension funds from 2000-2002: revise initial estimates by the Fund and by the currency; conference call with D. Chiplock re damages results.	4.50	
4/29/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
4/30/2013	BLOOMFIELD, JOSHUA	Document review.	5.00	
4/30/2013	BREHM, ELIZABETH	Document review.	2.30	
4/30/2013	CHIPLOCK, DANIEL	Emails to team re Catalyst invoice.	0.20	
4/30/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.00	
4/30/2013	LIEFF, ROBERT	Review emails re Catalyst invoice.	0.20	
4/30/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/1/2013	BLOOMFIELD, JOSHUA	Document review.	5.00	
5/1/2013	BREHM, ELIZABETH	Document review.	2.50	
5/1/2013	CHIPLOCK, DANIEL	Emails to team re document review administration.	0.40	
5/1/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	1.50	
5/1/2013	LIEFF, ROBERT	Review emails re document review administration.	0.10	
5/1/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/2/2013	BLOOMFIELD, JOSHUA	Document review.	5.00	
5/2/2013	BREHM, ELIZABETH	Document review.	6.30	
5/2/2013	CHIPLOCK, DANIEL	Emails to [redacted] re data analysis.	0.20	
5/2/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
5/2/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/3/2013	BLOOMFIELD, JOSHUA	Document review.	5.00	
5/3/2013	BREHM, ELIZABETH	Document review.	6.30	
5/3/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	2.50	
5/3/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.50	
5/4/2013	BLOOMFIELD, JOSHUA	Document review.	5.00	
5/5/2013	BLOOMFIELD, JOSHUA	Document review.	5.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception
Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
5/6/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
5/6/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/7/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
5/7/2013	BREHM, ELIZABETH	Document review	5.30	
5/7/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
5/7/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/8/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/8/2013	BREHM, ELIZABETH	Document review.	4.00	
5/8/2013	CHIPLOCK, DANIEL	Email team re ERISA action and motion to dismiss	0.40	
5/8/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	4.00	
5/8/2013	LIEFF, ROBERT	Review email re ERISA action and motion to dismiss.	0.20	
5/8/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/9/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/9/2013	BREHM, ELIZABETH	Document review.	2.50	
5/9/2013	DIAMAND, NICHOLAS	Review coders' timesheets.	0.20	
5/9/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	4.00	
5/9/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/10/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/10/2013	BREHM, ELIZABETH	Document review.	5.00	
5/10/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
5/10/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/11/2013	BLOOMFIELD, JOSHUA	Document review	4.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM From Inception

Timekeeper: ALL To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
5/12/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/13/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/13/2013	CHIPLOCK, DANIEL	Emails to teawm re document review and status.	0.20	
5/13/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	3.00	
5/13/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/14/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/14/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	2.00	
5/14/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/15/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/15/2013	BREHM, ELIZABETH	Document review	5.50	
5/15/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	3.50	
5/15/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding	8.00	
5/16/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
5/16/2013	BREHM, ELIZABETH	Document review.	5.00	
5/16/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	4.50	
5/16/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.60	
5/17/2013	BREHM, ELIZABETH	Document review.	5.00	
5/17/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
5/18/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
5/19/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
5/20/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
5/20/2013	BREHM, ELIZABETH	Document review.	5.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM From Inception

Timekeeper: ALL To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
5/20/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.50	
5/20/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/21/2013	BREHM, ELIZABETH	Document review.	5.30	
5/21/2013	DUGAR, KIRTI	Follow up on database issues raised by reviewers.	2.00	
5/21/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.00	
5/21/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/22/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/22/2013	BREHM, ELIZABETH	Document review.	6.30	
5/22/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with team re document review.	0.40	
5/22/2013	LIEFF, ROBERT	Review emails re document review.	0.10	
5/22/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/23/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/23/2013	BREHM, ELIZABETH	Document review.	5.30	
5/23/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.50	
5/23/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/24/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
5/24/2013	BREHM, ELIZABETH	Document review.	4.80	
5/24/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	5.00	
5/25/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
5/26/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
5/28/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
5/28/2013	BREHM, ELIZABETH	Document review.	6.00	
5/28/2013	CHIPLOCK, DANIEL	Review memo from E. Brehm re document review and email re same.	0.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From | Inception

Timekeeper: ALL | To | Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
5/28/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.80	
5/28/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/29/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
5/29/2013	BREHM, ELIZABETH	Document review	5.50	
5/29/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with R. Lieff and Mike Lesser re mediation status.	0.40	
5/29/2013	LIEFF, ROBERT	Telephone conferences and emails with D. Chiplock and Mike Lesser re mediation status.	0.30	
5/29/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/30/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
5/30/2013	BREHM, ELIZABETH	Document review.	6.00	
5/30/2013	CHIPLOCK, DANIEL	Emails to R. Lieff re mediation status and dates.	0.20	
5/30/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.00	
5/30/2013	LIEFF, ROBERT	Review emails from D. Chiplock re mediation status and dates.	0.20	
5/30/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
5/31/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
5/31/2013	BREHM, ELIZABETH	Document review.	6.30	
5/31/2013	CHIPLOCK, DANIEL	Emails to team re mediation status and summary from Jonathan Marks.	0.30	
5/31/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
5/31/2013	LIEFF, ROBERT	Review emails re mediation status and summary from Jonathan Marks.	0.30	
5/31/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.50	
6/1/2013	BLOOMFIELD, JOSHUA	Document review	6.00	
6/2/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/3/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	7.30	
6/3/2013	CHIPLOCK, DANIEL	Emails re Catalyst document review; conference with M. Miarmi re research on ERISA claims and preemption; research re same.	1.70	
6/3/2013	CHIPLOCK, DANIEL	Emails to R. Lieff and co-counsel re mediation; review proposal.	1.80	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/3/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.30	
6/3/2013	LIEFF, ROBERT	Review emails from D. Chiplock re mediation.	0.50	
6/3/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/4/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
6/4/2013	BREHM, ELIZABETH	Document review.	5.30	
6/4/2013	CHIPLOCK, DANIEL	Emails to R. Lieff re ERISA and mediation.	0.20	
6/4/2013	CHIPLOCK, DANIEL	Research re ERISA preemption.	3.00	
6/4/2013	DIAMAND, NICHOLAS	Email with K. Gralewski and E. Brehm briefly.	0.20	
6/4/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.00	
6/4/2013	LIEFF, ROBERT	Review emails from D. Chiplock re ERISA and mediation.	0.20	
6/4/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/5/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
6/5/2013	BREHM, ELIZABETH	Document review.	7.30	
6/5/2013	CHIPLOCK, DANIEL	Emails to team re document review status; telephone conference with K. Dugar re same.	0.40	
6/5/2013	DIAMAND, NICHOLAS	Email with K. Gralewski re her technical issues.	0.10	
6/5/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.30	
6/5/2013	LIEFF, ROBERT	Review emails re document review status.	0.10	
6/5/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/6/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/6/2013	BREHM, ELIZABETH	Document review.	5.00	
6/6/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with co-counsel re mediation document and counter-proposals; research re same.	3.50	
6/6/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with S. Milcro re document review.	0.30	
6/6/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.50	
6/6/2013	LIEFF, ROBERT	Review emails re mediation document and counter-proposals.	0.20	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/6/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/7/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/7/2013	BREHM, ELIZABETH	Document review.	6.00	
6/7/2013	CHIPLOCK, DANIEL	Emails to team re estimated ERISA damages.	0.30	
6/7/2013	DUGAR, KIRTI	Review Excel files; follow up on data extraction on same for searching; review database	2.50	
6/7/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	5.00	
6/7/2013	LIEFF, ROBERT	Review emails re estimated ERISA damages.	0.10	
6/7/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/8/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/8/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	3.50	
6/9/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
6/10/2013	BREHM, ELIZABETH	Document review.	6.50	
6/10/2013	CHIPLOCK, DANIEL	Review draft summary of mediation issues for Lawrence Sucharow, et al., and comment on same; emails re ERISA preemption and research re same; emails and telephone conferences with State Street counsel re unredacted motion to dismiss ERISA case.	4.20	
6/10/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	4.00	
6/10/2013	LIEFF, ROBERT	Travel to New York for mediation at Labaton.	8.00	
6/10/2013	MIARMI, MICHAEL	Email with D. Chiplock re case work.	0.10	
6/10/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/11/2013	BLOOMFIELD, JOSHUA	Document review	6.00	
6/11/2013	BREHM, ELIZABETH	Document review.	5.30	
6/11/2013	CHIPLOCK, DANIEL	Emails to team re mediation submissions and comments to same	0.50	
6/11/2013	CHIPLOCK, DANIEL	Research re ERISA preemption question.	4.10	
6/11/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding	1.50	
6/11/2013	LIEFF, ROBERT	Review emails re mediation submissions.	0.30	
6/11/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/12/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
6/12/2013	BREHM, ELIZABETH	Document review.	5.50	
6/12/2013	CHIPLOCK, DANIEL	Conference and emails with M. Miarmi re ERISA research.	0.50	
6/12/2013	CHIPLOCK, DANIEL	Emails to State Street counsel re motion to dismiss ERISA case.	0.20	
6/12/2013	CHIPLOCK, DANIEL	Research re ERISA preemption of state law claims; emails to team re same; emails re mediation strategy and draft memo re same	3.00	
6/12/2013	LIEFF, ROBERT	Meeting with D. Chiplock to discuss mediation on 6/13/2013.	1.00	
6/12/2013	LIEFF, ROBERT	Meeting with Mike Thornton to discuss case status.	2.00	
6/12/2013	LIEFF, ROBERT	Review emails re research re ERISA preemption of state law claims.	0.30	
6/12/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/13/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/13/2013	BREHM, ELIZABETH	Document review	4.50	
6/13/2013	CHIPLOCK, DANIEL	Prepare for and attend conference at Labaton re mediation proposals and plan for next steps; emails with team re same and telephone conference with mediator re same.	3.20	
6/13/2013	CHIPLOCK, DANIEL	Revise unredacted motion to dismiss ERISA case and emails to team re same.	1.00	
6/13/2013	LIEFF, ROBERT	Attend conference at Labaton re mediation proposals.	2.00	
6/13/2013	LIEFF, ROBERT	Review emails re unredacted motion to dismiss ERISA case.	0.20	
6/13/2013	LIEFF, ROBERT	Travel back to Los Angeles.	8.00	
6/13/2013	NUTTING, LEAH	Resolve Catalyst technical issues; confer with K. Dugar.	1.50	
6/13/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	6.50	
6/14/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/14/2013	BREHM, ELIZABETH	Document review.	7.00	
6/14/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.00	
6/14/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/15/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/15/2013	GRALEWSKI, KELLY	Review and issue code defendant's documents.	2.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/16/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
6/17/2013	BREHM, ELIZABETH	Document review.	4.00	
6/17/2013	DIAMAND, NICHOLAS	Email E. Brehm re coding/technical issues	0.10	
6/17/2013	GRALEWSKI, KELLY	Review and issue code defendant's documents.	5.50	
6/17/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/18/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
6/18/2013	BREHM, ELIZABETH	Document review.	6.00	
6/18/2013	CHIPLOCK, DANIEL	Emails to R. Lieff and Mike Lesser re mediation status and discovery.	0.30	
6/18/2013	DIAMAND, NICHOLAS	Timesheet administration re J. Bloomfield.	0.10	
6/18/2013	GRALEWSKI, KELLY	Review and issue code defendant's documents.	4.00	
6/18/2013	LIEFF, ROBERT	Review emails from D. Chiplock re mediation status and discovery.	0.30	
6/18/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.30	
6/19/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/19/2013	BREHM, ELIZABETH	Document review.	4.00	
6/19/2013	CHIPLOCK, DANIEL	Emails re mediation status.	0.40	
6/19/2013	DIAMAND, NICHOLAS	Administration re timesheets of coders.	0.10	
6/19/2013	GRALEWSKI, KELLY	Review and issue code defendant's documents.	7.00	
6/19/2013	LIEFF, ROBERT	Review emails re mediation status.	0.20	
6/19/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/20/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/20/2013	BREHM, ELIZABETH	Document review.	5.50	
6/20/2013	GRALEWSKI, KELLY	Review and issue code defendant's documents.	4.00	
6/20/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/21/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
6/21/2013	BREHM, ELIZABETH	Document review.	4.30	
6/21/2013	CHIPLOCK, DANIEL	Emails re document review and missing documents; emails re mediation.	0.90	
6/21/2013	DIAMAND, NICHOLAS	Administration re coder	0.10	
6/21/2013	DUGAR, KIRTI	Review database; track email attachments of documents; review documents identified by Mike Lesser.	6.50	
6/21/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
6/21/2013	LIEFF, ROBERT	Review emails re document review and missing documents.	0.20	
6/21/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	5.00	
6/22/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
6/22/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
6/23/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
6/24/2013	BREHM, ELIZABETH	Document review.	6.50	
6/24/2013	CHIPLOCK, DANIEL	Emails to L. Nutting and K. Dugar re document review status.	0.20	
6/24/2013	DIAMAND, NICHOLAS	Review materials circulated by E. Brehm.	0.10	
6/24/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.50	
6/24/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/25/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/25/2013	BREHM, ELIZABETH	Document review.	3.80	
6/25/2013	CHIPLOCK, DANIEL	Emails to team re mediation session preparation.	0.40	
6/25/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.00	
6/25/2013	LIEFF, ROBERT	Review emails re mediation session preparation.	0.30	
6/25/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
6/26/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
6/26/2013	BREHM, ELIZABETH	Document review.	4.00	
6/26/2013	CHIPLOCK, DANIEL	Emails to team re document review.	0.40	
6/26/2013	DIAMAND, NICHOLAS	Review timesheet of J. Bloomfield.	0.10	
6/26/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
6/26/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	5.00	
6/27/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
6/27/2013	BREHM, ELIZABETH	Document review.	5.30	
6/27/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
6/27/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	5.00	
6/28/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/28/2013	BREHM, ELIZABETH	Document review.	4.50	
6/28/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
6/28/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.50	
6/29/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/30/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
6/30/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
7/1/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/1/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	4.80	
7/1/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.50	
7/1/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/2/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/2/2013	BREHM, ELIZABETH	Document review.	2.50	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/2/2013	CHIPLOCK, DANIEL	Emails to team re mediation logistics.	0.30	
7/2/2013	DIAMAND, NICHOLAS	Review J. Bloomfield timesheet.	0.10	
7/2/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	0.80	
7/2/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/3/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/3/2013	BREHM, ELIZABETH	Document review.	7.00	
7/3/2013	CHIPLOCK, DANIEL	Conference and emails with M. Miarmi re ERISA question.	0.30	
7/3/2013	CHIPLOCK, DANIEL	Emails to L. Nutting re document review.	0.20	
7/3/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.30	
7/3/2013	MIARMI, MICHAEL	Email with D. Chiplock re research concerning ERISA preemption.	0.10	
7/3/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.80	
7/6/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/7/2013	LIEFF, ROBERT	Travel to New York for mediation.	8.00	
7/8/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/8/2013	BREHM, ELIZABETH	Document review.	8.00	
7/8/2013	CHIPLOCK, DANIEL	Review JP Morgan decision and attend pre-mediation meeting at Labaton; emails to co-counsel re same.	4.40	
7/8/2013	GRALEWSKI, KELLY	Review and issue code defendant's documents.	4.00	
7/8/2013	LIEFF, ROBERT	Meeting at Labaton re mediation preparation.	2.00	
7/8/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/9/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/9/2013	BREHM, ELIZABETH	Document review.	1.00	
7/9/2013	CHIPLOCK, DANIEL	Emails with Lynn Sarko and team re draft settlement papers.	0.30	
7/9/2013	CHIPLOCK, DANIEL	Prepare for and attend mediation at Labaton; emails with team and report to S. Fineman re same.	6.80	
7/9/2013	DIAMAND, NICHOLAS	Coder administration re K. Gralewski, E. Brehm and J. Bloomfield.	0.10	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception

Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/9/2013	GRALEWSKI, KELLY	Review and issue code defendant's documents.	2.00	
7/9/2013	LIEFF, ROBERT	Mediation at Labaton	2.00	
7/9/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/10/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
7/10/2013	BREHM, ELIZABETH	Document review.	5.00	
7/10/2013	CHIPLOCK, DANIEL	Emails to team re mediator invoices.	0.20	
7/10/2013	CHIPLOCK, DANIEL	Emails to team re status of document review and requests for further information.	0.90	
7/10/2013	DUGAR, KIRTI	Check databases for review progress by assigned firm and reviewer.	1.00	
7/10/2013	LIEFF, ROBERT	Review emails re status of document review and requests for further information.	0.20	
7/10/2013	LIEFF, ROBERT	Travel back to Los Angeles.	8.00	
7/10/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/11/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
7/11/2013	BREHM, ELIZABETH	Document review.	6.00	
7/11/2013	CHIPLOCK, DANIEL	Emails to team re mediation invoices and logistics.	0.30	
7/11/2013	GRALEWSKI, KELLY	Review and issue code defendant's documents.	4.00	
7/11/2013	LIEFF, ROBERT	Review emails re mediation invoices and logistics.	0.20	
7/11/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/12/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
7/12/2013	BREHM, ELIZABETH	Document review.	5.30	
7/12/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team and Lynn Sarko re mediation and sample class notice and plans of allocation; review same.	1.20	
7/12/2013	CHIPLOCK, DANIEL	Emails to team re mediation logistics.	0.30	
7/12/2013	GRALEWSKI, KELLY	Review and issue code defendant's documents.	4.00	
7/12/2013	LIEFF, ROBERT	Review emails re mediation and sample class notice and plans of allocation; telephone conference with team and Lynn Sarko re same.	1.00	
7/12/2013	LIEFF, ROBERT	Review emails re mediation logistics.	0.10	
7/12/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	6.80	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/13/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.00	
7/14/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
7/15/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/15/2013	BREHM, ELIZABETH	Document review.	5.50	
7/15/2013	CHIPLOCK, DANIEL	Collect sample settlement documents and email to co-counsel; review same.	0.40	
7/15/2013	CHIPLOCK, DANIEL	Email E. Brehm re document review.	0.20	
7/15/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/16/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/16/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.50	
7/16/2013	CHIPLOCK, DANIEL	Emails to team re document review progress and status.	0.40	
7/16/2013	CHIPLOCK, DANIEL	Emails to team re mediator invoices.	0.20	
7/16/2013	DIAMAND, NICHOLAS	Administration re J. Bloomfield (coder).	0.10	
7/16/2013	DUGAR, KIRTI	Review coding, review document count coded by each reviewer.	1.00	
7/16/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.00	
7/16/2013	LIEFF, ROBERT	Review emails re document review progress and status.	0.30	
7/16/2013	LIEFF, ROBERT	Review emails re mediation invoices.	0.10	
7/16/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/17/2013	BREHM, ELIZABETH	Document review.	4.80	
7/17/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
7/17/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.50	
7/18/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/18/2013	BREHM, ELIZABETH	Document review.	6.30	
7/18/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
7/18/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/19/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/19/2013	BREHM, ELIZABETH	Document review.	5.50	
7/19/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
7/19/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.00	
7/20/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/20/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
7/22/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/22/2013	BREHM, ELIZABETH	Document review.	6.30	
7/22/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5.00	
7/22/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/23/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
7/23/2013	BREHM, ELIZABETH	Document review.	2.00	
7/23/2013	CHIPLOCK, DANIEL	Emails to co-counsel re notice and plan of allocation.	0.60	
7/23/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
7/23/2013	LIEFF, ROBERT	Review emails to co-counsel re notice and plan of allocation.	0.20	
7/23/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/24/2013	DIAMAND, NICHOLAS	Administration re coders.	0.20	
7/24/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
7/24/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/25/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/25/2013	BREHM, ELIZABETH	Document review.	5.00	
7/25/2013	DUGAR, KIRTI	Follow up with Catalyst re image viewing problems	1.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/25/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents	4.00	
7/25/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/26/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/26/2013	BREHM, ELIZABETH	Document review	4.00	
7/27/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
7/28/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
7/29/2013	BLOOMFIELD, JOSHUA	Document review	6.00	
7/29/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.30	
7/29/2013	DIAMAND, NICHOLAS	Administration re coders.	0.20	
7/29/2013	DIAMAND, NICHOLAS	Review coder hours re E. Brehm for D. Chiplock; email with E. Brehm re technical issues.	0.50	
7/29/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
7/29/2013	MIARMI, MICHAEL	Email K. Sagafi re research concerning ERISA preemption.	0.10	
7/29/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
7/30/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
7/30/2013	BREHM, ELIZABETH	Document review.	4.00	
7/30/2013	CHIPLOCK, DANIEL	Emails to co-counsel re draft settlement agreement.	0.20	
7/30/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
7/30/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
7/30/2013	LIEFF, ROBERT	Review emails to co-counsel re draft settlement agreement	0.10	
7/30/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	6.50	
7/31/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
7/31/2013	BREHM, ELIZABETH	Document review.	5.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/31/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents	4.50	
7/31/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miarmi.	1.50	
8/1/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/1/2013	BREHM, ELIZABETH	Document review	5.00	
8/1/2013	CHIPLOCK, DANIEL	Email Michael Rogers re Catalyst invoice.	0.10	
8/1/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
8/1/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miarmi.	3.00	
8/1/2013	LIEFF, ROBERT	Review email to Mike Rogers re Catalyst invoice.	0.10	
8/1/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.50	
8/2/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/2/2013	BREHM, ELIZABETH	Document review.	4.30	
8/2/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents	4.00	
8/2/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miarmi	3.00	
8/2/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/3/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/3/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/5/2013	BLOOMFIELD, JOSHUA	Document review	8.00	
8/5/2013	BREHM, ELIZABETH	Document review.	5.00	
8/5/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents	4.00	
8/5/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miarmi.	3.50	
8/5/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/6/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
8/6/2013	BREHM, ELIZABETH	Document review	4.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
8/6/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
8/6/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miarmi.	3.50	
8/6/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/7/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/7/2013	BREHM, ELIZABETH	Document review.	4.00	
8/7/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miarmi.	3.50	
8/7/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/8/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/8/2013	BREHM, ELIZABETH	Document review.	5.80	
8/8/2013	CHIPLOCK, DANIEL	Work on draft proposed settlement papers.	1.00	
8/8/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miarmi.	0.50	
8/8/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/9/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/9/2013	BREHM, ELIZABETH	Document review.	5.30	
8/9/2013	CHIPLOCK, DANIEL	Email Michael Rogers re Catalyst invoice.	0.10	
8/9/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miarmi.	3.50	
8/9/2013	LIEFF, ROBERT	Review email to Michael Rogers re Catalyst invoice	0.10	
8/9/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	6.30	
8/10/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/12/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
8/12/2013	BREHM, ELIZABETH	Document review.	6.50	
8/12/2013	CHIPLOCK, DANIEL	Draft settlement agreement	2.00	
8/12/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/13/2013	BLOOMFIELD, JOSHUA	Document review	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
8/13/2013	BREHM, ELIZABETH	Document review.	5.00	
8/13/2013	CHIPLOCK, DANIEL	Draft settlement stipulation.	2.60	
8/13/2013	CHIPLOCK, DANIEL	Email co-counsel re settlement stipulation status.	0.20	
8/13/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
8/13/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	4.00	
8/13/2013	LIEFF, ROBERT	Review email to co-counsel re settlement stipulation status.	0.10	
8/13/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/14/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/14/2013	BREHM, ELIZABETH	Document review.	1.80	
8/14/2013	CHIPLOCK, DANIEL	Draft proposed settlement papers and emails to team re same.	4.00	
8/14/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
8/14/2013	LIEFF, ROBERT	Review D. Chiplock's proposed settlement papers.	1.00	
8/14/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/15/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/15/2013	BREHM, ELIZABETH	Document review.	4.00	
8/15/2013	CHIPLOCK, DANIEL	Emails to team re document review status; review and edit draft settlement notice; draft settlement agreement.	4.20	
8/15/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	1.00	
8/15/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miami.	2.50	
8/15/2013	LIEFF, ROBERT	Review emails re document review status.	0.20	
8/15/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/16/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/16/2013	BREHM, ELIZABETH	Document review.	6.00	
8/16/2013	CHIPLOCK, DANIEL	Edit and revise class notice and draft settlement agreement; email to co-counsel	4.80	
8/16/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miami	2.00	
8/16/2013	LIEFF, ROBERT	Review revised class notice and draft settlement agreement to co-counsel	0.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
8/16/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.30	
8/17/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/17/2013	CHIPLOCK, DANIEL	Revise draft settlement agreement and email to co-counsel.	1.10	
8/17/2013	LIEFF, ROBERT	Review revised draft settlement agreement to co-counsel.	0.20	
8/18/2013	CHIPLOCK, DANIEL	Emails to R. Lieff and Lynn Sarko and team re draft settlement papers.	0.60	
8/18/2013	LIEFF, ROBERT	Review emails from D. Chiplock re draft settlement papers.	0.20	
8/19/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
8/19/2013	BREHM, ELIZABETH	Document review.	4.50	
8/19/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miarmi.	3.50	
8/19/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/20/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
8/20/2013	BREHM, ELIZABETH	Document review.	4.50	
8/20/2013	CHIPLOCK, DANIEL	Emails to team re draft settlement papers.	0.40	
8/20/2013	DIAMAND, NICHOLAS	Review E. Brehm's email of reviewed hot documents; review J. Bloomfield's timesheet.	0.20	
8/20/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miarmi.	3.00	
8/20/2013	LIEFF, ROBERT	Review emails re draft settlement papers.	0.20	
8/20/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/21/2013	BLOOMFIELD, JOSHUA	Document review	6.00	
8/21/2013	BREHM, ELIZABETH	Document review.	3.00	
8/21/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miarmi	0.60	
8/21/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/22/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/22/2013	BREHM, ELIZABETH	Document review.	5.50	
8/22/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption, for M. Miarmi.	2.50	
8/22/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.50	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
8/23/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/23/2013	BREHM, ELIZABETH	Document review.	4.00	
8/23/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/24/2013	BLOOMFIELD, JOSHUA	Document review	6.00	
8/26/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
8/26/2013	BREHM, ELIZABETH	Document review.	3.00	
8/26/2013	CHIPLOCK, DANIEL	Emails to team re draft settlement papers.	0.30	
8/26/2013	LIEFF, ROBERT	Review emails re draft settlement papers.	0.20	
8/26/2013	MIARMI, MICHAEL	Email with Summer Associate N. Gupta re research concerning ERISA preemption.	0.10	
8/26/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/27/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
8/27/2013	BREHM, ELIZABETH	Document review.	2.00	
8/27/2013	CHIPLOCK, DANIEL	Emails and conference with team re draft settlement papers; edit same	3.40	
8/27/2013	DIAMAND, NICHOLAS	Coder timesheet administration.	0.10	
8/27/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
8/27/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption, for M. Miarmi.	4.00	
8/27/2013	LIEFF, ROBERT	Review emails re draft settlement papers; telephone conference re same.	1.00	
8/27/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
8/28/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/28/2013	BREHM, ELIZABETH	Document review.	2.00	
8/28/2013	CHIPLOCK, DANIEL	Emails to R. Lieff re ERISA counsel agreement, emails with team re same	0.40	
8/28/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.50	
8/28/2013	LIEFF, ROBERT	Review emails from D. Chiplock re ERISA counsel agreement.	0.30	
8/28/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
8/29/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/29/2013	BREHM, ELIZABETH	Document review.	5.00	
8/29/2013	CHIPLOCK, DANIEL	Emails to team re proposed settlement papers for ERISA review; edit same.	1.90	
8/29/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents	6.00	
8/29/2013	LIEFF, ROBERT	Review emails re proposed settlement papers for ERISA review.	0.30	
8/30/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/30/2013	BREHM, ELIZABETH	Document review.	6.00	
8/30/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re draft settlement papers and ERISA issues; research re same; telephone conference with R. Lieff re fee split agreement with ERISA counsel and forward to co-counsel.	2.20	
8/30/2013	GEMAN, RACHEL	Telephone conference with D. Chiplock re settlement of ERISA claims and related ERISA law issues, e.g., remedies and standing; assist in pulling materials showing suitability of treating ERISA and non-ERISA plans similarly in an approved plan of allocation.	0.40	
8/30/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents	3.30	
8/30/2013	LIEFF, ROBERT	Review emails re draft settlement papers and ERISA issues; telephone conference with D. Chiplock re fee split agreement with ERISA counsel.	1.00	
8/31/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
8/31/2013	CHIPLOCK, DANIEL	Emails to team re comments to draft settlement agreement and Lynn Sarko's letter; review same.	1.00	
8/31/2013	LIEFF, ROBERT	Review emails re comments to draft settlement agreement and Lynn Sarko's letter.	0.50	
9/3/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
9/3/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	7.50	
9/3/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team re draft settlement papers and mediation strategies; revise papers.	3.60	
9/3/2013	CHIPLOCK, DANIEL	Review and edit agreement with ERISA counsel; emails to team re same.	0.50	
9/3/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents	3.00	
9/3/2013	LIEFF, ROBERT	Review emails re draft settlement papers and mediation strategies; telephone conference with team re same.	1.50	
9/3/2013	LIEFF, ROBERT	Review revised agreement with ERISA counsel	0.30	
9/3/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/4/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | From Inception

Timekeeper: ALL | To Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/4/2013	BREHM, ELIZABETH	Document review.	5.00	8
9/4/2013	CHIPLOCK, DANIEL	Telephone conferences and emails re mediation and draft settlement papers; revise same; emails re Catalyst invoices.	2.00	
9/4/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	6.50	
9/4/2013	LIEFF, ROBERT	Telephone conference re mediation and draft settlement papers; review emails re same and Catalyst invoices.	1.00	
9/4/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/5/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
9/5/2013	BREHM, ELIZABETH	Document review.	2.50	
9/5/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	6.00	
9/5/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/6/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
9/6/2013	BREHM, ELIZABETH	Document review.	7.00	
9/6/2013	CHIPLOCK, DANIEL	Emails re fee split agreement and mediation.	0.20	
9/6/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with team re draft settlement agreement and mediation; revise same.	1.80	
9/6/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
9/6/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.00	
9/6/2013	LIEFF, ROBERT	Review emails re fee split agreement and mediation.	0.20	
9/6/2013	LIEFF, ROBERT	Telephone conference re draft settlement agreement and mediation; review emails re same.	1.00	
9/6/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/7/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
9/8/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
9/8/2013	DIAMAND, NICHOLAS	Coder administration.	0.10	
9/9/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
9/9/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/9/2013	CHIPLOCK, DANIEL	Telephone conferences with Lynn Sarko and emails to team re draft settlement papers; review and edit same.	2.80	
9/9/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
9/9/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.50	
9/9/2013	LIEFF, ROBERT	Telephone conferences with Lynn Sarko re draft settlement papers; review emails re same.	1.00	
9/9/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/10/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
9/10/2013	BREHM, ELIZABETH	Document review.	4.00	
9/10/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with ERISA and co-counsel re edits to draft settlement papers; edit same.	2.80	
9/10/2013	CHIPLOCK, DANIEL	Emails re Catalyst invoices and document review.	0.30	
9/10/2013	DIAMAND, NICHOLAS	Coder administration.	0.10	
9/10/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
9/10/2013	LIEFF, ROBERT	Review emails re Catalyst invoices and document review.	0.20	
9/10/2013	LIEFF, ROBERT	Review emails re edits to draft settlement papers.	0.50	
9/10/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.80	
9/11/2013	BREHM, ELIZABETH	Document review.	5.00	
9/11/2013	CHIPLOCK, DANIEL	Emails to team re edits to draft class notice; edit same and distribute to team and to State Street; edit settlement documents and send; edit fee agreement.	4.80	
9/11/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
9/11/2013	LIEFF, ROBERT	Review emails re edits to draft class notice.	0.30	
9/11/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/12/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
9/12/2013	BREHM, ELIZABETH	Document review.	5.50	
9/12/2013	CHIPLOCK, DANIEL	Emails re draft document recuests.	0.40	
9/12/2013	CHIPLOCK, DANIEL	Emails to State Street counsel re ERISA papers; print and review same; research re same.	3.50	
9/12/2013	CHIPLOCK, DANIEL	Telephone conference with Lynn Sarko and email team re mediation.	0.40	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception
Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/12/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
9/12/2013	LIEFF, ROBERT	Review emails re draft document requests.	0.10	
9/12/2013	LIEFF, ROBERT	Review emails to State Street counsel re ERISA papers.	0.30	
9/12/2013	LIEFF, ROBERT	Telephone conference with Lynn Sarko re mediation; review emails re same.	0.40	
9/12/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	6.00	
9/13/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
9/13/2013	BREHM, ELIZABETH	Document review.	5.00	
9/13/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation status; review ERISA pleadings.	1.40	
9/13/2013	LIEFF, ROBERT	Meet with Lynn Sarko re fee agreement.	0.50	
9/13/2013	LIEFF, ROBERT	Review emails re mediation status; telephone conference with team re same.	1.00	
9/13/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/14/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
9/15/2013	BLOOMFIELD, JOSHUA	Document review.	4.00	
9/15/2013	LIEFF, ROBERT	Travel to New York for mediation.	8.00	
9/16/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
9/16/2013	BREHM, ELIZABETH	Document review, weekly report to N. Diamand and D. Chiplock.	6.00	
9/16/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
9/16/2013	LIEFF, ROBERT	Meet with S. Fineman and D. Chiplock re case update and mediation.	0.50	
9/16/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/17/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
9/17/2013	BREHM, ELIZABETH	Document review.	5.00	
9/17/2013	CHIPLOCK, DANIEL	Prepare for and attend mediation session at Wilmer Hale; emails and conference with colleagues re same; research re ERISA.	6.40	
9/17/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
9/17/2013	LIEFF, ROBERT	Mediation with mediator Jonathan Marks at Wilmer Hale	2.00	
9/17/2013	LIEFF, ROBERT	Return travel to San Francisco.	8.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception
Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/17/2013	LIEFF, ROBERT	Review emails re mediation session at Wilmer Hale.	0.20	
9/17/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.00	
9/18/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
9/18/2013	BREHM, ELIZABETH	Document review.	5.50	
9/18/2013	CHIPLOCK, DANIEL	Emails to team re mediation debriefing.	0.20	
9/18/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.00	
9/18/2013	LIEFF, ROBERT	Review emails from D. Chiplock re mediation debriefing.	0.10	
9/18/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.00	
9/19/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
9/19/2013	BREHM, ELIZABETH	Document review.	4.80	
9/19/2013	CHIPLOCK, DANIEL	Emails to team re mediation debriefing.	0.20	
9/19/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
9/19/2013	LIEFF, ROBERT	Review emails re mediation debriefing.	0.10	
9/19/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	7.00	
9/20/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
9/20/2013	BREHM, ELIZABETH	Document review.	5.00	
9/20/2013	CHIPLOCK, DANIEL	Conference and emails with team re mediation debriefing and Hill case updates; research re same.	2.30	
9/20/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.30	
9/20/2013	LIEFF, ROBERT	Conference call re mediation debrief.	0.50	
9/20/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/22/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
9/23/2013	BLOOMFIELD, JOSHUA	Document review.	6.00	
9/23/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.00	
9/23/2013	CARNAM, TODD	Pull various transcripts in related litigation for D. Chiplock.	0.90	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/23/2013	CHIPLOCK, DANIEL	Research re Hill case orders and transcripts.	1.10	
9/23/2013	DIAMAND, NICHOLAS	Coder administration and logistics.	0.20	
9/23/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5.30	
9/23/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/24/2013	BLOOMFIELD, JOSHUA	Document review.	8.00	
9/24/2013	BREHM, ELIZABETH	Document review.	5.50	
9/24/2013	CARNAM, TODD	Follow-up with two separate court reporters re transcripts ordered.	0.70	
9/24/2013	CHIPLOCK, DANIEL	Emails with team re California Attorney General material; review documents and transcripts from California Attorney General case and Hill case; review discovery demands in both cases.	3.50	
9/24/2013	DIAMAND, NICHOLAS	Coder administration	0.20	
9/24/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
9/24/2013	LIEFF, ROBERT	Review emails re California Attorney General's material.	0.20	
9/24/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	8.00	
9/25/2013	BLOOMFIELD, JOSHUA	Document review.	7.00	
9/25/2013	BREHM, ELIZABETH	Document review.	4.50	
9/25/2013	CHIPLOCK, DANIEL	Review discovery order and hearing transcript from Hill litigation; research for letter to Jonathan Marks on discovery issues.	3.40	
9/25/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	2.50	
9/25/2013	NUTTING, LEAH	Review defendants' documents for relevance and issue coding.	4.00	
9/26/2013	BLOOMFIELD, JOSHUA	Document review.	3.00	
9/26/2013	BREHM, ELIZABETH	Document review.	5.80	
9/26/2013	CHIPLOCK, DANIEL	Review case transcripts and orders from Hill and California Attorney General actions; emails to team re same.	2.80	
9/26/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
9/26/2013	LIEFF, ROBERT	Review emails re case transcripts and orders from Timothy Hill and California Attorney General's actions.	0.30	
9/27/2013	BREHM, ELIZABETH	Document review.	5.30	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM | **From** Inception

Timekeeper: ALL | **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
9/27/2013	CARNAM, TODD	Follow up on ordered transcripts in related case for D. Chiplock.	0.40	
9/27/2013	CHIPLOCK, DANIEL	Review discovery transcripts and orders from Hill case; emails to team re same.	3.50	
9/27/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	1.00	
9/27/2013	LIEFF, ROBERT	Review email from D. Chiplock re discovery transcripts and orders from Timothy Hill case.	0.30	
9/30/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.50	
9/30/2013	CARNAM, TODD	Continue ordering certain transcripts, per D. Chiplock's requests.	0.90	
9/30/2013	CHIPLOCK, DANIEL	Draft letter to Jonathan Marks re document production; emails to team re same; revise same; review transcripts re same.	2.80	
9/30/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.50	
9/30/2013	LIEFF, ROBERT	Review draft letter to Jonathan Marks re document production.	0.30	
10/1/2013	BREHM, ELIZABETH	Document review.	4.00	
10/1/2013	CHIPLOCK, DANIEL	Revise letter to mediator on document demands; emails to team re same.	2.60	
10/1/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5.50	
10/1/2013	LIEFF, ROBERT	Review revised draft to mediator on document demands.	0.20	
10/2/2013	BREHM, ELIZABETH	Document review.	4.00	
10/2/2013	DIAMAND, NICHOLAS	Coder administration logistics.	0.20	
10/2/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
10/3/2013	BREHM, ELIZABETH	Document review.	5.50	
10/4/2013	BREHM, ELIZABETH	Document review.	5.30	
10/4/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	2.50	
10/7/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	6.00	
10/7/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	6.00	
10/8/2013	BREHM, ELIZABETH	Document review.	7.00	
10/8/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
10/9/2013	BREHM, ELIZABETH	Document review.	5.00	
10/9/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
10/10/2013	BREHM, ELIZABETH	Document review.	5.50	
10/10/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
10/11/2013	BREHM, ELIZABETH	Document review.	4.00	
10/11/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
10/11/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3.00	
10/14/2013	BREHM, ELIZABETH	Document review.	5.00	
10/14/2013	CHIPLOCK, DANIEL	Emails re document review staffing.	0.10	
10/14/2013	LIEFF, ROBERT	Review emails and conference with team re mediation status.	0.50	
10/14/2013	LIEFF, ROBERT	Review emails re document review staffing.	0.10	
10/15/2013	BREHM, ELIZABETH	Document review.	7.00	
10/15/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
10/16/2013	CHIPLOCK, DANIEL	Emails and conference with team re mediation status; review Hill docket and report on same; research re same	2.80	
10/16/2013	CHIPLOCK, DANIEL	Research re class certification issues and Chapter 93A.	1.00	
10/16/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	2.00	
10/17/2013	BREHM, ELIZABETH	Document review.	5.50	
10/17/2013	CHIPLOCK, DANIEL	Research re class certification under Chapter 93A; telephone conference with Mike Lesser re same.	3.60	
10/17/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5.00	
10/18/2013	BREHM, ELIZABETH	Document review.	5.30	
10/18/2013	DIAMAND, NICHOLAS	Coder logistics/administration.	0.20	
10/18/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception
Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
10/20/2013	BREHM, ELIZABETH	Document review.	2.30	
10/21/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.30	
10/21/2013	CHIPLOCK, DANIEL	Emails to team re document production status.	0.40	
10/21/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.50	
10/22/2013	BREHM, ELIZABETH	Document review.	4.80	
10/22/2013	CHIPLOCK, DANIEL	Emails and telephone conferences re mediation status and document production; do research on class certification issues.	3.50	
10/22/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
10/22/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
10/23/2013	BREHM, ELIZABETH	Document review.	5.50	
10/23/2013	DIAMAND, NICHOLAS	Coder administration logistics.	0.20	
10/23/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
10/24/2013	BREHM, ELIZABETH	Document review.	5.30	
10/24/2013	CHIPLOCK, DANIEL	Emails to team re negotiations over document productions.	0.40	
10/24/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
10/25/2013	BREHM, ELIZABETH	Document review.	5.50	
10/25/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
10/28/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.00	
10/28/2013	CHIPLOCK, DANIEL	Emails to team re Stte Street document production.	0.30	
10/28/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
10/29/2013	BREHM, ELIZABETH	Document review.	3.80	
10/29/2013	CHIPLOCK, DANIEL	Emails to team re impact of Judge Cott's order in Bank of New York Mellon.	0.60	
10/30/2013	BREHM, ELIZABETH	Document review.	4.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
10/30/2013	CHIPLOCK, DANIEL	Conference with R. Lieff re research on class certification and mediation status.	0.30	
10/30/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	6.00	
10/31/2013	BREHM, ELIZABETH	Document review.	3.30	
11/1/2013	BREHM, ELIZABETH	Document review	5.50	
11/1/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5.80	
11/2/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	2.00	
11/4/2013	BREHM, ELIZABETH	Document review	6.50	
11/4/2013	CHIPLOCK, DANIEL	Emails to team re additional document review.	0.20	
11/4/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
11/5/2013	BREHM, ELIZABETH	Document review.	6.00	
11/5/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.80	
11/6/2013	BREHM, ELIZABETH	Document review.	4.00	
11/6/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
11/7/2013	BREHM, ELIZABETH	Document review.	4.80	
11/7/2013	CHIPLOCK, DANIEL	Email team re Hill decision on motion to compel.	0.20	
11/7/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	1.50	
11/8/2013	BREHM, ELIZABETH	Document review.	5.00	
11/8/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.50	
11/11/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	6.00	
11/11/2013	DIAMAND, NICHOLAS	Coder administration.	0.40	
11/12/2013	BREHM, ELIZABETH	Document review.	4.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
11/12/2013	CHIPLOCK, DANIEL	Emails re mediation sessioin	0.20	
11/13/2013	BREHM, ELIZABETH	Document review.	3.50	
11/13/2013	CHIPLOCK, DANIEL	Prepare for and attend mediation session with State Street; emails with co-counsel re same.	5.50	
11/14/2013	BREHM, ELIZABETH	Document review.	7.00	
11/14/2013	CHIPLOCK, DANIEL	Emails to team re 12/18/2013 meeting.	0.20	
11/15/2013	BREHM, ELIZABETH	Document review.	6.50	
11/15/2013	CHIPLOCK, DANIEL	Email team re draft motion to extend stay; review same.	0.20	
11/18/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.30	
11/18/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	2.50	
11/19/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.50	
11/19/2013	CHIPLOCK, DANIEL	Emails to team re document review; email K. Dugar re same.	0.80	
11/19/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
11/20/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.80	
11/20/2013	CHIPLOCK, DANIEL	Emails re 12/18/2013 meeting.	0.30	
11/20/2013	DUGAR, KIRTI	Review ew production; conference call with Catalyst re allocation for review; conference call with D. Chilock re, same and revising allocation procedure for review.	1.00	
11/21/2013	BREHM, ELIZABETH	Document review.	4.80	
11/21/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
11/21/2013	DUGAR, KIRTI	Follow up on batching new documents for review.	1.00	
11/22/2013	BREHM, ELIZABETH	Document review.	6.00	
11/22/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
11/23/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	
11/24/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.00	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:16:46 AM **From** Inception

Timekeeper: ALL **To** Present

3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
11/25/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.30	
11/26/2013	BREHM, ELIZABETH	Document review.	7.30	
11/27/2013	BREHM, ELIZABETH	Document review.	7.80	
11/30/2013	BREHM, ELIZABETH	Document review.	5.00	
12/2/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	7.00	
12/2/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4.50	
12/3/2013	BREHM, ELIZABETH	Document review.	3.30	
12/3/2013	DIAMAND, NICHOLAS	Coder administration.	0.20	
12/3/2013	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5.00	
12/4/2013	BREHM, ELIZABETH	Document review.	4.30	
		Total Hours	**6,388.60**	

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 12/09/2013 11:08:44 AM

	From	Inception
	To	Present

Matter Number: 3344-0002 **STATE STREET - ARKANSAS TEACHERS**

PARTNER

NAME	HOURS	RATE	TOTAL
ELIZABETH CABRASER	13.10	925.00	12,117.50
RICHARD HEIMANN	22.60	925.00	20,905.00
STEVEN FINEMAN	71.20	800.00	56,960.00
ROBERT NELSON	0.50	800.00	400.00
DAVID STELLINGS	8.10	725.00	5,872.50
KATHRYN BARNETT	1.60	725.00	1,160.00
LEXI HAZAM	52.90	550.00	29,095.00
MICHAEL MIARMI	0.40	500.00	200.00
DANIEL SELTZ	0.20	530.00	106.00
DANIEL CHIPLOCK	914.30	600.00	548,580.00
RACHEL GEMAN	0.70	625.00	437.50
JOY KRUSE	174.40	750.00	130,800.00
	1,260.00		**806,633.50**

ASSOCIATE

NAME	HOURS	RATE	TOTAL
JOSHUA BLOOMFIELD	1,200.20	490.00	588,098.00
ELIZABETH BREHM	1,018.60	490.00	499,114.00
NANCY CHUNG	3.30	490.00	1,617.00
KELLY GRALEWSKI	698.40	490.00	342,216.00
JENNIFER GROSS	7.90	425.00	3,357.50
LEXI HAZAM	0.30	360.00	108.00
DANIEL LEATHERS	20.90	395.00	8,255.50
SHARON LEE	0.40	470.00	188.00
MICHAEL MIARMI	83.80	460.00	38,548.00
SCOTT MILORO	147.30	490.00	72,177.00
LEAH NUTTING	1,077.50	490.00	527,975.00
	4,258.60		**2,081,654.00**

LAW CLERK

NAME	HOURS	RATE	TOTAL
NEHA GUPTA	44.10	330.00	14,553.00
	44.10		**14,553.00**

PARALEGAL/CLERK

NAME	HOURS	RATE	TOTAL

DAWN BEHRMANN	1.40	295.00	413.00
RICHARD ANTHONY	2.50	295.00	737.50
TODD CARNAM	3.10	295.00	914.50
SHANDA CHAPIN-RIENZO	2.00	215.00	430.00
ROBIN KUPERSMITH	2.30	270.00	621.00
MELISSA MATHENY	12.80	270.00	3,456.00
ALEXANDER ZANE	0.10	285.00	28.50
KIRTI DUGAR	223.50	400.00	89,400.00
	247.70		**96,000.50**

OF COUNSEL

NAME	HOURS	RATE	TOTAL
ROBERT LIEFF	318.10	925.00	294,242.50
NICHOLAS DIAMAND	10.20	550.00	5,610.00
LYDIA LEE	36.50	475.00	17,337.50
BRUCE LEPPLA	2.80	685.00	1,918.00
	367.60		**319,108.00**

LITIGATION SUPPORT / RESEARCH

NAME	HOURS	RATE	TOTAL
SCOTT ALAMEDA	1.00	260.00	260.00
ROBERT DE MARIA	30.00	335.00	10,050.00
ARRA KHARARJIAN	116.90	270.00	31,563.00
MAJOR MUGRAGE	17.40	310.00	5,394.00
RENEE MUKHERJI	6.90	260.00	1,794.00
ANIL NAMBIAR	33.00	320.00	10,560.00
CYRUS YAMAT	3.00	310.00	930.00
SAT KRIYA KHALSA	2.40	285.00	684.00
	210.60		**61,235.00**

MATTER TOTALS	**6,388.60**	**3,379,184.00**

EX. 211

From: Garrett Bradley
Sent: Monday, June 29, 2015 6:26 PM
To: Michael Lesser
Cc: Michael Thornton; Evan Hoffman
Subject: Re: Hours for State Street: please review.

I will get my time in and I will correct the reference of 3 hours of my time as Labaton time.

Garrett

On Jun 29, 2015, at 6:17 PM, Michael Lesser <MLesser@tenlaw.com> wrote:

> For all STT hours as they now stand show Labaton at 29,000 hrs, Lieff at 17,000 hours, and Thornton at 13,000 hours.
>
> For the main attorneys working on each case, Labaton (Larry, Rogers, Goldsmith, Belfi) has 3400, Lieff (Chiplock, Lieff, Miarmi) has 1800, and Thornton (Lesser, Thornton, Hoffman) has 2600 (without whatever Garrett can add);
>
> The top numbers include (1) all outside reviewers we pay that work at Lieff and Labaton; (2) all internal document reviewers, including Garrett's brother; and (3) our lawyer time.
>
> It is perhaps difficult, under any circumstances, to compete with Labaton's time: Labaton's billing records show, for example, 16 partners billing on the case, 5 of counsels billing on the case (including 3 hours for Garrett at $800), 21 associates billing on the case, 8 research analysts working on the case, 7 investigators working on the case, 14 paralegals, 1 IT guy. Joel had 125 hours in the case, somehow.
>
> As you are both aware, we originated the case, have done the damages calculations and modeling throughout, did the initial hot docs/liability issues presentation (all of our docs were used in the subsequent Labaton presentation), and have had the primary relationship with the consultant, FX Transparency. We have also put all of our time in while doing the FCA cases (for both banks) in New York, Massachusetts, California, Florida, Virginia, and all of the Mellon MDL stuff as well.
>
> We need hours for Garrett on this case.
>
> -Lieff non-doc review hours (for the attorneys listed below) = 1,766.1
>
> Dan Chiplock: 1,113.5
> Bob Lieff: 447.6
> Miarmi: 205
>
> -Lieff TOTAL hours = 16,792.3
>
> -Labaton non-doc review hours (for the attorneys listed below) = 3,424.6
>
> Larry: 533.5

Mike Rogers: 1,349.4
David Goldsmith: 931.2
Eric Belfi: 610.5

Labaton TOTAL hours = 29,012.7

-Thornton doc review external (Thornton reviewers working Lieff + Labaton paid by Thornton) = 8,889.25
-Thornton doc review internal = 1,262.5
-Mike Lesser: 1243.2
-Evan Hoffman: 827.6
-M Thornton: 500 (estimated from the records we have now)

Thornton total, excluding G Bradley = 12722.55

Michael A. Lesser, Esq.
Thornton Law Firm LLP
100 Summer St., 30th Floor
Boston, MA 02110
617-720-1333
800-431-4600
mlesser@tenlaw.com

EX. 212

Garrett Bradley

Subject:	Mtg with AG re: State Street
Start:	Thu 3/3/2011 2:00 PM
End:	Thu 3/3/2011 2:30 PM
Recurrence:	(none)
Organizer:	Garrett Bradley

K. Joseph Shekarchi
Shekarchi Law Offices
Tel: 401-827-0100

Meet @ 12:30pm for lunch before 2pm AG Mtg

105 S Main St
Pawtucket RI
02903

33 College Hill Ct
Warwick, RI

1hr 20mins
58.40 miles

Notes

mapquest

Trip to:
33 College View Ct
Warwick, RI 02886
58.40 miles / 59 minutes

	11 Blaisdell Rd, Hingham, MA 02043-3906	Download Free App
	1. Start out going **east** on **Blaisdell Rd** toward **Main St / MA-228**. Map	**0.05 Mi**
	2. Take the 1st **right** onto **Main St / MA-228**. Map	**0.09 Mi**
	3. Take the 1st **right** onto **Gardner St**. Map	**1.1 Mi**
	4. Turn **right** onto **Derby St**. Map	**0.7 Mi**
	5. Merge onto **MA-3 N / Pilgrims Hwy N** toward **Boston / Points North**. Map	**6.7 Mi**
	6. Merge onto **I-93 S / US-1 S** via **EXIT 20A** on the **left** toward **I-95 / Canton**. Map	**6.7 Mi**
	7. Merge onto **I-95 S** via **EXIT 1A** toward **Providence RI** (Crossing into **Rhode Island**). Map	**41.6 Mi**
	8. Take the **RI-113 W** exit, **EXIT 12B**, toward **RI-2 / I-295 N**. Map	**0.1 Mi**
	9. Merge onto **RI-113 W / East Ave** via the ramp on the **left** toward **Warwick**. Map	**0.9 Mi**
	10. Turn **left** onto **Bald Hill Rd / RI-2**. Map	**0.4 Mi**
	11. Turn **left** onto **College Hill Rd**. Map	**0.2 Mi**
	12. Turn **left** onto **College View Ct**. Map	**0.02 Mi**
	13. **33 COLLEGE VIEW CT** is on the **right**. Map	
	33 College View Ct, Warwick, RI 02886	

Total Travel Estimate: **58.40 miles - about 59 minutes**

Garrett Bradley

Subject:	Call state street
Start:	Wed 3/16/2011 11:00 AM
End:	Wed 3/16/2011 12:00 PM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Garrett Bradley

Garrett Bradley

Subject:	call on state street
Start:	Wed 6/8/2011 2:00 PM
End:	Wed 6/8/2011 2:30 PM
Recurrence:	(none)
Organizer:	Garrett Bradley

Joyce Murphy

Subject:	State Street Meeting
Location:	Labaton
Start:	Mon 9/19/2011 2:00 PM
End:	Mon 9/19/2011 3:30 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Belfi, Eric J.

OK
10 hour


Please consider the environment before printing this email.

September 19, 2011

Monday

September 2011

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

October 2011

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

19 Monday

Notes

7 am

8 00

9 00

10 00

11 00

12 pm

Redacted

1 00

2 00

State Street Meeting
Labaton
Belfi, Eric J.

Redacted

3 00

4 00

Redacted

5 00

6 00

Redacted

Garrett Bradley 1 7/24/2015 12:19 PM

Joyce Murphy

Subject:	Follow up in RI on state street
Start:	Fri 10/21/2011 4:00 PM
End:	Fri 10/21/2011 5:00 PM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Garrett Bradley

1

Garrett Bradley

Subject:	Arkansas Teacher v. State Street Hearing on Motion to Dismiss @11:00am
Location:	Courtroom 10 before Judge Wolf @
Start:	Tue 5/8/2012 11:00 AM
End:	Tue 5/8/2012 11:30 AM
Recurrence:	(none)
Organizer:	Garrett Bradley

Garrett Bradley

Subject:	10Am Tele Conf. - Dial-In: 888-870-8293 - passcode:212-907-0860
Location:	State Street
Start:	Tue 8/7/2012 10:00 AM
End:	Tue 8/7/2012 10:30 AM
Recurrence:	(none)
Organizer:	Garrett Bradley

September 04, 2012

Tuesday

September 2012

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

October 2012

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

4 Tuesday

Notes

7 am

8 00

9 00

Redacted

10 00

Redacted

11 00

12 pm

1 00 Call state street

Redacted

2 00

3

Redacted

4 00

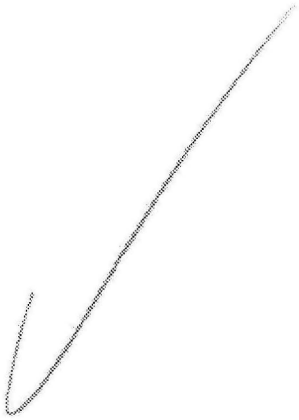
5 00

6 00

Garrett Bradley 1 7/24/2015 12:44 PM

Joyce Murphy

Subject:	Call state street
Start:	Tue 9/4/2012 1:00 PM
End:	Tue 9/4/2012 2:00 PM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Garrett Bradley



Garrett Bradley

Subject:	call on state street
Start:	Wed 9/5/2012 11:00 AM
End:	Wed 9/5/2012 11:30 AM
Recurrence:	(none)
Organizer:	Garrett Bradley

September 13, 2012

Thursday

September 2012

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

October 2012

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

13 Thursday

Notes

3:00am At Lababton NY To Sep 14

7 a

8 00

9 00

10 00

11 00

12 pm

1 00

2

3 00

4 00

5

6

Redacted

Redacted

Redacted

Leave for Labaton

Redacted

Redacted

Leave Labaton

Redacted

Redacted

Garrett Bradley 1 7/24/2015 12:47 PM

September 14, 2012

Friday

September 2012

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

October 2012

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

14 Friday

From Sep 13 **At Lababton NY** 3:00am

Notes

7 am
8 00
9 00
10 00
11 00
12 pm
1 00
2 00
3 00
4 00
5 00
6 00

Garrett Bradley

Subject:	Cancelled on 8/21/12 - State Street Scheduling Confernce today @ 3pm
Location:	Courtroom No. 10 on the 5th floor
Start:	Tue 9/18/2012 7:00 AM
End:	Tue 9/18/2012 7:30 AM
Recurrence:	(none)
Organizer:	Garrett Bradley

Garrett Bradley

Subject:	State Street - Mediation
Location:	Boston, MA
Start:	Tue 10/23/2012 8:00 AM
End:	Tue 10/23/2012 8:30 AM
Recurrence:	(none)
Organizer:	Garrett Bradley

Garrett Bradley

Subject:	State Street Mediation
Location:	Boston, MA
Start:	Wed 10/24/2012 8:00 AM
End:	Wed 10/24/2012 8:30 AM
Recurrence:	(none)
Organizer:	Garrett Bradley

September 17, 2013

Tuesday

September 2013

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

October 2013

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

17 Tuesday

7 am

8 00

Updated Invitation: Garret Bradley @ Tue Sep 17, 2013 8:20am - 9:20am (Ocean Ri
Lga to city
Ocean Ride Limousine

9 00

State Street Mediation

10 00

11 00

12 pm

1 00

2 00

3 00

Invitation: Garrett Bradley @ Tue Sep 17, 2013 3pm - 4pm (Ocean Ride Limousine)
City to lga
ocean.ride.limousine@gmail.com

4 00

5 00

6 00

Daily Task List

Arranged By: Due Date

Notes

October 03, 2013

Thursday

October 2013

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November 2013

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

	3 Thursday	Notes
7 am		
8 00		
9 00		
10 00	Redacted	
11 00		
12 pm		
1 00		
2 00	Call with lesser	
3 00		
4 00	Redacted	
5 00		
6 00		

Garrett Bradley 1 7/24/2015 1:13 PM

Joyce Murphy

Subject:	State Street Conf. Call - 888-870-8293/212 907 0860
Location:	Dial In Information Below
Start:	Wed 10/16/2013 4:00 PM
End:	Wed 10/16/2013 5:00 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Sucharow, Lawrence

A conference call is scheduled for today at 4:00pm EDT. Please use the below dial in information for this call.

Dial In Number:	888-870-8293
International Dial In Number:	719-234-7665
Participate Passcode:	212 907 0860

Thank you.

October 22, 2013

Tuesday

October 2013

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November 2013

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

22 Tuesday

7 am
8 00
9 00
10 00
11 00
12 pm
1 00
2 00
3 00
4 00
5 00
6 00

Redacted

Daily Task List

Arranged By: Due Date

Notes

6:30am - 7:00am 5:45am Stan p/u

Joyce Murphy

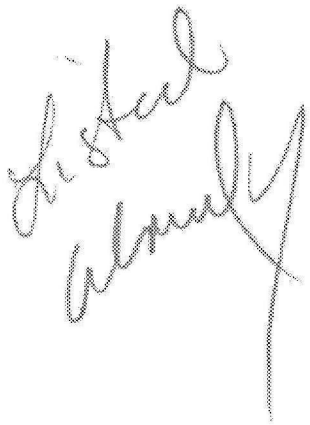
Subject:	State street
Start:	Wed 11/13/2013 2:00 PM
End:	Wed 11/13/2013 3:00 PM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Garrett Bradley

Garrett Bradley

Subject:	ny state street
Start:	Tue 3/4/2014 12:00 PM
End:	Tue 3/4/2014 12:30 PM
Recurrence:	(none)
Organizer:	Garrett Bradley

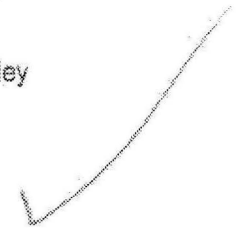
Garrett Bradley

Subject:	State Street Mediation - WH - 7 World Trade Center
Location:	250 Greenwich St., NY, NY 10007 (212 230 8800)
Start:	Fri 5/9/2014 10:00 AM
End:	Fri 5/9/2014 10:30 AM
Recurrence:	(none)
Organizer:	Garrett Bradley



Joyce Murphy

Subject:	State St. Call - 888-870-8292; passcode 212-907-0814.
Start:	Mon 10/27/2014 1:30 PM
End:	Mon 10/27/2014 2:30 PM
Recurrence:	(none)
Organizer:	Garrett Bradley



Joyce Murphy

Subject:	4pm - State Street Mediation Meeting
Location:	Thornton & Naumes - Large Conf. Room
Start:	Tue 2/3/2015 4:00 PM
End:	Tue 2/3/2015 4:30 PM
Recurrence:	(none)
Organizer:	Garrett Bradley

Joyce Murphy

Subject:	9am - State Street Mediation
Location:	WilmerHale - 60 State Street
Start:	Wed 2/4/2015 9:00 AM
End:	Wed 2/4/2015 9:30 AM
Recurrence:	(none)
Organizer:	Garrett Bradley

Joyce Murphy

Subject:	10:30am - State Street - Dial-in: 888-870-8293/Passcode: 212 907 0879
Start:	Wed 4/8/2015 10:30 AM
End:	Wed 4/8/2015 11:00 AM
Recurrence:	(none)
Organizer:	Garrett Bradley

Joyce Murphy

Subject:	State street
Start:	Thu 4/9/2015 9:30 AM
End:	Thu 4/9/2015 10:30 AM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Garrett Bradley

Joyce Murphy

Subject:	State Street, Boston
Start:	Thu 4/30/2015 9:30 AM
End:	Thu 4/30/2015 10:30 AM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Garrett Bradley

July 13, 2015
Monday

July 2015

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2015

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

13 Monday

Notes

7 am
8 00
9 00
10 00
11 00
12 pm
1 00
2 00
3 00
4 00
5 00
6 00

Redacted

July 14, 2015

Tuesday

July 2015

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2015

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

	14 Tuesday	Notes
7 am		
8 00		
9 00	Redacted	
10 00		
11 00		
12 pm		
1 00		
2 00		
3 00		
4 00		
5 00		
6 00		
	Redacted	

Joyce Murphy

Subject:	State Street, Boston
Start:	Thu 4/30/2015 9:30 AM
End:	Thu 4/30/2015 10:30 AM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Garrett Bradley

Joyce Murphy

Subject:	4pm - State Street Meeting
Location:	60 State St.
Start:	Tue 6/2/2015 4:00 PM
End:	Tue 6/2/2015 4:30 PM
Recurrence:	(none)
Organizer:	Garrett Bradley

ıly 17, 2015

Friday

July 2015

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2015

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

17 Friday

Notes

7 am

8 00

9 00 9am - Delta Flt 2671 - Con

Redacted

10 00

Ocean Ride Limo p/u

11 00

2pm - Conf. call - 866-676-8980. Meeting number 738292944

12 pm

1 00 Ocean Ride Limo p/u

2 00

Redacted

3 00 2:59pm - Delta Flt 2676 - Conf. HXNRIR - Seat 13A (Window); 4:25pm - Arrive Bosto

4 00

5 00

6 00

Redacted

Garrett Bradley 1 7/24/2015 11:47 AM

uly 20, 2015

Monday

July 2015

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2015

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

	20 Monday	Notes
7 am		
8 00		
9 00		
10 00		
11 00		
12 pm		
1 00		
2 00		
3 00		
4		
5 00		
6 00		

Redacted

Redacted

Garrett Bradley 1 7/24/2015 11:48 AM

Joyce Murphy

Subject:	State St--Call re Lynn's discussions with DOL
Start:	Tue 7/21/2015 11:00 AM
End:	Tue 7/21/2015 12:00 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Goldsmith, David

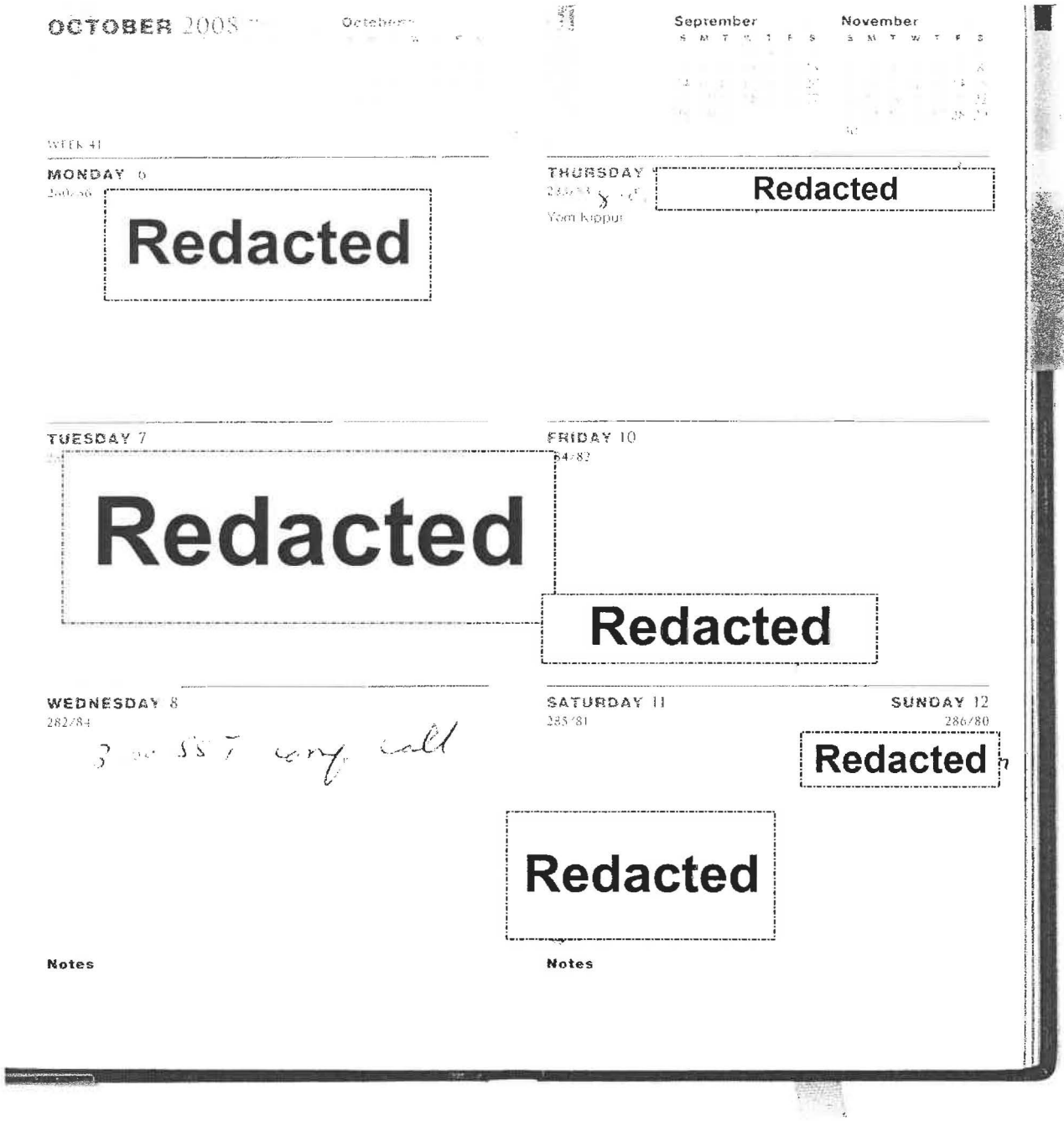
Please dial in at 11am ET tomorrow for this call:

Dial-In: 888-870-8293
Passcode: 212 907 0879

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. 213



OCTOBER 2008

September

November

WEEK 41

MONDAY 6

Redacted

THURSDAY

Redacted

Yom Kippur

TUESDAY 7

Redacted

FRIDAY 10

Redacted

WEDNESDAY 8

SATURDAY 11

SUNDAY 12

Redacted

Redacted

Notes

Notes

NOVEMBER 2008

November

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

October

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

December

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

WEEK 47

MONDAY 17
322/44

11:30 SS call Moroney.
Phil Mills, S. Karpinos

TUESDAY 18
323/43

Redacted

WEDNESDAY 19
324/42

Redacted

Notes

THURSDAY 20
325/41

Redacted

FRIDAY 21
326/40

Redacted

SATURDAY 22
327/39

SUNDAY 23
328/38

Notes

DECEMBER 2008

December

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

November

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

January 2009

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

WEEK 50

MONDAY 8
343/23

Redacted

1:00 Call with Bob Lieff

TUESDAY 9
344/22

Redacted

WEDNESDAY 10
345/21

Notes

THURSDAY 11
346/20

11:45 Manage Partners
Fund - Slot Dust - Longhorn

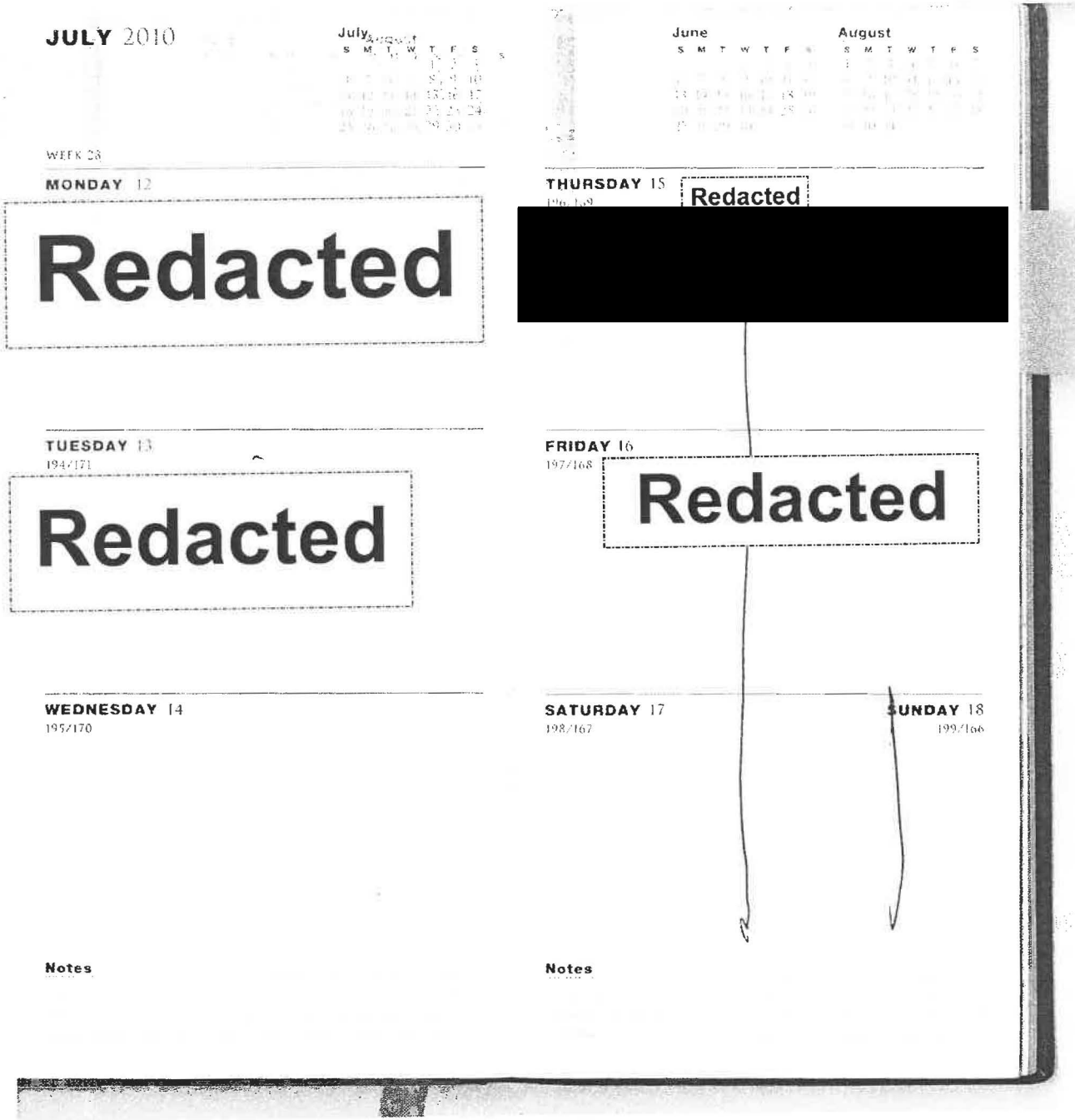
Redacted

FRIDAY 12
347/19

SATURDAY 13
348/18

SUNDAY 14
349/17

Notes


JULY 2010
July
June
August
WEEK 28
MONDAY 12
Redacted
THURSDAY 15
Redacted
TUESDAY 13
194/171
Redacted
FRIDAY 16
197/168
Redacted
WEDNESDAY 14
195/170
SATURDAY 17
198/167
SUNDAY 18
199/166
Notes
Notes

NOVEMBER 2010
DECEMBER 2010

December

WEEK 48

MONDAY 29

Redacted

TUESDAY 30
334/31

Redacted

WEDNESDAY 1
335/30

Redacted

Notes

November

January 2011

THURSDAY 2
336, 29

First day of Hanukkah

10:30 Steve Stock

1:30 Zabaton

Redacted

FRIDAY 3
337/28

SATURDAY 4
338/27

SUNDAY 5
339/26

Redacted

Notes

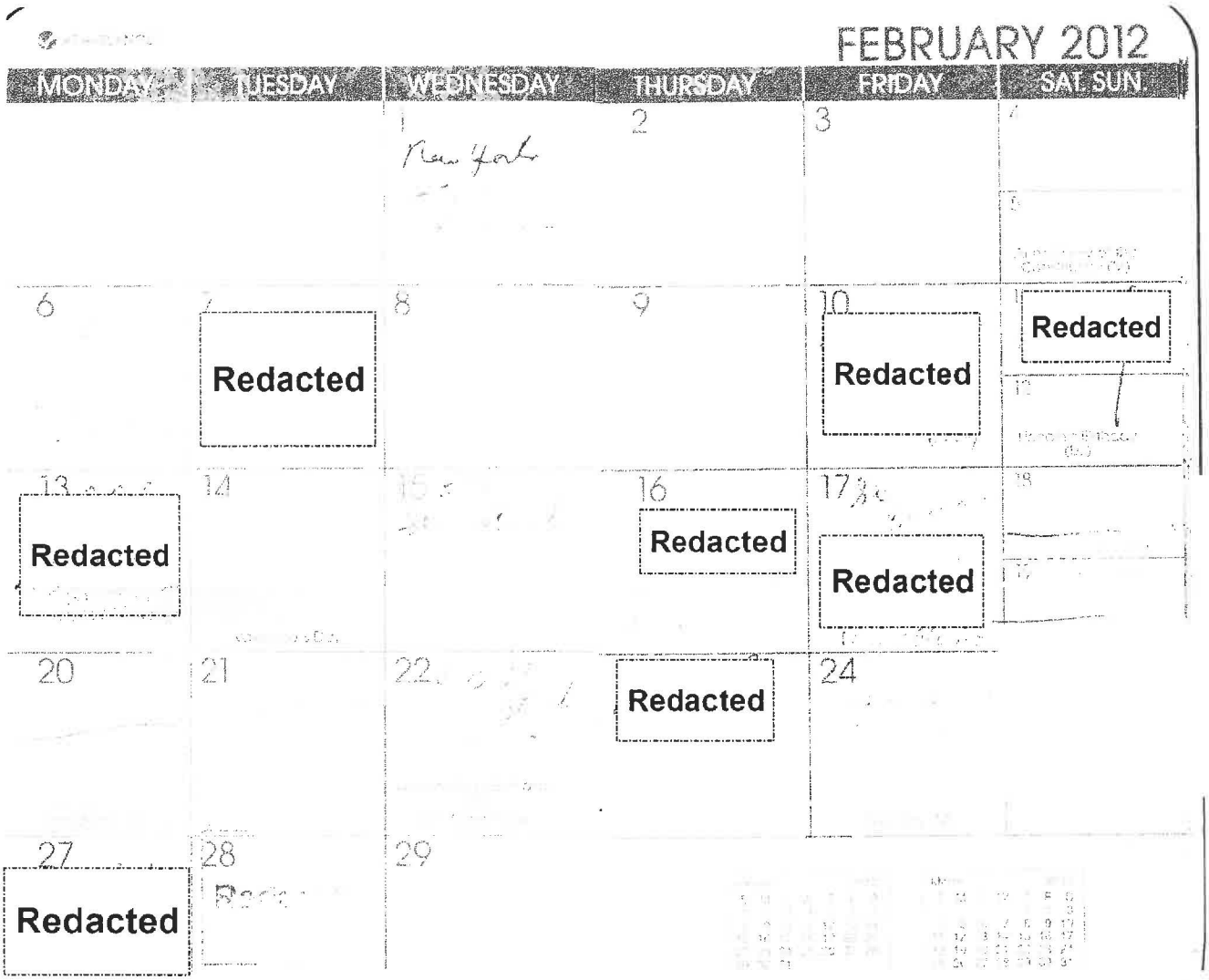
Confidential: Produced Pursuant to Court Order.

TLF-SST-042991

AT-A-GLANCE®

JUNE 2011

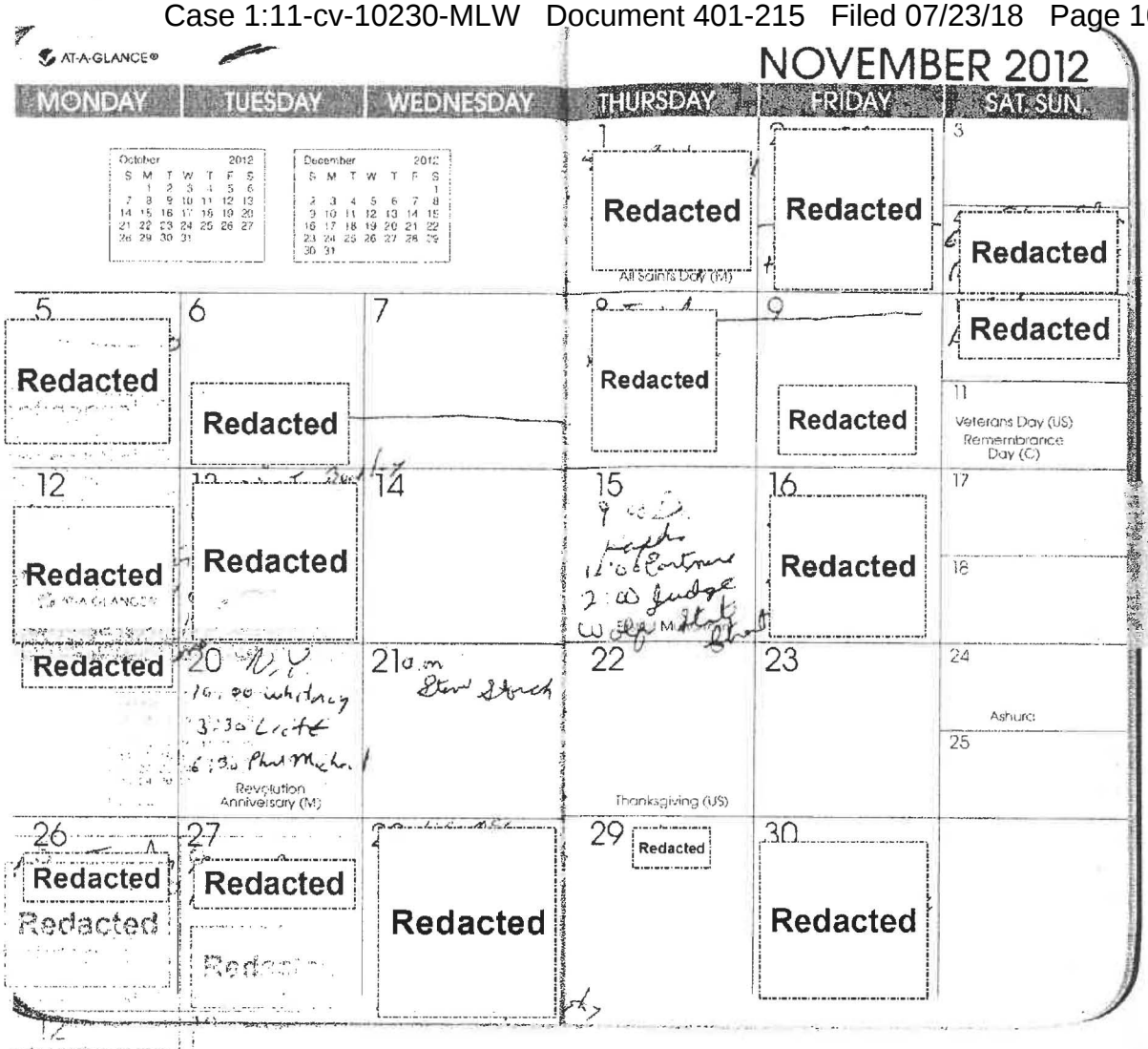
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT, SUN
May 2011 / July 2011		1	2 Redacted	3 Redacted	4 Redacted Redacted
6	7 Redacted	8 10:00 Meet of Larry Buchsbaum 2:00 Stan Strat Card	9 Redacted	10 Redacted	11 Redacted 12
13	14 Redacted Redacted	15 9:00 Cam Keller A - NY - Mets	16 Redacted	17 Redacted	18 19 Father's Day
20 Redacted	21 Summer begins	22 Redacted	23 Redacted	24 St. Jean Baptiste (Québec)	25 Redacted 26
27	28	29 Redacted	30		


FEBRUARY 2012
MONDAY
TUESDAY
WEDNESDAY
THURSDAY
FRIDAY
SAT. SUN.
New York
Redacted
Redacted
Redacted
Redacted
Redacted
Redacted
Redacted
Redacted

AT-A-GLANCE®

SEPTEMBER 2012

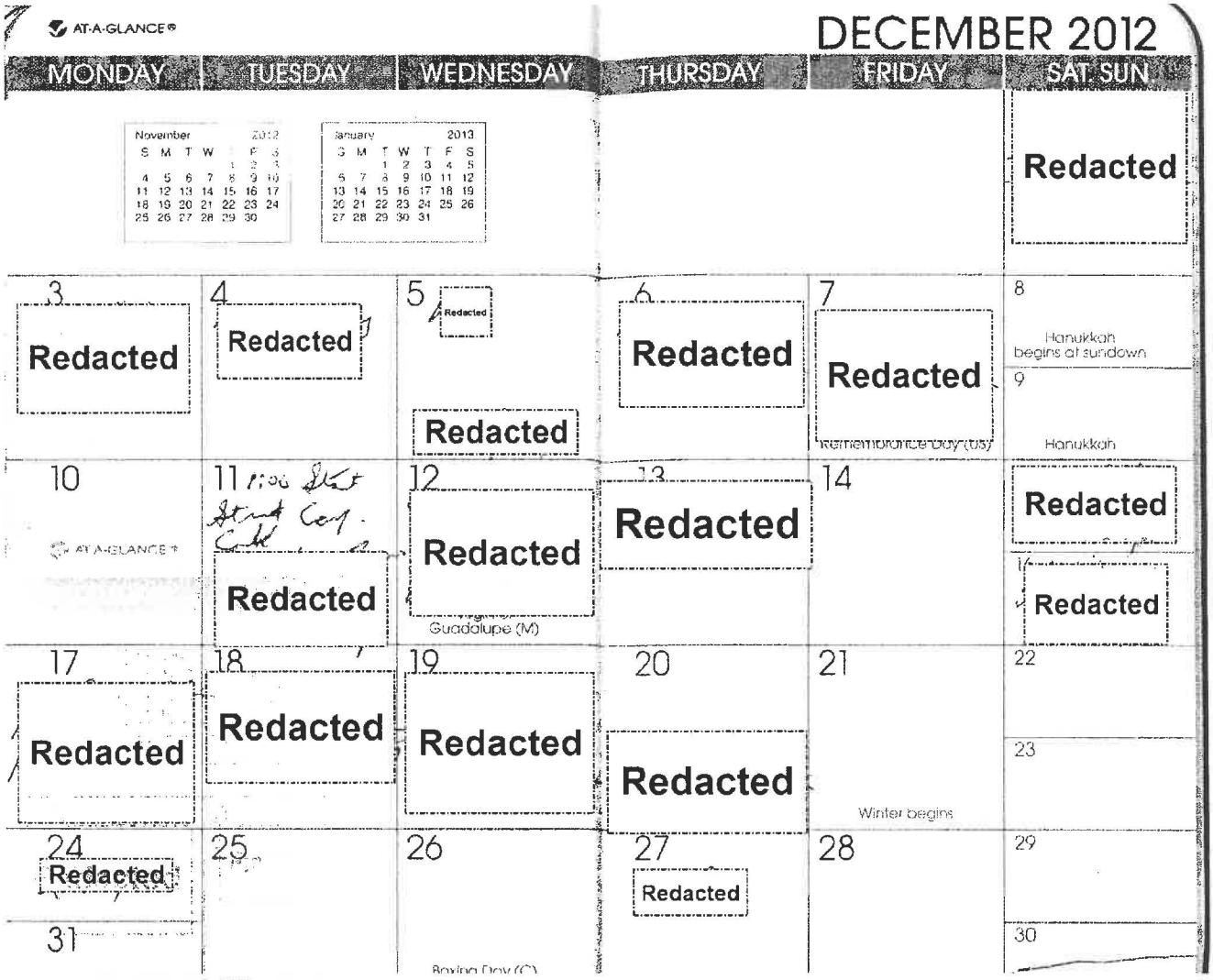
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT. SUN.
August 2012 / October 2012					1 2
3 Labor Day (C, US)	4	Redacted	6	7	8 9
10 Redacted	11 NL Redacted Patriot Day (US)	12 Redacted	13 State Street Meeting with Marks in NY at Lobster	Redacted	15 Declaration of Independence (M) 16 Independence Day (M) Rosh Hashanah begins at sundown
17 Redacted Rosh Hashanah	18 Redacted	Redacted	20 Dyo? Iron Stone Stand Birthday Bonds	21 Redacted	22 Autumn begins 23
24 Redacted	25	26 Redacted	27	Redacted	29



AT-A-GLANCE®

NOVEMBER 2012

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT SUN
			1 Redacted All Saints Day (RA)	Redacted	3 Redacted
5 Redacted	6 Redacted	7	8 Redacted	9 Redacted	Redacted 11 Veterans Day (US) Remembrance Day (C)
12 Redacted	Redacted	14	15 Redacted	16 Redacted	17 18
Redacted	20 Redacted Revolution Anniversary (M)	21 Redacted	22 Thanksgiving (US)	23	24 Ashura 25
26 Redacted Redacted	27 Redacted Redacted	Redacted	29 Redacted	30 Redacted	



AT-A-GLANCE®

DECEMBER 2012

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT SUN
					Redacted
3 Redacted	4 Redacted	5 Redacted Redacted	6 Redacted	7 Redacted Remembrance Day (US)	8 Hanukkah begins at sundown 9 Hanukkah
10	11 Redacted	12 Redacted Guadalupe (M)	13 Redacted	14	Redacted Redacted
17 Redacted	18 Redacted	19 Redacted	20 Redacted	21 Winter begins	22 23
24 Redacted 31	25	26 Boxing Day (C)	27 Redacted	28	29 30

JANUARY 2013

January

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

December 2012

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

February

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

WEEK 3

MONDAY 14
14/351

11:00 State Street mediation
Wilmer Hale - Washington DC

TUESDAY 15
15/350

Redacted

WEDNESDAY 16
16/349

THURSDAY 17
17/348

Redacted

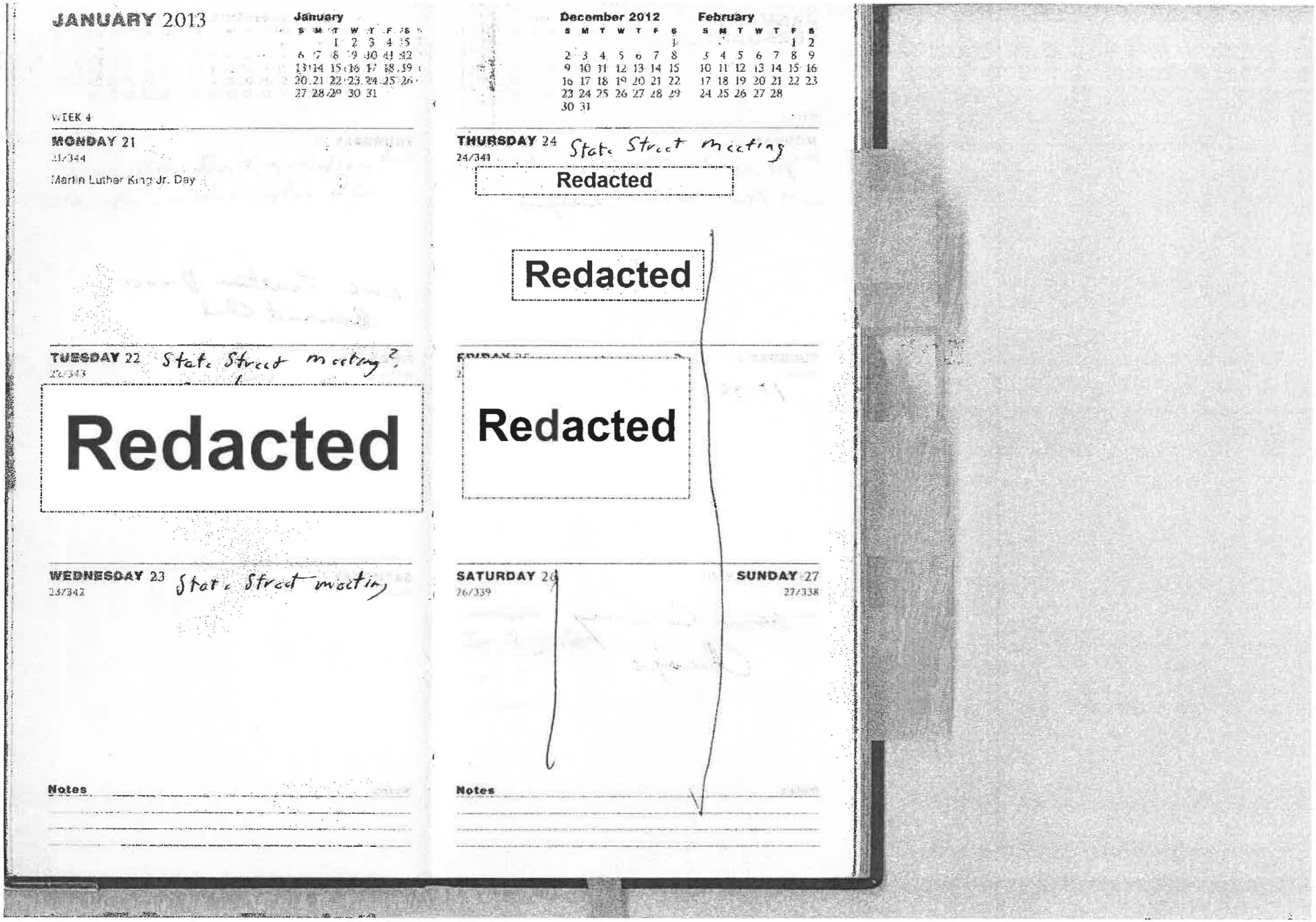
FRIDAY 18
18/347

SATURDAY 19
19/346

SUNDAY 20
20/345

Notes

Notes



JANUARY 2013

January

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

December 2012

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

February

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

WEEK 4

MONDAY 21
21/344
Martin Luther King Jr. Day

TUESDAY 22 State Street meeting?
22/343

Redacted

WEDNESDAY 23 State Street meeting
23/342

Notes

THURSDAY 24 State Street meeting
24/341

Redacted

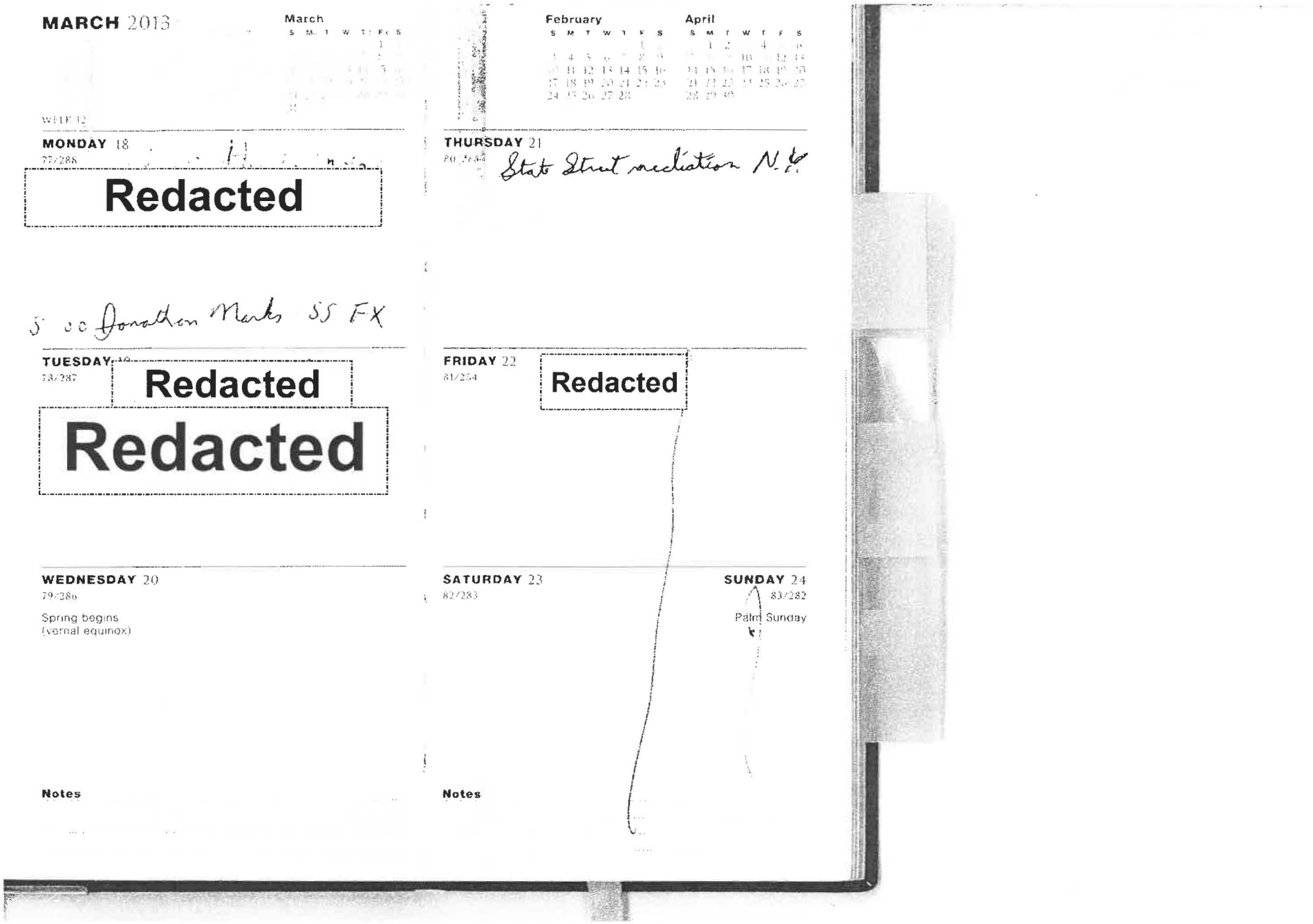
Redacted

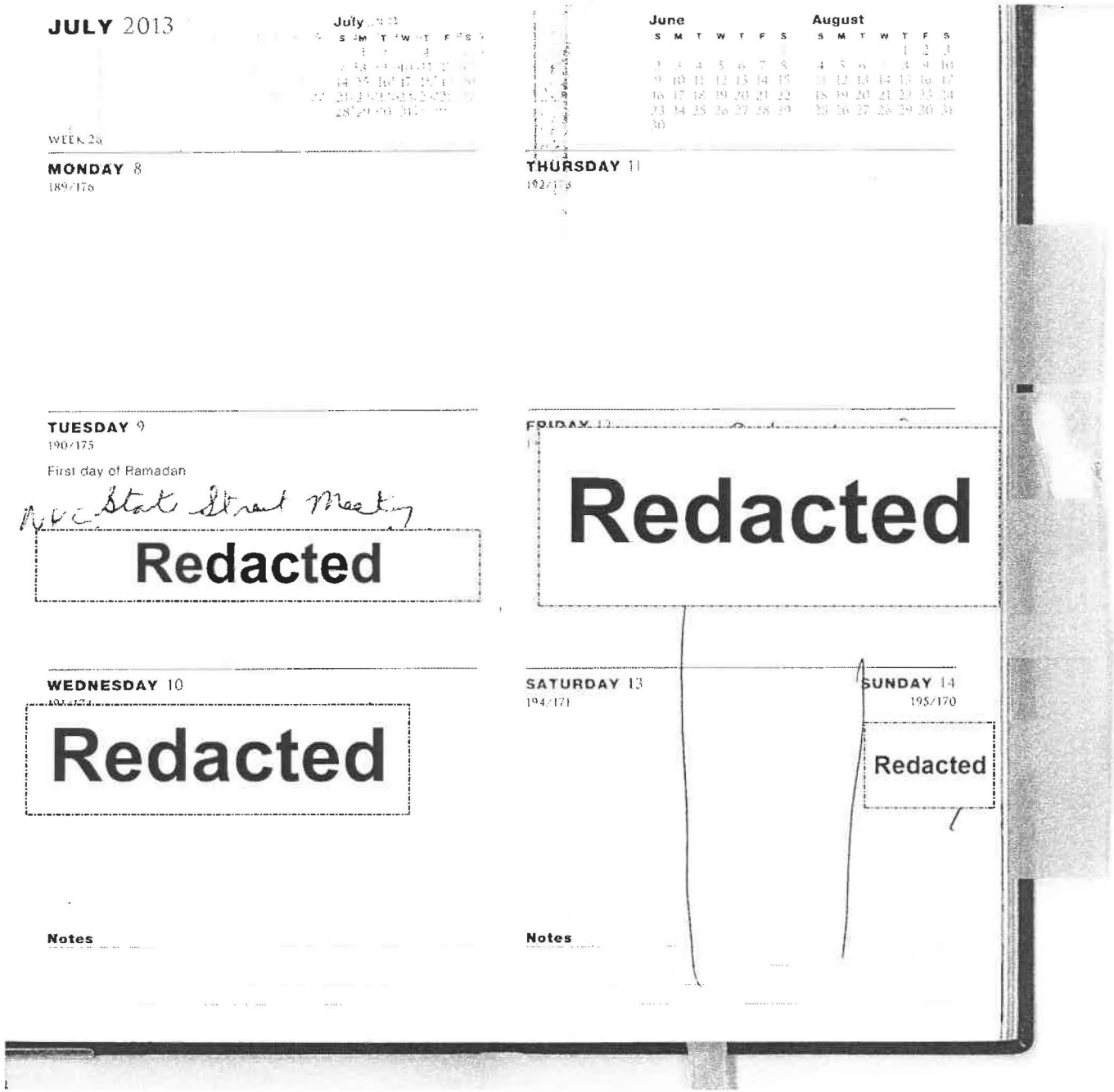
Redacted

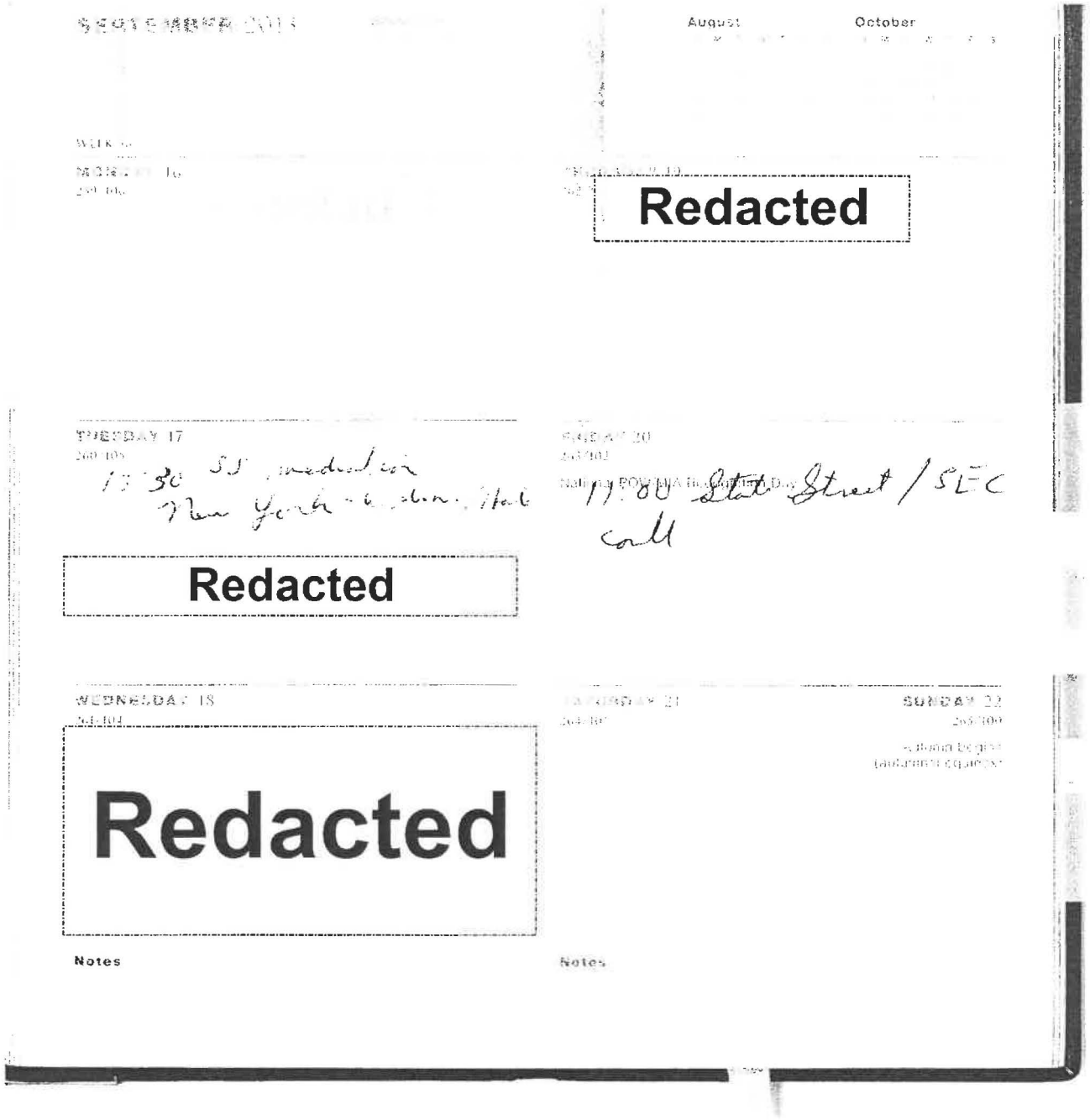
SATURDAY 26
26/339

SUNDAY 27
27/338

Notes


MARCH 2013
March
February
April
MONDAY 18
Redacted
THURSDAY 21
State Street recitation N.Y.
Jose Jonathon Marks SS FX
TUESDAY
Redacted
Redacted
FRIDAY 22
Redacted
WEDNESDAY 20
79/286
Spring begins
(vernal equinox)
SATURDAY 23
82/283
SUNDAY 24
83/282
Palm Sunday
Notes
Notes


JULY 2013
WEEK 28
MONDAY 8
189/176
TUESDAY 9
190/175
First day of Ramadan
NYC Start Strat Meeting
Redacted
WEDNESDAY 10
Redacted
Notes
THURSDAY 11
FRIDAY 12
Redacted
SATURDAY 13
194/171
SUNDAY 14
195/170
Redacted
Notes


August
October
Redacted
TUESDAY 17
13:30 SS mediation
New York
Redacted
11:00 State Street / SEC
call
WEDNESDAY 18
Redacted
SUNDAY 22
Notes
Notes

NOVEMBER 2013

November

October

December

WEEK 46

MONDAY 11

Veterans Day

Remembrance Day (Canada)

Redacted

TUESDAY 12

Redacted

FRIDAY 15

Redacted

WEDNESDAY 13

10:30 55 Medicine

R.V.C.

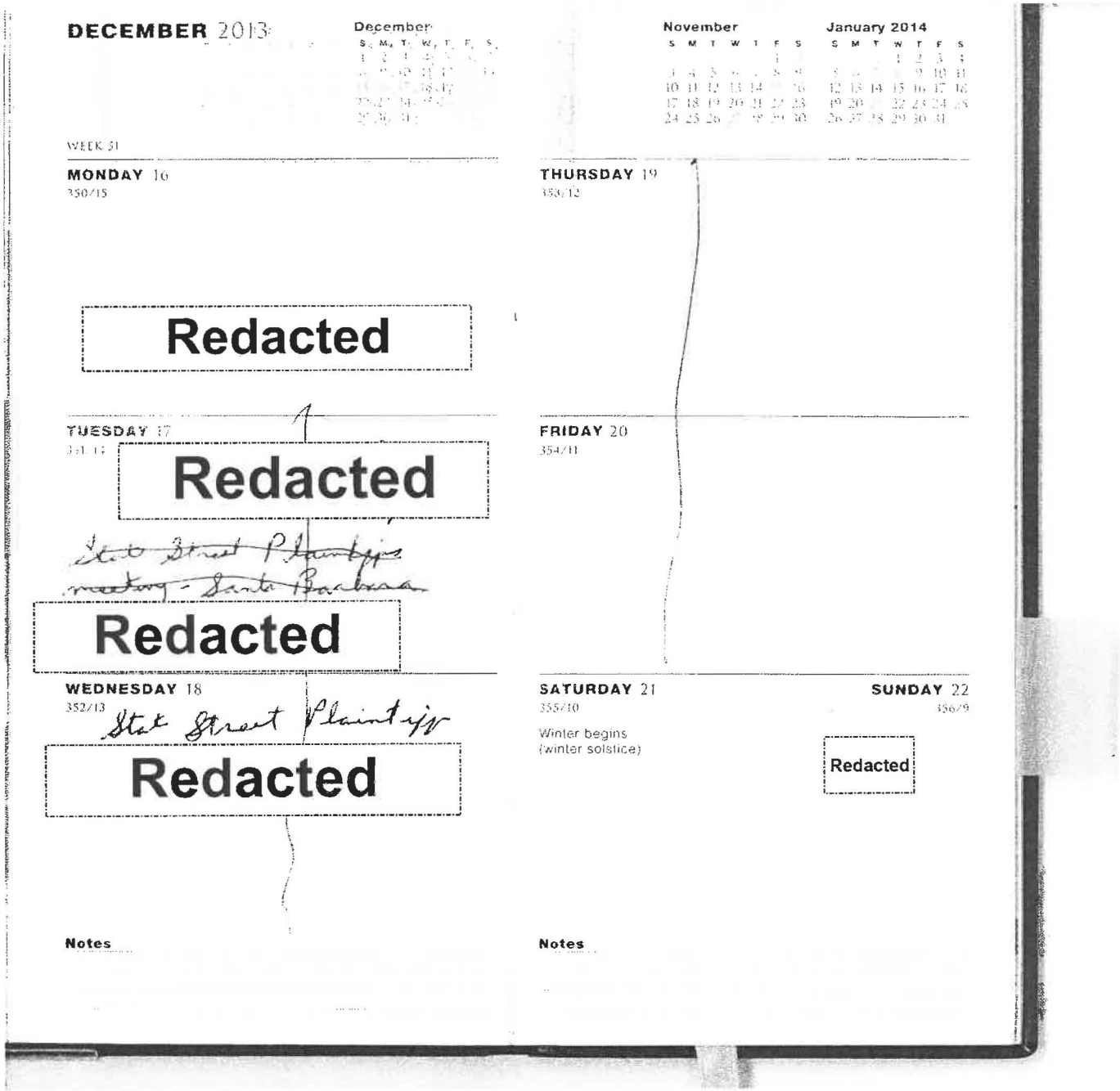
SATURDAY 16

SUNDAY 17

Redacted

Notes

Notes



DECEMBER 2013

December

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

January 2014

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

WEEK 51

MONDAY 16
350/15

Redacted

TUESDAY 17
351/14

Redacted

State Street Plaintiffs meeting - Santa Barbara

Redacted

WEDNESDAY 18
352/13

State Street Plaintiffs

Redacted

Notes

THURSDAY 19
353/12

FRIDAY 20
354/11

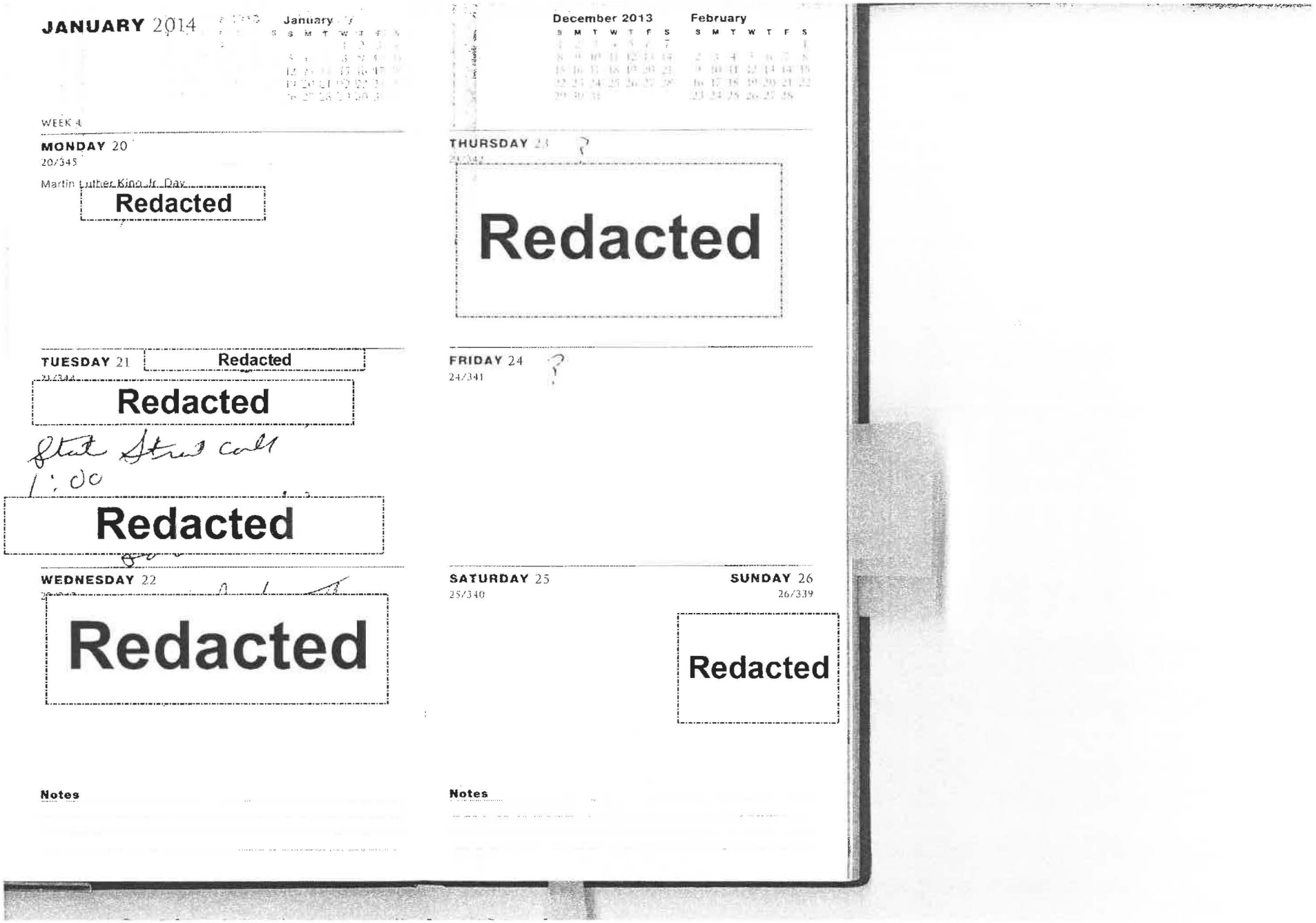
SATURDAY 21
355/10

Winter begins (winter solstice)

SUNDAY 22
356/9

Redacted

Notes



JANUARY 2014

January

December 2013

February

WEEK 4

MONDAY 20
20/345
Martin Luther King Jr. Day
Redacted

TUESDAY 21
Redacted
Redacted
Stat Strep call
1:00
Redacted

WEDNESDAY 22
Redacted

THURSDAY 23
Redacted

FRIDAY 24
24/341

SATURDAY 25
25/340

SUNDAY 26
26/339
Redacted

Notes

Notes

MARCH 2014

March

February

April

WEEK 10

MONDAY 3
62/303
Redacted

THURSDAY 6
65/
Redacted

6:30 Bob Duffy

TUESDAY 4
63/302
10:00 Stat Street Mediation

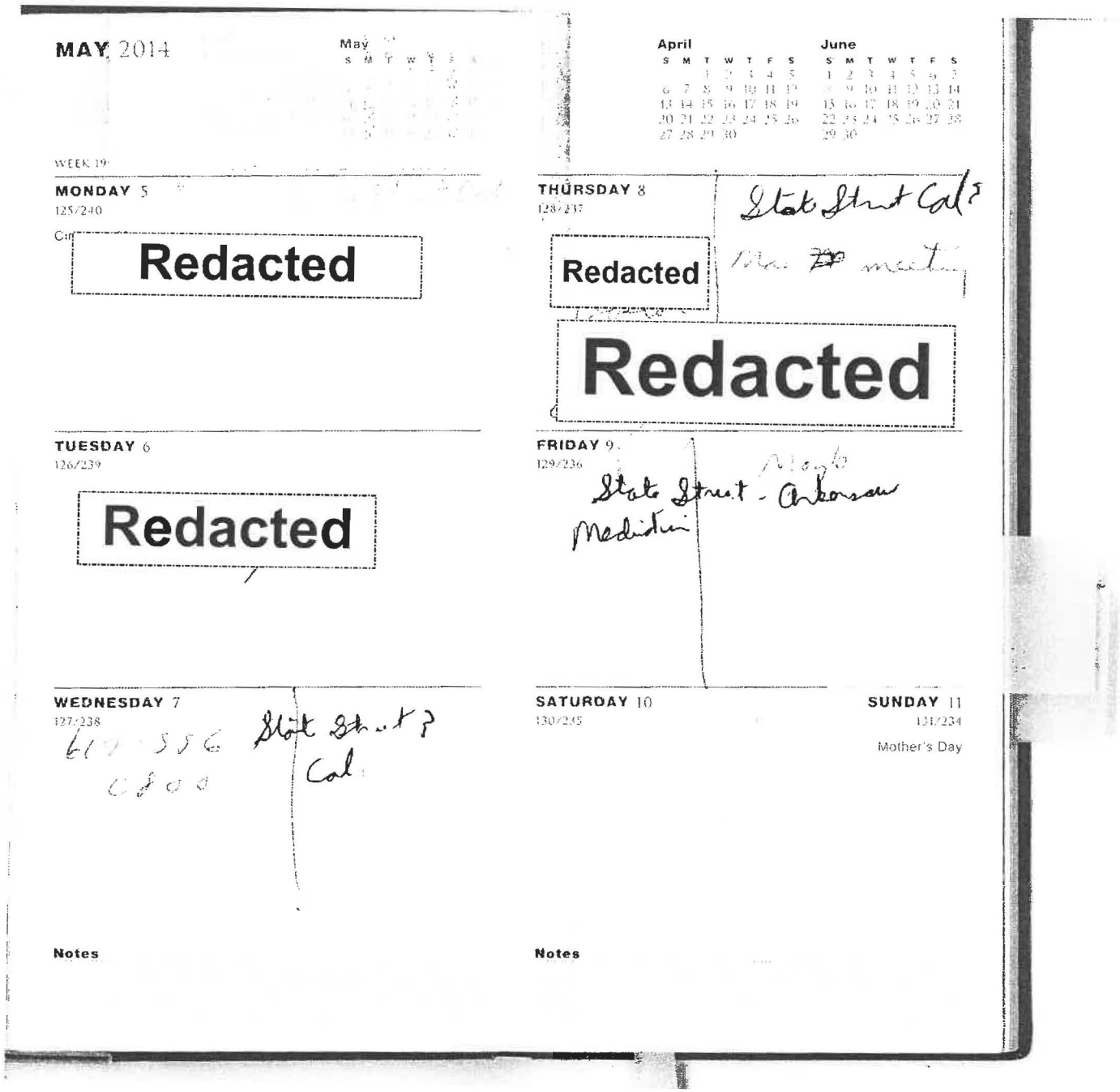
FRIDAY 7
66
Redacted

WEDNESDAY 5
64/301
Ash Wednesday
Redacted

SATURDAY 8
67/298

SUNDAY 9
68/297
Daylight saving time begins

Notes



MAY 2014

May

S	M	T	W	T	F	S

April

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

June

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

WEEK 19

MONDAY 5
125/240

Redacted

TUESDAY 6
126/239

Redacted

WEDNESDAY 7
127/238

State Street?
Cal

Notes

THURSDAY 8
128/237

State Street Cal?

Redacted

Redacted

FRIDAY 9
129/236

State Street - Arkansas
Mediation

SATURDAY 10
130/235

Notes

SUNDAY 11
131/234

Mother's Day

DECEMBER 2014

December

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

November

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

January 2015

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

WEEK 50

MONDAY 8

Redacted

TUESDAY 9
343/22

Redacted

WEDNESDAY 10
344/21

Redacted

Notes

THURSDAY 11
345/20

Redacted

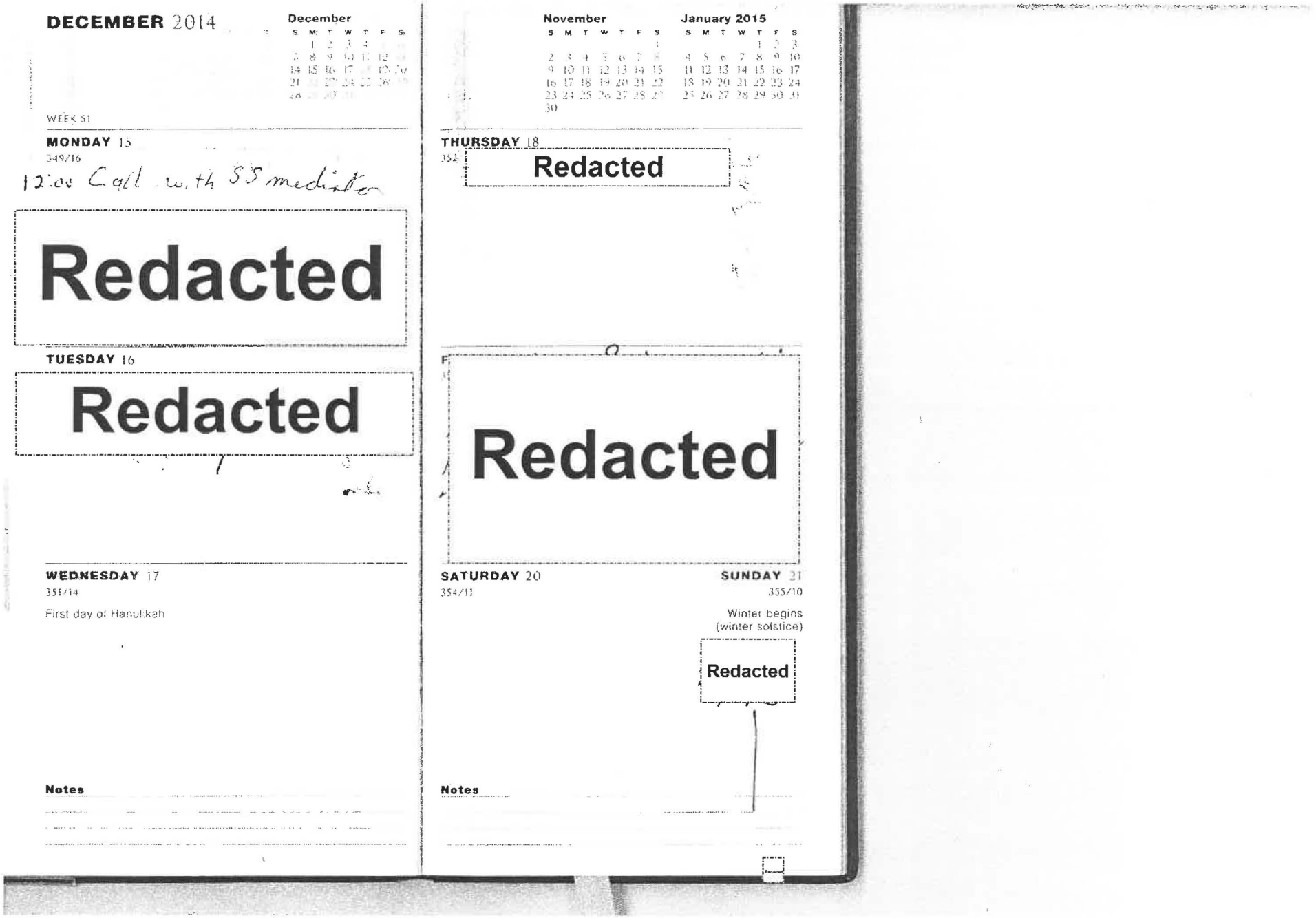
FRIDAY 12
346/19

11:30 State Street
Conf call - Leap,
Inc

SATURDAY 13
347/18

SUNDAY 14
348/17

Notes



DECEMBER 2014

December

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

November

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

January 2015

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

WEEK 51

MONDAY 15
349/16

12:00 Call with SS mediator

Redacted

TUESDAY 16

Redacted

WEDNESDAY 17
351/14

First day of Hanukkah

Notes

THURSDAY 18
352

Redacted

Redacted

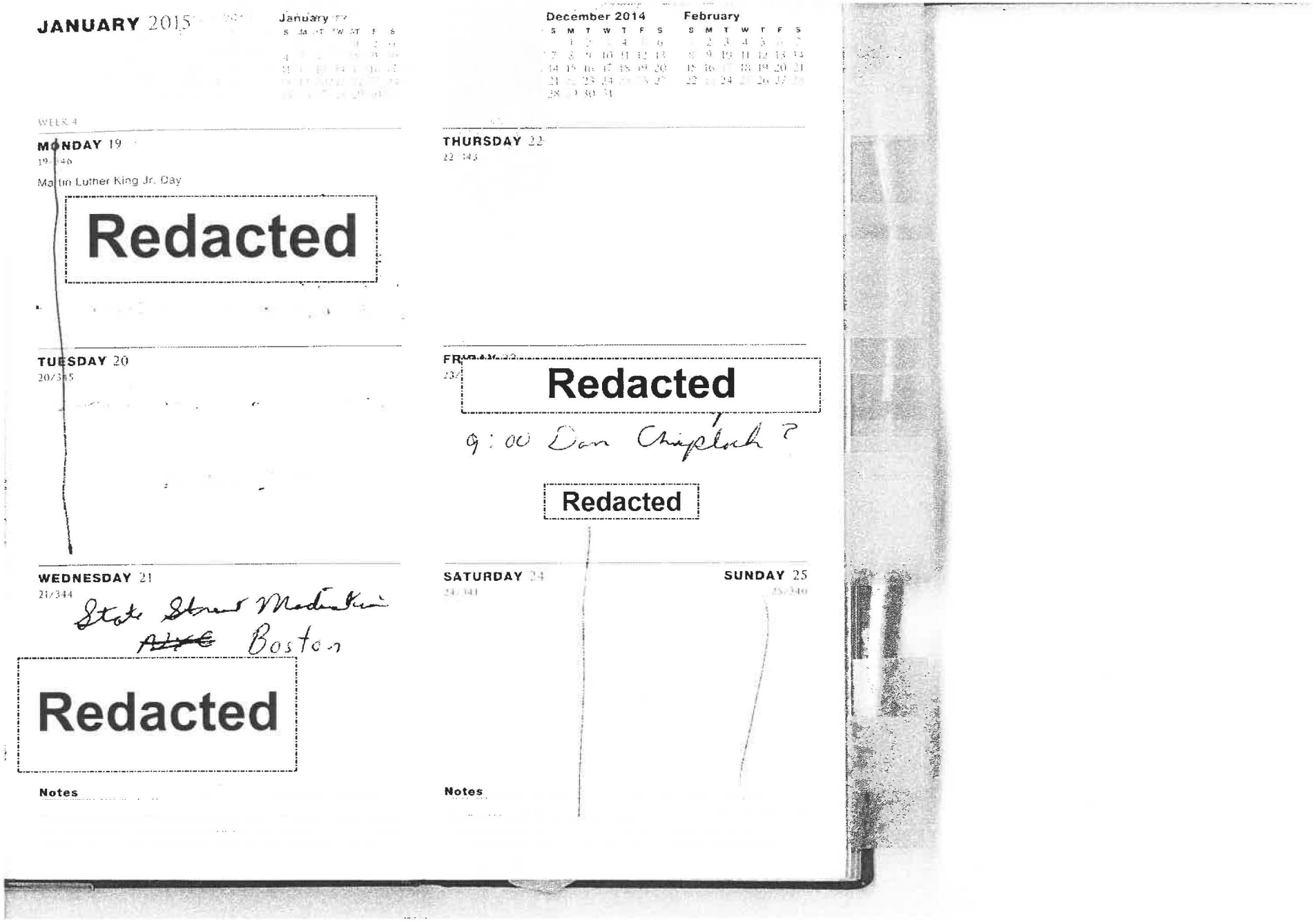
SATURDAY 20
354/11

SUNDAY 21
355/10

Winter begins
(winter solstice)

Redacted

Notes


JANUARY 2015
December 2014
February
WEEK 4
MONDAY 19
Martin Luther King Jr. Day
Redacted
TUESDAY 20
Redacted
9:00 Dan Chaplock ?
Redacted
WEDNESDAY 21
State Street Madeleine
~~ABC~~ Boston
Redacted
THURSDAY 22
SATURDAY 24
SUNDAY 25
Notes
Notes

Redacted

4:00 State Street pre-
mediation meeting
name meeting
t-name meeting

Redacted

Mediation - Boston
9:00 A.M.

Notes

Notes

January March

Redacted

4:00 State Street pre-mediation meeting
room meeting
[illegible] meeting

Redacted

Mediation : Boston
9:00 A.M.

Notes

Notes

FEBRUARY 2015

February

S	M	T	W	T	F	S

January

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

March

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

WEEK 7

MONDAY 9

Redacted

TUESDAY 10

Redacted

WEDNESDAY 11
42/323

Redacted

Notes

THURSDAY 12
43/322

Lincoln's Birthday

FRIDAY 13
44/321

12:00 Bob Trapp, Tony Gustavson - 5th Street

Redacted

SATURDAY 14
45/320

Valentine's Day

SUNDAY 15
46/319

Notes

FEBRUARY 2015
MARCH 2015

February
S M T W T F S
1 2 3 4 5 6 7
8 9 10 11 12 13 14
15 16 17 18 19 20 21
22 23 24 25 26 27 28

January
S M T W T F S
1 2 3
4 5 6 7 8 9 10
11 12 13 14 15 16 17
18 19 20 21 22 23 24
25 26 27 28 29 30 31

March
S M T W T F S
1 2 3 4 5 6 7
8 9 10 11 12 13 14
15 16 17 18 19 20 21
22 23 24 25 26 27 28
29 30 31

WEEK 9

MONDAY 23
54/312

Redacted

TUESDAY 24
55/310

WEDNESDAY 25
56/309

State Street Mediation
NYC 2:00 Zobelson

Redacted

THURSDAY 26
57/308

Redacted

State Street Mediation
NYC
10:30 Wilmer Hale

FRIDAY 27
58/307

Redacted

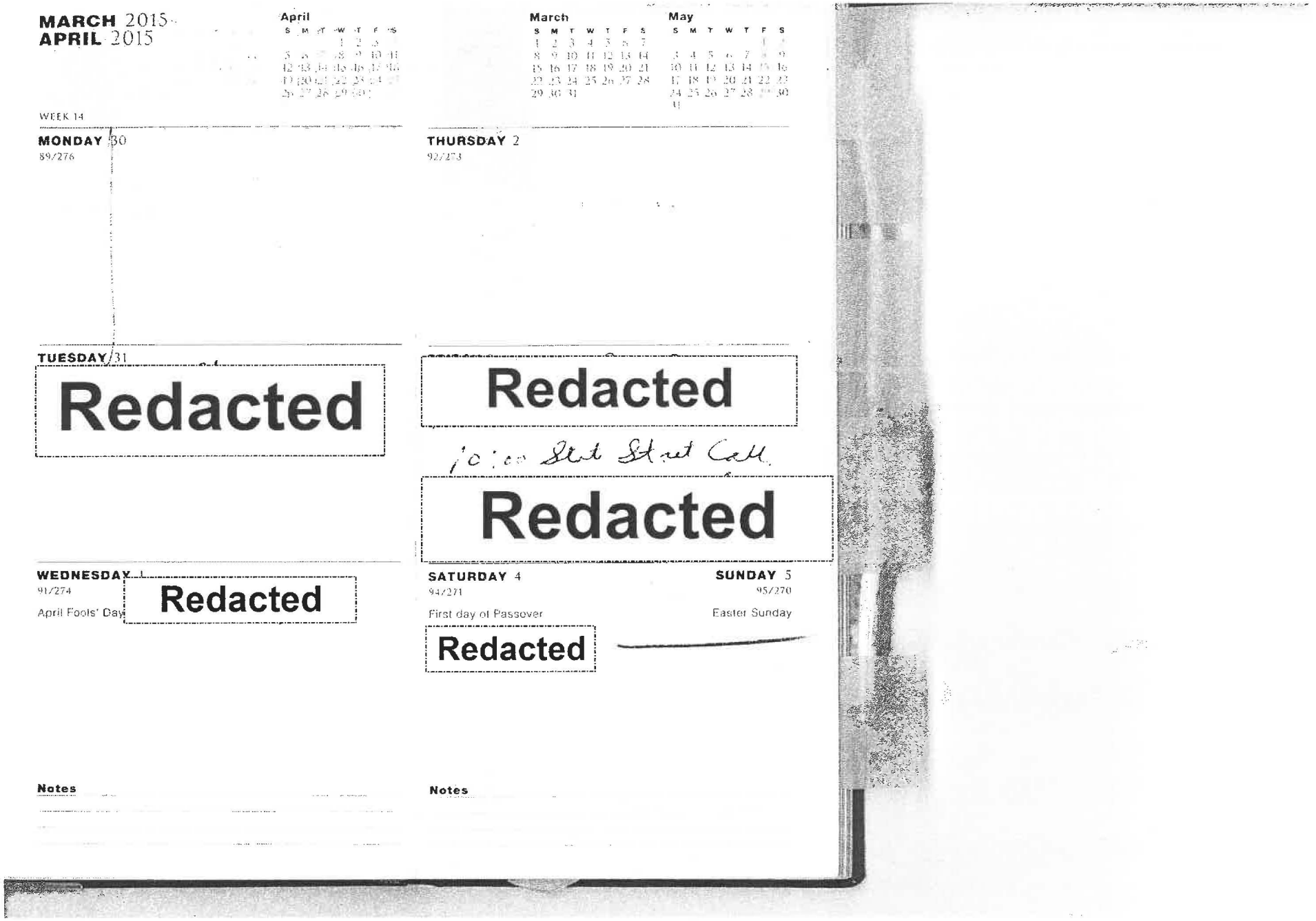
SATURDAY 28

Redacted

SUNDAY 1
60/305

Notes

Notes



MARCH 2015
APRIL 2015

April

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

March

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

May

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

WEEK 14

MONDAY 30
89/276

TUESDAY 31

Redacted

WEDNESDAY 1
91/274
April Fools' Day

Redacted

THURSDAY 2
92/273

Redacted

10:00 Start Start Call

Redacted

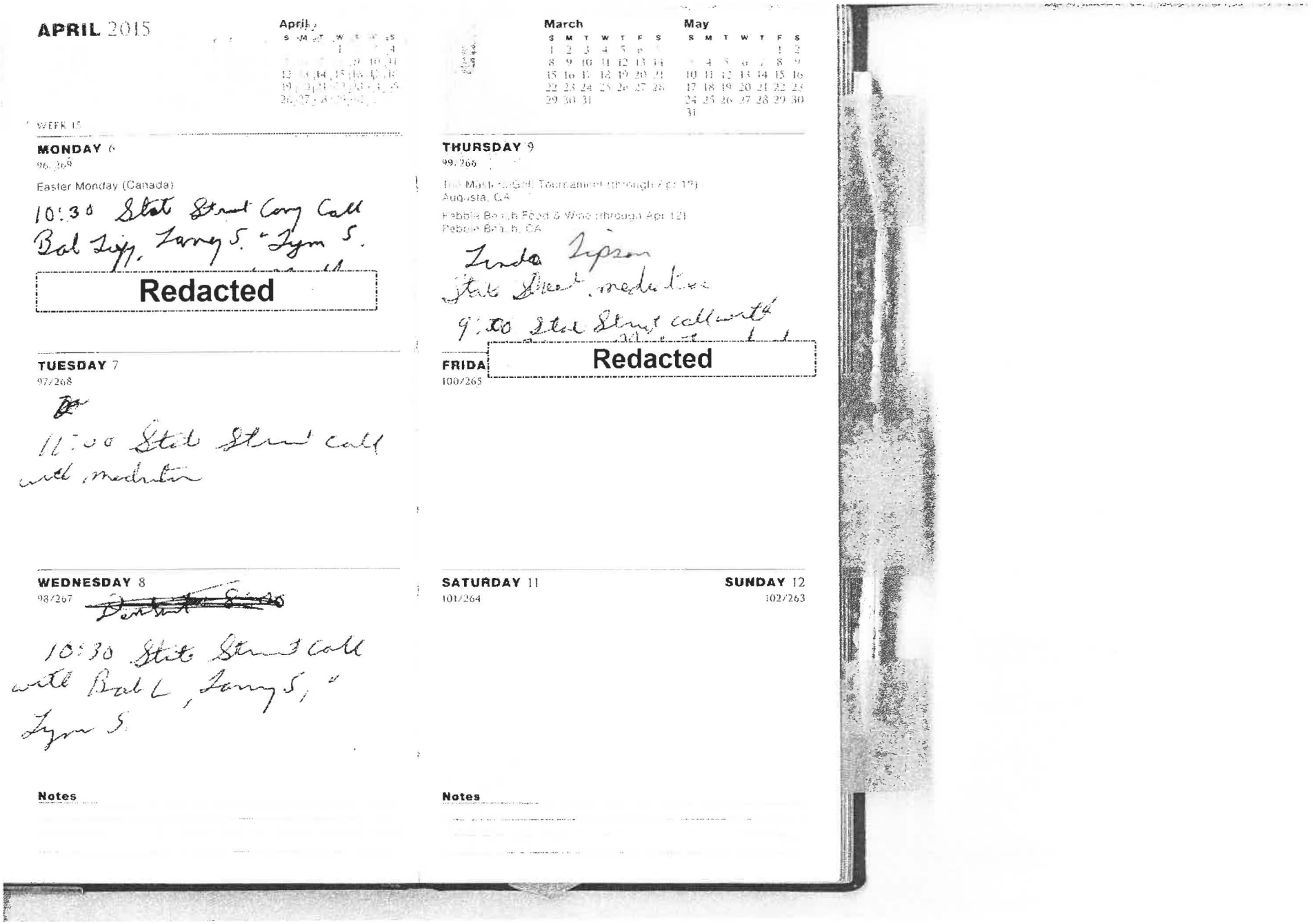
SATURDAY 4
94/271
First day of Passover

Redacted

SUNDAY 5
95/270
Easter Sunday

Notes

Notes



APRIL 2015

April

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

March

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

May

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

WEEK 15

MONDAY 6
96/269

Easter Monday (Canada)

10:30 State Street Corp Call
Bal Lipp, Larry S. "Lynn S.

Redacted

TUESDAY 7
97/268

11:00 State Street call
with Mediation

WEDNESDAY 8
98/267

10:30 State Street Call
with Bal L, Larry S, "
Lynn S

THURSDAY 9
99/266

Augusta, GA

Pebble Beach, CA

Linda Lipson
State Street mediation
9:00 State Street call with

Redacted

FRIDA
100/265

SATURDAY 11
101/264

SUNDAY 12
102/263

Notes

Notes

JUNE 2015

June

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

May

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

July

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

WEEK 24

MONDAY 8
15

Redacted

TUESDAY 9
160/205

SS 9 Redacted
10:30 Stat St
Labaton mediation

WEDNESDAY 10
161/204

THURSDAY 11
162/203

FRIDAY 12
163/202

SS

SATURDAY 13
164/201

SUNDAY 14
165/200
Flag Day

Redacted

Notes

Notes

JUNE 2015

June

May

July

WEEK 25

MONDAY 15

Redacted

TUESDAY 16
167/198

Redacted

WEDNESDAY 17
168/197

SS

State Street
Boston 11:30

Redacted

Notes

THURSDAY 18
169/196

SS - State Street

First day of Ramadan

Redacted

FRIDAY 19
170/195

SS

Redacted

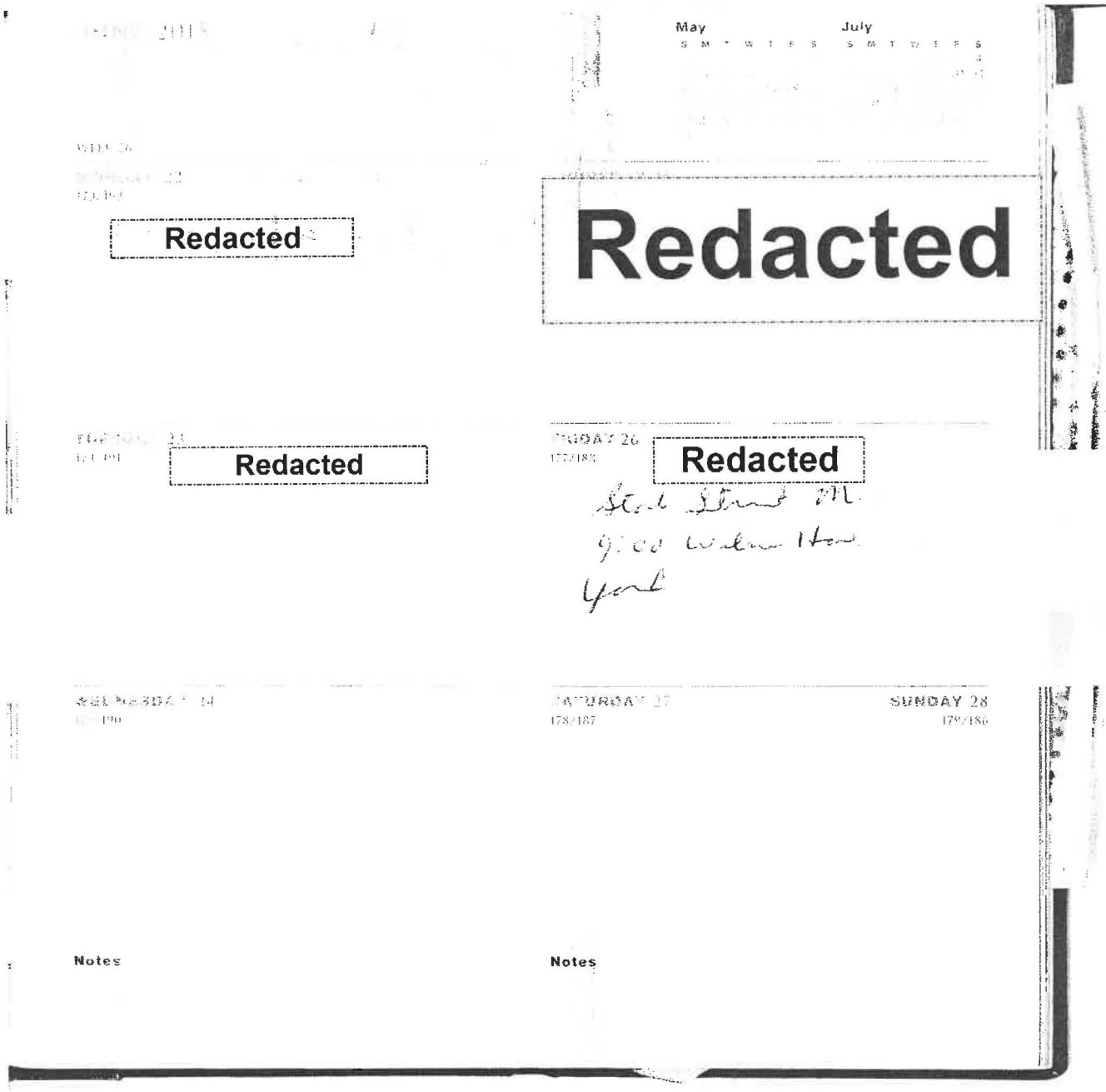
SATURDAY 20
171/194

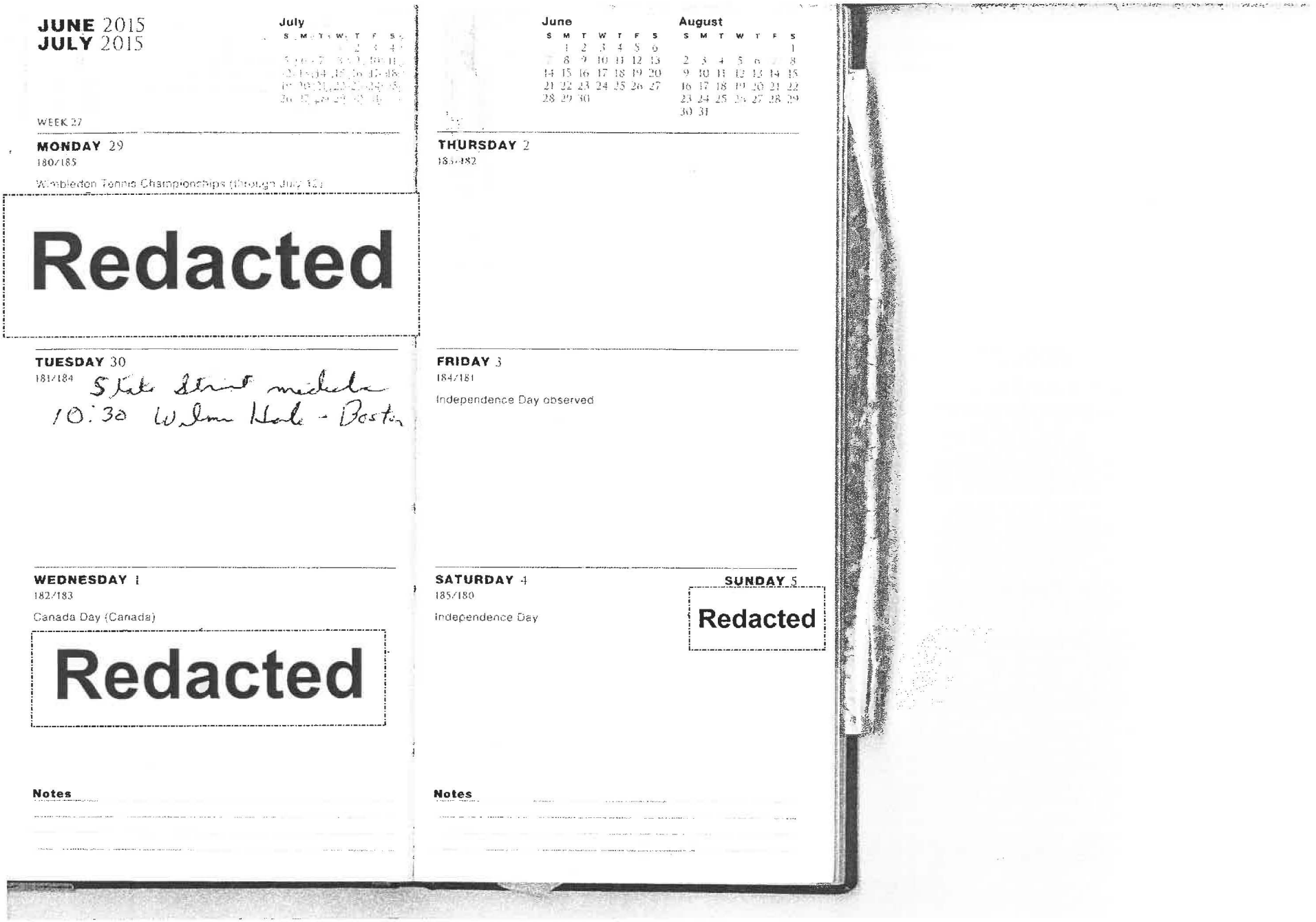
SUNDAY 21
172/193

Father's Day

Summer begins
(summer solstice)

Notes


May
July
Redacted
Redacted
Redacted
Redacted
Notes
Notes



JUNE 2015
JULY 2015

July
S M T W T F S
1 2 3 4
5 6 7 8 9 10 11
12 13 14 15 16 17 18
19 20 21 22 23 24 25
26 27 28 29 30 31

June
S M T W T F S
1 2 3 4 5 6
7 8 9 10 11 12 13
14 15 16 17 18 19 20
21 22 23 24 25 26 27
28 29 30

August
S M T W T F S
1
2 3 4 5 6 7 8
9 10 11 12 13 14 15
16 17 18 19 20 21 22
23 24 25 26 27 28 29
30 31

WEEK 27

MONDAY 29
180/185
Wimbledon Tennis Championships (through July 12)

Redacted

TUESDAY 30
181/184
5 Yale Street medical
10:30 Wilmer Hale - Boston

WEDNESDAY 1
182/183
Canada Day (Canada)

Redacted

THURSDAY 2
183/182

FRIDAY 3
184/181
Independence Day observed

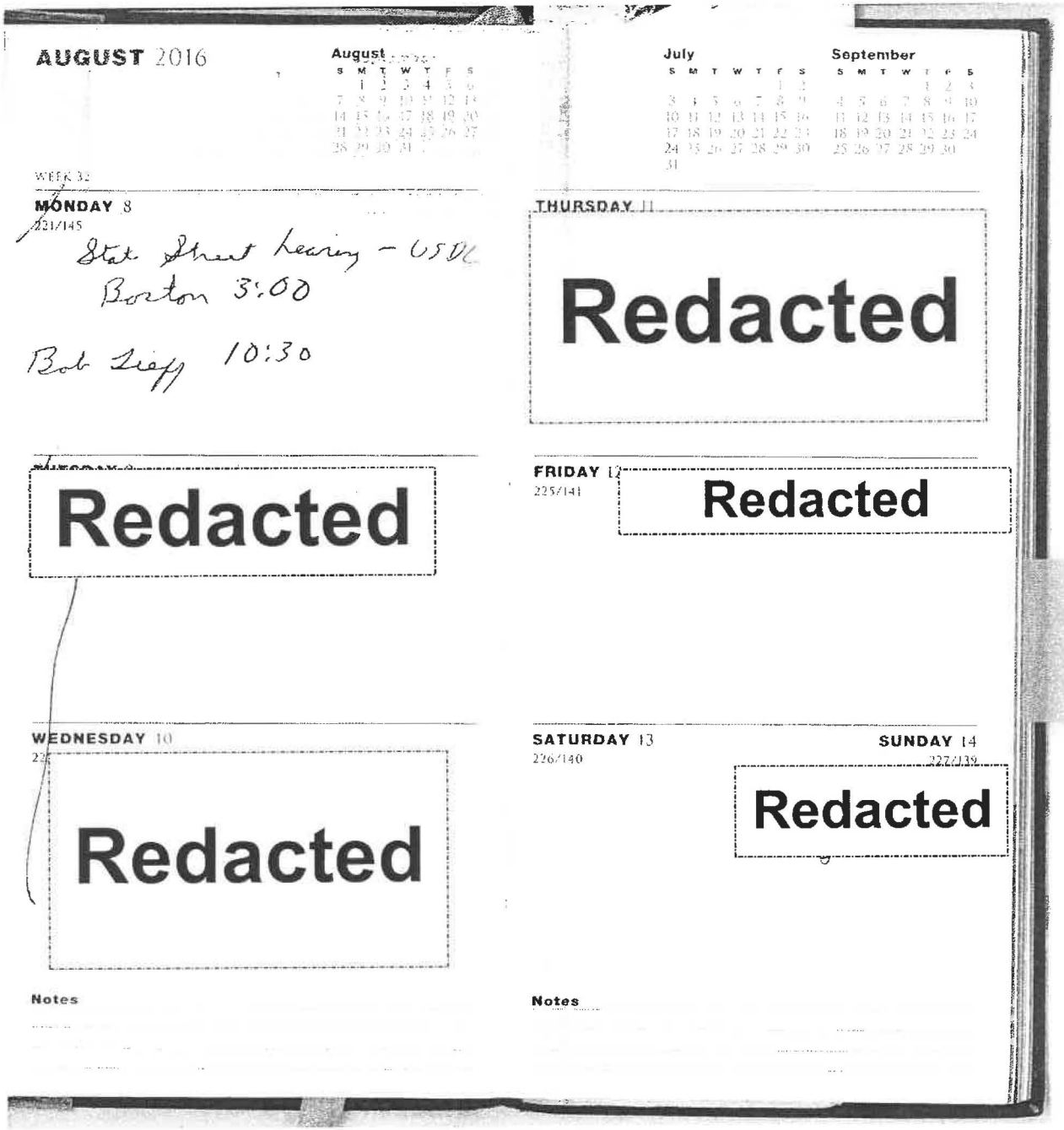
SATURDAY 4
185/180
Independence Day

SUNDAY 5

Redacted

Notes

Notes



AUGUST 2016

August

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

July

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

September

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

WEEK 32

MONDAY 8
221/145

State Street hearing – 0500
Boston 3:00

Bob Sieff 10:30

THURSDAY 11

Redacted

Redacted

FRIDAY 12
225/141

Redacted

WEDNESDAY 10

Redacted

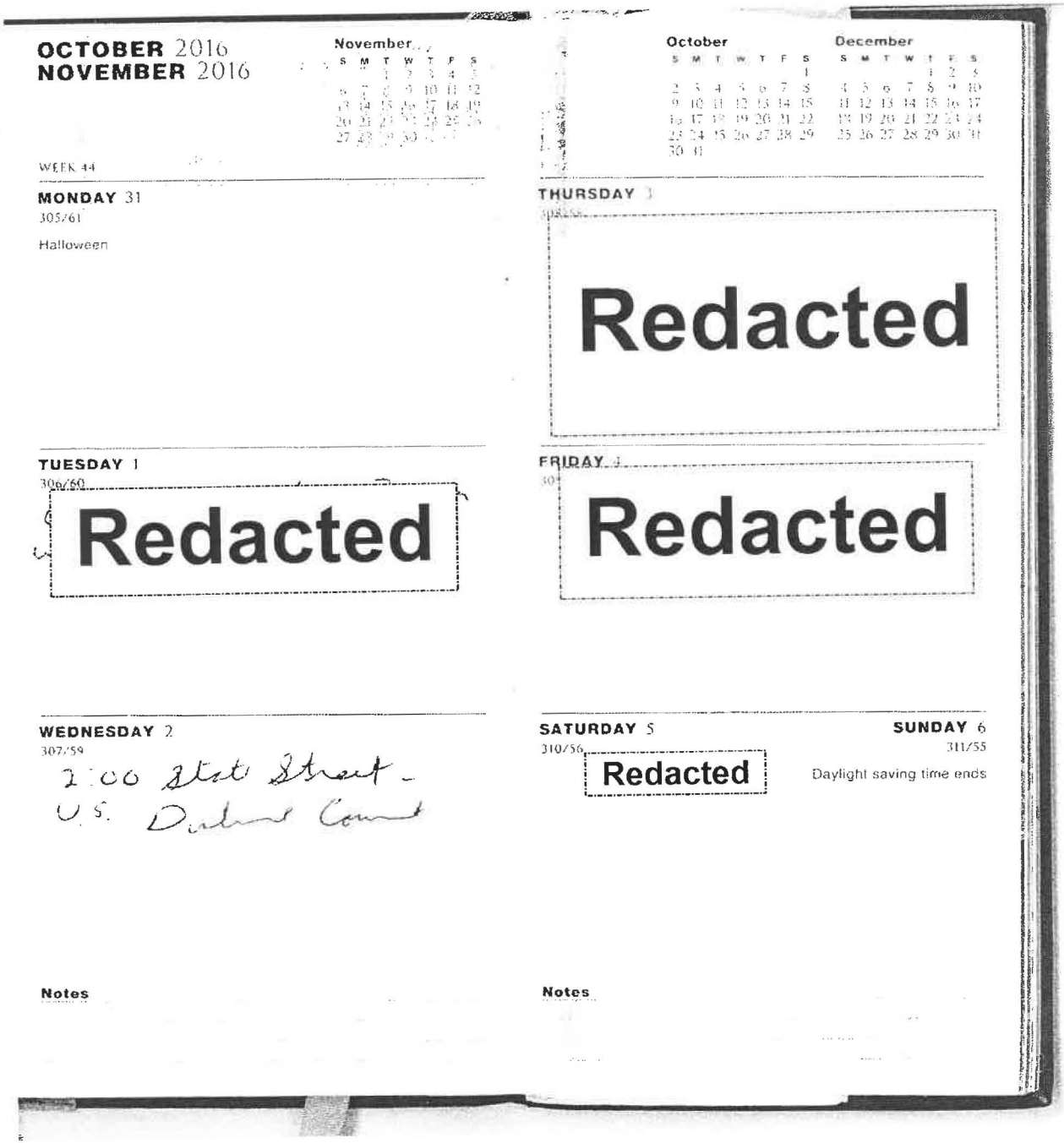
SATURDAY 13
226/140

SUNDAY 14
227/139

Redacted

Notes

Notes



OCTOBER 2016
NOVEMBER 2016

November

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

December

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

WEEK 44

MONDAY 31
305/61
Halloween

TUESDAY 1
306/60
Redacted

WEDNESDAY 2
307/59
2:00 State Street -
U.S. District Court

THURSDAY 3
Redacted

FRIDAY 4
Redacted

SATURDAY 5
310/56
Redacted

SUNDAY 6
311/55
Daylight saving time ends

Notes

Notes

Confidential: Produced Pursuant to Court Order.

TLF-SST-043021

EX. 214

Date	Timekeeper	Narrative	Hours
11/5/2009	Garrett Bradley	Review case and research same	3
11/9/2009	Garrett Bradley	Telephone call with co counsel and communicate with potential clients	2
11/23/2009	Garrett Bradley	Research case; data review; telephone call with co counsel re communication with client	2.5
11/24/2009	Garrett Bradley	call with co-counsel re client communication; review case	2
1/11/2010	Garrett Bradley	Research case	5
1/12/2010	Garrett Bradley	Review data, call with co-cousnel re prosepctive clients	3
1/20/2010	Garrett Bradley	Review case status and emails	2.5
1/28/2010	Garrett Bradley	Call with co-counsel re: status of case and draft complaint	0.8
2/4/2010	Garrett Bradley	Research case and complaint issues and 93A issues	3.5
4/8/2010	Garrett Bradley	Review emails re [redacted]	0.5
4/20/2010	Garrett Bradley	Research data and review trade data to be sent to expert	1
5/24/2010	Garrett Bradley	Call to co-counsel re research; review emails and data compiled	2
6/21/2010	Garrett Bradley	Review case and outstanding issues; call with co-counsel re preparing update for client	2
6/24/2010	Garrett Bradley	Call with LCHB re status and strategy	0.6
7/9/2010	Garrett Bradley	Review emails [redacted] research [redacted]	1.5
7/15/2010	Garrett Bradley	Call with LCHB re [redacted]	0.8
8/30/2010	Garrett Bradley	Call with co counsel re communication with client and research outstanding issues re same	1.5
9/10/2010	Garrett Bradley	Conference call with co-counsel to discuss status and strategy issues	2
9/14/2010	Garrett Bradley	Prepare for and meeting with co counsel re potential class litigation	2.2
9/16/2010	Garrett Bradley	Review emails; call with co-counsel re data compiled on loss charts for ATRS	2.5
9/17/2010	Garrett Bradley	Draft client memorandum; review draft complaint and research potential calls representtive	3
9/21/2010	Garrett Bradley	Calls with LCHB and Labaton re class complaint drafting	1.4
9/24/2010	Garrett Bradley	Review retainer and contracts; call with co-counsel re same; research same	4.5
9/30/2010	Garrett Bradley	Review emails and case memos	1.5
10/5/2010	Garrett Bradley	Revise draft complaint and research	2
11/2/2010	Garrett Bradley	Continue revision of draft complaint and case research	2.5

11/3/2010	Garrett Bradley	Call with co counsel re communication with clients; review emails and draft complaint	2.5
11/4/2010	Garrett Bradley	Travel to NY to meet with client and co-counsel	2
11/4/2010	Garrett Bradley	Meetings with client and co-cousnel to provide update on case and discuss outstanding issues and case research	9
11/5/2010	Garrett Bradley	Review communication from State Street and in-house meeting to discuss status update re client meeting	1.5
11/8/2010	Garrett Bradley	Telephone conference with co-counsel in preparation for 11/9/2010 meeting; call with co-counsel re communication with client; prepare materials	3.5
11/9/2010	Garrett Bradley	Travel to New York for meetings with co-counsel to discuss status and strategy	2
11/9/2010	Garrett Bradley	Meetings in New York with co counsel to discuss status and strategy	7
11/12/2010	Garrett Bradley	Prepare communication for client	1.5
11/17/2010	Garrett Bradley	Review and revise complaint; research same and telephone conference with client	3
11/18/2010	Garrett Bradley	telephone call with co-counsel re communication with client	1
11/23/2010	Garrett Bradley	Communicate with client	1
11/24/2010	Garrett Bradley	Review emails; case status and research; telephone call with co-counsel re communication with client	4
11/29/2010	Garrett Bradley	Review, revise draft communication to client; telephone call with co-counsel re same	2
12/1/2010	Garrett Bradley	Review documents and emails	1.5
12/3/2010	Garrett Bradley	Review emails and research	2
12/6/2010	Garrett Bradley	Review status of case, draft of complaint	2
12/7/2010	Garrett Bradley	Document review; telephone call with co-counsel	3
12/8/2010	Garrett Bradley	Review emails; review data re 93A issues and outstanding issues	2
12/9/2010	Garrett Bradley	Document review	3
12/10/2010	Garrett Bradley	Review draft complaint & 93A research; discuss with in-house counsel	3
12/13/2010	Garrett Bradley	Review emails, complaint and 93A draft memorandum	3
12/14/2010	Garrett Bradley	Review research re 93A issues; review and revise memorandum	3
12/15/2010	Garrett Bradley	Research 93A; review complaint	3
12/16/2010	Garrett Bradley	Review emails on draft complaint and 93A issues	2
12/17/2010	Garrett Bradley	Document review	3
12/20/2010	Garrett Bradley	Meeting in Boston with co-counsel to discuss case and outstanding issues	5
12/21/2010	Garrett Bradley	Review case; inhoues meeting re assignments and research	3.5
12/22/2010	Garrett Bradley	Review 93A memo	3

12/23/2010	Garrett Bradley	Discuss research, memo and related issues with co-counsel	2
1/3/2011	Garrett Bradley	Review and research 93A issues and emails	2.5
1/4/2011	Garrett Bradley	Telephone call to co-counsel re communication with client; discuss strategy; review emails and memos re potential class reps	2.5
1/5/2011	Garrett Bradley	Calls and emails with inhouse counsel re co counsel and complaint draft	1
1/6/2011	Garrett Bradley	Review, revise draft complaint & 93A memo	2
1/7/2011	Garrett Bradley	Continue review of complaint	1.5
1/10/2011	Garrett Bradley	Review emails and research	3
1/11/2011	Garrett Bradley	Review revised documents and research	3.5
1/12/2011	Garrett Bradley	Continue drafting complaint, memo and research issues	4
1/18/2011	Garrett Bradley	Review emails and case strategy	3
1/19/2011	Garrett Bradley	Review and revise guide chart	3
1/20/2011	Garrett Bradley	Review complaint drafts	2
1/21/2011	Garrett Bradley	Review research from clerks; document review	3.5
1/25/2011	Garrett Bradley	Continue drafting complaint, memo and research issues	3
1/26/2011	Garrett Bradley	Review complaint; discussions with co-counsel re same	4
1/27/2011	Garrett Bradley	Telephone call with co-counsel re communication with client; discuss complaint, memorandum and strategy	5
1/28/2011	Garrett Bradley	Review, revise complaint; telephone call with co-counsel regarding same	2.5
2/1/2011	Garrett Bradley	Review 93A memo; complaint	4
2/3/2011	Garrett Bradley	Review memorandum and research	2.5
2/4/2011	Garrett Bradley	Telephone discussion with co-counsel regarding client telephone call; discussed continued strategy issues; research	4
2/7/2011	Garrett Bradley	Reviewed emails;telephone calls with co-counsel regarding complaint and ongoing strategy; continue working on complaint	5
2/8/2011	Garrett Bradley	Review emails; review and revise complaint; telphone call with co-counsel	5
2/9/2011	Garrett Bradley	Review updated complaint; research	5
2/10/2011	Garrett Bradley	Review co-counsel emails and discussion regarding complaint filing	4
2/11/2011	Garrett Bradley	Document review and research	5
2/14/2011	Garrett Bradley	Document review; telephone call with co-counsel	2
2/15/2011	Garrett Bradley	Research and review case; call with co-counsel	3.5
2/17/2011	Garrett Bradley	Continue research and review of case	5
2/21/2011	Garrett Bradley	Review of emails and memos re case	3

2/22/2011	Garrett Bradley	Continue research of 93A issues	3.5
2/23/2011	Garrett Bradley	Document review	5
2/24/2011	Garrett Bradley	Review discovery drafts from co-counsel;continue document review and research	6
2/25/2011	Garrett Bradley	Document review; discussion with co-counsel re client communication	5
3/1/2011	Garrett Bradley	Document review	8
3/2/2011	Garrett Bradley	Review case; call with co-counsel re client communication	2
3/3/2011	Garrett Bradley	Meeting in Rhode Island to discuss case	4
3/4/2011	Garrett Bradley	call with co-counsel re client communicaiton; document review	4
3/7/2011	Garrett Bradley	Research case; call with co-counsel re client communication	5
3/8/2011	Garrett Bradley	Review emails; continue review of status	3
3/10/2011	Garrett Bradley	call with co-counsel re client communication; document review	3
3/11/2011	Garrett Bradley	Traveled to NY to meet with expert	12
3/14/2011	Garrett Bradley	Research expert issues	2.5
3/15/2011	Garrett Bradley	Continue research; review emails with co-counsel re 93A issues	2
3/16/2011	Garrett Bradley	Calls with co-counsel re case status	0.09
3/17/2011	Garrett Bradley	Review case status, emails	3
3/21/2011	Garrett Bradley	Review motion and all correspondence to and from all parties	3
3/22/2011	Garrett Bradley	Review motion and research issues	1.5
3/23/2011	Garrett Bradley	Continue to review issues re motion	3
3/25/2011	Garrett Bradley	Review case	4
3/28/2011	Garrett Bradley	Document review	4
3/29/2011	Garrett Bradley	Review motions; research case	4
3/30/2011	Garrett Bradley	Review revised documents and research	3
4/1/2011	Garrett Bradley	Call to co-counsel re communication with client	1.5
4/4/2011	Garrett Bradley	Review amended complaint	1
4/8/2011	Garrett Bradley	Review file; call to co-counsel to discuss communication with client	3
4/11/2011	Garrett Bradley	emails with co-counsel regarding status of case	1
4/14/2011	Garrett Bradley	Review draft amended complaint	2
4/15/2011	Garrett Bradley	Review file; call to co-counsel to discuss communication with client	2.5
4/20/2011	Garrett Bradley	Review documentation received from client	2
4/21/2011	Garrett Bradley	Review SEC inquiry; call to co-counsel to discuss same	2
4/25/2011	Garrett Bradley	Research outstanding issues regarding recent inquiry	2
5/31/2011	Garrett Bradley	Call to co-counsel re communication with client	0.5

6/1/2011	Garrett Bradley	Call to co-counsel re communication with client and discuss strategy	1.5
6/3/2011	Garrett Bradley	Review motions filed; research same; call to co-counsel re client communication	4
6/8/2011	Garrett Bradley	Call with co-counsel re motion to dismiss assignments; internal meeting re the same	1
6/10/2011	Garrett Bradley	Review emails; motion; memo; research issues in response to same	4
6/17/2011	Garrett Bradley	Document review and research	2
8/19/2011	Garrett Bradley	Review draft briefs, motions	1
8/22/2011	Garrett Bradley	Review reply memorandum, inhouse research and emails	3
9/19/2011	Garrett Bradley	Travel to NY to meet with co-counsel re status and strategy	2
9/19/2011	Garrett Bradley	Meetings in NY with co-counsel to discuss status and strategy of case	8
10/5/2011	Garrett Bradley	Review emails and discuss case with inhouse counsel	1
10/21/2011	Garrett Bradley	Travel to Rhode Island for meeting	2.5
10/21/2011	Garrett Bradley	Meeting in Rhode Island to discuss case	2.5
12/12/2011	Garrett Bradley	Review file; call to co-counsel re stratgy and analysis and status meeting	2
1/10/2012	Garrett Bradley	Call to co-counsel regarding communication with potential client	1
1/12/2012	Garrett Bradley	Review order, call to co-counsel for status on conference and client communication	1
3/22/2012	Garrett Bradley	Review file; call to co-counsel re communication with client	1.5
5/1/2012	Garrett Bradley	Conference call with co-counsel re 5/28 MTD Hearing	0.05
5/8/2012	Garrett Bradley	Prepare and attend Judge Wolf MTD Hearing	6
5/9/2012	Garrett Bradley	Call with co-counsel re client communication;	1.5
5/15/2012	Garrett Bradley	Call with co-counsel re recent court decision and inhouse discussion on stratgey; research re same	2.5
5/12/2012	Garrett Bradley	Prepare and attend Judge Wolf MTD Hearing	6
5/18/2012	Garrett Bradley	Reviewed and discuss with co-counsel materials to be sent to client from co-counsel	2.5
5/24/2012	Garrett Bradley	Continue review of materials to be sent to client; research same	3.5
6/13/2012	Garrett Bradley	Call with co-counsel regarding mediation and communication with client	1
6/14/2012	Garrett Bradley	Review case status and discussion with co-counsel regarding client meeting	2.5
6/21/2012	Garrett Bradley	Continue case review; call with co-counsel re meeting with defense counsel	4
6/22/2012	Garrett Bradley	Call with co-counsel to discuss meeting with defendants; prepare materials; discuss same with inhouse counsel	5
7/2/2012	Garrett Bradley	Call with co-counsel; discuss research	0.5
7/16/2012	Garrett Bradley	Review research and discuss case with co-counsel	2
8/1/2012	Garrett Bradley	Review emails and call with co-counsel	1

8/7/2012	Garrett Bradley	Conference call with co-counsel, mediator, and defense counsel re plans for mediation; emails re the same	1.4
8/9/2012	Garrett Bradley	Review case and participated in conference call	2.5
9/4/2012	Garrett Bradley	Call with co-counsel for status on client meeting	1
9/5/2012	Garrett Bradley	Telephone call with co-counsel	0.5
9/6/2012	Garrett Bradley	Review file, emails, research and discussions re mediation	4
9/7/2012	Garrett Bradley	Prepare for mediation; call with co-counsel re status of meeting	3
9/11/2012	Garrett Bradley	Travel to NYC	2
9/11/2012	Garrett Bradley	Meeting with LCHB and Labaton re mediation goals, strategy.	4
9/13/2012	Garrett Bradley	Ex-parte meeting with mediator	3
9/13/2012	Garrett Bradley	Travel back from NYC to BOS	2
10/22/2012	Garrett Bradley	Prepare for mediation; research; review file	4
10/30/2012	Garrett Bradley	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8
1/7/2013	Garrett Bradley	Review file, emails and call with co-counsel regarding communication with client	2.5
1/24/2013	Garrett Bradley	Call with co-counsel regarding communication with client	0.5
4/11/2013	Garrett Bradley	Review research and emails	1.5
5/3/2013	Garrett Bradley	Review research and emails; call to counsel on client communication	2
6/11/2013	Garrett Bradley	Review research and mediation issues	2.5
7/9/2013	Garrett Bradley	Call with inhouse counsel re medition and review of emails	1
8/14/2013	Garrett Bradley	Call with co-counsel to discuss ongoing research and issues, strategy and analysis of research	2
8/19/2013	Garrett Bradley	Review research	1.5
8/26/2013	Garrett Bradley	Review of emails re progress of document review and draft settlement papers	1
9/13/2013	Garrett Bradley	Prepare for mediation; review files, emails	3
9/16/2013	Garrett Bradley	Review draft document requests, emails and file in preparation for mediation	3
9/17/2013	Garrett Bradley	Travel to NYC	2
9/17/2013	Garrett Bradley	Attend Mediation with mediator	2
9/17/2013	Garrett Bradley	Travel back from NYC to Boston	2
10/1/2013	Garrett Bradley	Review Hill letter, emails and work on discovery issues	2
10/11/2013	Garrett Bradley	Review document research; call with co-counsel re client communication	1.5
10/15/2013	Garrett Bradley	Review letter from SEC; emails	1
10/16/2013	Garrett Bradley	Call with co counsel re mediation status and Hill status	0.09
10/21/2013	Garrett Bradley	Review research and SEC issues	2

10/22/2013	Garrett Bradley	Review emails and call with inhouse counsel regarding conference call	0.5
10/23/2013	Garrett Bradley	Call with co-counsel re client communication and outstanding issues	1
10/28/2013	Garrett Bradley	Discussion with co-counsel re SEC issues; emails and call re same	1
10/31/2013	Garrett Bradley	Review research re discovery issues; call with co-counsel re same	2.5
11/7/2013	Garrett Bradley	Review emails re discovery responses and discussion of same	1.5
11/8/2013	Garrett Bradley	Review of research on discovery issues	2
11/13/2013	Garrett Bradley	Travel to NYC	2
11/13/2013	Garrett Bradley	Attend mediaiton session	3
11/13/2013	Garrett Bradley	Travel back from NYC to Boston	2
11/13/2013	Garrett Bradley	Emails with co counsel re December meeting	0.3
12/3/2013	Garrett Bradley	Review document research; call with co-counsel re client communication	1.5
12/4/2013	Garrett Bradley	Review research, emails and file	2
12/5/2013	Garrett Bradley	Review damages and issues analysis; call with co-counsel re client meeting	2
12/6/2013	Garrett Bradley	Review reseach documentation re internal damages and issues analysis	0.5
12/19/2013	Garrett Bradley	Review emails; call with inhouse counsel re strategy session in CA; call with co-counsel re client communication update	1.4
2/27/2014	Garrett Bradley	Review emails re mediation, spreadsheet, damages sheet	1.5
3/4/2014	Garrett Bradley	Travel to NYC	2
3/4/2014	Garrett Bradley	Attend mediaiton session	3
3/4/2014	Garrett Bradley	Travel back from NYC to Boston	2
3/4/2014	Garrett Bradley	Review emails; call with inhouse counsel re mediation seesion with mediator; call with co-counsel re client communication update	1
3/5/2014	Garrett Bradley	Call with co-counsel re communication with client	0.5
3/7/2014	Garrett Bradley	Review emails; call co-counsel regarding client communication; call with inhouse counsel re status updat	0.5
3/25/2014	Garrett Bradley	Research outstanding issues; call with co-counsel re meeting with Mike Rogers	0.5
4/10/2014	Garrett Bradley	Review presentation and research completed by co-counsel	2
4/16/2014	Garrett Bradley	Review emails of E. co counsel and M. Rogers regarding [redacted]	1
5/6/2014	Garrett Bradley	Prepare for mediation	2
5/22/2014	Garrett Bradley	Review emails to/from co-counsel and ERISA counsel re communications with mediator and M. Rogers; call to co-counsel re client communication	1.5
5/28/2014	Garrett Bradley	Review emails with co-counsel re trade data and ARTRS fx; call to co-counsel re client communication	1

6/5/2014	Garrett Bradley	Review document research and draft discovery	0.5
6/23/2014	Garrett Bradley	Discussion with co-counsel re client communication; review emails	0.5
9/23/2014	Garrett Bradley	Review emails regading discovery issues	0.5
10/24/2014	Garrett Bradley	Review emails re conf call and to/from co-counsel	0.5
10/27/2015	Garrett Bradley	Conference call with co counsel re: mediation scheduling and message for Marks and SST; emails to/from co counsel re: same	1
12/30/2014	Garrett Bradley	Call with co-counsel re client communication and mediation	0.5
1/9/2015	Garrett Bradley	Call with co-counsel re discovery issues	0.5
1/13/2015	Garrett Bradley	Review emails re case stategy	0.5
2/25/2015	Garrett Bradley	Review outstanding issues re mediation; review emails re same	0.5
3/2/2015	Garrett Bradley	Review research; call with co-counsel re client communication	0.5
3/4/2015	Garrett Bradley	Review emails; call with inhouse counsel re emails to co-counsel and mediation update	0.05
3/6/2015	Garrett Bradley	Review emails and draft discovery	1
3/9/2015	Garrett Bradley	Review research documents; call to co-counsel re discovery issues	1
3/12/2015	Garrett Bradley	Review emails from co-counsel; call with co-counsel re client communciation	1
4/1/2015	Garrett Bradley	Review hot docs for STT mediation	1
4/6/2015	Garrett Bradley	Review emails and discussion inhouse counsel re mediation meeting	1
4/30/2015	Garrett Bradley	Attend mediation session	4
6/2/2015	Garrett Bradley	Meeting at Office with co-counsel to discuss case and strategy	0.5
6/2/2015	Garrett Bradley	Meeting at Office with co-counsel to discuss case and strategy	0.5
7/21/2015	Garrett Bradley	Conference call with ERISA co counsel re [redacted] allocation issues; conference call with STT counse re the same	2.1
8/7/2015	Garrett Bradley	Telephone conference with co-counsel regarding status and update of case	0.5
8/11/2015	Garrett Bradley	Telephone conference with co-counsel regarding case	0.5
			539.58

EX. 215

Date	Timekeeper	Narrative	Hours
11/5/2009	Garrett Bradley	Review case and research same	3
11/9/2009	Garrett Bradley	Telephone call with co counsel and communicate with potential clients	2
11/23/2009	Garrett Bradley	Research case; data review; telephone call with co counsel re communication with client	2.5
11/24/2009	Garrett Bradley	call with co-counsel re client communication; review case	2
1/11/2010	Garrett Bradley	Research case	5
1/12/2010	Garrett Bradley	Review data, call with co-cousnel re prosepctive clients	3
1/20/2010	Garrett Bradley	Review case status and emails	2.5
1/28/2010	Garrett Bradley	Call with co-counsel re: status of case and draft complaint	0.8
2/4/2010	Garrett Bradley	Research case and complaint issues and 93A issues	3.5
4/8/2010	Garrett Bradley	Review emails re [redacted]	0.5
4/20/2010	Garrett Bradley	Research data and review trade data to be sent to expert	1
5/24/2010	Garrett Bradley	Call to co-counsel re research; review emails and data compiled	2
6/21/2010	Garrett Bradley	Review case and outstanding issues; call with co-counsel re preparing update for client	2
6/24/2010	Garrett Bradley	Call with LCHB re status and strategy	0.6
7/9/2010	Garrett Bradley	Review emails [redacted]; research [redacted]	1.5
7/15/2010	Garrett Bradley	Call with LCHB re [redacted]	0.8
8/30/2010	Garrett Bradley	Call with co counsel re communication with client and research outstanding issues re same	1.5
9/10/2010	Garrett Bradley	Conference call with co-counsel to discuss status and strategy issues	2
9/14/2010	Garrett Bradley	Prepare for and meeting with co counsel re potential class litigation	2.2
9/16/2010	Garrett Bradley	Review emails; call with co-counsel re data compiled on loss charts for ATRS	2.5
9/17/2010	Garrett Bradley	Draft client memorandum; review draft complaint and research potential calls representtive	3
9/21/2010	Garrett Bradley	Calls with LCHB and Labaton re class complaint drafting	1.4
9/24/2010	Garrett Bradley	Review retainer and contracts; call with co-counsel re same; research same	4.5
9/30/2010	Garrett Bradley	Review emails and case memos	1.5
10/5/2010	Garrett Bradley	Revise draft complaint and research	2
11/2/2010	Garrett Bradley	Continue revision of draft complaint and case research	2.5

9/9/15

11/3/2010	Garrett Bradley	Call with co counsel re communication with clients; review emails and draft complaint	2.5
11/4/2010	Garrett Bradley	Travel to NY to meet with client and co-counsel	2
11/4/2010	Garrett Bradley	Meetings with client and co-cousnel to provide update on case and discuss outstanding issues and case research	9
11/5/2010	Garrett Bradley	Review communication from State Street and in-house meeting to discuss status update re client meeting	1.5
11/8/2010	Garrett Bradley	Telephone conference with co-counsel in preparation for 11/9/2010 meeting; call with co-counsel re communication with client; prepare materials	3.5
11/9/2010	Garrett Bradley	Travel to New York for meetings with co-counsel to discuss status and strategy	2
11/9/2010	Garrett Bradley	Meetings in New York with co counsel to discuss status and strategy	7
11/12/2010	Garrett Bradley	Prepare communication for client	1.5
11/17/2010	Garrett Bradley	Review and revise complaint; research same and telephone conference with client	3
11/18/2010	Garrett Bradley	telephone call with co-counsel re communication with client	1
11/23/2010	Garrett Bradley	Communicate with client	1
11/24/2010	Garrett Bradley	Review emails; case status and research; telephone call with co-counsel re communication with client	4
11/29/2010	Garrett Bradley	Review, revise draft communication to client; telephone call with co-counsel re same	2
12/1/2010	Garrett Bradley	Review documents and emails	1.5
12/3/2010	Garrett Bradley	Review emails and research	2
12/6/2010	Garrett Bradley	Review status of case, draft of complaint	2
12/7/2010	Garrett Bradley	Document review; telephone call with co-counsel	3
12/8/2010	Garrett Bradley	Review emails; review data re 93A issues and outstanding issues	2
12/9/2010	Garrett Bradley	Document review	3
12/10/2010	Garrett Bradley	Review draft complaint & 93A research; discuss with in-house counsel	3
12/13/2010	Garrett Bradley	Review emails, complaint and 93A draft memorandum	3
12/14/2010	Garrett Bradley	Review research re 93A issues; review and revise memorandum	3
12/15/2010	Garrett Bradley	Research 93A; review complaint	3
12/16/2010	Garrett Bradley	Review emails on draft complaint and 93A issues	2
12/17/2010	Garrett Bradley	Document review	3
12/20/2010	Garrett Bradley	Meeting in Boston with co-counsel to discuss case and outstanding issues	5
12/21/2010	Garrett Bradley	Review case; inhoues meeting re assignments and research	3.5
12/22/2010	Garrett Bradley	Review 93A memo	3

12/23/2010	Garrett Bradley	Discuss research, memo and related issues with co-counsel	2
1/3/2011	Garrett Bradley	Review and research 93A issues and emails	2.5
1/4/2011	Garrett Bradley	Telephone call to co-counsel re communication with client; discuss strategy; review emails and memos re potential class reps	2.5
1/5/2011	Garrett Bradley	Calls and emails with inhouse counsel re co counsel and complaint draft	1
1/6/2011	Garrett Bradley	Review, revise draft complaint & 93A memo	2
1/7/2011	Garrett Bradley	Continue review of complaint	1.5
1/10/2011	Garrett Bradley	Review emails and research	3
1/11/2011	Garrett Bradley	Review revised documents and research	3.5
1/12/2011	Garrett Bradley	Continue drafting complaint, memo and research issues	4
1/18/2011	Garrett Bradley	Review emails and case strategy	3
1/19/2011	Garrett Bradley	Review and revise guide chart	3
1/20/2011	Garrett Bradley	Review complaint drafts	2
1/21/2011	Garrett Bradley	Review research from clerks; document review	3.5
1/25/2011	Garrett Bradley	Continue drafting complaint, memo and research issues	3
1/26/2011	Garrett Bradley	Review complaint; discussions with co-counsel re same	4
1/27/2011	Garrett Bradley	Telephone call with co-counsel re communication with client; discuss complaint, memorandum and strategy	5
1/28/2011	Garrett Bradley	Review, revise complaint; telephone call with co-counsel regarding same	2.5
2/1/2011	Garrett Bradley	Review 93A memo; complaint	4
2/3/2011	Garrett Bradley	Review memorandum and research	2.5
2/4/2011	Garrett Bradley	Telephone discussion with co-counsel regarding client telephone call; discussed continued strategy issues; research	4
2/7/2011	Garrett Bradley	Reviewed emails;telephone calls with co-counsel regarding complaint and ongoing strategy; continue working on complaint	5
2/8/2011	Garrett Bradley	Review emails; review and revise complaint; telphone call with co-counsel	5
2/9/2011	Garrett Bradley	Review updated complaint; research	5
2/10/2011	Garrett Bradley	Review co-counsel emails and discussion regarding complaint filing	4
2/11/2011	Garrett Bradley	Document review and research	5
2/14/2011	Garrett Bradley	Document review; telephone call with co-counsel	2
2/15/2011	Garrett Bradley	Research and review case; call with co-counsel	3.5
2/17/2011	Garrett Bradley	Continue research and review of case	5
2/21/2011	Garrett Bradley	Review of emails and memos re case	3

2/22/2011	Garrett Bradley	Continue research of 93A issues	3.5
2/23/2011	Garrett Bradley	Document review	5
2/24/2011	Garrett Bradley	Review discovery drafts from co-counsel;continue document review and research	6
2/25/2011	Garrett Bradley	Document review; discussion with co-counsel re client communication	5
3/1/2011	Garrett Bradley	Document review	8
3/2/2011	Garrett Bradley	Review case; call with co-counsel re client communication	2
3/3/2011	Garrett Bradley	Meeting in Rhode Island to discuss case	4
3/4/2011	Garrett Bradley	call with co-counsel re client communicaiton; document review	4
3/7/2011	Garrett Bradley	Research case; call with co-counsel re client communication	5
3/8/2011	Garrett Bradley	Review emails; continue review of status	3
3/10/2011	Garrett Bradley	call with co-counsel re client communication; document review	3
3/11/2011	Garrett Bradley	Traveled to NY to meet with expert	12
3/14/2011	Garrett Bradley	Research expert issues	2.5
3/15/2011	Garrett Bradley	Continue research; review emails with co-counsel re 93A issues	2
3/16/2011	Garrett Bradley	Calls with co-counsel re case status	0.09
3/17/2011	Garrett Bradley	Review case status, emails	3
3/21/2011	Garrett Bradley	Review motion and all correspondence to and from all parties	3
3/22/2011	Garrett Bradley	Review motion and research issues	1.5
3/23/2011	Garrett Bradley	Continue to review issues re motion	3
3/25/2011	Garrett Bradley	Review case	4
3/28/2011	Garrett Bradley	Document review	4
3/29/2011	Garrett Bradley	Review motions; research case	4
3/30/2011	Garrett Bradley	Review revised documents and research	3
4/1/2011	Garrett Bradley	Call to co-counsel re communication with client	1.5
4/4/2011	Garrett Bradley	Review amended complaint	1
4/8/2011	Garrett Bradley	Review file; call to co-counsel to discuss communication with client	3
4/11/2011	Garrett Bradley	emails with co-counsel regarding status of case	1
4/14/2011	Garrett Bradley	Review draft amended complaint	2
4/15/2011	Garrett Bradley	Review file; call to co-counsel to discuss communication with client	2.5
4/20/2011	Garrett Bradley	Review documentation received from client	2
4/21/2011	Garrett Bradley	Review SEC inquiry; call to co-counsel to discuss same	2
4/25/2011	Garrett Bradley	Research outstanding issues regarding recent inquiry	2
5/31/2011	Garrett Bradley	Call to co-counsel re communication with client	0.5

6/1/2011	Garrett Bradley	Call to co-counsel re communication with client and discuss strategy	1.5
6/3/2011	Garrett Bradley	Review motions filed; research same; call to co-counsel re client communication	4
6/8/2011	Garrett Bradley	Call with co-counsel re motion to dismiss assignments; internal meeting re the same	1
6/10/2011	Garrett Bradley	Review emails; motion; memo; research issues in response to same	4
6/17/2011	Garrett Bradley	Document review and research	2
8/19/2011	Garrett Bradley	Review draft briefs, motions	1
8/22/2011	Garrett Bradley	Review reply memorandum, inhouse research and emails	3
9/19/2011	Garrett Bradley	Travel to NY to meet with co-counsel re status and strategy	2
9/19/2011	Garrett Bradley	Meetings in NY with co-counsel to discuss status and strategy of case	8
10/5/2011	Garrett Bradley	Review emails and discuss case with inhouse counsel	1
10/21/2011	Garrett Bradley	Travel to Rhode Island for meeting	2.5
10/21/2011	Garrett Bradley	Meeting in Rhode Island to discuss case	2.5
12/12/2011	Garrett Bradley	Review file; call to co-counsel re stratgy and analysis and status meeting	2
1/10/2012	Garrett Bradley	Call to co-counsel regarding communication with potential client	1
1/12/2012	Garrett Bradley	Review order, call to co-counsel for status on conference and client communication	1
3/22/2012	Garrett Bradley	Review file; call to co-counsel re communication with client	1.5
5/1/2012	Garrett Bradley	Conference call with co-counsel re 5/28 MTD Hearing	0.05
5/8/2012	Garrett Bradley	Prepare and attend Judge Wolf MTD Hearing	6
5/9/2012	Garrett Bradley	Call with co-counsel re client communication;	1.5
5/15/2012	Garrett Bradley	Call with co-counsel re recent court decision and inhouse discussion on stratgey; research re same	2.5
5/12/2012	Garrett Bradley	Prepare and attend Judge Wolf MTD Hearing	6
5/18/2012	Garrett Bradley	Reviewed and discuss with co-counsel materials to be sent to client from co-counsel	2.5
5/24/2012	Garrett Bradley	Continue review of materials to be sent to client; research same	3.5
6/13/2012	Garrett Bradley	Call with co-counsel regarding mediation and communication with client	1
6/14/2012	Garrett Bradley	Review case status and discussion with co-counsel regarding client meeting	2.5
6/21/2012	Garrett Bradley	Continue case review; call with co-counsel re meeting with defense counsel	4
6/22/2012	Garrett Bradley	Call with co-counsel to discuss meeting with defendants; prepare materials; discuss same with inhouse counsel	5
7/2/2012	Garrett Bradley	Call with co-counsel; discuss research	0.5
7/16/2012	Garrett Bradley	Review research and discuss case with co-counsel	2
8/1/2012	Garrett Bradley	Review emails and call with co-counsel	1

8/7/2012	Garrett Bradley	Conference call with co-counsel, mediator, and defense counsel re plans for mediation; emails re the same	1.4
8/9/2012	Garrett Bradley	Review case and participated in conference call	2.5
9/4/2012	Garrett Bradley	Call with co-counsel for status on client meeting	1
9/5/2012	Garrett Bradley	Telephone call with co-counsel	0.5
9/6/2012	Garrett Bradley	Review file, emails, research and discussions re mediation	4
9/7/2012	Garrett Bradley	Prepare for mediation; call with co-counsel re status of meeting	3
9/11/2012	Garrett Bradley	Travel to NYC	2
9/11/2012	Garrett Bradley	Meeting with LCHB and Labaton re mediation goals, strategy.	4
9/13/2012	Garrett Bradley	Ex-parte meeting with mediator	3
9/13/2012	Garrett Bradley	Travel back from NYC to BOS	2
10/22/2012	Garrett Bradley	Prepare for mediation; research; review file	4
10/30/2012	Garrett Bradley	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8
1/7/2013	Garrett Bradley	Review file, emails and call with co-counsel regarding communication with client	2.5
1/24/2013	Garrett Bradley	Call with co-counsel regarding communication with client	0.5
4/11/2013	Garrett Bradley	Review research and emails	1.5
5/3/2013	Garrett Bradley	Review research and emails; call to counsel on client communication	2
6/11/2013	Garrett Bradley	Review research and mediation issues	2.5
7/9/2013	Garrett Bradley	Call with inhouse counsel re medition and review of emails	1
8/14/2013	Garrett Bradley	Call with co-counsel to discuss ongoing research and issues, strategy and analysis of research	2
8/19/2013	Garrett Bradley	Review research	1.5
8/26/2013	Garrett Bradley	Review of emails re progress of document review and draft settlement papers	1
9/13/2013	Garrett Bradley	Prepare for mediation; review files, emails	3
9/16/2013	Garrett Bradley	Review draft document requests, emails and file in preparation for mediation	3
9/17/2013	Garrett Bradley	Travel to NYC	2
9/17/2013	Garrett Bradley	Attend Mediation with mediator	2
9/17/2013	Garrett Bradley	Travel back from NYC to Boston	2
10/1/2013	Garrett Bradley	Review Hill letter, emails and work on discovery issues	2
10/11/2013	Garrett Bradley	Review document research; call with co-counsel re client communication	1.5
10/15/2013	Garrett Bradley	Review letter from SEC; emails	1
10/16/2013	Garrett Bradley	Call with co counsel re mediation status and Hill status	0.09
10/21/2013	Garrett Bradley	Review research and SEC issues	2

10/22/2013	Garrett Bradley	Review emails and call with inhouse counsel regarding conference call	0.5
10/23/2013	Garrett Bradley	Call with co-counsel re client communication and outstanding issues	1
10/28/2013	Garrett Bradley	Discussion with co-counsel re SEC issues; emails and call re same	1
10/31/2013	Garrett Bradley	Review research re discovery issues; call with co-counsel re same	2.5
11/7/2013	Garrett Bradley	Review emails re discovery responses and discussion of same	1.5
11/8/2013	Garrett Bradley	Review of research on discovery issues	2
11/13/2013	Garrett Bradley	Travel to NYC	2
11/13/2013	Garrett Bradley	Attend mediaiton session	3
11/13/2013	Garrett Bradley	Travel back from NYC to Boston	2
11/13/2013	Garrett Bradley	Emails with co counsel re December meeting	0.3
12/3/2013	Garrett Bradley	Review document research; call with co-counsel re client communication	1.5
12/4/2013	Garrett Bradley	Review research, emails and file	2
12/5/2013	Garrett Bradley	Review damages and issues analysis; call with co-counsel re client meeting	2
12/6/2013	Garrett Bradley	Review reseach documentation re internal damages and issues analysis	0.5
12/19/2013	Garrett Bradley	Review emails; call with inhouse counsel re strategy session in CA; call with co-counsel re client communication update	1.4
2/27/2014	Garrett Bradley	Review emails re mediation, spreadsheet, damages sheet	1.5
3/4/2014	Garrett Bradley	Travel to NYC	2
3/4/2014	Garrett Bradley	Attend mediaiton session	3
3/4/2014	Garrett Bradley	Travel back from NYC to Boston	2
3/4/2014	Garrett Bradley	Review emails; call with inhouse counsel re mediation seesion with mediator; call with co-counsel re client communication update	1
3/5/2014	Garrett Bradley	Call with co-counsel re communication with client	0.5
3/7/2014	Garrett Bradley	Review emails; call co-counsel regarding client communication; call with inhouse counsel re status updat	0.5
3/25/2014	Garrett Bradley	Research outstanding issues; call with co-counsel re meeting with Mike Rogers	0.5
4/10/2014	Garrett Bradley	Review presentation and research completed by co-counsel	2
4/16/2014	Garrett Bradley	Review emails of E. co counsel and M. Rogers regarding [redacted]	1
5/6/2014	Garrett Bradley	Prepare for mediation	2
5/22/2014	Garrett Bradley	Review emails to/from co-counsel and ERISA counsel re communications with mediator and M. Rogers; call to co-counsel re client communication	1.5
5/28/2014	Garrett Bradley	Review emails with co-counsel re trade data and ARTRS fx; call to co-counsel re client communication	1

6/5/2014	Garrett Bradley	Review document research and draft discovery	0.5
6/23/2014	Garrett Bradley	Discussion with co-counsel re client communication; review emails	0.5
9/23/2014	Garrett Bradley	Review emails regading discovery issues	0.5
10/24/2014	Garrett Bradley	Review emails re conf call and to/from co-counsel	0.5
10/27/2015	Garrett Bradley	Conference call with co counsel re: mediation scheduling and message for Marks and SST; emails to/from co counsel re: same	1
12/30/2014	Garrett Bradley	Call with co-counsel re client communication and mediation	0.5
1/9/2015	Garrett Bradley	Call with co-counsel re discovery issues	0.5
1/13/2015	Garrett Bradley	Review emails re case stategy	0.5
2/25/2015	Garrett Bradley	Review outstanding issues re mediation; review emails re same	0.5
3/2/2015	Garrett Bradley	Review research; call with co-counsel re client communication	0.5
3/4/2015	Garrett Bradley	Review emails; call with inhouse counsel re emails to co-counsel and mediation update	0.05
3/6/2015	Garrett Bradley	Review emails and draft discovery	1
3/9/2015	Garrett Bradley	Review research documents; call to co-counsel re discovery issues	1
3/12/2015	Garrett Bradley	Review emails from co-counsel; call with co-counsel re client communciation	1
4/1/2015	Garrett Bradley	Review hot docs for STT mediation	1
4/6/2015	Garrett Bradley	Review emails and discussion inhouse counsel re mediation meeting	1
4/30/2015	Garrett Bradley	Attend mediation session	4
6/2/2015	Garrett Bradley	Meeting at Office with co-counsel to discuss case and strategy	0.5
6/2/2015	Garrett Bradley	Meeting at Office with co-counsel to discuss case and strategy	0.5
7/21/2015	Garrett Bradley	Conference call with ERISA co counsel re DOL [redacted] conference call with STT counse re the same	2.1
8/7/2015	Garrett Bradley	Telephone conference with co-counsel regarding status and update of case	0.5
8/11/2015	Garrett Bradley	Telephone conference with co-counsel regarding case	0.5
			539.58

EX. 216

Labaton Sucharow

MEMORANDUM

TO: File

FROM: Jonathan Gardner, Paul Scarlato, Craig A. Martin

DATE: January 20, 2011

RE: Potential Claims Against State Street Under M.G.L. c. 93A

I. [redacted]

[redacted]

II. [redacted]

[redacted]

III. [redacted]

[redacted]

MEMORANDUM

[redacted]

IV. [redacted]

[redacted]

[redacted]

[redacted]

1. [redacted]

[redacted]

2. [redacted]

[redacted]

MEMORANDUM

[redacted]

[redacted]

[redacted]

1. [redacted]

[redacted]

2. [redacted]

[redacted]

3. [redacted]

[redacted]

C. [redacted]

[redacted]

D. [redacted]

[redacted]

V. [redacted]

[redacted]

VI. [redacted]

[redacted]

VII. [redacted]

[redacted]

3.5 hrs

EX. 217

ichael Lesser

rom: Belfi, Eric J. [EBelfi@labaton.com]
ent: Wednesday, December 08, 2010 11:59 AM
o: Michael Lesser
c: Michael Thornton; Garrett Bradley
ubject: Re: Summary of Labaton's Corroborating Witness Contacts: Confidential

hank you. I have sent to George. I plan to speak to him in the morning and the I will call you.

ric Belfi
artner
abaton Sucharow LLP
40 Broadway
lew York, N.Y. 10005
: 1.212.907.0878
: 1.516.509.5236

)n Dec 8, 2010, at 11:20 AM, "Michael Lesser" <MLesser@tenlaw.com> wrote:

Eric:

Email re investigation of claims asserted in State Street Litigation

Email re investigation of claims asserted in State Street Litigation

Michael A. Lesser, Esq.
Thornton & Naumes LLP
100 Summer St.
Boston, MA 02110
617-720-1333
800-431-4600
mlesser@tenlaw.com

EX. 218

Memorandum

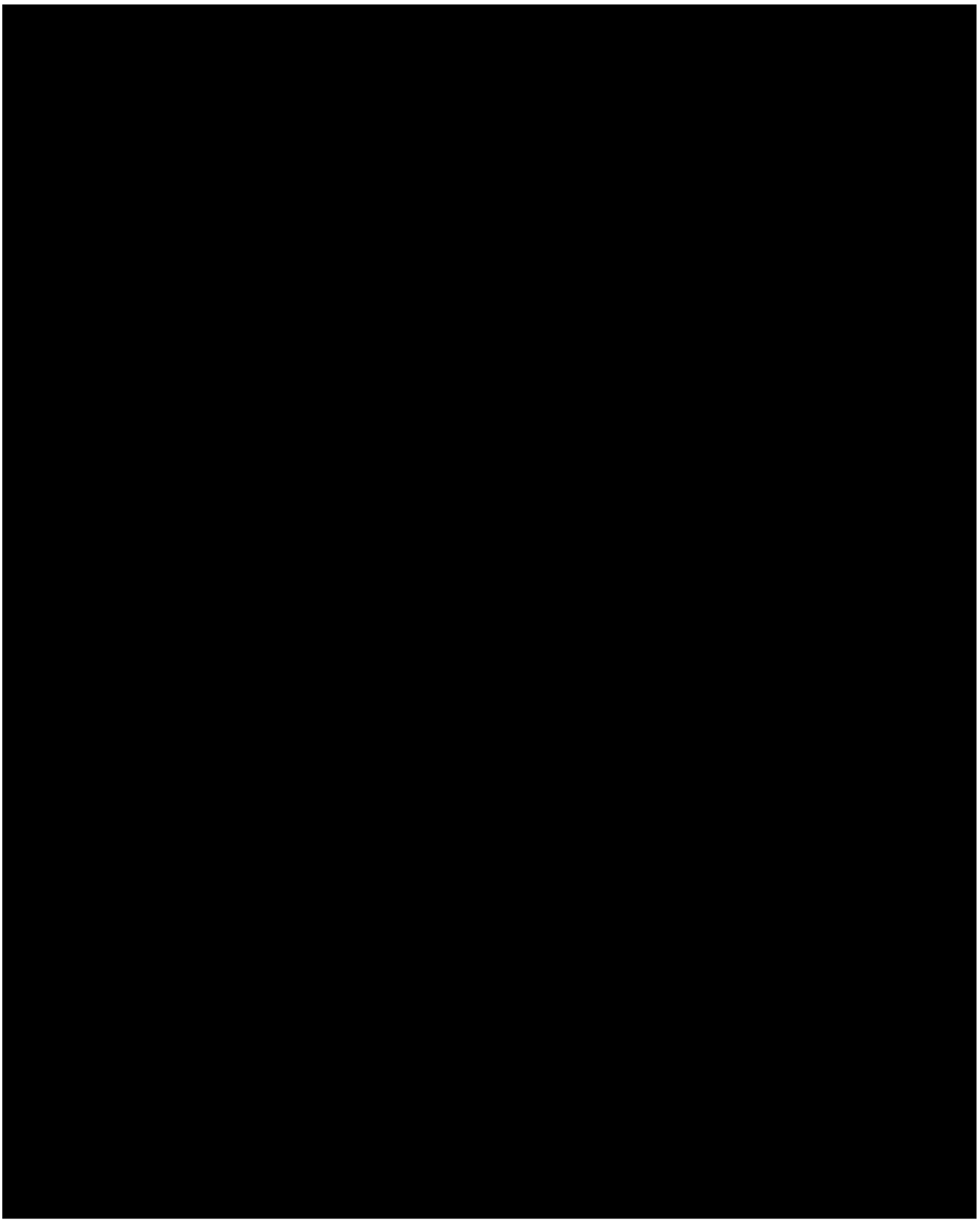
TO: Mike Lesser

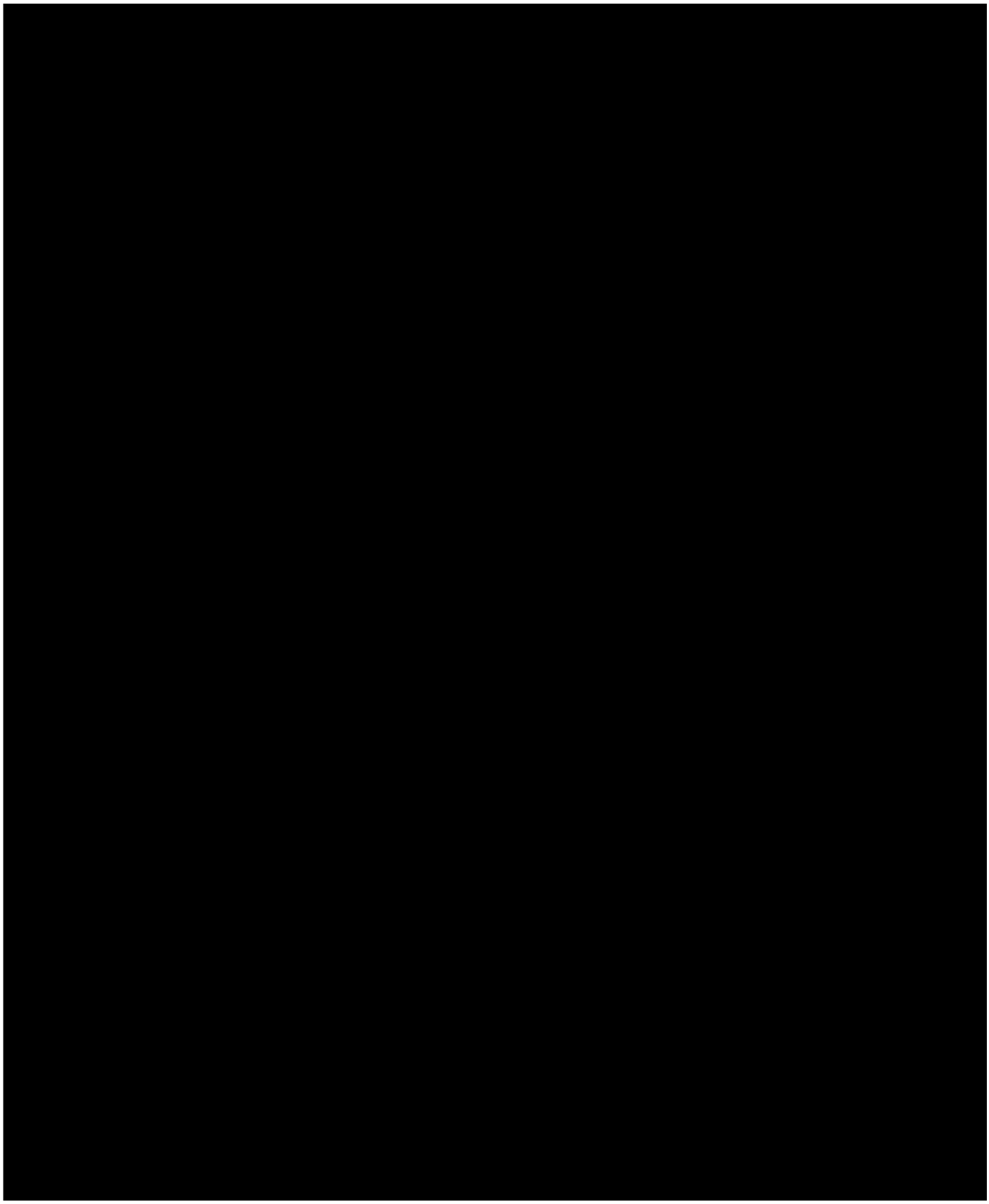
FROM: Evan Hoffman

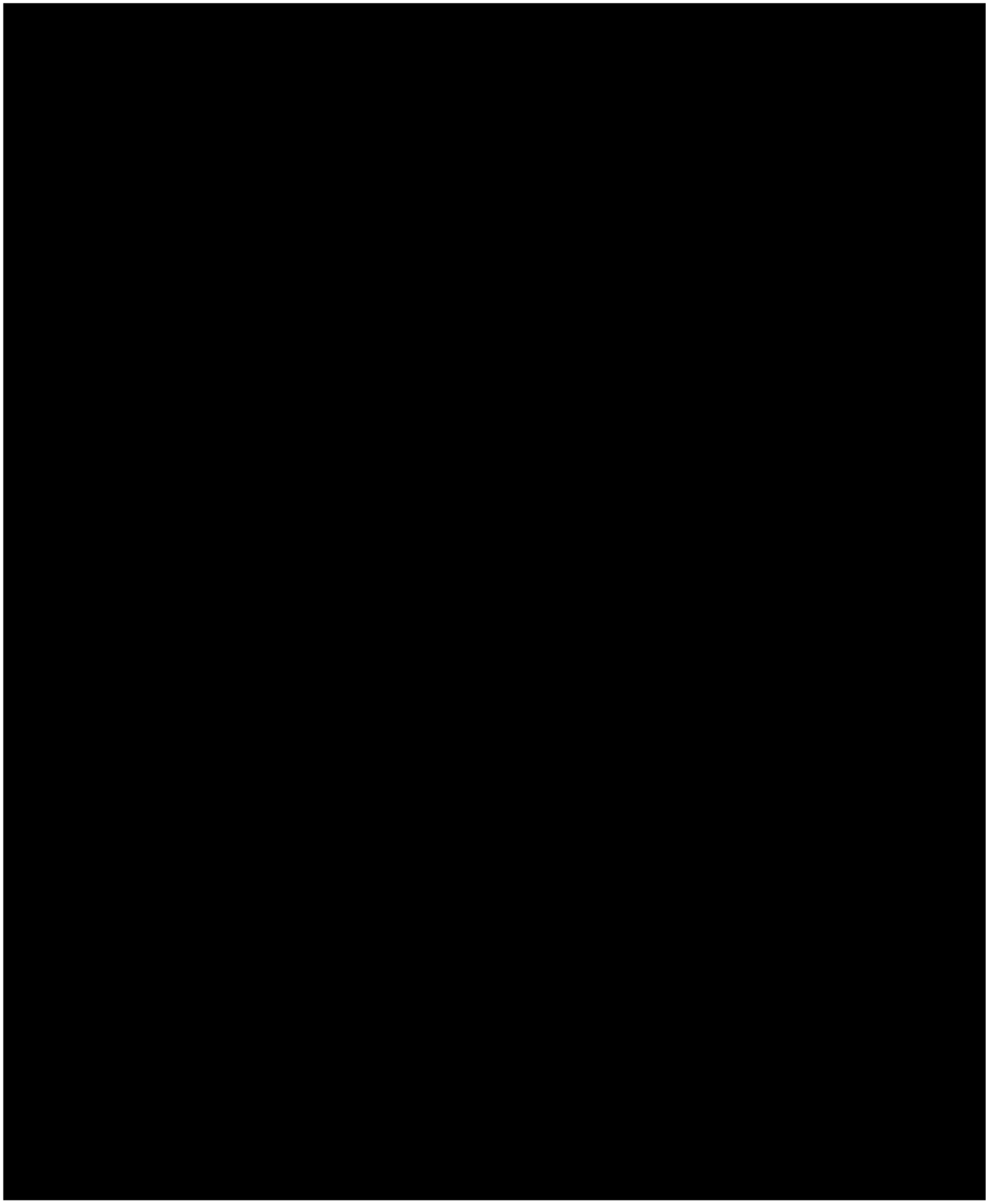
DATE: 22 December 2010

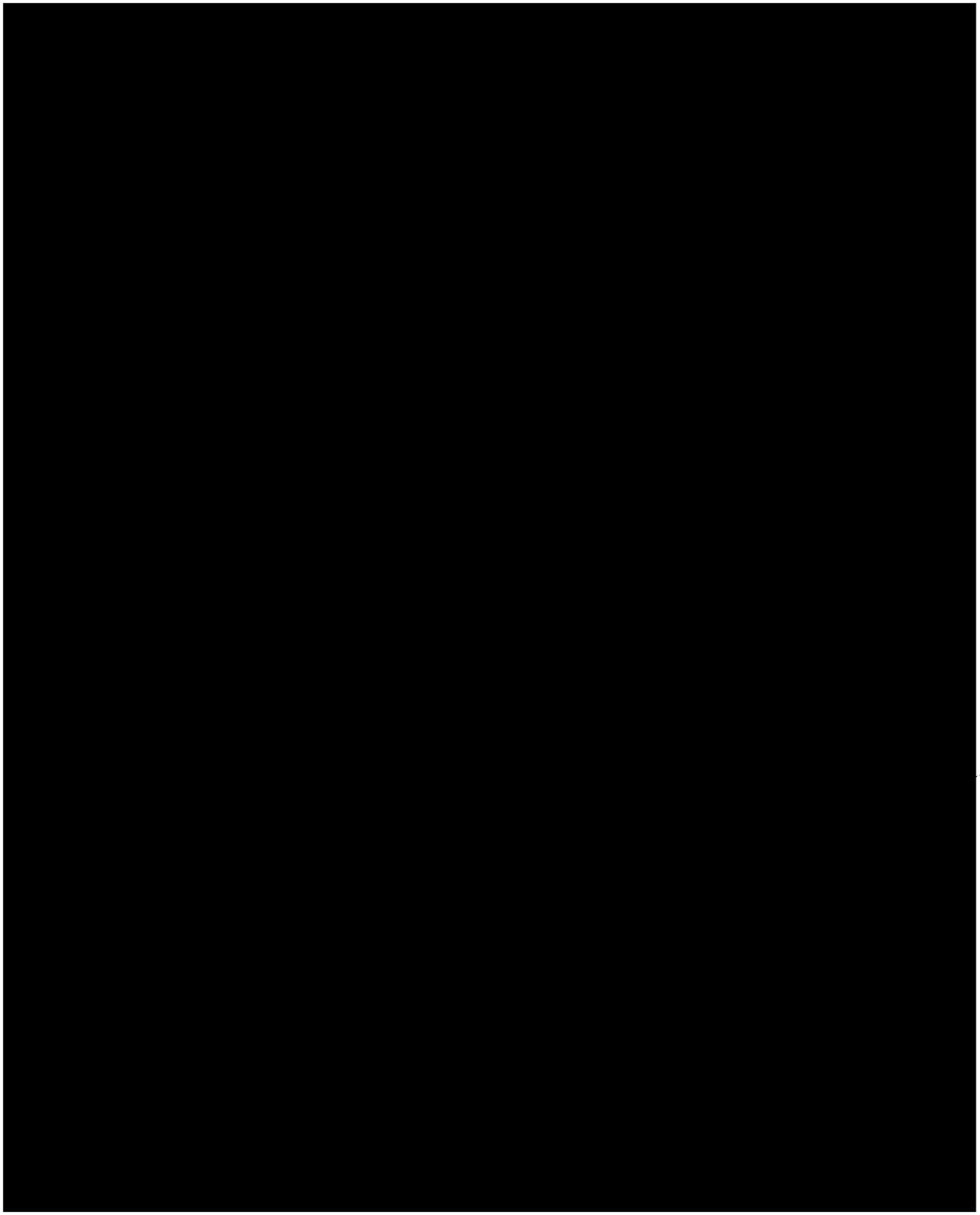
RE: ARTRS and a Guideline to Ch. 93A Claims, §§9 and 11.

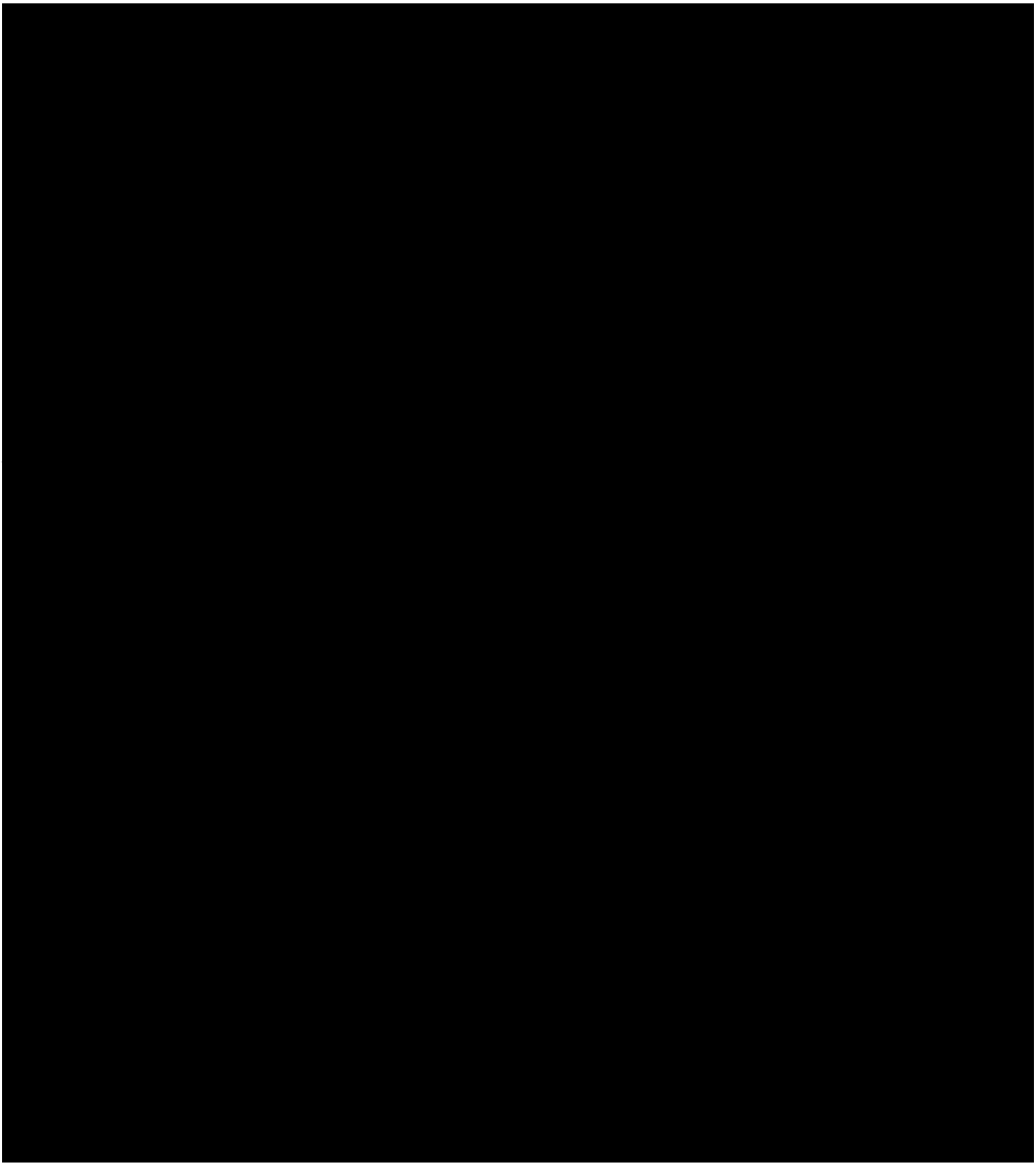
[redacted]

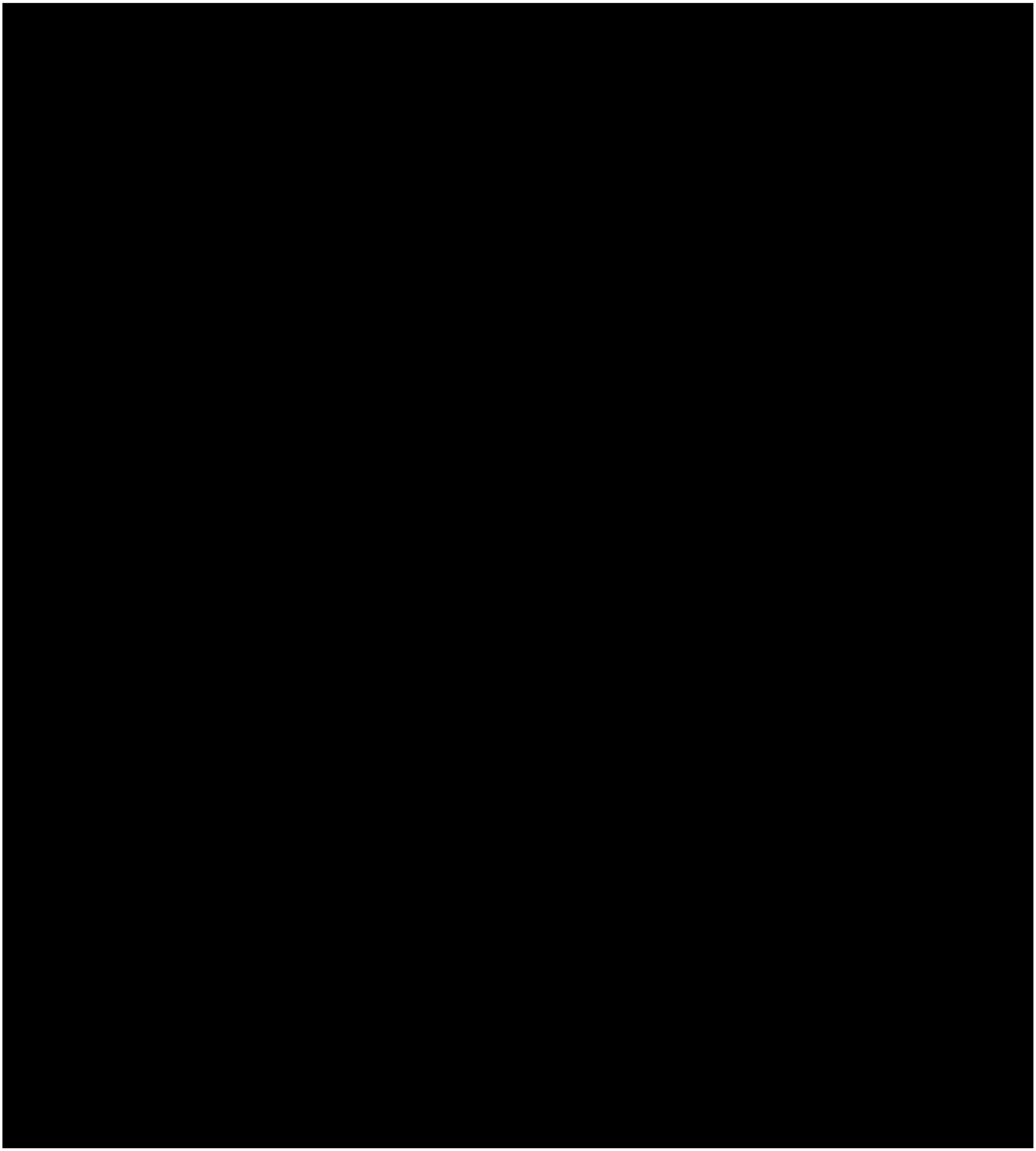












[redacted]

EX. 219

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 GARRETT J. BRADLEY

I, Garrett J. Bradley, declare as follows:

1. I am the author of the handwritten notes that appear on the following pages produced to the Special Master (with the exception of signatures and accompanying signature dates that are clearly part of the underlying documents):

1. TLF-SST-090346
2. TLF-SST-090347
3. TLF-SST-090368
4. TLF-SST-090373
5. TLF-SST-090381
6. TLF-SST-090399
7. TLF-SST-090443
8. TLF-SST-090471
9. TLF-SST-090523
10. TLF-SST-090524
11. TLF-SST-090540
12. TLF-SST-090554
13. TLF-SST-090576
14. TLF-SST-090580
15. TLF-SST-090581
16. TLF-SST-090584
17. TLF-SST-090598
18. TLF-SST-090604
19. TLT-SST-090605
20. TLT-SST-090627
21. TLF-SST-090645
22. TLF-SST-090646
23. TLF-SST-090651
24. TLF-SST-090652
25. TLF-SST-090654
26. TLF-SST-090655
27. TLF-SST-090656
28. TLF-SST-090661
29. TLF-SST-090662
30. TLF-SST-090664
31. TLF-SST-090665
32. TLF-SST-090666
33. TLF-SST-090677
34. TLF-SST-090682
35. TLF-SST-090683
36. TLF-SST-090684
37. TLF-SST-090695
38. TLF-SST-090704
39. TLF-SST-090715
40. TLF-SST-090716
41. TLF-SST-090751
42. TLF-SST-090812
43. TLF-SST-090814
44. TLF-SST-090817
45. TLF-SST-090827
46. TLF-SST-090837
47. TLF-SST-090854
48. TLF-SST-090855
49. TLF-SST-090858
50. TLF-SST-090863
51. TLF-SST-090917
52. TLF-SST-090922
53. TLF-SST-090930

2. I do not have a specific recollection of when I wrote the notes on the pages cited in paragraph 1 of this Declaration. Some of the notes appear to contain my thoughts on the documents, or are notes of meetings. Most of the notes appear to show an amount of time. One of my practices was to record the amount of time I spent reviewing a particular document on the document itself. I assume this is the case with respect to the time notations appearing on the pages cited in paragraph 1 of this Declaration.

3. I am the author of some, but not all, of the handwritten notes on the page produced to the Special Master at Bates number TLF-SST-090729. In particular, I am the author of the notation in the upper left corner of the page. I am not the author of the notation in the bottom right corner of the page. Nor am I the author of any of the markings that appear on subsequent pages of this document (*i.e.*, TLF-SST-090730 to TLF-SST-090749).

4. I am the author of some, but not all, of the handwritten notes on the page produced to the Special Master at Bates number TLF-SST-090832. In particular, I am the author of the notation in the lower left corner of the page. I am not the author of the notations above the words "Chicago" and "Agent" in the paragraph at the bottom of the page.

5. I am the author of some, but not all, of the handwritten notes on the page produced to the Special Master at Bates number TLF-SST-090872. In particular, I am the author of the notation on the lower left corner of the page. I am not the author of the notation on the top right corner of the page.

6. I am the author of some, but not all, of the handwritten notes on the page produced to the Special Master at Bates number TLF-SST-090901. In particular, I am the author of the notation on the lower left corner of the page. I am not the author of the notation above and to the right of the quotation in what is marked paragraph 2.

7. I am the author of some, but not all, of the handwritten notes on the page produced to the Special Master at Bates number TLF-SST-090905. In particular, I am the author of the notation on the lower left corner of the page. I am not the author of the notation immediately below the title of the page.

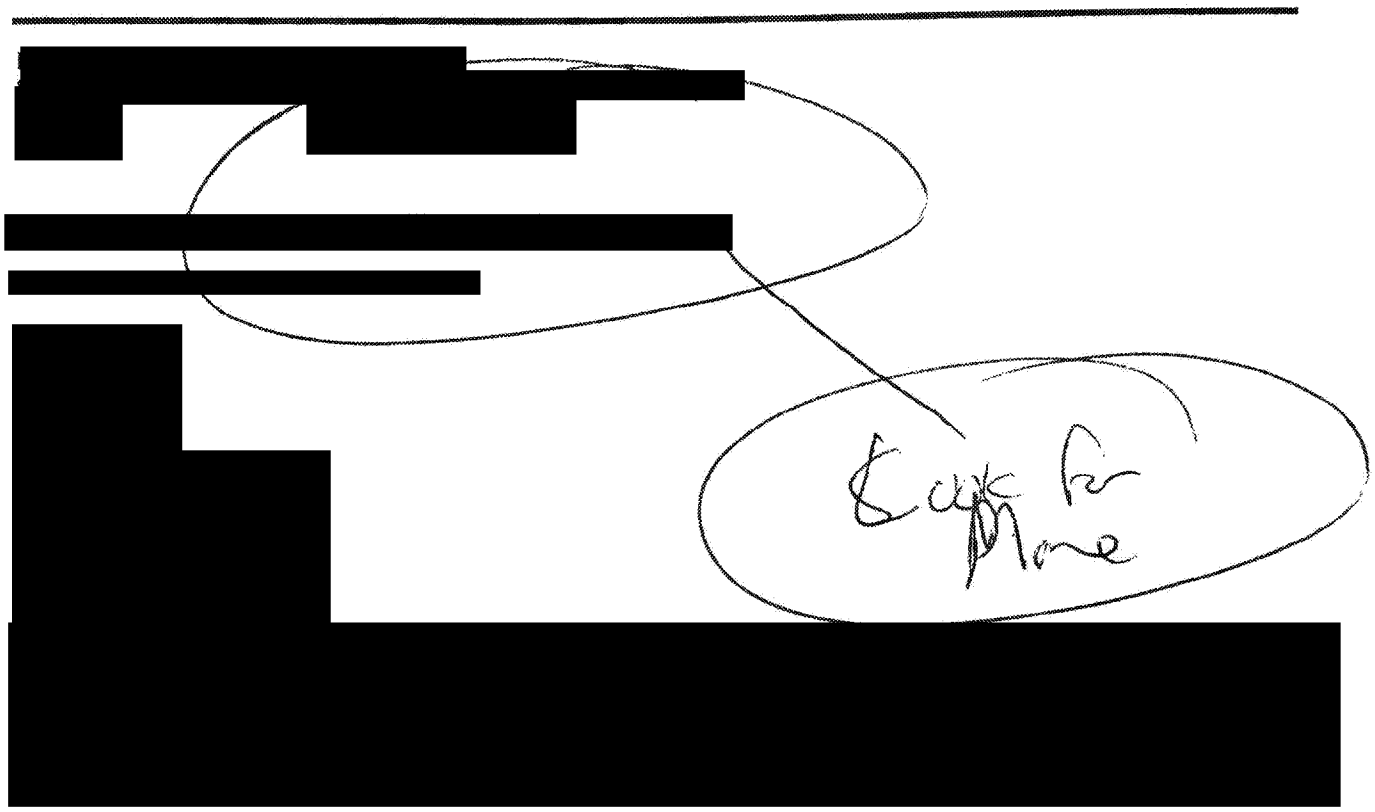
8. I am not the author of the handwritten notes on the page produced to the Special Master at Bates numbers TLF-SST-090887, TLF-SST-090400, TLF-SST-090615, TLF-SST-090723, and TLF-SST-090833.

9. The time records at Bates Numbers TLF-SST-090931 to TLF-SST-091187 appear to be copies or drafts of the master spreadsheet created by TLF and maintained during the course of the State Street litigation. It is my understanding that the final version of this spreadsheet was previously produced to the Special Master at Bates number TLF-SST-000001.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2018.

Garrett J. Bradley

EX. 220



EX. 221

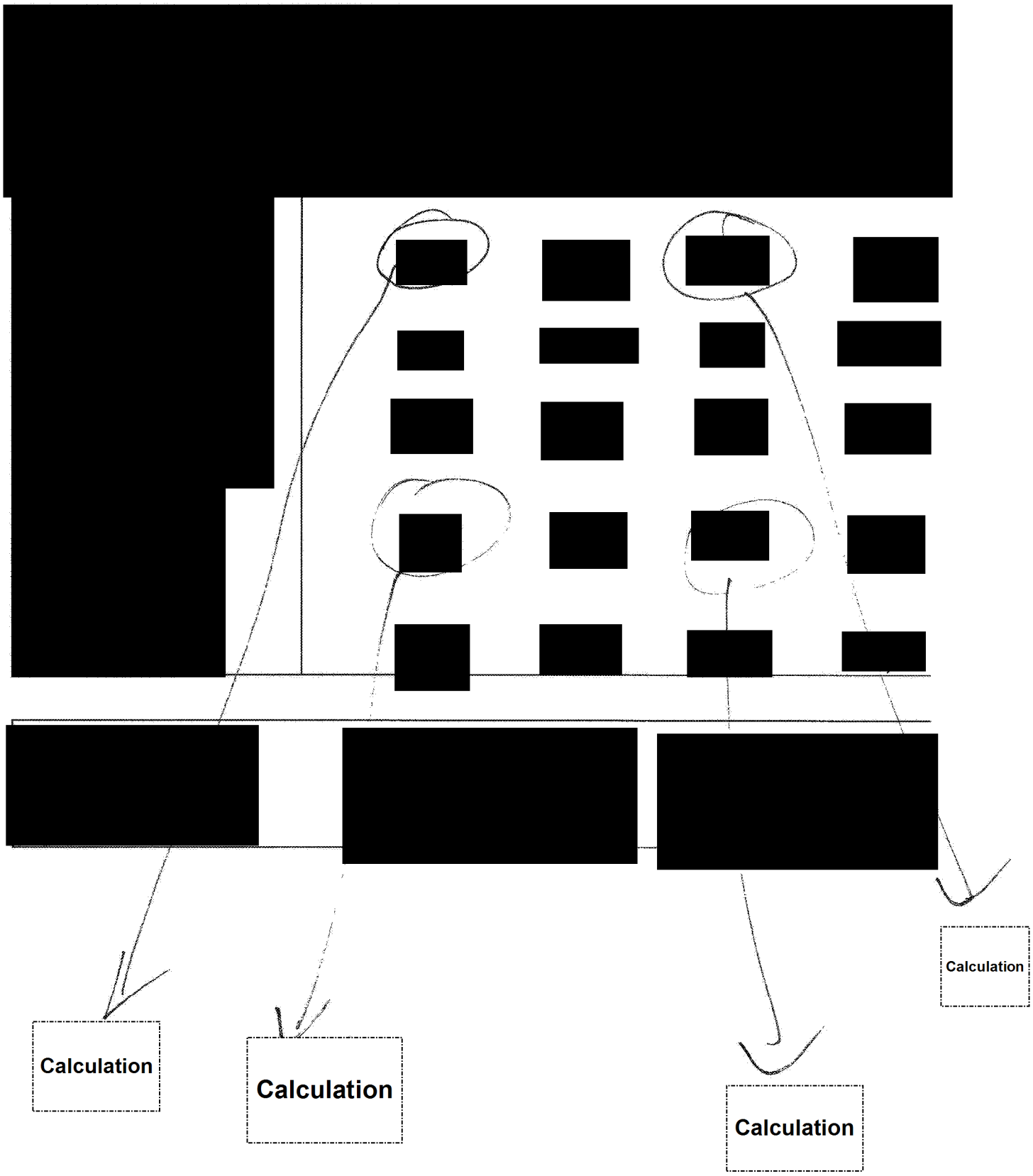
[redacted]

[redacted]

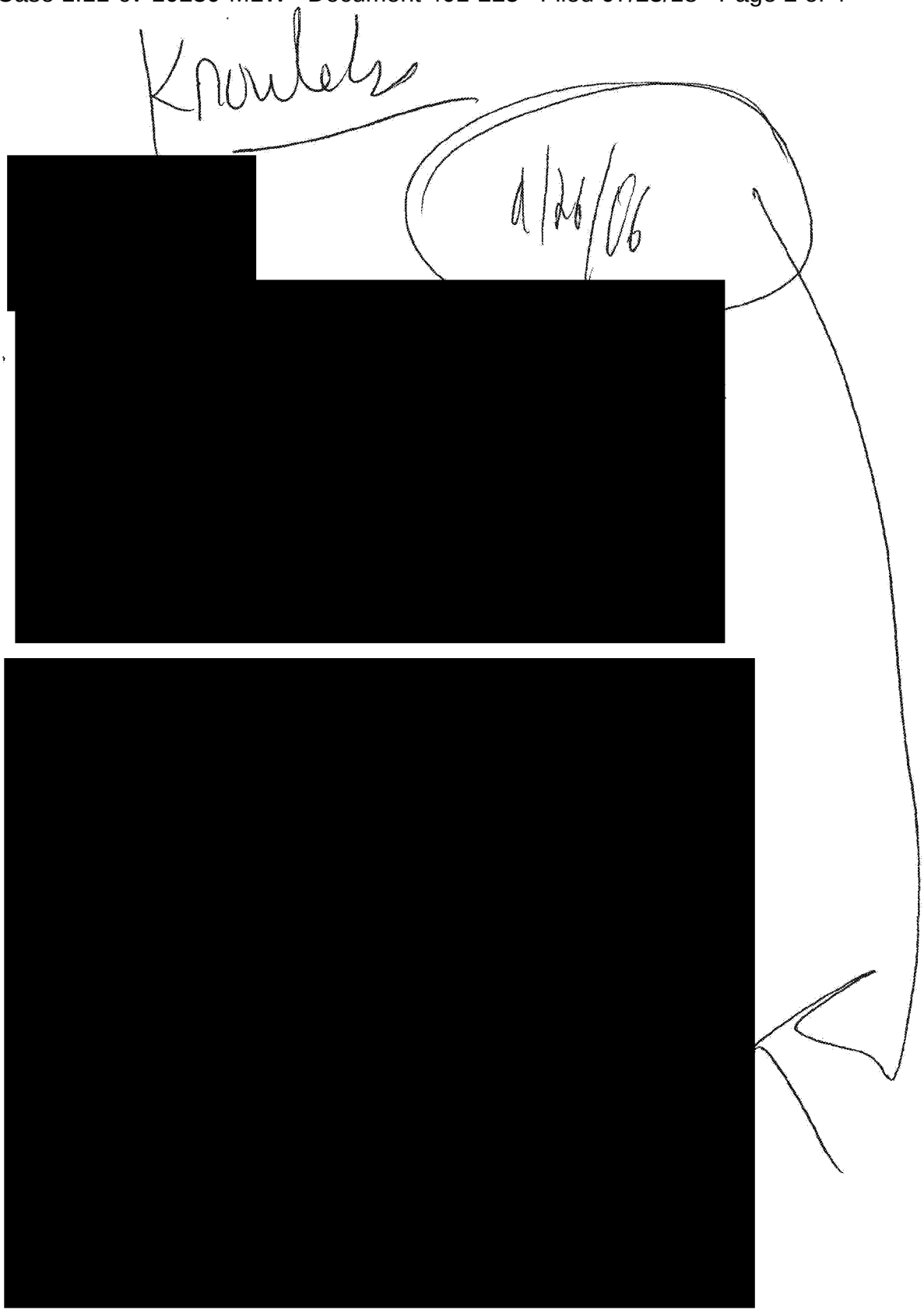
Gerbox

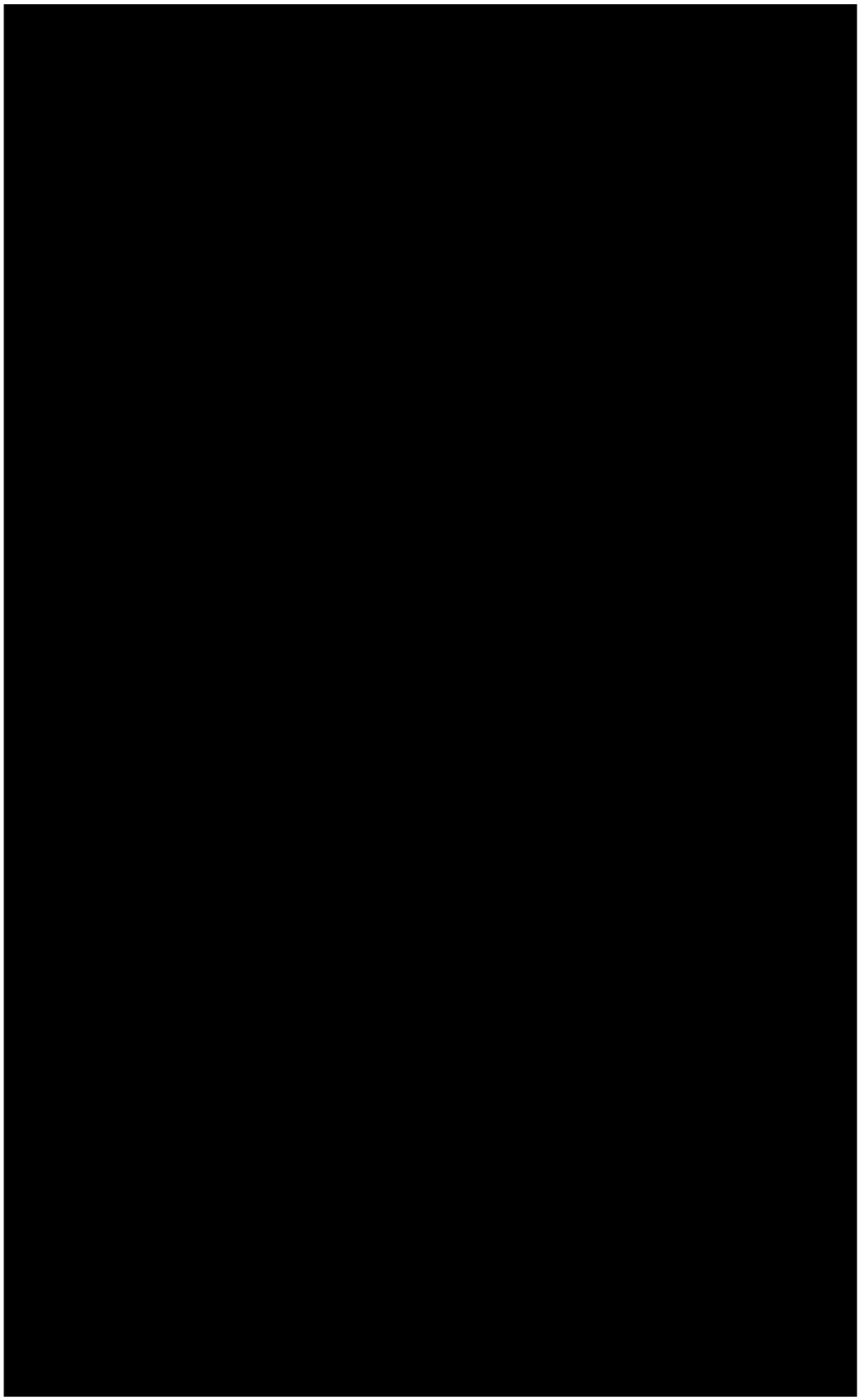
[redacted]

EX. 222


Calculation
Calculation
Calculation
Calculation

EX. 223


Knowles
1/20/06
[redacted]
[redacted]
[redacted]



EX. 224

[redacted]

[redacted]

EX. 225

Massachusetts Rules of Professional Conduct (Mass.R.Prof.C.), Rule 1.5
Massachusetts General Laws Annotated Currentness
Rules of the Supreme Judicial Court (Refs & Annos)
Chapter Three. Ethical Requirements and Rules Concerning the Practice of Law
Rule 3:07. Massachusetts Rules of Professional Conduct and Comments (Refs & Annos)
Client-Lawyer Relationship

Rule 1.5. Fees

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining whether a fee is clearly excessive 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.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. Except for contingent fee arrangements concerning the collection of commercial accounts and of insurance company subrogation claims, a contingent fee agreement shall be in writing and signed in duplicate by both the lawyer and the client within a reasonable time after the making of the agreement. One such copy (and proof that the duplicate copy has been delivered or mailed to the client) shall be retained by the lawyer for a period of seven years after the conclusion of the contingent fee matter. The writing shall state:

(1) the name and address of each client;

(2) the name and address of the lawyer or lawyers to be retained;

(3) the nature of the claim, controversy, and other matters with reference to which the services are to be performed;

(4) the contingency upon which compensation to be paid, and whether and to what extent the client is to be liable to pay compensation otherwise than from amounts collected for him or her by the lawyer;

(5) the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer out of amounts collected, and unless the parties otherwise agree in writing, that the lawyer shall be entitled to the

greater of (i) the amount of any attorney's fees awarded by the court or included in the settlement or (ii) the percentage or other formula applied to the recovery amount not including such attorney's fees; and

(6) the method by which litigation and other expenses are to be deducted from the recovery and whether such expenses are to be deducted before or after the contingent fee is calculated.

Upon conclusion of a contingent fee matter for which a writing is required under this paragraph, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) 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 participation and the total fee is reasonable. This limitation does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

(f) The following form of contingent fee agreement may be used to satisfy the requirements of paragraph (c). The authorization of this form shall not prevent the use of other forms consistent with this rule.

CONTINGENT FEE AGREEMENT

To be Executed in Duplicate

Date: _____, 19___

The Client .....

(Name) (Street & Number) (City or Town)

retains the Lawyer .....

(Name) (Street & Number) (City or Town)

to perform the legal services mentioned in paragraph (1) below. The lawyer agrees to perform them faithfully and with due diligence.

(1) The claim, controversy, and other matters with reference to which the services are to be performed are:

(2) The contingency upon which compensation is to be paid is:

(3) The client is not to be liable to pay compensation or court costs and expenses of litigation otherwise than from amounts collected for the client by the lawyer, except as follows:

(4) Compensation (including that of any associated counsel) to be paid to the lawyer by the client on the foregoing contingency shall be the following percentage of the (gross) (net) [indicate which] amount collected. [Here insert the percentages to be charged in the event of collection. These may be on a flat rate basis or in a descending scale in relation to the amount collected.] The percentage shall be applied to the amount of the recovery not including any attorney's fees awarded by a court or included in a settlement. The lawyer's compensation shall be such attorney's fees or the

amount determined by the percentage calculation described above, whichever is greater. [Modify the last two sentences as appropriate if the parties agree on some other basis for calculation.]

This agreement and its performance are subject to Rule 1.5 of the Rules of Professional Conduct adopted by the Massachusetts Supreme Judicial Court.

WE EACH HAVE READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Witnesses to signatures

(To client) .....

(Signature of Client)

(To lawyer) .....

(Signature of Lawyer)

(If more space is needed separate sheets may be attached and initialed.)

CREDIT(S)

Adopted June 9, 1997, effective January 1, 1998. Amended November 2, 2000, effective January 2, 2001.

COMMENT

2006 Main Volume

Basis or Rate of Fee

[1] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, 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 render 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.

[1A] Rule 1.5(a) departs from Model Rule 1.5(a) by retaining the standard of former DR2-106(A) that a fee must be illegal or clearly excessive to constitute a violation of this rule. However, it does not affect the substantive law that fees must be reasonable to be enforceable against the client.

[1B] Rule 1.5(b) states, as the ABA Model Rule does, that the basis or rate of a fee shall be communicated "preferably in writing". Appropriate caution and ease of proof of compliance with Rule 1.5(b) indicate that the presentation of a fee arrangement to a client in writing is desirable.

Terms of Payment

[2] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(j). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

[3] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby

services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Division of Fee

[4] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee after disclosure of the fact of division to, and consent by, the client. It does not require disclosure to the client of the share that each lawyer is to receive. Moreover, as under the former rule, the total fee must be reasonable to be enforced.

[4A] Paragraph (e), unlike ABA Model Rule 1.5(e), does not require that the division of fees be in proportion to the services performed by each lawyer unless, with a client's written consent, each lawyer assumes joint responsibility for the representation. Paragraph (e) is substantively the same as former DR 2-107, which was adopted by the Justices in 1972 without subparagraph (A)(2) of DR 2-107 of the ABA Code (prescribing the basis for fee division). 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.

Disputes over Fees

[5] In the event of a fee dispute, the lawyer should conscientiously consider submitting to mediation or an established fee arbitration service. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[6] Former Rule 3.05(6), with its limitations period for challenging contingent fee agreements, was eliminated as inappropriate for a disciplinary rule.

Form of Fee Agreement

[7] Rule 1.5(f) provides a form of contingent fee agreement that may be used, as did S.J.C. Rule 3.05, which was repealed on the adoption of the Massachusetts Rules of Professional Conduct. The new form largely follows the language of the form that appeared in S.J.C. Rule 3.05. Inclusion of the reference to court costs and expenses of litigation in clause (3) reflects the permission granted in Rule 1.8(e)(1) to make repayment of such costs and expenses contingent on the outcome of the matter. Deletion of the reference to "reasonable compensation" that appeared in clause (4) of the former form makes no substantive change. The contingent fee must be reasonable to be enforced against the client and may not be clearly excessive in order to avoid violating Rule 1.5(a). See Comment 1A.

(8) When attorney's fees are awarded by a court or included in a settlement, a question arises as to the proper method of calculating a contingent fee. Rule 1.5(c)(5) and paragraph (4) of the form agreement contained in Rule 1.5(f) state the default rule, but the parties may agree on a different basis for such calculation, such as applying the percentage to the total recovery, including attorney's fees.

Corresponding ABA Model Rule. Identical to Model Rule 1.5(b), and (d); (a) first two sentences based on DR 2-106; (c) different but in many respects similar to Model Rule 1.5(e); (e) different; (f) is an expanded version of S.J.C. Rule 3:05(7).

Corresponding Former Massachusetts Rule. Current S.J.C. Rule 3:05, DR 2-106, 2-107.

LIBRARY REFERENCES

2006 Main Volume

Attorney and Client 32(2), 44(1).
Westlaw Topic No. 45.

C.J.S. Attorney and Client §§ 42 to 43, 79 to 80, 88.

NOTES OF DECISIONS

Contingent fee agreement 1
Duty to inform 2

1. Contingent fee agreement

All contingent fee agreements between attorneys and clients are subject to the overarching requirement of reasonableness. In re Discipline of an Attorney (2008) 884 N.E.2d 450, 451 Mass. 131. Attorney And Client 147

Discipline was not appropriate in connection with contingent fee agreements providing that on discharge by the client, the attorney would be entitled to recover the greater of the reasonable value of his services or one-third of any settlement offer made up to that point; rule of professional conduct did not bar an attorney from negotiating such a term in a contingent fee agreement, and record did not indicate that attorney had ever recovered a fee from clients that exceeded a quantum meruit recovery. In re Discipline of an Attorney (2008) 884 N.E.2d 450, 451 Mass. 131. Attorney And Client 44(1)

Contingent fee agreement, which did not expressly foreclose the possibility that if the attorney were discharged by the client, he could seek fees even though the client had not recovered funds from a third party, would not be read in disciplinary proceeding involving that agreement to allow such a recovery, where the attorney had made no argument that he would be entitled to recover fees in such a circumstance. In re Discipline of an Attorney (2008) 884 N.E.2d 450, 451 Mass. 131. Attorney And Client 148(1)

Rule of professional conduct permits attorneys and clients to negotiate specific terms of contingent fee agreements for themselves. In re Discipline of an Attorney (2008) 884 N.E.2d 450, 451 Mass. 131. Attorney And Client 147

2. Duty to inform

It is not inherently wrong or improper for a lawyer to negotiate, with explanation, a term in a contingent fee agreement that provides a general, contractual lien on the client's recovery, if any, as security for unpaid fees and expenses. In re Discipline of an Attorney (2008) 884 N.E.2d 450, 451 Mass. 131. Attorney And Client 147

Lawyers should be required to explain specifically the meaning of any terms in contingent fee agreement that differ from the model agreement contained in rule of professional conduct and to obtain the client's written consent to those provisions; terms added to model agreement presumably are intended to protect the lawyer's ability to collect his or her legitimate fee, rather than to advance an independent interest of the client, and an explanation of these terms would likely increase the client's understanding of the proposed contractual relationship with the lawyer and enable the client to make a more informed decision about whether to go forward. In re Discipline of an Attorney (2008) 884 N.E.2d 450, 451 Mass. 131. Attorney And Client 147

Current with amendments received through January 15, 2010

End of Document

EX. 226

DR 2-07. Division of Fees Among Lawyers

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of that lawyer's firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not exceed reasonable compensation for all legal services they rendered the client.

(B) This rule does not prohibit payments to a former partner or associate pursuant to a separation or retirement agreement.

EX. 227

Volume: 1
Pages: 1-193
Exhibits: 1-8

JAMS

Reference No. 1345000011/C.A. No. 11-10230-MLW

----------X

In Re: STATE STREET ATTORNEYS FEES

----------X

630 8th Avenue
New York, New York

April 3, 2018
1:45 p.m. to 5:51 p.m.

B E F O R E:

Special Master Honorable GERALD ROSEN,
United States District Court, Retired

MELISSA GILMORE, Reporter

DEPOSITION OF

PETER A. JOY

Page 2

APPEARANCES:

BARRETT & SINGAL
On Behalf of the Special Master
One Beacon Street, Suite 1320
Boston, Massachusetts 02108-3106
BY: WILLIAM F. SINNOTT, ESQ.
ELIZABETH J. McEVOY, ESQ.
617-720-5090
wsinnott@barrettsingal.com
emcevoy@barrettsingal.com

JAMS
150 West Jefferson, Suite 850
Detroit, Michigan 48226
BY: THE HON. GERALD ROSEN (Ret.), ESQ.
313-872-1100

Page 3

APPEARANCES: (Cont'd)

CHOATE HALL & STEWART LLP
On Behalf of Labaton Sucharow
Two International Place
Boston, Massachusetts 02110
BY: JOAN A. LUKEY, ESQ.
STUART M. GLASS, ESQ.
617-248-5000
joan.lukey@choate.com
sglass@choate.com

NIXON PEABODY, LLP
On Behalf of Thornton Law Firm
100 Summer Street
Boston, Massachusetts 02110-2131
BY: BRIAN T. KELLY, ESQ.
JOSHUA SHARP, ESQ. (Via telephone)
EMILY CRANDALL HARLAN, ESQ. (Via telephone)
617-345-1065
bkelly@nixonpeabody.com

Page 4

APPEARANCES: (Cont'd)

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
On Behalf of Lieff Cabraser
275 Battery Street, 29th Floor
San Francisco, California 94111
BY: RICHARD M. HEIMANN, ESQ.
ROBERT L. LIEFF, ESQ.
415-956-1000
rheimann@lchb.com

KELLER ROHRBACK, LLP
On Behalf of ERISA Plaintiffs
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
BY: T. DAVID COPLEY, ESQ. (Via telephone)
206-623-1900
dcopley@kellerrohrback.com

Page 5

APPEARANCES: (Cont'd)

ALSO PRESENT:
MICHAEL CANTY, Labaton Sucharow
MICHAEL THORNTON, Thornton Law Firm
LINDA HYLENSKI, ESQ., JAMS
PROFESSOR STEPHEN GILLERS

(EXHIBITS RETURNED TO ATTORNEY SINNOTT)

PETER JOY, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

MR. SINNOTT: Good afternoon, sir.

THE WITNESS: Good afternoon.

MR. SINNOTT: For the record, my name is William Sinnott, S-I-N-N-O-T-T, from the firm of Barrett & Singal. I'm counsel to the special master.

We are here on a special master investigation deriving from Arkansas Teachers Retirement System versus State Street Bank, Number 11-cv-10230-MLW.

The special master is the Honorable Gerald T. Rosen, R-O-S-E-N, formerly with the United States District Court in Detroit, Michigan. He is a retired federal district court judge.

Also on the special master's team to my left is Attorney Elizabeth McEvoy, also of Barrett & Singal.

On the telephone is Linda Hylenski,

also on the team. The special master will be joining us shortly.

I would ask, at this time, that the parties, beginning with our witness, identify themselves and their affiliation.

THE WITNESS: My name is Peter Joy, and I am a witness on behalf of the law firm of Labaton & Sucharow.

MR. SINNOTT: Thank you, Peter.

Joan?

MS. LUKEY: Joan Lukey from Choate Hall, representing Labaton Sucharow.

MR. CANTY: Michael Canty on behalf of Labaton.

MR. GLASS: Stuart Glass, Choate Hall, for Labaton.

MR. HEIMANN: Richard Heimann for Lieff Cabraser.

MR. LIEFF: Robert Lieff, Lieff Cabraser.

MR. THORNTON: Michael Thornton, Thornton Law Firm.

MR. KELLY: Brian Kelly, Nixon Peabody, on behalf of Thornton Law Firm.

Page 10

MR. SINNOTT: Thank you. And if the phone participants could identify themselves, beginning with David.
MR. COPLEY: David Copley for Keller Rohrback on behalf of the ERISA plaintiffs.
MR. SINNOTT: Josh?
MR. SHARP: Josh Sharp of Nixon Peabody for the Thornton Law Firm.
MR. SINNOTT: Thank you. And outside of Linda, I don't believe we have anyone else on the telephone, do we? Okay. Great. Thanks.
EXAMINATION BY
MR. SINNOTT:
Q. Good afternoon, sir.
A. Good afternoon.
Q. Thank you for being here. And thank you for your patience in waiting.
Professor, I would like to ask you a few questions, but not many, about your background.
A. Okay.
Q. And I note that with your report

Page 11

came a CV?
A. Yes.
Q. In the name of Peter A. Joy.
And have you had a chance to look at this CV recently?
A. I prepared it. And the last time I looked at it is probably a week ago.
Q. Okay.
MR. SINNOTT: Madam Court Reporter, if I could ask that this be marked as Exhibit 1.
(Joy Exhibit 1, Curriculum Vitae of Peter A. Joy, marked for identification.)
Q. And, Professor, if you'll take a look at that.
A. Yes.
Q. And tell me whether there are any changes or additions that need to be made to that CV.
A. No, there aren't.
Q. Okay. And beyond that CV, were there any other relevant experiences that informed your opinion in this case?
A. One thing that's not on the CV is I

Page 12

successfully litigated a class action case on behalf of various classes of taxicab drivers that resulted in a reported decision out of the Northern Districts of Ohio. It happened to be an ERISA case.
Q. Okay. And what was the name of that case?
A. Bruchac, B-R-U-C-H-A-C, versus Universal Cab. They are et al. because there were several cab companies, all owned by the same family, but Universal Cab is the first defendant. If you were to look it up, you would find the decision was written by the Honorable David Dowd who, unfortunately, is now deceased.
Q. And when you say "successfully litigated," was it a trial?
A. Cross-motions for summary judgment on the issue of liability. And we prevailed on the issues of liability. And then we settled the matter for the class.
This was before the Supreme Court decision in Evans versus Jeff D. So we settled the class issue, their damages, and then we

Page 13

later submitted our attorneys' fee petition. The defendants didn't really fight us over it, and then we got awarded our attorneys' fees separately.
So unlike what happens sometimes today.
Q. Okay. Congratulations. Successful in litigating and got attorneys' fees.
A. That's right.
Q. It's a good day.
According to your report, you receive $400 an hour for each hour spent preparing your opinion; is that correct?
A. That's correct.
Q. And can you estimate how many hours you've spent up until this point, both writing your report and preparing for your testimony?
A. Total is in the area of about 95.
Q. 95 hours?
A. Yes.
Q. All right, sir. And did you prepare for your testimony today?
A. Yes, I did.
Q. And how did you do that?

Page 14

A. I read my report twice, and also I met with counsel for Labaton for approximately two hours yesterday.
Q. All right, sir. And, Professor, I'm holding in my hand a report whose face sheet says, "Expert Report, March 26, 2018, Professor Peter A. Joy."
Is this your rebuttal report in this case?
A. My report, that's correct.
Q. Okay.
MR. SINNOTT: And Madam Court Reporter, if I could ask that that be marked as Exhibit 2.
(Joy Exhibit 2, Expert Report of Professor Peter A. Joy, dated March 26, 2018, marked for identification.)
Q. And the witness has that report. And looking at that, is that a complete copy of your submission in this matter as an expert?
A. (Perusing.) Yes, it is.
Q. All right. And let me direct your attention to that report, Exhibit 2, Professor, and specifically with respect to the factual

Page 15

statement.
A. Okay.
Q. Beginning on page 2.
A. Yes.
Q. And going to page 13.
A. Yes.
Q. Who drafted that factual statement?
A. The factual statement was drafted by counsel for Labaton. I indicate that on page 13. I then reviewed the various portions of depositions and other items that were cited to verify the citations in the factual report to confirm that those citations supported the facts in the report.
Q. Okay. And did you request any additional facts in the course of that review?
A. I did not request additional facts. Initially, before I got the factual statement, I had asked about some matters, some of which are in the factual statement, but I did not request any additional facts after I received this factual statement.
Q. Okay. And the documents that you received, do you recall what they were?

Page 16

A. Well, there are the items that are either cited in the factual report. I could go through them, but --
Q. In general terms, if you can describe them.
A. Okay. They were depositions, copies of e-mails that went back and forth, a draft retention letter between Labaton and Arkansas Teachers Retirement System, which if it's okay, I'll refer to as Arkansas, because it's kind of a mouthful.
Q. I'll do the same.
A. Okay. I received a copy of the expert report written by Professor Stephen Gillers. I received a copy of a submission by lawyers representing Labaton. And then I looked at some things just for me to get a feel of the underlying litigation.
I didn't ask for copies, but I accessed the docket for the underlying case in just -- I wanted to take a look at the class notice that went out, and relative -- I mean, just having to deal with this case. I think that's about it.

Page 17

Q. And was that on your own initiative to request the notice?
A. Well, I didn't request the notice. I just looked for the notice.
Q. But that had been provided to you?
A. I didn't -- I had already -- I already downloaded a copy of it, so I didn't ask for it.
Q. Okay. And when you received the transcripts, were they the full transcripts or excerpts?
A. I received -- I definitely received excerpts that conformed with this, but there was also some documents that were made available to me through an internet connection site that I believe were the full transcripts, but I did not read the full transcripts.
I looked for the portions that supported the facts that were -- the facts that I accepted.
Q. All right. So even when you received a full transcript, you focused on what you considered to be the relevant portions?
A. That's correct.

Page 18

Q. Did Labaton indicate to you which portions of those transcripts you should focus on?
A. Only in the sense of the facts -- factual statement that I adopted.
Q. Okay. Now, let me direct your attention to the opinion in Exhibit 2.
A. Okay.
Q. That begins on page 13 and goes to page 56.
A. Okay.
Q. Who wrote that opinion?
A. I did.
Q. And did you have any assistance in writing that opinion?
A. No, I did not.
Q. Did you have any assistance in researching the law underlying that report?
A. No.
Q. And were you in conversation with Labaton as to your opinions?
A. Before I wrote the report, after I got a good feel, but hadn't drilled down, you know, totally deep on every one of the issues,

Page 19

but where I felt comfortable, I verbally stated what my tentative opinions were at that point in time, subject to changing if anything else developed.
Then I wrote the report, and the only thing, after I wrote the report, is some of the lawyers working on behalf of Labaton proofed it, and there were some typographical errors that they helped me with, but that's the only assistance I received.
Q. Did the Labaton attorneys have any role in your opinions?
A. No.
Q. All right. So you didn't bounce certain opinions off of them and receive their take on those opinions or suggestions on those opinions?
A. No. They framed the questions that they wanted my opinions on. And as I said, I gave them my tentative, you know, what I thought they were going to be, and then I wrote up my report and that was it.
Q. Okay. So let me start off by referencing something that you discuss early in

Page 20

your report, and that's so-called imperfect fee divisions under Rule 1.5(e).
A. Okay.
Q. You state that no Massachusetts court has opined on Rule 7.2(b) and 1.5(e) together, correct?
A. That's correct.
Q. Now, you are aware that New York has opined on these together, correct?
A. Not that I'm aware of.
Q. All right. Does the fact that Massachusetts or other courts have not discussed 7.2(b) and 1.5(e) in a single opinion make those rules ineffective as written?
A. No. Separately, each is effective. But what I do not see is that if a violation of 1.5(e) automatically then converts any fee division under 1.5(e) into a -- what was then Massachusetts Rule 7.2(c), that that's the connection that is, as far as I could tell, non-existent.
Q. And what is the significance of the Massachusetts court failure to address these together, in your opinion?

Page 21

A. It demonstrates that the understanding is that they're not connected, that they are separate rules meant to address separate issues.
Q. All right, sir. You state in your report that Rule 7.2(b) prohibits only payments to non-lawyers; is that correct?
A. That's correct.
Q. And, specifically, let me address you -- direct your attention to footnote 18.
MS. LUKEY: In his report?
Q. In your report.
A. I think on page 20.
Q. Thank you.
A. Yes.
Q. And just for the record, footnote 18 on page 20 of Professor Joy's report states, "The comment to which Professor Wolfram referred was titled 'Paying Others to Recommend A lawyer,' and it states, 'A lawyer is allowed to pay for advertising permitted by this rule, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or

Page 22

person, other than lawyer' -- 'other than the lawyer from advertising or recommend the lawyer services. Thus, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph C does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this rule.'"

So footnote 18 says that "the rule prohibits payments made for channeling professional work." Rather, that's how you refer to that -- that comment.

A. Well, that's what Professor Wolfram states. I'm quoting him.

Q. You are quoting Wolfram.

Do you consider Damon Chargois' call and Herron's meeting to be channeling?

MS. LUKEY: Objection.

A. No, I don't.

Q. How else would you characterize it?

A. Initially, my understanding, and based on everything I have reviewed, is he was going to be local counsel, and then later, when

Page 23

he did not act in that capacity, he received a referral fee.

So referral fee is separate from something, again, that Professor Wolfram would refer to as touts or runners or cappers. And those are people like who are trying to, basically, do like in-person advertising. So, you know, a taxicab driver, one of the examples he uses in Nevada would try to steer somebody, literally drive them to the lawyer's office to do a divorce for them, but that's separate and distinct from referral fees.

Q. You would agree with me, would you not, that Chargois did not act as an attorney in the traditional sense --

MS. LUKEY: Objection.

Q. -- in this case?

MS. LUKEY: Objection.

A. When you say "the case," you mean just the class action or what are you talking about?

Q. No. I mean with respect to --

A. Everything with Arkansas?

Q. Yes.

Page 24

A. Well, again, initially, he was going to be acting as local counsel, though my understanding is that did not develop in terms of the class action. And I guess the other thing is, even in terms of recommending another lawyer, if one lawyer recommends another lawyer, the first lawyer is basically telling the client this is somebody I think is competent and capable of handling your work, but putting in the lawyer's professional judgment on that issue.

And that's why fee sharing or fee splitting or referral fees are permitted, because there's that act of basically vouching on the professional qualifications for a particular lawyer or law firm to assist a client.

Q. But you would agree that, in this case, the client, Arkansas, never sought legal advice from Chargois?

MS. LUKEY: Objection.

A. In terms of the class action, I didn't see evidence of that, but I'm not sure if Arkansas had sought other advice from him,

Page 25

because my understanding is he was known to the first director, not the -- not the second, not Mr. Hopkins, but Mr. Hopkins' predecessor.

So I don't know, since he knew Mr. Hopkins, if he ever gave any advice or representation to Arkansas prior to Labaton's involvement.

THE SPECIAL MASTER: Is it your understanding that the relationship between Arkansas, Labaton and Mr. Chargois was at the initiation of Arkansas?

THE WITNESS: At one point, Arkansas invited Labaton and Chargois Herron to submit a proposal of qualifications to be monitoring counsel. So they extended that invitation.

THE SPECIAL MASTER: I'm actually going back to the inception of the relationship.

THE WITNESS: Okay.

THE SPECIAL MASTER: So what is your understanding of how the relationship initially evolved?

THE WITNESS: That Mr. Chargois

Page 26

and/or others from Chargois & Herron helped to arrange a meeting where lawyers from Labaton could meet with the predecessor, I think Mr. Doane, but I don't want to say that.

THE SPECIAL MASTER: Yes.

THE WITNESS: So Mr. Doane. And then subsequent to that meeting, at some point while Mr. Doane was still head of Arkansas, he invited them to submit a proposal showing their qualifications to be monitoring counsel.

THE SPECIAL MASTER: So it is your understanding that Mr. Chargois and Mr. Herron initiated the relationship with Arkansas and facilitated it through -- with the help of a state senator?

MS. LUKEY: Objection.

THE WITNESS: I've seen some indication of that. The only thing I'm not sure about is what may have preceded that or things in addition to that, but I do know that either Mr. Chargois or others from Chargois & Herron helped to arrange

Page 27

the meeting. And I know that a senator in Arkansas was also helpful in that regard.

THE SPECIAL MASTER: Okay. So it is your understanding that Arkansas did not reach out to Mr. Chargois or Chargois & Herron and effectively invite them to find somebody to have a relationship with Arkansas?

THE WITNESS: I did not see anything that indicated that they did, but like I said, I don't know what happened, you know, prior to that. But based on what I've seen, I didn't see that.

BY MR. SINNOTT:

Q. Was it, in fact, in this case, this was the opposite, where Chargois & Herron's role was to find a client or solicit a client?

MS. LUKEY: Objection.

A. Again, based on everything that I saw, I saw them serving in that role, but I do know that there was some pre-existing relationship of some sort between lawyers in the Arkansas office of Chargois & Herron and Mr. Doane, and perhaps others with Arkansas.

Page 28

So -- but based on what I saw, I would say yes.

THE SPECIAL MASTER: If there is no evidence in the record that there was a pre-existing relationship between Mr. Doane or anyone else at Arkansas and Chargois & Herron, does that change your view as to whether this was a solicitation?

MS. LUKEY: Objection.

THE WITNESS: Okay. I mean, the one thing I do know that's in the record is, is that lawyers at the Arkansas office of Chargois & Herron had some pre-existing relationship with Mr. Doane, that they were -- at least one of the lawyers was known to Mr. Doane. I don't know the nature of that relationship. Like I said, I don't know if he had ever provided any legal services to either Arkansas or Mr. Doane individually or anybody associated with Arkansas.

THE SPECIAL MASTER: If there was no relationship pre-existing, would that be a solicitation?

Page 29

MS. LUKEY: Objection.

THE WITNESS: It depends. What I mean by that is it depends on what the form of the interaction is. So that if a lawyer calls somebody up and says, you know, I can help you with your legal problems, that would definitely be a solicitation.

If a lawyer sees somebody they know and the person says, you know, I have this problem and, you know, do you think you might be able to help them, then that's not a solicitation.

THE SPECIAL MASTER: If the lawyer, in this case, Chargois and his partner, Tim Herron, initiate the contact with Mr. Doane and Arkansas for purposes of introducing Labaton to Arkansas, initially to serve as monitoring counsel, if that's what the record shows, would that be a solicitation?

MS. LUKEY: Objection.

THE WITNESS: It could be. And the only hesitation I have here is this.

Page 30

Again, it depends on the nature of the interaction. So that if Arkansas is looking for monitoring counsel, and it's known to Mr. Herron or Mr. Chargois and they respond to that, then that's not a solicitation. But if they are coming out of the blue, then it would be solicitation.

THE SPECIAL MASTER: And would that solicitation, absent compliance with 1.5(e) and the exception in 7.2(b)(5), absent -- putting that aside for a moment, would that bring the relationship within 7.2(b)?

MS. LUKEY: Objection.

THE SPECIAL MASTER: If it was solicitation?

THE WITNESS: No. It would bring it within 7.2(b) if a lawyer with Chargois & Herron was, you know, basically going around knocking on doors saying, I have somebody, you know, that could help you with your legal problems, you know, if they were not acting in a lawyer capacity.

Page 31

So like, for example, a lawyer who's a taxicab driver in Nevada steering clients to divorce lawyers, that's --

THE SPECIAL MASTER: That doesn't insulate them.

THE WITNESS: Then the person is a taxicab driver.

THE SPECIAL MASTER: So that's an interesting issue. Where is the line between acting as a lawyer and acting as a, what I think is referred to as a tout? Where is that line? What you seem to be saying is it's not simply having a law degree. That's not enough. Just because the person has a law degree, that's not enough to insulate them from 7.2(b), right?

THE WITNESS: Again, yeah, that's right. If they are not acting in a lawyer capacity, that's right.

THE SPECIAL MASTER: So, at some level, for 7.2(b) to apply or to not apply, I should say, the person who is doing the recommending has to be acting in some capacity as a lawyer.

THE WITNESS: That's right. And that capacity could be simply knowing that the lawyer/law firm they are recommending is well qualified to assist the potential client.

THE SPECIAL MASTER: And that's sufficient to insulate them from 7.2(b)?

THE WITNESS: Yes.

THE SPECIAL MASTER: Just knowing that they are well qualified?

THE WITNESS: That's right. And that's especially true in Massachusetts, that allows for pure referral fee without either working on the matter or accepting joint responsibility for the case.

BY MR. SINNOTT:

Q. You mentioned earlier that you had reviewed, among other things, e-mails, correct?

A. That's correct.

Q. Do you remember seeing an e-mail exchange between Damon Chargois and Eric Belfi in which Chargois reminds Belfi of what he has done to acquire Arkansas as a client?

Page 33

A. I recall seeing e-mail exchanges between the two of them involving Arkansas, as you characterize it, about reminding him what he's done. If you have the e-mail exchange, and I could see it, I would let you know if that was one I definitely reviewed.

MR. SINNOTT: I will ask that Madam Court Reporter mark this. This is an e-mail, and the relevant portion begins on LBS017593. At the top of the page, it says from Damon Chargois, sent October 18, 2014, to Eric Belfi, subject, concerning Eric. "In reviewing your text regarding HP it," and it starts to say "appears."

So if I could ask that this item be marked as Exhibit 3.

(Joy Exhibit 3, E-Mail Chain, Bates Stamped LBS017593 through 17594, marked for identification.)

Q. And, Professor, you are welcome to read the whole thing but my question will begin with the e-mail that begins at the very bottom of the first page of 593.

A. Okay.

Page 34

MS. LUKEY: Do you have any other copies?
MR. SINNOTT: I'm sorry. We do.
MS. LUKEY: Thank you.
A. I'm reading it.
Q. Yep. Take your time.
A. (Perusing.) I can't say, with a hundred percent certainty, that I've seen this. Colonial Bank does not ring any bell to me -- any bell to me. I mean, but the idea of like sort of expending political capital or something, I know I've read that. So I can't say, with a hundred percent certainty, that I've seen this.
Q. So some of it appears to be familiar?
A. Yeah, some of it does -- I mean, some of the ideas appear to be familiar, but there are other things that I think I would remember. But, you know, I don't have perfect memory.
Q. All right. And directing your attention to that second page, and approximately a third of the way down that

Page 35

second page, there's a paragraph that reads, "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."
And then it finishes by saying, "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."
And, sir, it's fair to say that this is an e-mail from Damon Chargois to Eric Belfi on Saturday, October 18, 2014, at 9:15 a.m. correct?
A. That's what it states, yes.
Q. So looking at that paragraph that I just read, isn't it apparent from the language in that paragraph that Labaton used Chargois to get Arkansas as a client? Would you agree with

Page 36

that?
MS. LUKEY: Objection.
A. They were involved in getting Arkansas as a client. I'm not sure -- I mean, I know you used the word "used," but in the context of this e-mail, it seems like -- I just want to be sure -- Mr. Chargois was characterizing this as sort of feeling like he was being used in some fashion.
Q. Okay. And I wasn't using it in that sense, but that may be reflective of how he feels based on the first paragraph.
A. Because I know that they were involved in getting Arkansas as a client, and as I stated previously, initially, they were going to be local counsel, and then that didn't develop.
Q. Well, let me back up to the dash, dash, and then read from there on the second line of that paragraph.
"We got you ATRS," or Arkansas," as a client (after considerable favors, political activity, money spent and time dedicated in Arkansas.)"

Page 37

Do you see anything about legal services in that parenthetical reference?
MS. LUKEY: Objection.
A. I'm not -- well, I'm not sure, when he talks about considerable favors and time dedicated in Arkansas, I just don't know what he's referring to.
Q. Doesn't it sound like the tout that you were referring to previously?
MS. LUKEY: Objection.
A. No.
Q. I mean, isn't it apparent here that Chargois' role, at least as portrayed in this paragraph, was to get Arkansas as a client for Labaton?
MS. LUKEY: Objection.
A. According to Chargois' paragraph there, he was involved in getting Arkansas as a client, absolutely.
Q. And there's nothing about Arkansas asking Labaton to -- or asking Chargois to get Labaton as counsel, is there?
MS. LUKEY: Objection.
A. Well, there isn't, except it's my

Page 38

understanding that, after Labaton was serving as monitoring counsel, that's when later they got involved as being class counsel for Arkansas.

So I think this paragraph is referring to the initial involvement of Chargois & Herron in securing Arkansas as a client on the monitoring counsel.

Q. Sure.

THE SPECIAL MASTER: I would like you to assume that the testimony from Mr. Chargois was that Eric Belfi asked him if he knew any people that he could be -- he, on behalf of Labaton, could be put in touch with -- that were institutional investors, and could he help make introductions to institutional investors.

Mr. Chargois' testimony was he didn't know what an institutional investor was, and he had to find out what an institutional investor was, and he found out that he understood what an institutional investor was once he found that out, and that he then proactively,

Page 39

along with his partner, Tim Herron, set about initiating the relationship, the introduction to Arkansas, and he did that through the good offices of Senator Faris, who chaired the committee that oversaw state pension activity. And that this was all at the initiation of, in the first instance, Labaton. And, in the second instance, Mr. Chargois, and that that was how the relationship started for the purpose of bringing institutional investors to Labaton as clients.

Does that inform your opinion as to whether this was a solicitation?

MS. LUKEY: Objection.

THE WITNESS: I still don't see it as a solicitation if that's the bottom line of your question.

THE SPECIAL MASTER: It is.

THE WITNESS: I still don't see it as a solicitation.

THE SPECIAL MASTER: What is it about that chain of facts that takes it out of being a solicitation?

Page 40

THE WITNESS: All right. The following. It's all right for a lawyer to contact a client that they have to see if that client needs any more legal assistance. And lawyers do that all the time.

THE SPECIAL MASTER: The client that they have who --

THE WITNESS: That's right. So what I don't know is if --

THE SPECIAL MASTER: I want you to assume there was no existing relationship at all, at least of the record, I want you to assume it, that there was no existing relationship between Chargois & Herron and Arkansas.

MS. LUKEY: Objection.

THE WITNESS: And then the next thing is, assuming that there was no relationship whatsoever, that they had never had any type of a relationship --

THE SPECIAL MASTER: We are not talking about running into people at a cocktail party. We are talking about a

Page 41

professional relationship.

THE WITNESS: Okay. That they have no professional relationship.

THE SPECIAL MASTER: Yes.

THE WITNESS: And that either Mr. Doane or other people at Arkansas hadn't been putting out any requests for any assistance, then it could be a solicitation.

THE SPECIAL MASTER: What if it was just what we call a cold call? Now, obviously, there were more than calls involved, but what if it was a cold call? They went to Senator Faris, and Senator Faris, at Chargois' initiation, on behalf of Labaton, helped facilitate the introduction, and that there had been no previous relationship between Mr. Chargois, Mr. Herron, their firm and Arkansas.

THE WITNESS: And no relationship with Senator Faris either?

MS. LUKEY: Objection.

THE SPECIAL MASTER: Let's assume

Page 42

there was a relationship between Mr. Herron, but not Mr. Chargois, but Mr. Herron and Senator Faris.
THE WITNESS: Then it wouldn't be a solicitation.
THE SPECIAL MASTER: Because?
THE WITNESS: Because it's okay for a lawyer to talk to a client or someone that they have other kinds of relationships with, to say, do you know anyone who could use my services. And it's okay, then, for that person to facilitate them getting other clients. Lawyers do that every day.
THE SPECIAL MASTER: So Mr. Chargois, again, no relationship between Chargois & Herron and Arkansas, so Mr. Chargois or Mr. Herron could go to the senator and say, we have this law firm that does securities work, we would like an introduction to Arkansas for purposes of Arkansas -- for purposes of Labaton serving as monitoring counsel. And by the fact they went to Senator Faris, that

Page 43

would take it out of a solicitation?
MS. LUKEY: Objection.
THE WITNESS: Again, assuming they have a relationship with Senator Faris and then Senator Faris, I don't know what he says to either Mr. Doane or others at Arkansas, but if he says something to the effect of, I would like you to meet with or I know a lawyer or a law firm that might be able to assist you, they still, then, have the opportunity to say, sure, we will set up a meeting or, no, we won't set up a meeting.
THE SPECIAL MASTER: So using somebody as an intermediary who does have the relationship, when the lawyer who's doing the recommending does not have the relationship with the client, takes it out of solicitation?
MS. LUKEY: Objection.
THE WITNESS: It depends in what we have talked about, I mean, in the abstract, it could still be solicitation. But, in this situation, if they have a

Page 44

relationship with Senator Faris and if Senator Faris doesn't compel Arkansas to have the meeting, just suggests, you know, this is an opportunity, have it or not.
THE SPECIAL MASTER: You know that Senator Faris chaired the committee with oversight responsibility over Arkansas.
THE WITNESS: Yes, I do.
THE SPECIAL MASTER: And the fact that the senator with oversight responsibility over this public retirement system calls and says I'd like you to meet with this firm, is that a professional relationship that takes it out of solicitation?
MS. LUKEY: Objection.
THE WITNESS: When you say "a professional relationship," do you mean Senator Faris' relationship with Arkansas? I have lost which relationship.
THE SPECIAL MASTER: We have a number of different levels of the relationship.
THE WITNESS: Okay.

Page 45

THE SPECIAL MASTER: For the first level, we have the relationship between Labaton and Chargois & Herron. We will use those two together. At that level, we have Labaton, through the person of Eric Belfi, asking Mr. Chargois to introduce him to institutional investors for the purpose of getting them positions as monitoring counsel at least.
We then have the relationship between Mr. Herron, as part of Chargois & Herron, having some kind of relationship, we don't know, really, what kind of a relationship, but some kind of relationship with Senator Faris who chaired the committee with oversight responsibility over Arkansas.
And then we have the relationship between Senator Faris and Arkansas.
I want you to assume these facts. Labaton initiated the relationship with Chargois for the purpose of having Chargois & Herron get introductions to institutional investors. Chargois didn't

Page 46

know any institutional investors. Herron didn't know any institutional investors. But Herron knew Senator Faris.
Mr. Herron goes to Senator Faris and says, we'd like your help in getting an introduction for Labaton to Arkansas to serve as monitoring counsel for Arkansas.
I want you to assume that chronology. And Senator Faris initiates the contact with Arkansas to facilitate that relationship.
That's not a solicitation?
MS. LUKEY: Objection.
THE WITNESS: I still don't see it as one. And I remember seeing some e-mail exchanges that whether or not Arkansas would end up retaining, at least initially, Labaton Sucharow and Chargois & Herron would depend on how the meeting went, and then I remember some e-mail that meeting went well and then the initial retention occurred.
MR. SINNOTT: Madam Clerk -- Madam Court Reporter, Melissa, if you would mark

Page 47

this as an exhibit.
(Joy Exhibit 4, Excerpt of Deposition of Damon Chargois, dated October 2, 2017, marked for identification.)
Q. For the record, an item has just been marked as Exhibit 4. It's an excerpt of the deposition of Damon Chargois taken on October 2, 2017. Let me direct your attention to page 33 in the lower right quadrant, Professor.
A. Okay.
Q. And you see where -- about line 12 --
A. Okay.
Q. -- I ask Mr. Chargois, "At some point, did you have some success in making inroads into this area?"
And Chargois answers, "Yes, sir."
And I say, "Tell us about that."
And Chargois responds as follows, "Tim," I will suggest to you that Tim is Tim Herron, "was friends with Senator Faris -- Steve Ferris and asked him, do you know anyone

Page 48

or point us to anyone we might be able to talk to, and he told Tim that recently a gentleman named Paul Doane had taken over Arkansas Teachers, and you might want to give him a try. Good luck."
Do you see that, sir?
A. Yeah, I do.
Q. Had you seen that before?
A. I don't recall this, no.
Q. Would you agree that this indicates that, having been asked as Judge Rosen questioned you about -- by Labaton to find institutional investors, that Chargois & Herron, Damon and Tim, leverage a contact with a Senator Faris, and he made the introduction to Mr. Doane; is that correct?
MS. LUKEY: Objection.
A. That appears to, but there's just one thing that I need clarification on, and it's this statement. He, which I believe refers to Senator Faris, this is line 18, toward the end, he, and I'm just -- "he told Tim that recently a gentleman named Paul Doane had taken over Arkansas Teachers, and you might

Page 49

want to give him a try. Good luck."
So, you know, I just -- I need to know what happens after this, because my reading that almost sounds like the senator is telling Tim Herron, why don't you try Paul Doane, and then good luck.
So, you know, I need to know like what happens after this to be able to say what the import of this is.
Q. If you were to assume that Senator Faris was treated to dinner and other things, would that indicate -- would that inform your curiosity?
MS. LUKEY: Objection.
A. Treated to dinner by Mr. Herron, his good friend or --
Q. Or by Labaton.
MS. LUKEY: Objection.
A. If -- it may be relevant. I just don't know. I mean, I would need to know more to be able to say, because dinner by itself could be meaningless.
Q. I appreciate your caution, but based on that passage between lines 16 and 21,

Page 50

without knowing what happened in the future, does that passage, in and of itself, indicate that Chargois & Herron was trying to bring --
A. Trying to what?
Q. Was trying to bring Arkansas on board as a client?
MS. LUKEY: Objection.
A. That passage by itself? No, it doesn't by itself.
MR. SINNOTT: Madam Court Reporter -- and I apologize for calling you clerk before -- let me show you another document that's an excerpt from that same transcript, but it's the follow-on page, page 34.
(Joy Exhibit 5, Excerpt of Deposition of Damon J. Chargois, dated October 2, 2017, marked for identification.)
Q. And that is Exhibit 5.
A. So should I then continue reading where I stopped off?
Q. Yes, please.
A. Okay. Just please give me a moment.

Page 51

(Perusing.)
MS. LUKEY: So we got another page that wasn't on the first exhibit. So it's -- the previous one is incorporated in this one, but then there is a second page as well.
MR. SINNOTT: Okay. But the second page is there.
MS. LUKEY: Yeah.
MR. SINNOTT: For a fleeting moment, we thought we had given you exactly the same exhibit.
A. (Perusing.) Okay.
Q. All right, Peter. So looking at the bottom of page 33, which is the second of these three pages, if you count the face sheet, after the passage that we discussed previously, I asked Mr. Chargois, "Did he," referencing Paul Doane, "facilitate that introduction in any way?" The introduction to -- I'm sorry -- that Ferris, being he, facilitating the introduction of Paul Doane, and did he facilitate that introduction in any way.
And Chargois answers, "No, sir. Tim

Page 52

just told me about it." And then going on to the next page, 34, "and I looked up Paul Doane and called him.
And Judge Rosen says, "Cold?"
Chargois replies, "Yes, sir."
"And what was Mr. Doane's response when you called him?
"The gist of it was who are you and why are you calling me, but I told him who I was, who our firm was. We're local, not far from your office, and how I got his name and why I was calling."
Then I asked, "And did he offer to help you?"
And Chargois said, "I don't understand."
I said, "Did he ask you to come in for a meeting? Or did he --"
Chargois answers, "No, sir."
"-- extend -- you know, try to arrange for you to talk again with him?
"No, sir.
"All right. What did he say?
"He listened to what I had to say

Page 53

and I asked him if I could meet with him. And then I told him that, you know, I was working with a New York law firm that specializes in institutional investors."
And so then there is some further discussion on page 35. And the bottom of 34, I say, "So how did you leave it after that conversation?"
Chargois answers, "Let me know if you're willing to give us some time.
"Okay. And what happened next?
"He -- I don't know if it was a follow-up call by me or if it was that call, but he ultimately agreed to meet."
And then I ask, "Did you meet with him by yourself or were you accompanied by someone else?"
And Chargois answers, "The Labaton -- I believe it was Eric Belfi and Chris Keller, but I can't swear to that. I know Eric Belfi was there. I don't know if Chris Keller was there."
And then -- "And how soon after the telephone conversation did this meeting take

Page 54

place?
"I'll guess within a week or two."
And I ask, "Okay. And is it fair to say that Eric and Chris were responsive and came down --
"Yes.
" -- at the time that you told them that the meeting would be -- time and date?
"Yes, sir.
"Okay. So tell us what happened at that meeting."
And then on page 36 he starts to answer, "Eric."
Special master says, "Hold that thought."
Special master says, "Was this the first institutional investor that you had been successful in meeting up with?"
THE SPECIAL MASTER: Setting up.
Q. I'm sorry, "setting up a meeting with?
"THE WITNESS: Yes, sir."
And then the questioning continues.
Special master says, "If you remember the

Page 55

question.
"I do."
And I say, "Tell us what happened at the meeting."
And Chargois answers, "Eric Belfi presented all of the services that Labaton has available and what their -- what they could do and presented as a courtesy that they do this monitoring of the portfolio.
"Okay. And did Mr. Doane ask any questions of Eric?
"I'm sure he did. I don't remember specific questions."
And then I ask, "Okay. Did you participate in the conversation?
"ANSWER: I was there. But as far as substantive matters, no.
"You let Eric do the talking?
"Yes, sir."
And then there's some follow-up conversation on that.
So is it apparent to you, from those pages that I read, that Chargois & Herron did their job in setting up a meeting for Eric

Page 56

Belfi?
MS. LUKEY: Objection.
A. Well, I don't know about "did their job," but I would say that, according to Mr. Chargois' testimony here, he set up a meeting with Mr. Doane.
Q. Okay. And does it also appear that, once that meeting was effected, and Doane sat down with Chargois or Chargois and Herron and Eric Belfi, that Chargois and Herron's role was basically as a silent partner here?
MS. LUKEY: Objection.
A. I mean, at that meeting, according to Mr. Chargois, he didn't say a lot. He says, you know, as far as substantive matters, no, but as far as local counsel role, which is what the original plan was, that might be what local counsel would do.
Q. Okay. But at least with respect to -- without speculating as to anything that happened in the future, it would appear that this meeting was set up and Chargois & Herron's role was essentially effective, correct?
MS. LUKEY: Objection.

Page 57

A. Well, they set up the meeting. So they were effective in setting up a meeting.
Q. That's what I mean.
A. Okay.
Q. Okay. Thank you.
THE SPECIAL MASTER: Could I ask -- now that you've read the full transcript -- not the full transcript. You're welcome to read the full transcript, but the transcript of Mr. Chargois' description of the inception of the relationship and his role in it, does that not sound like solicitation to you?
MS. LUKEY: Objection.
THE WITNESS: Well, I mean, actually, what this sounds like, and I'm just assuming that what Mr. Chargois says is true, where he calls up Mr. Doane, then not the solicitation that we have been talking about in terms of 7.2(b), but there is also a prohibition against realtime communication with a person who is not already a client.

Page 58

Now, with institutional, you know, with corporations, there is some authority, and I wasn't retained for this, so I didn't drill down, but this could be a realtime, in-person solicitation that would raise ethical concerns.
THE SPECIAL MASTER: Does it sound like Mr. Chargois is acting as an agent of Labaton, and I don't mean any negative connotation by the term "agent," but as an agent for Labaton in seeking to open a relationship between Labaton and Arkansas?
MS. LUKEY: Objection.
THE WITNESS: Well, again, I do have an issue with the word "agent," because --
THE SPECIAL MASTER: Use a different word.
THE WITNESS: Okay.
THE SPECIAL MASTER: As simple as acting on behalf of Labaton.
THE WITNESS: Well, if he is acting as local -- someone who would be local counsel with Labaton, so -- but that's -- I mean, acting on behalf, I guess he's

Page 59

acting on behalf of -- well, I'm just like -- I'm just hesitant here about how it's been characterized, so.
THE SPECIAL MASTER: How would you characterize it?
THE WITNESS: Maybe facilitating, so trying to -- but --
THE SPECIAL MASTER: Opening the door?
THE WITNESS: Again, I mean, it could be, but there are a lot of different individuals here and the depth of their relationships with one other is something I would want to know more about, but he is facilitating the meeting.
THE SPECIAL MASTER: Well, I think it's pretty obvious, from the colloquy, again, crediting Mr. Chargois, that there was no relationship at all --
MS. LUKEY: Objection.
THE SPECIAL MASTER: -- between Chargois and Doane.
MS. LUKEY: Objection.
THE WITNESS: That's the way

Page 60

Mr. Chargois characterizes it.
THE SPECIAL MASTER: "What was Mr. Doane's response when you called him?
"The gist of it was who are you and why are you calling me."
THE WITNESS: I guess the part that I don't know is how Mr. Chargois is representing this to Labaton, you know, Mr. Belfi. What's he saying?
Because, you know, if he is telling Labaton, oh, look, I have a relationship with this person or that person, Labaton could be relying on that. So that's what I mean.
All these different people and I think, to understand what's going on here, it would be good to take a look at, at the same time, what is Mr. Chargois telling Mr. Belfi or anybody else at Labaton to see if they line up, because he might be saying one thing to them and now something else when he's under oath in a deposition.
THE SPECIAL MASTER: So if he was saying to Eric Belfi, I know Paul Doane

Page 61

and I'm happy to make an introduction to Paul Doane on your behalf, that would take it out of solicitation?
MS. LUKEY: Objection.
THE WITNESS: It very well could, yes.
THE SPECIAL MASTER: And I take it your answer would be that it would take it out of solicitation if he told Mr. Belfi that he had some sort of a professional relationship with Mr. Doane.
THE WITNESS: Absolutely.
THE SPECIAL MASTER: But assume there is -- for now, assume that Mr. Chargois' testimony is credited for now, he was asked by Mr. Belfi to help find institutional investors. He didn't know what an institutional investor was. He had to find out.
He went to Senator Faris and Senator Faris said you should call Paul Doane, who is executive director of Arkansas. He calls Paul Doane cold, as he says. Paul Doane doesn't know him at all, as he says.

Page 62

And in that first conversation he says, "I am working with a New York law firm that specializes in institutional investors."
And he makes a request that Paul Doane meet with this New York law firm. That's not a solicitation?
MS. LUKEY: Objection.
THE WITNESS: And what am I supposed to assume about what he has told Mr. Belfi?
THE SPECIAL MASTER: Just assume that Mr. Belfi -- just assume the facts that I gave you.
THE WITNESS: And Mr. Belfi doesn't know what's going on.
THE SPECIAL MASTER: Mr. Belfi doesn't know.
THE WITNESS: Again, as I said, it very well may be the realtime, in-person solicitation issue that I mentioned, but that's something I didn't look into for this.
THE SPECIAL MASTER: If that were the case, would that bring 7.2(b) into

Page 63

play?
MS. LUKEY: Objection.
THE WITNESS: It wouldn't bring it into play in terms of -- no, it wouldn't, because by the time -- this is the initial meeting. Then there is the monitoring counsel agreement. And subsequent to the monitoring counsel agreement, there's the retention of Labaton to be lawyers.
So this -- this is, as I said, it's the, you know, kind of in-person or telephonic realtime solicitation issue, but by the time we get to the class action being filed, there's a retention letter. It's a fee-sharing issue.
THE SPECIAL MASTER: Don't we have to look at what the purpose of the payment that was made to Mr. Chargois was to determine what he was being paid for?
MS. LUKEY: Objection.
THE WITNESS: Yeah, he was being paid a referral fee.
THE SPECIAL MASTER: For recommending to Arkansas that Labaton be

Page 64

retained as monitoring counsel?
MS. LUKEY: Objection.
THE WITNESS: I mean, I guess I'm just a little hesitant here on the issue of recommending. And I'll tell you why. And I'm just looking at what we have here, pages 34 to 37, because I'm just doing what you said, assume that what Chargois says is true.
He calls Doane. And he says, we are a local firm. Then he listened to what I had to say, and I'm on line, I guess, 19 of page 34, "And I asked him if I could meet with him. And then I told him that, you know, I was working with a New York law firm that specializes in institutional investors."
And then, you know -- and I may have missed it here, but I don't see him say that I am recommending Labaton. What I see is he is setting up a meeting between him and some lawyers from a firm that he's working with that specializes in institutional investors.

Page 65

So it's this in-person solicitation issue that I told you about, you know, initiated via telephone and in person and telephone. It's a realtime solicitation issue.
So it's not a recommending. You know, I don't see him say that, you know, I want to meet with you to recommend that you hire this firm. He is saying, I want to meet with you so a firm that I'm working with, we might be able to help you, or something to that effect.
BY MR. SINNOTT:
Q. But isn't it implicit, when Chargois & Herron go to great lengths to get a sit-down with Mr. Doane, and they come to that meeting with Eric Belfi, that they are recommending Eric Belfi and Labaton?
MS. LUKEY: Objection.
A. Well, I know Chargois, in that e-mail exchange, talked about, you know, putting in a lot of effort. Again, if he is to be believed, in his deposition, it sounds like he had one or maybe two telephone calls with

Page 66

Mr. Doane out of the blue. So something here is -- gives me hesitation. I don't know what to believe. But if I'm to assume that his deposition is true, then that contradicts what he says in his e-mail to Belfi.

THE SPECIAL MASTER: Is there anything in Chargois' deposition testimony that you've now read that indicates that Mr. Chargois was acting in his capacity as a lawyer, using his legal skills and professional expertise, to make a recommendation or to facilitate the introduction of Labaton to Doane?

MS. LUKEY: Objection.

THE WITNESS: Well, he says he is working with a law firm, and what I don't know, because it's not in what I've read, is what he knows about Mr. Belfi and what he knows about Labaton.

So I don't know that, but he talks about working with a New York law firm which we know to be Labaton, and I know originally -- the inception is I've understood this all along, was he was

Page 67

going to be local counsel.

So, yes, that would be what -- you know, part of what local counsel would be doing.

BY MR. SINNOTT:

Q. Just so that I've got it straight, Professor, you're not claiming that the word "person" in rule 7.2(b) refers only to non-lawyers, are you?

A. Not 100 percent. That's how the cases have broken down. But, you know, I mentioned before, it could conceivably apply to a lawyer who is not acting in a lawyer capacity in any way.

Q. All right. But as a matter of statutory construction, you're not making that claim, correct?

MS. LUKEY: Objection.

A. Not on its face. But I guess, as I said before, how it's been interpreted, and then I also mention -- well, anyway, how it's been interpreted, because there haven't been instances where we have the lawyer taxicab driver that I mention, though I suspect that,

Page 68

in today's job market, there may be.

Q. All right. Let's talk a little bit about 1.5(e).

A. Okay.

Q. And compliance with the pre-2011 rule.

You talk about Saggese, and you talk about Professor Gillers' references to it.

Is it your opinion that the writing requirement articulated in Saggese did not apply prior to the rule change in 2011?

A. You know, that was something that I wondered about, because when I read Saggese, I thought maybe it applies, but then, as I looked, I couldn't find any cases where it applied in between Saggese, the decision, and then the rule change.

And then the other thing that bothered me to some extent is what Saggese said, henceforth, this is what 1.5(e) means, isn't what the ultimate new rule 1.5 actually says. So that was something else.

And then the third thing that was kind of puzzling to me is when the rule change

Page 69

is made, I forget, I think they gave at least three months notice. Here's the proposed rule and here's the effective date.

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 that 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, you know, I don't know if I would say, you know, probably dicta. I mean, that wasn't an issue in the case. That's what the court said it was going to do, but then, you know, there weren't any instances where the court did it, and then the bar didn't do what the court said they should be doing.

So that's why I think it's most likely dicta and, you know, the writing requirement in some of what Saggese said just was not implemented in the fashion that I think, just reading the case, I would normally

Page 70

have believed. And then after I did all the research, I saw, well it doesn't seem to line up.
Q. You also say that, on page 29 of your report, "The fee agreement did not and was not specifically required to identify Chargois & Herron."
A. That's right.
Q. What's your authority for that opinion?
A. Because the rule that was in effect didn't require it.
Q. Well, can you cite any cases for that proposition?
A. Well, you know, when you're trying to prove something that is well understood, you're generally not going to find cases that are dealing with it.
So if everybody -- let me put it this way. I didn't find any cases that said, oh, you didn't have a writing, so now you've violated this rule.
Did I find a case that says you didn't have a writing and you didn't violate

Page 71

the rule? I didn't find that case either.
MS. LUKEY: I think he was asking slightly different. Weren't you asking about identifying the referral firm?
MR. SINNOTT: Yes.
A. That's what I meant, the firm name in writing in the agreement.
Q. Okay. With respect to that identification of the firm, let me just read 1.5(e).
"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 participation and the total fee is reasonable."
Now, what language, what portion or what clause in 1.5(e) supports your opinion that the fee agreement was not specifically required to identify Chargois & Herron?
A. Because if you have a fee agreement that says that either fee sharing will be taking place or may be taking place, and the ultimate total fee is reasonable and the client

Page 72

agrees that you may share fees with others, that fits what you just read.
Q. And the phrase that "a division of fees will be made" does not indicate to you that a specific informing of the client as to that referring arrangement needs to be made?
A. As long as the client is informed that there will be or may be a division of fees and agrees to that, under that old rule, I'm not saying all Rule 1.5(e)s are worded in the same way, but under that rule, that was permissible.
Q. And when, in the life of the State Street case, was that complied with?
A. When the original retention letter between Labaton and Arkansas was consummated in February of 2011, I believe.
Q. And it never happened before that?
A. When you say "it never happened before that," what it are you referring to?
Q. Was 1.5(e) complied with?
MS. LUKEY: Objection.
A. Well, there was the prior retention letter for monitoring counsel that contained

Page 73

similar language. I would have to take a look at that earlier one, but 1.5(e) was complied with in the retention letter that Labaton had with Arkansas.
Q. So you believe that the retention letter satisfied the requirement that the client be informed that a division of fees will be made and the client consents to the joint participation?
A. That's right.
Q. But prior to that, you say there was similar language in the?
A. The original?
Q. The application for monitoring.
A. That's right. When they submitted their qualifications, there was an earlier letter where Labaton was retained by Arkansas.
Q. And what, to the best of your recollection, did that similar language say?
A. It was very similar, but I know that there was some change between the first letter and the second letter, but I'd have to look at both of the letters to tell you what that change is.

Page 74

MR. SINNOTT: Let me reference a letter dated February -- strike that.
Let me first reference an item that was previously introduced by a prior witness as Exhibit 5. You should all still have this.
THE SPECIAL MASTER: It's the RFQ.
Q. Have you seen that document before, Professor?
A. Yes, I have.
Q. And let me direct your attention to page 13.
A. Okay.
Q. And item 5.10.
A. Okay.
Q. And that reads, "Please describe proposed billing arrangements, including contingency fees, for securities litigation. If other than contingency fees are contemplated, please state the range of hourly billing rates, by timekeeper status (paralegal, first or third-year associates, et cetera, staff attorney, shareholder or partner, of counsel, et cetera) of all attorneys and

Page 75

paralegals proposed for assignment to ATRS matters. State what discount, if any, to these rates the firm proposes to provide to ATRS. While this RFQ primarily seeks the services of one lead attorney, the involvement of other firm attorneys may be required from time to time, depending on that matter."
And I'm not going to read it, but I ask that you look at the responses of Labaton and of Chargois in the following three pages.
A. Okay. (Perusing.) Okay.
Q. All right. Now, looking at those responses to 5.10, would it be fair to say that there's no reference in there to division of fees or a fee referral arrangement?
A. Not in this request.
MS. LUKEY: I may have misunderstood the question. May I ask that the reporter read it back?
MR. SINNOTT: Sure.
(Record read.)
MS. LUKEY: Objection.
A. In this request for qualifications, that's not discussed.

Page 76

Q. All right. And based on your previous reading of this document, does that appear elsewhere?
A. Not that I recall in this document.
Q. All right. So is it fair to say that this previous application, this request for qualifications, did not reference a division of fees?
A. It does not. And I may have been mistaken. I thought I saw an earlier fee arrangement between Labaton and Arkansas for the -- I thought it was for the monitoring counsel, but it may have just been a draft of the letter that ultimately was modified for the class action litigation.
THE SPECIAL MASTER: Could you be -- so that the chronology is clear, the response to the RFQ was in 2008.
THE WITNESS: Yes.
THE SPECIAL MASTER: Could you be thinking of the retention agreement, which took place in February of 2011?
THE WITNESS: Well, as I said, I thought and I am thinking I must be

Page 77

mistaken, that subsequent to the 2008 request for qualifications, and I'll explain why I'm thinking this, I recall that there was a discussion, I think maybe initially via e-mail, but then on telephone with the woman whose name I forget.
THE SPECIAL MASTER: Christa Clark?
THE WITNESS: Yeah, Christa Carter, is that it?
THE SPECIAL MASTER: Clark.
THE WITNESS: Christa Clark. That's it.
Who said to Eric Belfi, is my recollection, we can only have one firm name listed, and -- and I believe that I saw an agreement that resulted from that, referring to the monitoring counsel role. Now, it could have just been me thinking I saw an agreement because of the back and forth, but I know that it was explicitly understood that there was going to be fee division with Chargois & Herron that Arkansas knew through Christa Clark. And

Page 78

the only reason that that wasn't memorialized specifically was because she informed Mr. Belfi that the contracting system in Arkansas wouldn't permit it if the firms did not have a -- some kind of formal affiliation.

THE SPECIAL MASTER: Could you be thinking of the e-mail that Christa Clark sent to Eric Belfi in October of 2008?

THE WITNESS: I'm definitely thinking of that e-mail. The thing I think I must be mistaken about is I thought that there was a subsequent written agreement.

I still, although, I'm hesitating, I still think, based on the way her e-mail read, that there must have been something, because she said it can only be one, but maybe that had some more internal function with Arkansas, that they were just going to list Labaton themselves, but that's what led me to think I saw another agreement.

THE SPECIAL MASTER: There is an

Page 79

e-mail that I'm referring to which talks about some other possible role for Mr. Chargois other than jointly with Labaton as monitoring counsel.

MS. LUKEY: Objection.

THE SPECIAL MASTER: And this is the October 13, 2008, e-mail.

MS. LUKEY: Objection.

THE SPECIAL MASTER: Do we have that?

MR. HEIMANN: Maybe it would be useful to show it to him.

MS. McEVOY: I think all the copies were distributed.

THE SPECIAL MASTER: It's actually in your fact statement on page 8.

MS. LUKEY: It was marked this morning, too.

THE SPECIAL MASTER: Okay. It's actually in your fact statement on page 8. It's quoted. Maybe you could just take a look and see if that's what -- if that refreshes your recollection as to what informed the relationship.

Page 80

THE WITNESS: Right. (Perusing.) Right. And so it is just the e-mail exchange and then the subsequent telephone discussion that I, in my own mind, imagine resulted in a separate kind of retention letter between Labaton and Arkansas.

THE SPECIAL MASTER: So do you read Christa Clark's e-mail together with the subsequent retention letter in February of 2011 as creating the relationship together?

MS. LUKEY: Objection.

THE WITNESS: No. What I'm saying is there were two separate relationships. There was the relationship for monitoring counsel, and then there was a separate relationship created when Labaton represented Arkansas and then ultimately became class counsel.

So they were retained to do one body of work, and that led to a second body of work.

THE SPECIAL MASTER: For which there was a separate retention letter?

Page 81

THE WITNESS: That's right, a separate retention letter.

BY MR. SINNOTT:

Q. To your knowledge, Professor, what did Eric Belfi or others from Labaton tell George Hopkins about Damon Chargois?

A. Specifically --

Q. I'm not asking for specific words, but as best you can characterize their context.

A. I know there were discussions, and now we are shifting from Doane to now --

THE SPECIAL MASTER: Hopkins.

A. Hopkins. That there were conversations about -- to the effect of, and so this is my paraphrasing, so excuse me, to the effect of there is some fee sharing, and do you want to know who's involved in it, to which Mr. Hopkins, again, my paraphrasing, said I just don't want to know about how you are dividing the fees or how the lawyer fees are working.

So I know that there was a conversation to that effect as represented both by Mr. Hopkins and Mr. Belfi.

Page 82

I know that, subsequent to the class action settlement, that, at some point, Mr. Hopkins became aware of Chargois & Herron. I don't believe, though I could be wrong, that specifically Mr. Hopkins was informed about Chargois & Herron until -- I don't believe he was informed about them before the class settlement. That's the best of my recollection.

THE SPECIAL MASTER: Mr. Hopkins testimony was that he didn't know anything about Chargois and the agreement between Labaton and Chargois until this investigation.

MS. LUKEY: Objection.

THE SPECIAL MASTER: That's Mr. Hopkins' testimony.

MS. LUKEY: Objection.

THE WITNESS: Okay.

BY MR. SINNOTT:

Q. As a general matter, does a client's request not to be informed of case developments supersede or obviate an attorney's obligation to inform that client?

Page 83

MS. LUKEY: Objection.

A. You have a duty to keep your client informed. The detail of, you know, the granular nature of the information will depend a lot on what the client wants to know, that there are certain decisions the client, you know, in typical arrangements, has to make. And for those decisions, you have to keep them well informed, and they make those decisions.

So if it's a matter going to trial, whether or not the client is going to testify is the client's decision. And if it's a case that's going to be settled or if you're going to be going to trial, making the decision between settlement and trial those are all client decisions, and they have to be well informed about those, but some clients want more detailed information, and other clients don't.

Q. Do you consider the payment of $4.1 million to an attorney that performed no services in a case to be a significant development?

MS. LUKEY: Objection.

Page 84

A. Not in this -- in the abstract, yes. But in this particular case with a client who says I don't want to know how the fees are being divided, no.

Q. What if that request runs counter to the attorney's obligations under the professional rules?

MS. LUKEY: Objection.

A. If there is a clear professional obligation and a client wants you to violate that obligation, you have to live up to your ethical obligation.

Q. And then, in the February 8, 2011, engagement letter, there is a specific reference, is there not, to Labaton keeping Arkansas apprised of significant investments. Do you recall that?

A. I believe so, but if I could see the letter, then I could say yes without just saying I believe so.

Q. Sure.

MR. SINNOTT: Do you have that, Joan?

MS. LUKEY: Yes.

Page 85

A. I'm being shown it now.

Q. Second page, second paragraph, first line.

A. Okay. (Perusing.) Okay. Yes.

Q. So the engagement letter memorializes an obligation on the part of Labaton to keep Arkansas informed of matters of significance, correct?

A. That's correct.

Q. Was a $4.1 million payment to Damon Chargois a matter of significance?

A. In this particular case, I don't believe so.

Q. Why not?

A. Well, it -- first of all, the preceding paragraph says that, "Arkansas agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed."

And it goes on but -- and it then says, "Any division of fees among counsel will be Labaton Sucharow's sole responsibility and

Page 86

will not increase the fees payable by Arkansas Teacher or the class upon successful resolution of the litigation."
So, in that context, it would be significant if Arkansas Teachers were going to be paying the total bill themselves, but not in this instance.
Q. All right. So the answer is no?
A. That's correct.
Q. Not significant.
Beginning on page 31, you discuss the issue of disclosure.
A. Yes.
Q. And you list several grounds for a disclosure or several authorities that would require a disclosure.
A. And you are referring to disclosure to the court, correct?
Q. Yes, disclosure to the court.
And these include the Federal Rules of Civil Procedure, local court rules, standing orders, special order applying to class actions and clear precedent, correct?
A. That's correct.

Page 87

Q. You don't list ethical duties, correct?
A. Not here. I get to ethical duties later on.
Q. Okay. Why don't you list them here?
A. Because these are the sources of law that inform what the ethical duties are.
Q. You don't put ethical duties as an independent basis for disclosure?
A. Well, I discuss it later, that the ethical rules, in and of themselves, don't create an independent basis and did not create for Labaton to provide notice of the court of its fee-sharing arrangements with Chargois & Herron.
But then later when I do discuss the ethical duties, there could be situations where the ethical duty would have been triggered.
Q. All right. And could be triggered independent of the federal rules?
A. That's right. There could be no local rule. There could be no precedent. If the judge said, I want to know exactly how all the fees are being divided, then that would

Page 88

trigger the ethical duty to tell the judge how all the fees were being divided.
Q. Would candor to the court, Rule 3.3, be an independent grounds for disclosure to the court?
MS. LUKEY: Objection.
A. Only in a situation where you have a duty to speak.
Q. In addressing the obligation of customer class counsel to the court, did you consider what authority the court had to disallow the Chargois payment even if it was a valid division of fees?
MS. LUKEY: Objection.
A. I'm not sure what your question is.
Q. Sure. Did you consider the fact that the court, regardless of whether it was a valid division of fees, could say not good enough?
MS. LUKEY: Objection.
Q. I'm not going to accept it?
A. If the court had required or there was some other authority that required disclosure of all the fees and how they were

Page 89

being divided, then, yes, the court would have had that authority. But without the requirement of disclosure, then that doesn't -- I guess the court's authority isn't implicated.
Q. Well, the court's authority remains the same, correct?
MS. LUKEY: Objection.
A. That's right. But the court only decides on what's before it and what's required to be before it.
Q. So what's the responsibility of the court to a certified class?
A. It has a fiduciary duty to the certified class.
Q. And do you have any view on whether Judge Wolf, who would have considered the existence of the Chargois arrangement, relevant to his exercise of that fiduciary duty?
MS. LUKEY: Objection.
A. I have no view on that.
Q. You don't have any view as to whether it's relevant?
MS. LUKEY: Objection.
A. I don't see it as relevant unless

Page 90

his view was made known to counsel or was required -- or that the information was required to be disclosed to the court.

THE SPECIAL MASTER: So the burden is totally on the court to ask?

THE WITNESS: Or to have a court rule or a standing order as many judges in different courts have.

THE SPECIAL MASTER: And in the absence of the court asking, before a judge approves a settlement agreement, the lawyers have no responsibility or duty to make the judge aware of an agreement such as the Chargois agreement?

THE WITNESS: That's right, absent a local rule, a standing order or a case-specific order. That's why, you know, rule -- Civil Rule Procedure 54(d), you know, specifically has a clause, "if the court requests."

THE SPECIAL MASTER: How is a judge supposed to perform his or her obligations to the class in a proceeding at a settlement hearing, what we call a

Page 91

fairness hearing --

THE WITNESS: Right.

THE SPECIAL MASTER: -- in determining that the allocation of fees is fair to the class if the lawyers don't tell him anything about this agreement that's out there to pay $4.1 million to somebody who did no work on the case and appears nowhere in the fee petition filings? How is a judge supposed to perform his or her obligation?

MS. LUKEY: Objection.

MR. HEIMANN: Objection.

THE WITNESS: That's for the judge to decide. Some judges decide that they are going to have a local rule, and they get together, like the judges of the Southern District and the Eastern District of New York did.

Other judges have standing orders. Some judges might have a case-specific order.

Even absent all those orders, a direct request made to counsel could

Page 92

fulfill that.

Is the absence of having all of those rules an indication that the judge is not fulfilling his or her fiduciary obligation? Absolutely no. Because the rules are there. I think it's -- and I haven't opined on this, and I haven't researched the judge's fiduciary obligation, but I've read enough class action cases to see that the primary obligation is to see that the settlement is fair to the class members and that the attorney fees awarded, the gross amount of the attorney fees awarded appears to be fair.

What obligation beyond that, I haven't been asked to opine on it, and I haven't researched it.

THE SPECIAL MASTER: So, in the absence of a local rule or a judge's standing order, there is no obligation to the lawyers to make a disclosure of a fee agreement or agreement to pay a lawyer $4.1 million who never appeared before the

Page 93

court, appears in no fee declaration, appears in no Lodestar petition, never filed an appearance in the court, there is no obligation for the lawyer to come forward to disclose this so that the judge may make a determination as to whether this payment is in the interests of class?

MS. LUKEY: Objection.

THE WITNESS: That's what I've said. And I guess if there was an obligation for 4.1 million, my position would be if there's an obligation for 4.1 million, there would be an obligation for any amount.

THE SPECIAL MASTER: What if the judge -- well, that raises a good question.

What if the amount was $10 million instead of $4.1 million?

MS. LUKEY: Objection.

THE WITNESS: In Massachusetts, where you can have a peer referral fee, sometimes known as a naked referral fee or a bear referral fee, again, it would not

Page 94

make a difference.
THE SPECIAL MASTER: So the amount is irrelevant?
THE WITNESS: I think the amount is irrelevant.
THE SPECIAL MASTER: What if the judge says, I want to know about the allocation in the case, tell me about the allocation in the case without more.
MS. LUKEY: Objection.
THE SPECIAL MASTER: Does that trigger an obligation on the part of a lawyer to talk about this fee agreement?
MS. LUKEY: Objection.
THE WITNESS: Based on the way you've characterized it, no, because I think that's just talking about the allocation among the firms. And then what the firms do with their allocation is, absent the standing order or local court rule or case-specific order or precedent, of which there is none in Massachusetts District Court, no, it doesn't trigger an obligation.

Page 95

THE SPECIAL MASTER: You understand that this particular settlement fairness hearing and fee petition was a non-adversary proceeding. There was nobody objecting, nobody there to raise objections or even to raise questions other than the judge. You understand that?
MS. LUKEY: Objection.
THE WITNESS: I can assume that based on what you've said. I believe I saw something to the effect that there were no objectors and it was not non-adversarial.
THE SPECIAL MASTER: Does this raise in any way the obligation of the lawyers to more fully disclose fee agreements to the court?
THE WITNESS: No.
MS. LUKEY: Objection.
THE SPECIAL MASTER: Are you aware of the comment to the Massachusetts Rules of Professional Conduct, specifically comment 14(a) to Rule 3.3, are you aware

Page 96

of that?
THE WITNESS: I know I've read it, but if you are going to question me on it, if I had a copy, it would be greatly appreciated.
MS. LUKEY: Your Honor, can I ask when we might be breaking? I think we have been going two hours.
THE SPECIAL MASTER: In a little bit. Okay?
14(a). I don't want to mismark it.
THE WITNESS: I can remember 14(a).
THE SPECIAL MASTER: Just for the record, I will read it.
THE WITNESS: If I could follow along with you, or if I could read it silently.
THE SPECIAL MASTER: And then I will ask you about the next as well.
MR. SINNOTT: Why don't we mark it as an exhibit.
(Joy Exhibit 6, Excerpts from the Massachusetts Rules of Professional Conduct, marked for identification.)

Page 97

MS. LUKEY: Given the issue we had earlier in the case, do we know if this is what the rule was at the time? I just don't know what the answer to that is.
THE SPECIAL MASTER: I think it was, but we can check that.
Elizabeth, didn't we check to make sure this was the rule and comment? The time would be August '16 or November 2016 hearings. So we think it is.
THE WITNESS: Okay.
THE SPECIAL MASTER: Does this comment at least imply some higher duty of disclosure to the court where there is a class action settlement and it is in the nature of a non-adversary proceeding?
MS. LUKEY: Objection.
THE WITNESS: Yeah, it does.
THE SPECIAL MASTER: And it seems to define what that is within -- within that comment as being the same duties of candor to the tribunal as lawyers in ex parte proceedings.
THE WITNESS: That's correct.

Page 98

THE SPECIAL MASTER: And should be guided by Rule 3.3(d).
THE WITNESS: That's right.
THE SPECIAL MASTER: And I think 3.3(d) is next there right in front of you.
THE WITNESS: Yes.
THE SPECIAL MASTER: We should read that for the record.
"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."
THE WITNESS: Uh-huh.
THE SPECIAL MASTER: Which raises the question. A judge who has to decide whether or not this is a fair settlement to the class in his or her fiduciary role to the class, is this not a material fact, this, the Chargois agreement, not a material fact that a judge, known to the lawyer, that would enable a lawyer to make an informed decision?

Page 99

MS. LUKEY: Objection.
THE WITNESS: I don't believe it's a material fact.
THE SPECIAL MASTER: Really?
THE WITNESS: Really.
THE SPECIAL MASTER: Let me ask you this. You understand that the class consisted of not just what we have called the customer class, but also members of two other ERISA lawsuits, correct?
THE WITNESS: That's correct.
THE SPECIAL MASTER: You understand that, and that those two other cases were consolidated for all pre-trial purposes?
THE WITNESS: That's my understanding.
THE SPECIAL MASTER: That would include settlement.
THE WITNESS: That's my understanding.
THE SPECIAL MASTER: Do you understand that the ERISA members of that class, including the named class representatives in the other two lawsuits,

Page 100

were never told of the Chargois arrangement? Do you understand that?
THE WITNESS: I understand the class members were not told, yes.
THE SPECIAL MASTER: Including the ERISA class members?
THE WITNESS: That's correct.
THE SPECIAL MASTER: Do you understand also that their lawyers were not told of the Chargois arrangement? Their lawyers, meaning the lawyers for the ERISA class members, and specifically the ERISA class representatives were not told of the Chargois arrangement?
THE WITNESS: It's my understanding, at some point, they were, but I'm not sure at what point they were.
THE SPECIAL MASTER: I want you to assume that they knew nothing about it until this investigation.
THE WITNESS: Okay.
THE SPECIAL MASTER: I want you to further assume that there were efforts made to ensure that they knew nothing

Page 101

about it by not disclosing it to them in various documents in which it could have been disclosed to them. There were specifically efforts made to not disclose it to them.
My question to you, sir, is how would the interests of the class be protected, and here we are talking about the settlement class, which included ERISA members, how would the interest of the class be protected if the ERISA lawyers were not told, the ERISA class members were not told, and the court was not told?
MS. LUKEY: Objection.
THE WITNESS: Because, at the hearing, the decision is, was what was submitted in terms of the attorneys' fees, was that, you know, substantiated, and was that fair, you know, given the amount of award that was going to all of the class members.
So it would be the same thing as, let's assume that Mr. Chargois happened to be a lawyer with Labaton, and the only

Page 102

thing that he did at Labaton was help get Arkansas as a client, and that's the only thing he did, but his agreement with Labaton is he gets $4.1 million. Nobody takes a look once the firm gets the fee. The judge is looking at what the amount is and how much is going to each of the firms involved.

THE SPECIAL MASTER: With one exception, right? The Labaton firm was appearing before the court as lead counsel, right?

MS. LUKEY: Objection.

THE WITNESS: They are appearing, that's correct.

THE SPECIAL MASTER: And the court is aware that the Labaton firm is before the court. Yes?

THE WITNESS: That's right, sure.

THE SPECIAL MASTER: And the court is further aware that the Labaton firm has done a lot of work on the case, correct?

THE WITNESS: That's right.

THE SPECIAL MASTER: And there's no

Page 103

distinction there between that and Mr. Chargois, who had no relationship to the case, did no work on the case, never appeared in the case, was not in a fee petition, was not in a Lodestar petition, and you still see that as exactly the same?

MS. LUKEY: Objection.

THE WITNESS: I don't see it exactly the same, but I think -- and I see in this case that it doesn't make a difference because there was no obligation to disclose to the court the fee-sharing arrangement because the court didn't ask for it under 54(d). There was no local rule. There was no standing order. There wasn't a specific request from the judge. There's no precedent that says that you have to do it.

THE SPECIAL MASTER: And Rule 3.3 and 3.3(d) and the comments thereto create no higher obligation?

MS. LUKEY: Objection.

THE WITNESS: In this instance, they

Page 104

don't create an obligation to disclose the fee to Chargois Herron.

THE SPECIAL MASTER: So, in the absence of a court rule --

THE WITNESS: Yes.

THE SPECIAL MASTER: In the absence of a court's standing order, is the only thing the court is to look at, then, is the total fee, and whether that's fair and reasonable in light of all the factors that courts look at, and not to be concerned about how that fee is being divided among the lawyers?

MR. HEIMANN: Objection, compound.

THE WITNESS: If I understand your question correctly, that's right, because the same way -- although various lawyers at the firm submit their time, the firm's own agreement is going to decide what portion of those fees the lawyers who have done the work is going to get.

THE SPECIAL MASTER: You are aware that there is, or maybe you're not aware, that there is testimony in this case from

Page 105

the lawyers for the ERISA clients that, had they known of the agreement with Mr. Chargois, they would not have agreed to the settlement. Are you aware of that?

MS. LUKEY: Objection.

THE WITNESS: I'm not aware of that.

MR. HEIMANN: I object. There is no such testimony, Your Honor.

THE SPECIAL MASTER: They would not have recommended it.

MR. HEIMANN: That's not true. I'm sorry.

MS. LUKEY: Objection.

THE WITNESS: I'm not aware of any of this.

THE SPECIAL MASTER: Are you aware that the ERISA lawyers have said that they would not have agreed had they been aware of the Chargois arrangement, that they would not have agreed with the allocation of their fees?

MS. LUKEY: Objection.

THE WITNESS: No, I'm not.

THE SPECIAL MASTER: Are you aware

Page 106

of the role of the Department of Labor in this case?
THE WITNESS: I'm aware that they were involved in working out what the ERISA class members were going to get, like what percentage. But, you know, I wasn't asked to opine on that. So that's something I have some awareness of, but only because of digging into this, you know, that is something I became aware of.
THE SPECIAL MASTER: You are aware that the Department of Labor has jurisdiction to oversee ERISA plans?
THE WITNESS: Yes.
THE SPECIAL MASTER: And that the Department of Labor was involved in these negotiations?
THE WITNESS: I know they had some role.
THE SPECIAL MASTER: And are you aware that one lawyer in particular for the ERISA, who was representing the ERISA clients in this, had primary responsibility for negotiating with the

Page 107

Department of Labor?
MR. HEIMANN: Objection.
THE WITNESS: That sounds like something I may have come across, but I'm not -- not aware of that entirely.
THE SPECIAL MASTER: Are you aware that the defendant in the case with whom the settlement negotiations were going on, was insisting on a global settlement to include the Department of Labor, the SEC and the Department of Justice?
THE WITNESS: I'm not aware of that.
THE SPECIAL MASTER: I want you to assume that one of the lawyers for the ERISA class was taking primary and lead responsibility for dealing with the Department of Labor, and that that's the testimony of a number of lawyers, not just the ERISA lawyers.
THE WITNESS: Okay.
THE SPECIAL MASTER: I want you to assume that.
And that that lawyer has testified that, had he known of the Chargois

Page 108

arrangement, he would have been obligated to tell the Department of Labor about the Chargois arrangement?
MS. LUKEY: Objection.
THE WITNESS: I'm assuming that. Go ahead.
THE SPECIAL MASTER: Okay. And that he believes that the Department of Labor would not have agreed to participate, it's his belief, but he testified to that.
MS. LUKEY: Objection.
THE SPECIAL MASTER: Which then would have had the effect of blowing up the settlement because there wouldn't be a global settlement.
MS. LUKEY: Objection.
THE SPECIAL MASTER: Are you aware of that?
THE WITNESS: I'm making those assumptions as you've asked me to.
THE SPECIAL MASTER: Does that change your view that there was no obligation to tell any of the other lawyers in this case?

Page 109

MS. LUKEY: Objection.
THE WITNESS: I wasn't asked to opine on that issue.
THE SPECIAL MASTER: Do you believe that there was an obligation to tell the lawyers for the ERISA members of the class?
THE WITNESS: Like I said, I wasn't asked to opine on it. I don't believe so. I would, before rendering an opinion on that, I would want to look deeper into that, but I don't believe so based on everything I'm come across.
THE SPECIAL MASTER: I want to go back, taking the objections to the way I characterized the ERISA lawyers. Let me read you exactly what this ERISA lawyer said and other ERISA lawyers.
This is the testimony -- is this from Kravitz or Sarko?
MR. SINNOTT: Sarko.
THE SPECIAL MASTER: This is questioning by Mr. Sinnott.
"What would you have done, Counsel,

Page 110

if during the course of this case, you had learned about Mr. Chargois?
"**ANSWER:** Well, I think, in my answer -- if we go back in the original time, the 9 percent deal, I would not have agreed to that. I guess I would not have agreed to file a joint fee petition if some money was going to Mr. Chargois now that all of this information has come out. I mean, the first thing, I would have asked some questions, but I think that's, you know, 20/20 hindsight.
"I think the real issue is if I would have known this information, I would not have agreed to file a joint petition, because I would not have wanted, I mean, bluntly, in order to do that, I would have had -- I would have had -- I would have first had to talk to the other ERISA counsel and they would not have agreed."
MS. LUKEY: What's the question, sir?
THE SPECIAL MASTER: "I would have had to get approval from the named

Page 111

plaintiffs who would not have agreed. I mean, you have met our named plaintiffs. They're straight shooters. They would say this doesn't sound right."
MR. SINNOTT: Could we mark that as an exhibit, please?
THE SPECIAL MASTER: Yes. We'll mark it as an exhibit.
(Joy Exhibit 7, Excerpt of Deposition of Lynn Lincoln Sarko, dated September 8, 2017, marked for identification.)
MS. LUKEY: Is there a question?
THE WITNESS: You were reading from?
THE SPECIAL MASTER: I'm sorry. Page 75. If you want to take a moment to read it, it starts at the very bottom of page 74, line 23.
THE WITNESS: Okay. Thank you. (Perusing.)
And you just want me to read that section for your question, then?
THE SPECIAL MASTER: You can read as much as you want.

Page 112

THE WITNESS: If you let me know what I need to read for your question, then that will keep me focused.
THE SPECIAL MASTER: Okay. My question to you is, does this impact your opinion at all that members of the class were not told about the Chargois arrangement and there might well have been a significant impact upon whether or not they would have agreed to the settlement?
MS. LUKEY: Objection.
THE WITNESS: As I said, I didn't render an opinion about communications between the various law firms, class counsel, the various counsel for the different classes, but in terms of my opinion about notice to the court and my opinion about notice to the class members, it won't change my opinion.
THE SPECIAL MASTER: So how are the interests of the ERISA class members protected here, where this arrangement with Mr. Chargois was not disclosed to the class, was not disclosed to the ERISA

Page 113

lawyers, was not disclosed to the ERISA class members, and was not disclosed to the court, how can a court protect the interests of the class members under these circumstances?
MS. LUKEY: Objection.
THE WITNESS: As I said, I wasn't asked to opine about what, as we referred to them, the customer class lawyers told the ERISA class lawyers and what the ERISA class lawyers knew or didn't know. That was not something I investigated or looked into.
THE SPECIAL MASTER: Well, you did say that it wasn't necessary to inform the class.
THE WITNESS: That's correct.
THE SPECIAL MASTER: And the ERISA members were members of the class.
MS. LUKEY: I think your question had built in the lawyers as well as the class. And I think he is just making that point.
THE SPECIAL MASTER: Yes. Well, all

Page 114

right. You believe there was no obligation to inform the ERISA class members at all of the Chargois agreement as members of the class.
THE WITNESS: That's correct.
THE SPECIAL MASTER: Even though their lawyer has now testified that that would have been material information, which may have caused them to not file a joint petition with the customer class and to have to tell their clients, the representatives of the ERISA class members, and to -- and in this lawyer's view, that their clients would never have agreed to it?
MS. LUKEY: Objection.
THE SPECIAL MASTER: So the question is, that doesn't change your opinion as to the obligation to tell the class?
MR. HEIMANN: Judge, what's the "it" in your question, please?
THE SPECIAL MASTER: "It," about the Chargois agreement.
MR. HEIMANN: And not agreed to the

Page 115

fee. That's what you're saying, correct?
MS. LUKEY: That they would not have agreed to the settlement?
THE SPECIAL MASTER: "To file a joint fee petition," let me read, "because I would have not have wanted -- I mean bluntly in order to do that, I would have had -- I would have first had to talk to the other ERISA counsel, and they would not have agreed.
"I would have to get approval from the named plaintiffs who would not have agreed. I mean you've met our named plaintiffs. They are straight shooters. They would say this doesn't sound right."
Does that change your opinion at all that there was no obligation to tell the class?
MS. LUKEY: Objection.
THE WITNESS: It does not change my opinion.
THE SPECIAL MASTER: So my question to you is, how are the interests of the class protected by keeping the Chargois

Page 116

agreement from the class, from the class members who were specifically named in the ERISA cases and in the petition, you understand there were three -- the three cases were listed, and the case -- cases had been consolidated for pre-trial purposes, including settlement.
So given all of this, how are -- how can the interests of the class, including the ERISA members, be protected?
MS. LUKEY: Objection.
THE WITNESS: In my opinion, by the judge's determination that the amount going to the class members was fair and equitable, and the amount of attorneys' fees were justified by what had been submitted to the court, and that those were also fair and equitable.
THE SPECIAL MASTER: So all the judge has to know, all the judge has to know, is that the total fee is fair. The judge has no interest in knowing anything else, in the absence of a court rule or a standing order?

Page 117

MS. LUKEY: Objection.
THE WITNESS: Well, I'm comfortable in saying no interest in knowing about fee sharing, but in terms of what has been submitted to the court in terms of what firm A is getting and what firm B is getting, the judge might have an interest between -- you know, in that way, in terms of deciding what's fair and equitable.
THE SPECIAL MASTER: That's as to lawyers before the court and the allocation of fees between those lawyers?
THE WITNESS: Yeah. Typically, between the firms before the court. That's correct.
THE SPECIAL MASTER: Why would the judge have any lesser interest in knowing about a lawyer who's getting $4.1 million who's never appeared before the court, is not listed on any fee petition, is not listed on a Lodestar petition, is not listed as an expense, is not in anywhere, any place brought to the court, why would the judge have more interest in the

Page 118

allocation between the lawyers before him than in a payment to a lawyer who's not appeared at all in any way before the court?
MS. LUKEY: Objection.
THE WITNESS: For two reasons. The first reason is the same reason the judge has no interest in what the firm does when it gets its fee and how it shares its fee.
And the second reason is we have civil rule -- Federal Rule of Civil Procedure 54(d) that says when the judge wants to know about fee sharing, the judge will ask. And then we have standing orders where some judges say, I always want to know, or we have court local court rules, like in the Southern District and the Eastern Districts of New York, where all of the judges there have gotten together and say we want to know in every one of these cases.
THE SPECIAL MASTER: So to put a cap on this, in these instances in which there's not a court rule and not a

Page 119

standing order, the lawyer has no obligation, the lawyers, here, lead counsel, has no obligation to inform the court whatsoever, either under any Rule of Civil Procedure or under the rules of candor to the court and, particularly in light of comment 14(a) and the nature of a settlement brought to the court in a non-adversary context.
MS. LUKEY: Objection.
THE WITNESS: That's correct, no obligation.
MR. SINNOTT: Just a couple questions and we can break.
BY MR. SINNOTT:
Q. I know, in your report, you cite 3.3(a) and you cite comment 3 to 3.3. Correct me if I'm wrong, but I did not see comment 14(a) or 3.3(d) referenced in your report.
A. That's correct.
Q. Were you aware of comment 14(a) when you wrote your report?
A. I know that I read the rule and all of the comments, and I was focusing on the way

Page 120

that the issue had been presented up to that point in time.
I didn't focus on this particular comment. And I would have if that had been already identified as an issue, and I would have done more research and I would have seen if I could have come up with anything one way or the other.
Q. So Labaton had not identified it as an issue for you --
MS. LUKEY: Objection.
Q. -- is that correct?
MS. LUKEY: Objection.
A. No, no, the only thing --
MS. LUKEY: Go ahead.
A. Okay. No. What was identified to me was, is there a 3.3(a) issue or is there an 8.4(c) issue here. That's what was identified to me.
Q. But if you read the rule, and let me read it again, read the comment, rather.
"When adversaries present a joint petition to a tribunal, such as a joint petition to approve the settlement of a class

Page 121

action suit or the settlement of a suit involving a minor, the proceeding loses its adversarial character and, in some respects, takes on the form of an ex parte proceeding.
"The lawyers presenting such a joint petition thus have the same duties of candor to the tribunal as lawyers in ex parte proceedings, and should be guided by Rule 3.3(d)."
And Rule 3.3(d), again, states, "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."
Would you agree with me that comment 14(a) and 3.3(d) are inconsistent with the opinion that you've offered?
MS. LUKEY: Objection.
A. No, I would not.
Q. Well, would you agree with me that they speak to the same issues as -- on duty of candor to the court as you've spoken to?
MS. LUKEY: Objection.

Page 122

A. I'm not quite following your question.
Q. Let me just break it down.
You've got a comment that makes specific reference to a joint petition to a tribunal such as a joint petition to approve the settlement of a class action suit. And we had that in this case, correct?
A. Right.
Q. So that's relevant, isn't it?
A. Yeah. Please correct me if I'm wrong, because I read the ethical report by Professor Gillers, and I don't recall him identifying this as an important issue.
And so I suspect that when I did, you know, when I read through it, I thought, well, Professor Gillers doesn't see this as bearing on this, and he's focusing on 3.(a), and he is focusing on 8.4(c) and I'm focusing on there.
If you would like me to prepare a supplemental report, I would be happy to do so, and I would research this, and I would do a very thorough job, as I have tried to do

Page 123

throughout this.
Q. All right. But your testimony is that you did not leave this out because it was adverse or inconsistent to your position?
A. Absolutely not. I did not leave it out because it was adverse. If I had thought it was adverse, I would have looked into it and I would have disclosed it to the lawyers that had retained me and said, look, I think you have a problem here. I've done that more times than I could say, because I want to stand by what I've done.
Q. And this is a significant comment, isn't it?
MS. LUKEY: Objection.
A. It could be significant. It could be significant.
Q. It deserved attention, didn't it?
MS. LUKEY: Well, objection.
A. Not in the context that I was doing this. Absolutely not.
MS. LUKEY: This is a rebuttal report. Professor Gillers did not cite to the rule, to the note or to 3.3(d).

Page 124

All we asked him to do was a rebuttal to Professor Gillers' report.
MR. KELLY: Objection. May I add a legal point on the comments?
MR. SINNOTT: Let me ask my question and then you can make any objection.
THE SPECIAL MASTER: But not speaking objections, please.
BY MR. SINNOTT:
Q. You have testified, Professor, that the judge could have issued a standing order, the judge could have required or asked questions of the parties if he wanted to know that information about fee allocation or fee referrals, correct?
A. That's correct.
Q. Isn't it just as likely that a judge could say, I don't have to do that. Based on Rule 3.3 and the comments, these parties have to be candid with me, they have to treat this like it's a non-adversarial setting in which they have a duty to provide this information. Isn't that just as likely?
MR. HEIMANN: Objection, calls for

Page 125

speculation, among many other reasons to object.
MS. LUKEY: Objection.
A. So this is my pure speculation, and that is, first of all, we get to the fact that 3.3(d) talks about all material facts, right?
And so what are the material facts? The material facts at this hearing are what the fees is going to be and what the amount to the class is going to be.
As I said, I haven't researched this, but based on my experience, based on everything I've done, I would be very surprised if I would find a case that would say that because of 3.3(d) incorporated through comment 14(a) of the Massachusetts Rules of Professional Conduct, there is some heightened duty of candor that would have been applicable in this case that would have required disclosure of the Chargois Herron in the amount of -- the fee that they were going to get out of the fee awarded to class counsel.
I would be very surprised, and as I said, I would be happy to provide you with the

Page 126

research that would back up what I've just said.
Q. All right. Thank you, Professor.
A. You're welcome.
MR. SINNOTT: On the phone, 15 minutes. We will reconvene at 4:25.
(Recess taken.)
MR. SINNOTT: All right. We are back on the record. And on the phone, I believe we are now joined by Professor Gillers as well.
And, David, are you there?
MR. COPLEY: Yes, I am.
MR. SINNOTT: Okay. Linda, are you there?
MS HYLENSKI: I am.
MR. SINNOTT: Okay. Emily has not returned, has she?
Okay. Josh, are you on the phone?
MR. SHARP: Yes, I am.
MR. SINNOTT: Is anyone else on the phone? Could whoever is shuffling papers into the speaker cease and desist? Thank you.

Page 127

BY MR. SINNOTT:
Q. All right. Professor, welcome back.
In your report on page 39, you conclude your examination of one of the cases that Professor Gillers had cited in his report, the Agent Orange case.
A. That's right.
Q. And on page 39, the last paragraph in the middle of the page says, "In re: Agent Orange informs and is consistent with my opinion that without a standing order, specific order, inquiry from the court, local court rule or precedent in a circuit, there is no obligation to disclose fee-sharing agreements with the court."
I read that correctly, didn't I?
A. You did.
Q. But I would suggest to you or let me suggest that Agent Orange does, in fact, require disclosure of a private fee-sharing agreement, and let me just point out a couple things to you.
In that case, and you have read the case, obviously, because you rebutted it or

Page 128

wrote a rebuttal to it.
A. Yes.
MR. SINNOTT: Madam Court Reporter, if we could mark that as the next exhibit.
(Joy Exhibit 8, In re: Agent Orange Product Liability Litigation, marked for identification.)
Q. And looking at what has now been marked as Exhibit 8, this is In re: Agent Orange product liability litigation, 818 F.2d 216, United States Court of Appeals for the Second Circuit.
And would you agree with me that, in Agent Orange, the Second Circuit refused to enforce the agreement among the lawyers despite the absence of a court rule that would have required the lawyers to inform the District Court judge of the agreement?
MS. LUKEY: Objection.
A. Not exactly, because there was a court rule that required it, but the District Court waived the application of the rule in that particular case, and waived the rule at a time when the court was unaware of the

Page 129

agreement among counsel.
Q. It was more than just a waiver, wasn't it?
MS. LUKEY: Objection.
A. I'm not sure what you mean by "waiver."
Q. Let me direct your attention to page 12 of the opinion. It would be page 8 at the bottom of your copy.
A. Okay. Page 8. All right.
Q. And you see up above the bracketed 12?
A. Yes.
Q. "We do agree with the District Court's ruling that, in all future class actions, counsel must inform the court of the existence of a fee-sharing agreement at the time it is formulated."
I read that correctly, didn't I?
A. You did.
Q. How do you understand the meaning of the word "all" in that sentence?
A. That the -- wait. That all means all. In the Second Circuit, the court was

Page 130

saying you had to disclose in all class actions.
Q. And how do you understand the meaning of the words "a fee-sharing agreement"?
A. As the words state, an agreement to share fees.
Q. Okay. And the Second Circuit did not limit itself to a particular kind of fee-sharing agreement, did it?
A. Not by that language, no, it did not.
Q. Because it said "all," correct?
A. It did.
Q. And it did not limit itself, certainly, to the kind of fee-sharing agreement in the Agent Orange case, did it?
A. Not by that language, it did not.
Q. Let me direct your attention also to page 5 at the bottom of your pages on the right-hand side of the section bracketed 5.
A. All right.
Q. And the court quotes Lewis versus Teleprompter.
A. Yes -- hold on. I'm not -- I'm on

Page 131

page 5. Do you mean on the right-hand side?
Q. Page 5, down here, yeah.
A. Okay. Okay. I'm sorry. I was looking on the left column, not the right column.
Q. Yeah, go to the right-hand side, and specifically the sentence that begins "We reject this authority."
Do you see that?
A. Yes.
Q. And if I could read it. "We reject this authority, however, to the extent it allows counsel to divide the award among themselves in any," and you can see that the word "any" is emphasized there.
A. Right.
Q. "Manner they deem satisfactory under a private fee-sharing agreement."
A. Uh-huh.
Q. "Such a division overlooks the District Court's role as protector of class interests under Federal Rule of Civil Procedure 23(e) and its role of assuring reasonableness in the awarding of fees in equitable fund

Page 132

cases.
"In addition, this approach overlooks the class attorney's duty," let me just make sure I'm reading it correctly.
A. So you skipped over the citations.
Q. Yeah. So I skipped the citations. And if you go down below the quoted reference there, it says, "In addition, this approach overlooks the class attorney's duty to be sure that the court, in passing on the fee application, has all the facts."
A. That's right.
Q. "As well as their fiduciary duty to the class not to overreach."
And you see where Lewis versus Teleprompter is cited there.
A. That's right.
Q. My question to you is, how do you interpret the words "has all the facts"?
MS. LUKEY: Objection.
A. Well, I'd have to take a look at Lewis versus Teleprompter Corp. to answer that, because it's making -- you know, that's a quote out of context, and I just would want to take a

Page 133

look at how they are talking to it.
I know the next paragraph talks about that, you know, the decisions where these internal fee agreements have been approved were not ones where there was a return on investment as a factor.
So, I mean, I might infer that, you know, if you have an agreement where, you know, having an investment agreement where you're going to get a big multiple of what you've invested, that that's a fact that the court needs to know. But like I said, I want to take a look at Lewis versus Teleprompter to be certain.
Q. But you would agree that it doesn't say that -- strike that.
You would agree that it doesn't say "has all the facts that the parties believe to be relevant," correct?
A. It does not say that.
Q. And why didn't you quote these passages in your discussion of the Agent Orange case?
(Discussion off the record.)

Page 134

A. I have no idea why I didn't quote those particular passages out of, you know, the various -- I think I quoted the passages that I quoted because I thought that they were relevant to what I was saying, and I can't tell you why I didn't just append the entire decision.
Q. Would you agree with me that these passages are relevant to the questions that will come before Judge Wolf in this case?
MS. LUKEY: Objection.
A. They may be, but I think everything has to be in context.
THE SPECIAL MASTER: While he is considering his next line of questioning or next question, was the class, once it was certified, a client of Labaton?
MS. LUKEY: Objection.
THE WITNESS: Labaton had certain duties to the class as a whole, but they weren't a client like an individual client is.
THE SPECIAL MASTER: Without going through the entire record, there are a

Page 135

number of references to the ERISA members of the class as they were our clients.
MR. HEIMANN: I'm objecting to this unless you show us in the record where that was said.
THE SPECIAL MASTER: We can spend time. I will get them all out if you want to do that.
Can you get all those? There's a list of them that we have.
But I want you to assume there's a number, including what's been referenced in this litigation as the lobby conference, in which the judge was told there are overlapping interest, words to the effect, I'll get it exactly, but they are all our clients.
Does that change your view about whether the class was class counsel's clients?
MS. LUKEY: Objection.
THE WITNESS: I don't think what you're saying is inconsistent with what I said.

Page 136

I said that class counsel for -- or Labaton let's just say Labaton had certain obliges to the class but those obligations were not exactly the same as a lawyer to the class members, that a lawyer would have to an individual client.
THE SPECIAL MASTER: So once the class is certified, Labaton does not have an obligation to comply with the disclosure requirements and consent requirements under Rule 1.5(e)?
THE WITNESS: Not to every individual class member, it does not.
THE SPECIAL MASTER: What about in this case, where you have three cases consolidated for pre-trial purposes, and you have specific class representatives in those other two cases that are consolidated, no obligation to disclose the Chargois agreement to those class representatives or at least to their lawyers so that it can be disclosed to those class members?
MS. LUKEY: Objection.

Page 137

THE WITNESS: As I said, I did not look into any obligation that Labaton had to the lawyers representing the ERISA class members.
THE SPECIAL MASTER: Okay. Fine. Let's just stick with the named ERISA class members in the two other cases that have been consolidated and are now members of the settlement class. No obligation to disclose --
THE WITNESS: None, that I could find.
THE SPECIAL MASTER: How would the interest, if there's no obligation, are we -- let me start again.
No obligation under 1.5(e) to disclose this arrangement. Is that what you're referring to, the Chargois arrangement?
MS. LUKEY: Objection.
THE WITNESS: I'm referring to that, yes.
THE SPECIAL MASTER: And no obligation under any other rule of ethics

Page 138

or legal obligation that you're aware of to disclose it to the named ERISA plaintiffs in the other two cases?
THE WITNESS: Not that I could find.
THE SPECIAL MASTER: Were these ERISA members of the class clients of Labaton for purposes of 1.5(e)?
THE WITNESS: Not in terms of getting each individual's agreement to fee sharing, no.
THE SPECIAL MASTER: And when you say "each individual's" you are referring to the named representatives in the two other lawsuits?
THE WITNESS: I'm referring to the named representatives, and I'm also referring to every member of those classes.
THE SPECIAL MASTER: And there was no obligation to give them, in the notice that went out of the settlement and the payment of attorneys' fees, there was no obligation to tell them of that either?
THE WITNESS: That's correct. There

Page 139

was no obligation.
THE SPECIAL MASTER: I'm sorry. I garbled that.
There was no obligation in the notice that went out to the class to tell them of the Chargois arrangement in that notice?
THE WITNESS: That's correct. I could not find any obligation to do so.
BY MR. SINNOTT:
Q. Would you agree with me that the Agent Orange decision and Lewis, which is cited within it, did not depend on a court rule or a local rule?
MS. LUKEY: Objection.
A. Could I take each one separately?
Q. Please.
A. Okay. So, in Agent Orange, there was a court rule that the judge, and I think I used word "waived" and you used --
Q. You did.
A. But, anyway, the court did not require that the firms follow the local court rule.

Page 140

And then, in the Lewis case, I know also refer to Lewis case in my report, and before I speak to it, I would like to take a look at that again to refresh my recollection.
Q. Please feel free.
A. Okay. Thank you. (Perusing.)
Q. What page is that, Peter?
A. Starting on page 41.
Q. 41 to 42?
A. It starts on 41 and goes over to 42. (Perusing.) Yeah. And then in terms of Lewis versus Teleprompter, there wasn't any agreement between a law firm and a client about fee sharing. These were all agreements just between the firms concerning fee -- well, some type of fee sharing or fee splitting, is what the court referred to it.
Some of the fee splitting had to do with firms that were supporting the application of the Popper Pomerantz firm. Some of the other were for firms that were helping to identify clients, but there was nothing that -- between the Popper Pomerantz with the client that permitted the fee sharing, and so that's

Page 141

how I distinguish that particular case from the case that we have here, where Labaton did have an agreement with Arkansas that explicitly referenced fee sharing.
Q. But didn't Lewis specifically reject the premise that counsel could divide the award among themselves in any manner they deem satisfactory under a private fee-sharing agreement?
A. Yes, it did.
Q. It did. And, in fact, it referenced the role of the District Court as a protecter of the class, right?
A. Yes.
Q. Tell me if you agree with this statement, Professor. "A representation stating the truth so far as it goes, but which the maker knows or believes to be materially misleading because of its failure to state additional or qualifying matter, is a fraudulent misrepresentation."
Do you agree with that?
A. Basically, yes.
Q. All right. Now, I'm going to ask

Page 142

you to assume that, in this case, the notice of pendency to the class informed recipients that, in September, I believe this was 2016, the lawyer's fee petitions would be placed on the website for the State Street FX class action. Assume that this happened, and the petition listed the Lodestar numerous firms, including customer class counsel.
Would it be rational for a class member to conclude, from the fee petition, that only lawyers listed on it would receive a payment from the class recovery?
MS. LUKEY: Objection.
A. I don't believe it would be rational for a class member to believe that. An unsophisticated class member, yes, that would be rational. But anybody that knows anything about law firms would know that there are other lawyers who are sharing in those fees who aren't specifically listed because of partnership agreements that the firms have and how fees get divided.
Q. But that notice doesn't just go out to sophisticated class members, does it?

Page 143

MS. LUKEY: Objection.
A. That's right.
Q. It goes out to unsophisticated class members. It goes out to semi-sophisticated class members, correct?
MS. LUKEY: Objection.
A. I assume so, yes.
Q. So with respect to those two categories, would you agree with me that it would be rational for one of those unsophisticated or semi-sophisticated class members to assume that that's it?
MS. LUKEY: Objection.
A. Well, again, it may be rational for them to make that assumption, but I -- it may be rational for them to make that assumption.
Q. I believe it's on page 50 and 52, Peter. You discuss how the duty to inform the class of the Chargois arrangement depended on the duty to inform the court.
Is that a correct statement?
A. I say it flows from that, and it also flows from any other disclosure obligations that the class counsel would have to class members.
So it might not be solely to the court.
Q. And you cite Newburg in your opinion, correct?
A. I do.
Q. And specifically on page 51, if I could just find it. (Perusing.)
Now on page 51 you quote section 8:25.
A. Yes.
Q. And you say that, "Rule 23(h)(1) requires that a court considering a motion for reasonable attorney fees direct notice to class members in a reasonable manner. Yet, other than requiring that the notice be made in a reasonable manner, Rule 23 does not dictate any specific content that the notice must contain.
"Newburg continues that class members must be given sufficient information to be able to object to the fee motion. Newburg states that this requires that the information must conform to Federal Rule Civil Procedure 23(h), and Newburg explains that 23(h) requires

Page 144

Page 145

that the fee petition be made by motion according to Rule 54(d), and Rule 54, in turn, requires that the motion specify the judgment and statute, rule or other grounds entitling the movant of the award, state the amount sought or provide a fair estimate of it, and disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made."
So I ask you again, Professor, was the notice in this case sufficient to adequately inform class members of the division of fees?
A. 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.
Q. I don't believe you quoted it in your opinion, but do you recall Newburg, in that same section and text -- of the text saying that, "In addition to these bare bones requirements, the manual for complex litigation

Page 146

notes that the party seeking fees has the burden of submitting sufficient information to justify the requested fees and taxable costs."
Now, you didn't quote that, did you?
A. I did not.
Q. Why didn't you quote that?
A. Because I read that to talk about justifying the fees and taxable costs, meaning the fees that were going to be going in the fee petition to the various firms, and then what those firms did with the fees would be controlled by what the firms decided to do with them, provided that they followed the ethics rules.
Q. Do you recognize that members of the certified class are clients of class counsel?
MS. LUKEY: Objection.
A. I indicated previously that they are clients, but they are not exactly the same as an individual -- the relationship between class counsel and individual class members is not the same as a lawyer's relationship with an individual client.
Q. But are they clients of class

Page 147

counsel?
MS. LUKEY: Objection.
A. They are a type of client of class counsel, that's correct.
Q. And Newburg says they are, correct?
A. That's correct.
THE SPECIAL MASTER: Let me interject. I found some of the -- some of the excerpts from both depositions and the rest of the record that I was alluding to earlier, so let me read those to you, okay?
THE WITNESS: Okay.
THE SPECIAL MASTER: This is from Mr. Chiplock's deposition. Mr. Chiplock is a lawyer who's with the Lieff firm, and he is talking about the responsibility to the ERISA members of the class.
"We had a responsibility as class counsel to the class, and that included ERISA plans.
"I felt that customer class counsel had a responsibility to the entire customer class with no distinctions. We

Page 148

didn't discriminate in our class definition. We didn't see the need to when we filed our case."
That's from Mr. Chiplock.
MR. HEIMANN: What page? I didn't hear the word "clients" in that section.
THE SPECIAL MASTER: He didn't use the word "clients." He talked about responsibility.
MR. HEIMANN: Right.
MS. LUKEY: And he said to the entire customer class.
THE SPECIAL MASTER: First. But then he said we didn't discriminate in our class definition.
Mr. Goldsmith, who is a lawyer with Labaton, who represented the class, at the preliminary hearing in August and at the fairness hearing in November, said "We did not assert an ERISA claim in our complaint, but we did allege a class that was broad enough to encompass ERISA-governed assets. How much of the settlement would go to ERISA clients was

Page 149

something that DOL was focused on. Of course, we were focused on it as well, because they were our clients.
"There was a lobby conference on November 15 of 2012."
THE WITNESS: Excuse me. May I ask a question?
THE SPECIAL MASTER: Yes.
THE WITNESS: I'm assuming, when you say "lobby," you mean like in the lobby.
THE SPECIAL MASTER: In the lobby of the judge's chambers.
THE WITNESS: I just wanted to make sure that my vision of the lobby was what you were referring to.
THE SPECIAL MASTER: All of the lawyers were there for both State Street and for the class.
THE WITNESS: Okay.
THE SPECIAL MASTER: And Michael Thornton, who's sitting over, was there. Bob Lieff, who's sitting over there, was there. And Labaton lawyers were there. And the lawyer for State Street had just

Page 150

given a summary of where they were in the case.
And Michael Thornton says, "I just want to clarify one thing of Mr. Rudman's, State Street's attorney, excellent summary that we might differ on.
"There are two clear ERISA cases."
THE WITNESS: May I ask one more question?
MS. LUKEY: Who's saying this now?
THE SPECIAL MASTER: Michael Thornton.
THE WITNESS: Just so I'm clear on this, it seems to me that you're reading from a transcript at this point.
THE SPECIAL MASTER: I am.
THE WITNESS: Good. I just wanted to make sure.
THE SPECIAL MASTER: This is a transcript of the November 15, 2012, lobby conference.
MS. LUKEY: An excerpt, I assume.
THE SPECIAL MASTER: An excerpt.
THE WITNESS: Thank very much.

Page 151

THE SPECIAL MASTER: I will start over. This Mr. Thornton.
"I just want to clarify one thing of Mr. Rudman's, State Street's attorneys, excellent summary that we might differ on. There are two clear ERISA cases, Enriquez and Andover and, in the third case, Arkansas.
"The ERISA claims are included in the class definition. We also have a claim. And then Mr. Lieff says there is on overlap. That's all we're trying to say. We represent the same people."
And the court asks, "You do represent the same people?"
And Mr. Lieff says, "Yes."
MR. HEIMANN: I didn't hear the word "clients" there.
THE SPECIAL MASTER: He used the word "represent."
Mr. Goldsmith, in his deposition, used the word "clients."
MR. HEIMANN: He is the only one so far I've heard, yes.

Page 152

THE SPECIAL MASTER: Okay. Does any of that change your view as to the obligations that the -- what we have referred to as the customer class law firms, but particularly Labaton, as lead counsel, had to the members of the class to provide notice and as to whether they were clients of Labaton?
MS. LUKEY: Objection, compound.
THE WITNESS: If I'm understanding your question correctly, you mean an obligation of Labaton to inform the ERISA class members that they were clients of Labaton?
THE SPECIAL MASTER: No, not that they were clients. Of the Chargois relationship.
THE WITNESS: No, absolutely not.
BY MR. SINNOTT:
Q. Professor, would you agree that the Chargois agreement or arrangement would be information relevant to a class member's decision on whether to object to the fee?
MS. LUKEY: Objection.

Page 153

A. Not in this case.
Q. And why do you say "not in this case"?
A. Because there wasn't an obligation to disclose the fee-sharing arrangement with Chargois & Herron.
If you were to say to me, if it had been disclosed, may a class member have objected, then that's a possibility, but since they didn't have an obligation to disclose it, that's why I'm saying not in this case.
Q. But that's not what I asked you. I asked you if it would be relevant to the class member's decision whether to object, and regardless -- strike that.
Would it be relevant to that member's decision?
A. Not in this case.
Q. Do you think that information would matter --
MS. LUKEY: Objection.
Q. -- to a class member?
MS. LUKEY: Objection.
A. It might matter to them, but they --

Page 154

that information was not required to be disclosed to them.
Q. Because the lawyers had come up with an agreement?
MS. LUKEY: Objection.
A. Because there was no rule, court order, case-specific order or inquiry from the court asking about fee-sharing agreements.
Q. But there was a fiduciary duty to the class members, correct?
MS. LUKEY: Objection.
A. They had a fiduciary duty, but not one that encompassed disclosing the fee-sharing arrangement.
Q. And there was a duty of candor to the court as well, wasn't there?
MS. LUKEY: Objection.
A. That's correct. But, again, the duty of candor to the court did not require disclosure of the fee-sharing arrangement.
Q. But that duty of candor also encompassed the obligation to tell the court any material facts, correct?
MS. LUKEY: Objection.

Page 155

A. We've talked about material facts in the context of the cases that you were talking about, absolutely, correct.
Q. Would you agree with me that there was no way for a class member to learn of the Chargois agreement --
MR. SINNOTT: Okay. Who just entered the conversation?
MS HYLENSKI: Sorry. It's just me. I got disconnected.
MR. SINNOTT: Okay, Linda. Thanks.
Q. Let me start again, Peter.
Would you agree with me that there was no way for a class member to learn of the Chargois arrangement if class counsel didn't disclose it?
MS. LUKEY: Objection.
A. Absent the court requiring disclosure, that's correct.
Q. All right. And do you agree that Rules 1.2 and 1.4, the duty to inform, require that a lawyer give a client information about any "circumstance with respect to which the client's informed consent is required by these

Page 156

rules"?
MS. LUKEY: Objection.
A. I didn't -- I wasn't asked to opine on the application of those rules to this situation.
What you've paraphrased or read is my recollection of what the rule says, but, again, I haven't done the research to see if they could be implicated in a particular matter.
Q. And, once again, I appreciate your caution. Thank you.
Do you agree that the decision whether to settle belongs to the client under Rule 1.2A?
A. Absolutely.
Q. Do you agree that the Chargois arrangement could rationally bear on a class member's actions regarding the decisions the notice invited class members to make?
MS. LUKEY: Objection.
A. Not in this particular case, as I understand the application of that rule, which I have not done thorough investigation into.

Page 157

Q. All right. But you just agreed that it's the client's decision whether to settle, correct?
A. That's correct.
Q. And my question was, that arrangement could rationally bear on a class member's actions. I'm not asking about disclosure of it. I'm asking you whether that information could rationally bear on a class members actions regarding the decision to settle.
MS. LUKEY: Objection.
A. Again, I'm hesitant to say anything in an absolute on this matter, because I haven't done the research into this issue.
It's conceivable, but I think that the client's decision, at least a class member, and I have been a class member of many classes, as I'm sure many people around this room has, and, you know, and even as a lawyer, when I get the packet of material, I oftentimes don't read it all. I'm just sort of looking at, am I going to get anything, and what is it that I'm going to get.

Page 158

But as I said, I mean, it may, but I'd have to do more research into that particular rule as it applies to class members and what bounds the courts have said or ethics authorities about how much information has to be provided to the class members for them to make a decision about, you know, whether they are going to be an objector. Because, essentially, if you are a class member, unless you are an objector, you are agreeing to the settlement.

So I think the vast majority of class members don't even think they are agreeing. They are just thinking, am I going to be an objector. And then, you know, even as a lawyer, when I've looked at that, I've, you know, thought that it's rather onerous to take on the role of an objector.

THE SPECIAL MASTER: Let's put aside whether there was a duty of disclosure of the Chargois agreement and Chargois payment to the class. Let's just put that aside, okay?

THE WITNESS: Okay.

Page 159

THE SPECIAL MASTER: Do you think that, in making its -- their decision about whether to accept the settlement, that the existence of the Chargois agreement and the payment to Chargois something -- payment is something class members would want to know?

MS. LUKEY: Objection.

THE WITNESS: Maybe. And the reason I say maybe is, you know, I have a colleague who's done some work dealing with class actions and also another colleague who's done work about privacy disclosures when we waive all of our privacy rights, and both of them have concluded that most of us waive our rights or we don't assert our rights, because it's just an overload of information.

So that's why I'm saying maybe. I'm not going to say absolutely.

THE SPECIAL MASTER: If it were disclosed in the notice to the class that a lawyer, who did not appear in the class, did no work in the case, was note on any of the Lodestar petitions, and if it were to appear that this lawyer was going to receive $4.1 million, do you think that is something that reasonably might impact a class member's decision as to whether to accept the settlement?

MS. LUKEY: Objection.

THE WITNESS: As I said, maybe. Because I could also see a class member looking at, by the time you get the notice of proposed settlement, there's also some indication that there's been some preliminary approval by the court, and a lot of people defer to the legal process and what judges are doing. Not everybody, because there are some objectors.

THE SPECIAL MASTER: I want to focus on the ERISA class members.

THE WITNESS: Okay.

THE SPECIAL MASTER: Are you aware that the amount that Chargois received was more than any single ERISA firm received?

MS. LUKEY: Objection.

THE WITNESS: I did not look at how

Page 160

Page 161

the fees were -- you know, what the fee petition -- I mean, I looked at the notice of class, but I didn't pay attention. I was just trying to sort of get a feel for it, but I am not aware of that.

(Discussion off the record.)

MR. SINNOTT: If you could, go on mute, everyone.

THE WITNESS: Or does candor to the court require whoever was shuffling the papers to identify themselves? We're not in court.

THE SPECIAL MASTER: I think my question was, as to the ERISA class members, do you think it would have been important for them to know that Mr. Chargois, who never appeared in the case, did no work on the case, was receiving more money than any single ERISA firm law firm?

MS. LUKEY: Objection.

THE WITNESS: Again, it may be.

THE SPECIAL MASTER: Do you think it would have been important to the ERISA

Page 162

class members to know that the payment that Mr. Chargois received for doing no work, not appearing in the case, was just about 60 percent of the entire ERISA fee award?
MS. LUKEY: Objection.
THE WITNESS: I'm not sure.
THE SPECIAL MASTER: You don't have an opinion of whether that might be important to the ERISA class members to know that?
MS. LUKEY: Objection.
THE WITNESS: No. Because I'm speculating on what's important to them. That's why I said maybe. And I'm not sure.
THE SPECIAL MASTER: I want to recalculate my arithmetic. I don't want to mislead you.
THE WITNESS: Okay. So now we are dealing with candor to the witness.
THE SPECIAL MASTER: Candor to the witness. 55 percent, not 60 percent.
MR. HEIMANN: Has anybody done the

Page 163

computation of how much it really impacted the members of the class in terms of how much less they got than what they would have gotten.
THE SPECIAL MASTER: We are looking at it.
MR. HEIMANN: I can tell you what it is.
THE SPECIAL MASTER: You want to be under oath here, Richard?
MR. HEIMANN: I don't need to be under oath. You just need to do the math. It's very simple.
MR. SINNOTT: We welcome anything you want to give us.
BY MR. SINNOTT:
Q. Let me just get this for the record, Professor. And if I'm wrong, excuse me, but I didn't see you cite Rules 1.2 or 1.4, or the duty to inform in your opinion. Did you?
A. That's correct. No, I did not.
MS. LUKEY: Objection.
Q. Is that because you were not asked to analyze those?

Page 164

MS. LUKEY: Objection.
A. That's correct. I was not asked to analyze them, and I focused -- I was working under a limited time frame, and I focused on the issues I had, which continued to grow a little.
MS. LUKEY: Bill, again, it's a rebuttal report.
MR. SINNOTT: Yeah. Got it.
Q. But do you think they bear on the issue?
MS. LUKEY: Objection.
A. They may.
Q. Assume, Professor, that Judge Wolf could have ordered the money intended for Chargois to instead go to the class.
Between paying Chargois, on the one hand, and having the money, on the other hand, go to the class, what do you believe is in the best interest of the class?
MS. LUKEY: Objection.
A. That's too speculative for me to answer.
Q. Could a class member reasonably

Page 165

conclude that the class had no interest in any money going to Chargois?
MS. LUKEY: Objection.
A. Again, you're -- this is kind of deep speculation, and I just -- I am very reluctant to speculate on to this frame.
Q. We quoted Newburg earlier on class members having sufficient information to decide whether to object to a fee request.
Did they have sufficient information in this case?
A. I believe so.
Q. On page 54, I'm wrapping up here, in your opinion, you hold that Massachusetts Rule of Professional Conduct 1.5(a)'s prohibition on a clearly excessive fee does not apply to the Mass. Rule of Professional Conduct 1.5(e), division of a fee, including a referral fee between lawyers who are not in the same firm, correct?
A. That's correct.
Q. Let me just approach this with some questions.
Two lawyers, Jones and Smith, enter

Page 166

into an otherwise valid division of a fee agreement and collect, between them, $200,000 for their work. That sum is considered reasonable for the work.
Jones does ten hours of work. Smith does 500 hours of work. They divide the fee, 50,000 for Jones and 150,000 for Smith.
A. And Smith is the one who did the less amount of work?
Q. Jones. Jones did ten hours. Smith did 500.
A. All right. I would like a piece of paper, because if I don't, you will be repeating it. Okay.
Q. We can handle that. Let me start again.
A. Jones and Smith.
Q. Jones and Smith enter into an otherwise valid division of fee agreement.
A. Okay.
Q. And, between them, they collect $200,000 for the work.
A. Okay.
Q. That sum, you can presume, is

Page 167

reasonable for the work.
A. Right.
Q. Jones does ten hours of work. Smith does 500 hours of work. They divide the fee, 50,000 for Jones, 150,000 for Smith, who did the 500.
A. Okay. Uh-huh.
Q. Smith earns $300 hourly, which is deemed reasonable for Smith. Jones earns $5,000 hourly, although he has never billed more than $500 hourly.
Can a court apply 1.5(a) and conclude that Jones' fee is clearly excessive?
MS. LUKEY: Objection.
A. In Massachusetts, under the rule that existed at the time, and assuming we are talking about a division of fee under 1.5(e), no, I don't think the court would even, you know, 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.
Q. Okay. Let me just change the facts a little bit.

Page 168

I want you to assume, instead, that Jones and Smith are both working on the matter, but there is no division of fee agreement. Jones works for ten hours on the matter.
A. And they are separate firms? I mean, we're dealing now, we've got separate firms?
Q. Yes. Assume that.
A. Okay. And you say no division of fees. So this is not under a 1.5(e)?
MS. LUKEY: No agreement, I think he said.
Q. No agreement.
A. No agreement of how they are going to divide?
Q. That's right.
A. But it is a 1.5(e), where the client agrees that they can divide the fee?
Q. Hold on. So Jones works for ten hours on the matter. Smith works for 500 hours. Each of them bills the client separately. Smith bills at $300 an hour. Jones bills at $5,000 an hour.
Under those circumstances, is a

Page 169

court empowered to find the Jones fee is clearly excessive?
MS. LUKEY: Objection.
A. Okay. Before I answer it, I just want to make sure, because I was trying to ask this. So we are no longer dealing with the 1.5(e). We are dealing with a straight 1.5(a) situation, and the court may conclude that, but the court could also conclude that, actually, the $5,000 to Jones is not clearly excessive.
It would depend. If the client were a corporation and it had corporate counsel and corporate counsel was aware of what these billing rates were and approved of it, it's very unlikely that a court would intrude on it.
In fact, there's a case called the Brombeck case that I've taught many times, where a lawyer gets this really outrageously, to me, it seemed, high fee, and it's usually juxtaposed against situations where lawyers get even less fee, but the courts have said, under the circumstances, it was clearly excessive, and in Brombeck, they don't do that because there was corporate counsel involved approving

Page 170

of the fee arrangement that resulted in this, and I'm sure, under today's dollars, the amount would be far in excess of $5,000 an hour.
Q. All right. So, under 1.5(a), you are prepared to say that it could be found to be clearly excessive?
A. If it's not under 1.5(e), yes.
Q. Okay. Would it be a basis for discipline?
MS. LUKEY: Objection.
A. It could be. It could be. You know, like I said, it could be. There are a lot of factors that would go into it, but it could be.
Q. Okay. Thank you.
A. You're welcome.
THE SPECIAL MASTER: I just want to ask some general questions from your testimony, and there may be --
THE WITNESS: Before we do that, may I have a very short break?
THE SPECIAL MASTER: Sure.
THE WITNESS: I have been drinking water to keep lubricated.

Page 171

MR. SINNOTT: On the phone, we are taking a brief break, five minutes.
(Recess taken.)
MR. SINNOTT: Back on the record.
THE SPECIAL MASTER: I want to ask to try to understand your testimony and where it fits in the larger scheme of things here in this case.
THE WITNESS: Okay.
THE SPECIAL MASTER: I want to understand your view about the following questions, and I'm going to try to break them out individually. And in asking this question, I want to give you every opportunity to explain or correct or modify or add caveats to your opinion, okay?
THE WITNESS: All right.
THE SPECIAL MASTER: So as to the Chargois agreement, under which he and his firm would receive 20 percent of the fee for doing no work in a case, in a class action in which Arkansas is the class representative and Labaton is lead

Page 172

counsel, is it your view that there is no ethical or legal obligation upon Labaton first, to inform the client of the nature of the relationship with Chargois if the client doesn't ask?
MS. LUKEY: Objection.
THE WITNESS: Under these facts, especially where the relationship began, where the client knew that they were going to be working together, where Christa Clark said, we can only have the one name on the agreement, where the resulting agreement does talk about a division of fees, including referral fees, where that agreement does conform to Massachusetts Rule 1.5(e) that was in effect at the time, then, yes, there's no obligation to go into the details of the arrangement between Labaton and Chargois Herron.
THE SPECIAL MASTER: Did it also conform to the Supreme Court's decision in Saggese?
THE WITNESS: We have talked about that before, and I think it's not

Page 173

inconsistent with the Supreme Court's decision in Saggese.
THE SPECIAL MASTER: I think you said that the retention agreement resulted from the earlier relationship from -- as spelled out by Christa Clark in her October 2008 e-mail. Is that what you meant to say?
MS. LUKEY: Objection.
THE WITNESS: Oh, if you're talking about previously, when I thought there was a separate agreement, yes, I was referring to the e-mail, the subsequent communications.
I -- as I said, I had it in my mind that that had a separate kind of fee agreement, but that was the initial agreement that -- about how things were to be done.
THE SPECIAL MASTER: So in your answer, that there is no obligation to inform the client of the nature of the Chargois arrangement unless the client asks, that includes going back to 2008 and

Page 174

the Christa Clark e-mail.
THE WITNESS: Not necessarily, no.
THE SPECIAL MASTER: Standing on its own, the retention agreement standing on its own, there's no obligation --
THE WITNESS: The retention agreement, standing on its own, met 1.5(e) as it existed at the time.
THE SPECIAL MASTER: So no obligation to inform the client of the nature of the relationship if the client doesn't ask, the relationship being the Chargois relationship.
MS. LUKEY: Objection.
THE WITNESS: You said I could have qualifiers?
THE SPECIAL MASTER: Yes.
THE WITNESS: So here is one the qualifiers. There are two things.
One is there was already imputed to the entity itself, because of Christa Clark's understanding that Chargois Herron was going to be affiliated, so even though, at the time of that particular

Page 175

agreement, she was no longer there, that gets imputed to the entity.
THE SPECIAL MASTER: Okay. In that imputation, let me ask you --
MS. LUKEY: Were you done with your answer?
THE SPECIAL MASTER: He is going to answer in two parts.
THE WITNESS: I have more to say, that if I could say it now, then I might not forget it later, okay? So that's one thing.
The second thing is there was an offer to try to explain how all the fees -- the fee-sharing situation, and the then head of Arkansas said, that's okay, I don't want to know it. And so, under that set of circumstances, you know, I stand by what I said, which --
THE SPECIAL MASTER: You're not testifying, you're not trying to tell us that there was anything in Christa Clark's e-mail in which she said it's fine if you want to have an agreement with

Page 176

Mr. Chargois to pay him for 20 percent for every case in which Labaton was lead counsel or co-lead counsel and Arkansas was lead or co-lead plaintiff.
MS. LUKEY: Objection.
THE SPECIAL MASTER: You're not trying to tell us there was anything in that e-mail that they knew that.
MS. LUKEY: Objection.
THE WITNESS: I'm not saying she put in a specific percentage amount. I'm not saying that.
THE SPECIAL MASTER: Or any amount.
THE WITNESS: She didn't put in any amount, that's correct.
THE SPECIAL MASTER: And is it your belief that the Christa Clark e-mail also says that he could be paid, he, Chargois, could be paid in every one of these cases in which Chargois -- in which Labaton was lead counsel and Arkansas was lead plaintiff for doing no work? Is there anything in that e-mail that you impute to that condition?

Page 177

MS. LUKEY: Objection.
THE WITNESS: She doesn't say that in that e-mail.
THE SPECIAL MASTER: Okay. So with that, let me ask that part of the question again.
There is no obligation, ethical or legal, upon Labaton to inform the client, in this case, Arkansas, of the nature of the relationship if the client doesn't ask.
THE WITNESS: Okay. Given the agreement that Labaton had with Arkansas, it met its ethical and legal obligation. So that's what I'm saying. That's how I'm qualifying what I'm saying.
THE SPECIAL MASTER: And there is no obligation to inform co-counsel in the class of the true nature, the full scope of the Chargois relationship, including the fact that he did no work in the case?
MS. LUKEY: Objection.
THE WITNESS: Yeah. I didn't opine on that. I didn't research it, and I'm

Page 178

not in a position to give an opinion on that.
THE SPECIAL MASTER: Is it your opinion that there is no ethical or legal obligation upon Labaton to inform the ERISA counsel on behalf of the ERISA members of the class?
MS. LUKEY: Objection.
THE WITNESS: Again, I didn't research that issue. I would -- I didn't form an opinion on that, and I'm not in a position to give an opinion on that at this time.
THE SPECIAL MASTER: Is it your opinion that there's no ethical or legal obligation upon Labaton to inform the class itself of the Chargois relationship?
THE WITNESS: Absent a court rule, court order, standing order, direct inquiry from the court or precedent in either the District of Massachusetts or the First Circuit or Supreme Court, that's correct.
THE SPECIAL MASTER: Is it your

Page 179

opinion that there is no ethical or legal obligation upon Labaton to inform the ERISA class members independently from other class members?
THE WITNESS: Again, it's my opinion no obligation with the same provision that absent a court order, absent a standing order, absent a local rule, absent precedent either in the District, the First Circuit or the Supreme Court, or the Federal Rules of Civil procedure clearly requiring.
THE SPECIAL MASTER: Is it your opinion that there is no ethical or legal obligation upon Labaton to inform the court of the Chargois relationship at either the preliminary approval hearing or the fairness hearing if the court doesn't ask and there's no court order and no court -- local rule on it?
THE WITNESS: Right. And no precedent that would be controlling over the matter, and no ethical rule specific requirement.

Page 180

THE SPECIAL MASTER: Taking all of this, what is the public policy that is served by all of this non-disclosure?
MS. LUKEY: Objection.
THE SPECIAL MASTER: In fairness to the witness, I ask this because we are going to be in a court. It's likely that my report, the responses of the law firms will receive the attention of the media. That's how this case started, I think you know. So it's likely that this will receive the attention of the media, which means it will receive the attention of the public.
What is the public interest in all of this non-disclosure? Where is the public interest here?
MS. LUKEY: Objection.
THE WITNESS: Again, I didn't offer an opinion on this. I didn't look at the public policy. I tell you, you know, about various public policies of different rules. Once something gets in the media, it takes on a life of its own. And I'm

Page 181

not in a position to give an opinion that would be well-informed about public policy concerning the non-disclosure or disclosure.
Why we don't have a court rule that says that it's automatically disclosed, some circuits like the Second Circuit has concluded that that's something they want to have. Some judges have made that decision. Other, you know, District Courts have made that decision.
THE SPECIAL MASTER: So, in this case, the burden is on the Massachusetts District Court or Judge Wolf or both --
MS. LUKEY: Objection.
THE SPECIAL MASTER: -- to require disclosure.
THE WITNESS: To require disclosure, that's correct.
It could also be something that the First Circuit could do.
THE SPECIAL MASTER: Or a First Circuit rule either by rule or by decision.

Page 182

THE WITNESS: That's right. They could do that. And some circuits have seen that that was how they could promote what they view to be a good public policy, is what I would presume, but I'm not offering an opinion as to what their reasoning was.

THE SPECIAL MASTER: But, in any event, the burden is on the courts or an individual judge to either adopt a rule, a local rule, a circuit rule, case precedent or to ask?

THE WITNESS: You know, I'm not sure I would use the word "burden." I guess I would say --

THE SPECIAL MASTER: Obligation?

THE WITNESS: Maybe obligation, or maybe requirement. That's what the rules say. And, again, I don't know why the drafters of the rules have drafted them in the way they have drafted them, but that's what they've done.

THE SPECIAL MASTER: Do you think it was -- putting aside the rules and your

Page 183

answers, we've got your answers, they're on the record -- was it prudent for Labaton not to disclose this obligation to Chargois and the payment, was it prudent not to disclose it to -- let's start with Arkansas?

MS. LUKEY: Objection.

THE SPECIAL MASTER: Was it prudent?

MS. LUKEY: Objection.

THE WITNESS: Again, I haven't looked into what was prudent and what wasn't prudent.

In my own experience, what seems to be imprudent is informed by 20/20 hindsight, and there are many well-meaning lawyers and law firms and judges who have done things that, at the time, they thought was perfectly fine, and then later somebody is saying maybe it isn't. And sometimes they are proven to be fine. And other times, people say, well, you know, that wasn't prudent.

But, you know, I'm not in a position to make an opinion about what's prudent or

Page 184

not.

THE SPECIAL MASTER: On any of these questions, including -- well, let me ask you separately.

Was it prudent not to inform the court about the fact that Chargois was going to receive $4.1 million without the court asking?

MS. LUKEY: Objection.

THE WITNESS: Again, I'm not in a position to say what was prudent at the time that things were occurring.

THE SPECIAL MASTER: And if the court says, in making its decision to approve a settlement and the fee allocation in the settlement, I'm relying heavily upon what the lawyers have submitted to me here, that's not sufficient for the lawyers to have to speak up.

MR. HEIMANN: Objection.

MS. LUKEY: Objection.

THE WITNESS: Making an assumption that that's what a judge has said, I would

Page 185

say --

THE SPECIAL MASTER: I should say when. At the settlement hearing, the November 2 fairness hearing.

MR. HEIMANN: Objection.

MS. LUKEY: Objection.

THE WITNESS: Again, assuming that's what's said. There's no obligation to disclose a fee-sharing agreement in response to that.

THE SPECIAL MASTER: Okay.

BY MR. SINNOTT:

Q. Let me just ask you, Professor, if you agree with this statement.

"Legal ethics experts should not offer an opinion, even if defensible, unless they would adopt that opinion if they were the judge in the case."

MS. LUKEY: You asked him that exact question this morning. That exact one.

MR. SINNOTT: The other witness.

MS. LUKEY: Okay. Sorry. They're blending.

Q. Do you agree with that statement?

Page 186

A. Could you repeat it again?
Q. "Legal ethics experts should not offer an opinion, even if defensible, unless they would adopt that opinion if they were the judge in the case."
MS. LUKEY: Objection.
A. Okay. If you're asking me if I were the judge in this case, would I adopt my opinions, the answer is absolutely yes.
Q. Okay. So it would be correct to say that you are prepared to testify in court that Judge Wolf should rule as you've testified today?
A. I mean, I would give the testimony I have given today, and it's up to Judge Wolf to decide how he wants to rule. My job isn't to tell a judge what to do, and I would never make any attempt to do that.
That isn't what the role of an expert witness is. I would be a resource for the judge. He would form his own conclusion, but I was saying, if I were a judge in a case like this, I would adopt these opinions.
Q. Okay. Thank you.

Page 187

MR. SINNOTT: That's all the questions I have.
THE SPECIAL MASTER: Joan, you had some questions?
EXAMINATION BY
MS. LUKEY:
Q. Professor Joy, this is a copy of Exhibit 6, which is the excerpts from the Mass. Rules of Professional Conduct.
A. Okay.
Q. The opening line under comment 14.(a) to Rule 3.3 says, "When adversaries present a joint petition to a tribunal, such as a joint petition to approve the settlement of a class action or the settlement of a suit involving a minor, the proceeding loses its adversarial character and, in some respects, takes on the form of an ex parte proceeding."
Who were the adversaries in the State Street case?
A. They were the -- well, Arkansas and the various classes. The ERISA classes were the plaintiffs. And then State Street, and there was some other State Street-type

Page 188

entities. I can't tell you how many. I believe at least three different ones, but I could -- I know at least two, because there's an et al. in it, and they were the defendants. So those are the adversaries, the plaintiffs and the defendants, those are the adversaries.
Q. To your knowledge, sir, did the State Street defendants join in a joint petition for the award of fees in this case?
A. Not -- to the best of my knowledge, they didn't join in for an award of fees. I believe that the only place where they were non-adversarial was on the underlying settlement, but I don't believe that they were joining in on the fee petition.
Q. So as far as you were aware, sir, there was no joint petition in which the adversaries were involved on the fee petition in this case, correct?
A. Not that I'm aware of.
Q. Sir, with regard to the Agent Orange case, that's not a First Circuit case, is it?
A. No. It's a Second Circuit case.
Q. Is it the most recent Second Circuit

Page 189

case that deals with the obligation of disclosure to the court?
A. No, it isn't.
Q. Is there a superseding case?
A. Yes. It's the Bernstein versus Bernstein, other names.
Q. And that is a case that you cite in your report, isn't it?
A. That's correct.
Q. And what is the significance of the superseding Bernstein case to you, sir?
A. Well, that's -- first of all, that's the controlling case authority in the Second Circuit that says, absent a local rule -- well, no. Actually, it says that Rule 26(e), on its own, does not require disclosure of a fee-sharing agreement.
And then, subsequent to that decision, the rules committee revisited the local rules and then they ended up having two layers of the judiciary in the Eastern and Southern Districts adopting and approving a new rule that now requires disclosure in those districts of fee-sharing agreements in class

action cases.
Q. Sir, I believe you said that, upon questioning today, that you are not aware of any authority in New York that suggests the relationship between 1.5(e) and 7.2(b) that is propounded by Professor Gillers; is that right?
A. That's correct.
MS. LUKEY: And, Mr. Sinnott, you asked a question that suggested there is such authority. Are you able to provide us with that authority?
MR. SINNOTT: Yes.
MS. LUKEY: Will you provide it?
MR. SINNOTT: I will.
MS. LUKEY: Okay. Thank you. I have nothing further.
MR. SINNOTT: Richard?
MR. HEIMANN: No questions.
MR. SINNOTT: Brian?
MR. KELLY: No questions.
THE SPECIAL MASTER: I don't have anything further.
MR. SINNOTT: David, on behalf of Keller Rohrback, any questions?

MR. COPLEY: No. Thank you.
MR. SINNOTT: Okay. Thanks, everyone. This will conclude this deposition.
(Time noted: 5:51 p.m.)

A C K N O W L E D G M E N T

STATE OF)
:ss
COUNTY OF)

I, PETER JOY, hereby certify that I have read the transcript of my testimony taken under oath in my deposition; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____
PETER JOY

Signed and subscribed to before me this _____ day of _____, 2018.

_____
Notary Public, State of _____

C E R T I F I C A T E

STATE OF NEW YORK)
:ss
COUNTY OF RICHMOND)

I, MELISSA GILMORE, a Notary Public within and for the State of New York, do hereby certify:
That PETER JOY, 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 such witness.
I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of April, 2018.

MELISSA GILMORE

B

F

G

H

M

N

S

EX. 228

Volume: 1
Pages: 1-136
Exhibits: 1-3

JAMS

Reference No. 1345000011/C.A. No. 11-10230-MLW

----------X

In Re: STATE STREET ATTORNEYS FEES

----------X

620 8th Avenue
New York, New York

April 4, 2018
1:27 p.m. to 4:02 p.m.

B E F O R E:

Special Master Honorable GERALD ROSEN,
United States District Court, Retired

MELISSA GILMORE, Reporter

DEPOSITION OF

HAL LIEBERMAN

Page 2

APPEARANCES:

BARRETT & SINGAL
On Behalf of the Special Master
One Beacon Street, Suite 1320
Boston, Massachusetts 02108-3106
BY: WILLIAM F. SINNOTT, ESQ.
ELIZABETH J. McEVOY, ESQ.
617-720-5090
wsinnott@barrettsingal.com
emcevoy@barrettsingal.com

JAMS
150 West Jefferson, Suite 850
Detroit, Michigan 48226
BY: THE HON. GERALD ROSEN (Ret.), ESQ.
313-872-1100

Page 3

APPEARANCES: (Cont'd)

CHOATE HALL & STEWART LLP
On Behalf of Labaton Sucharow
Two International Place
Boston, Massachusetts 02110
BY: JOAN A. LUKEY, ESQ.
STUART M. GLASS, ESQ.
617-248-5000
joan.lukey@choate.com
sglass@choate.com

NIXON PEABODY, LLP
On Behalf of Thornton Law Firm
100 Summer Street
Boston, Massachusetts 02110-2131
BY: BRIAN T. KELLY, ESQ.
JOSHUA SHARP, ESQ. (Via telephone)
EMILY CRANDALL HARLAN, ESQ. (Via telephone)
617-345-1065
bkelly@nixonpeabody.com

Page 4

APPEARANCES: (Cont'd)

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
On Behalf of Lieff Cabraser
275 Battery Street, 29th Floor
San Francisco, California 94111
BY: RICHARD M. HEIMANN, ESQ.
ROBERT L. LIEFF, ESQ.
415-956-1000
rheimann@lchb.com

KELLER ROHRBACK, LLP
On Behalf of ERISA Plaintiffs
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
BY: T. DAVID COPLEY, ESQ. (Via telephone)
206-623-1900
dcopley@kellerrohrback.com

Page 5

APPEARANCES: (Cont'd)

ALSO PRESENT:
MICHAEL CANTY, Labaton Sucharow
MICHAEL THORNTON, Thornton Law Firm
LINDA HYLENSKI, ESQ., JAMS (Via telephone)
PROFESSOR STEPHEN GILLERS

INDEX

WITNESS	EXAMINATION BY	PAGE
HAL LIEBERMAN	MR. SINNOTT	10

EXHIBITS

LIEBERMAN	DESCRIPTION	FOR I.D.
Exhibit 1	Curriculum Vitae of Hal R. Lieberman	11
Exhibit 2	Expert Report of Hal R. Lieberman	18
Exhibit 3	Saggese v. Kelley Decision	85

(EXHIBITS RETURNED TO ATTORNEY SINNOTT)

MR. SINNOTT: For the record, it's approximately 1:27, and we are ready to begin the examination of Attorney Hal Lieberman.

If the witness could be sworn.

H A L L I E B E R M A N, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

MR. SINNOTT: Thank you, Hal.

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 Rosen, retired. Formerly of the United States District Court in Detroit, Michigan.

Judge Rosen has been appointed as special master in the matter of Arkansas Teacher Retirement System versus State Street Bank, Number 11-cv-10230-MLW.

Also on the special master's team to my left is attorney Elizabeth McEvoy, also of Barrett & Singal. And to her left,

Professor Gillers of the New York University School of Law.

On the phone, Linda, are you there?

MS. HYLENSKI: I'm here.

MR. SINNOTT: Okay. Is Attorney Linda Hylenski, also on the special master's team.

And, at this time, if I could ask participants who are in the room first to identify themselves beginning with Attorney Lieberman.

THE WITNESS: Yes. Hal Lieberman.

MS. LUKEY: Joan Lukey from Choate Hall, for Labaton Sucharow.

MR. CANTY: Michael Canty for Labaton Sucharow.

MR. GLASS: Stuart Glass, Choate Hall, for Labaton.

MR. HEIMANN: Richard Heimann, Lieff Cabraser.

MR. LIEFF: Robert Lieff, Lieff Cabraser.

MR. THORNTON: Michael Thornton, Thornton Law Firm.

MR. KELLY: Brian Kelly of Nixon Peabody, on behalf of Thornton Law Firm.

MR. SINNOTT: Thank you, folks. On the telephone, we've already identified Attorney Hylenski.

Is Josh on the phone?

MR. SHARP: Yes. Joshua Sharp of Nixon Peabody for the Thornton Law Firm.

MR. SINNOTT: Thank you, Josh.

Is David on the phone?

MR. COPLEY: Yes. David Copley, Keller Rohrback, for the ERISA plaintiffs.

MR. SINNOTT: All right. Is Emily on the phone? Okay.

Has anyone else joined us on the telephone? All right. Hearing none.

The usual caveats with respect to encouraging witnesses and questioners to speak up loudly and clearly so that the participants by phone can hear us.

And a word of caution to the participants by phone. If you can't hear us or if there's distortion in the line, please bring it to our attention at the

Page 10

earliest possible time so that we don't have to revisit testimony.
All right, with those preliminaries out of the way.
EXAMINATION BY
MR. SINNOTT:
Q. Good afternoon, sir.
A. Good afternoon.
Q. Thank you for being here. And pardon me if I mistakenly call you professor, because it's been professor palooza for the last day and a half here.
But you are a practitioner, correct?
A. I have also been an adjunct professor over the years, but I am a practitioner, yes, sir.
Q. All right, sir. And in the course of this case, you were asked to write a report; is that correct?
A. Yes.
Q. And in conjunction with that report, you submitted a CV; is that correct?
A. Yes.
MR. SINNOTT: Madam Court Reporter,

Page 11

if I could pass to you this document and ask that you mark that as Exhibit 1.
(Lieberman Exhibit 1, Curriculum Vitae of Hal R. Lieberman, marked for identification.)
Q. And, Attorney Lieberman, showing you Exhibit 1. Is that the CV that you submitted in conjunction with your expert report?
A. (Perusing.) Yes.
Q. All right. And, sir, your expert report was submitted on March 26 of 2018.
Since that time, have you drafted any more recent copies of the CV?
A. No.
Q. So there are no changes or additions that need to be made to that CV?
A. No.
Q. Is there any other relevant experience, beyond what's in the CV, that informs your opinion, the opinions that you've submitted in your report?
A. (Perusing.) No.
Q. All right. And, Attorney Lieberman, are you being compensated for being here today?

Page 12

A. Yes.
Q. And what's your rate of compensation?
A. $750 an hour.
Q. And can you estimate how many hours you've worked on this case up until this point?
A. I haven't really thought about it. It would be -- no, I can't really estimate.
Q. All right, sir. Would it be in excess of 25 hours?
A. Probably not.
Q. And in preparation for today's deposition, did you conduct any review or other kind of preparation?
A. Yes.
Q. And would you describe what you did in order to prepare for today's deposition?
A. Well, in the course of preparing my report, I reviewed various documents that were provided to me by counsel for Labaton, and I also met with counsel for Labaton on -- well, several occasions on the telephone and once in person.
Q. All right. And was that meeting in

Page 13

person today?
A. Well, we did talk briefly today, but the meeting that I'm -- where I prepared was last week.
Q. Okay. And, sir, referring to the -- referencing the documents that you mentioned, that were used in the preparation for your deposition, were those the same documents you used in order to write your report?
A. Well, I referred to those to understand the case better. I didn't use those documents to write my report, but they were helpful in terms of providing facts and background and understanding people's positions, if that's what you mean.
Q. All right, sir. Well, let me ask you about the facts in this case.
Who drafted the factual statement that appears between pages 3 and 13 of your report?
A. It was a joint effort between myself and Labaton counsel.
Q. All right. And could you describe for us what that process was?

Page 14

A. Sure. I asked Labaton to provide to me a set of facts that I would base my opinion on, my assumed facts. They did. We worked on it together and, ultimately, it's what you see in the report.

But I needed my -- my practice is to request facts on which I'm going to rely and then to provide an opinion based on those facts.

Q. All right. And was that a static process? And by that I mean, once you received statement of facts from counsel for Labaton, did that remain the statement of facts that you operated on in formulating your report?

A. No. It evolved.

Q. And how did it evolve?

A. Based on discussions with counsel and with --

Q. Can you give us some insight as to the types of things that made it evolve?

A. Sure. One of the things was the fact that I was under the impression, initially, that the rule that was applicable to the time period at issue was the so-called

Page 15

newer rule promulgated in 2011 when, in fact, it turned out, and I found out, and it affected my opinion to a degree -- I shouldn't say it substantially affected my opinion, but it affected my opinion that, in fact, the old rule applied at the time of the signing of the retention letter.

Q. Okay.

A. So that was an issue that evolved.

Q. Any other things that evolved with respect to the facts during the course of that process?

A. That's probably the main thing.

Q. All right. And with respect to the underlying documents in this case, can you describe for us, in general terms, what those documents were?

A. Professor Gillers' report, the Camille Sarrouf declaration, the George Hopkins declaration, various deposition excerpts.

I'm trying to think what else there might have been. There probably are other things. Those would be the things I recall right now.

Page 16

Q. And you say deposition excerpts.

Did you receive any complete transcripts?

A. I don't know if I did. I doubt it. I may have. I know that there was testimony by Eric Belfi. There was testimony by George Hopkins.

I don't recall -- I don't recall any additional testimony offhand, but there may have been others.

Q. All right. Thank you, sir.

And with respect to your opinion that appears between pages 13 and 20 of your report, who wrote that opinion?

A. I did.

Q. And did you have any assistance in that?

A. I had assistance from my research associate in my law firm, but I wrote the opinion.

Q. And prior to you writing the opinion with the assistance of your research associate, had you seen Mr. Sarrouf's declaration?

A. Yes.

Page 17

Q. And in addition to Mr. Sarrouf's declaration, did counsel for Labaton give you any additional guidance?

A. I'm not sure I understand your question.

Q. Did they, for example, tell you what questions they wanted you to address?

A. No. I formulated the questions.

Q. Okay. And how did you formulate the questions?

A. Based on Professor Gillers' report. I wanted to respond to it.

Q. All right. And was that strictly -- strike that.

So beyond reading Professor Gillers' report and Mr. Sarrouf's declaration, did you receive anyone -- input from anyone else, suggestions, if you will, as to what your report should encompass?

A. No.

Q. And did you personally perform all the research in your opinion or did your research assistant did all or some of it?

A. He did some of it.

Page 18

Q. All right. Thank you.
MR. SINNOTT: And Madam Court Reporter, if I could pass over to you the expert report of Hal R. Lieberman and ask you to mark that as Exhibit 2.
(Lieberman Exhibit 2, Expert Report of Hal R. Lieberman, marked for identification.)
Q. Now, sir, showing you that expert report that's been marked as Exhibit 2, and directing your attention to page 15.
A. Okay.
Q. Under the letter A, you write, "Contrary to Professor Gillers' central argument, the facts support the conclusion that Labaton substantially complied with its obligations under Mass. Rule 1.5(e) to disclose to its client, ARTRS," and if you don't mind, I'll call them Arkansas, "that its fees could be shared with Chargois."
Do you see that, sir?
A. Yes.
Q. And just so it's fresh in everyone's mind, although I suspect that most people in

Page 19

this room have it memorized, stated in full, that provision reads, "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 participation and the total fee is reasonable."
Is that your understanding of how the rule reads, Attorney Lieberman?
A. Yeah. I'm reading the rule as you spoke.
Q. Okay. And I have accurately stated the rule?
A. You read the words in the rule, yes.
Q. So when you say that "Labaton substantially complied with its obligation under 1.5(e) to disclose its client, Arkansas, that its fees could be shared with Chargois," what do you base that on?
A. First of all, I would amend that slightly. I think now I would take out the word "substantially," and I would simply say Labaton complied. I don't think it was substantial. I think it was full compliance.

Page 20

And you are asking the question, what do I base it on?
The facts that were provided to me and on which I assumed for purposes of my opinion.
Q. Let me just back you up there.
In changing from the word "substantially" to full or fully complied, do you base that on more recent information or have you just changed your mind?
A. No, I haven't changed my mind. Yeah, I think -- I think that -- I think it was just ill advised to include the word "substantial," because I think they fully complied with both 1.5(e), as stated in February 2011 and as later changed by the adoption of 1.5(e) in revised form, based on -- on page 14. I think they fully complied with either -- either rule -- either version of the rule.
Q. And, specifically, Attorney Lieberman, with respect to the provision of the rules that states that after saying, "The division of a fee between lawyers who are not

Page 21

in the same firm may be made only if," specifically with respect to the words "after informing the client that a division of fees will be made," I ask you, how did Labaton adhere to or comply with that provision?
A. I think, on the final retention letter, it states, "Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees or for other services performed in connection with the litigation."
Q. All right. So you're basing compliance with that particular phrase on the retention agreement?
A. Yes, sir, among other things.
Q. What are the other things that you base it on?
A. Well, that they also disclosed the existence of the relationship with Chargois to Mr. Hopkins' predecessor and to the general counsel.
Q. What did they disclose, first of all, to the general counsel, and then I'm going to ask you what they disclosed to Mr. Hopkins,

Page 22

but, to your knowledge, what was disclosed to George Hopkins?
A. I'm sorry. You said you were going to ask me -- you reversed the order.
Q. Yes, I did.
A. I'm sorry.
Q. Tell me first what you understand was disclosed to George Hopkins.
A. Well, the retention letters.
Q. All right. And that's it?
A. At the time, that's the best of my knowledge. Maybe there were conversations with Mr. Hopkins. I think there's some testimony about that on -- on page 9 of my report, there is reference to that, but I don't -- I mean, I don't know anything more specific than that.
Q. So you're not aware of any conversations between Eric Belfi or other Labaton attorneys and George Hopkins with respect to a division of fees?
A. I'm only aware of what's in the facts section of my report.
Q. All right. But with respect to what's in the facts section of your report, in

Page 23

making or concluding that Labaton complied with its obligations under 1.5(e) and specifically that phrase that I asked you about, informing the client that the division of fees will be made, is it your testimony that that is, with respect to Mr. Hopkins, solely contained within that line that you read from the retention agreement?
A. No, that's not my testimony. My testimony is that that's one thing, but that there may have been conversations as well. It appears that there were, and that Mr. Hopkins apparently said he wasn't interested in knowing about the fee split as long as the overall fee was whatever it was, and it was fair to him and to the prospective class.
Q. All right. Now, who did he say that to?
A. I don't know. I wasn't there. But my assumption is that he said it to Belfi.
Q. When did he say it to Belfi?
A. I don't know precisely when he said it to Belfi.
Q. Is it important as to when he said

Page 24

it to Belfi?
A. Not for purposes of 1.5(e) in terms of the compliance aspect.
Q. So if he said it to Belfi yesterday, that would be sufficient?
A. It might be.
Q. If he said it to Belfi a month from now, that would be sufficient in order to indicate that the client has been informed that a division of fees will be made?
MS. LUKEY: Objection.
A. That's not my -- that's not my testimony, but the courts certainly have enforced fee-splitting agreements where there's been even no notice to the client ahead of time, such as in the Daynard case, which Professor Gillers cites in his report.
Q. Well, do you adopt that view, that a division of fees can be in satisfaction of 1.5(e) if there's no notice to the client?
MS. LUKEY: Objection.
A. Do I adopt that point of view with respect to 1.5(e)?
Q. Yes, sir.

Page 25

A. No, I don't.
Q. So you would agree that 1.5(e) requires that a division of fees can be made only if, after informing the client that a division of fees will be made, the client consents, correct?
A. That's what the rule says.
Q. So the rule would indicate that the client needs to be informed before a division of fees will be made.
Do you agree with that?
A. Well, it's not so clear. In Massachusetts, the Saggese decision seems to suggest that that would be the preferred practice going forward. But, apparently, the court enforced that fee agreement as -- fee-splitting agreement as between the lawyers when it was not disclosed.
So it's not clear.
Q. It's your view that Saggese said that that would be the preferred practice?
(Emily Harlan attends telephonically at this time.)
A. That's what I just said, yes.

Page 26

Q. So you don't ascribe to the belief that the Saggese court said it should be done in all agreements?
MS. LUKEY: Objection.
Q. All fee agreements?
MS. LUKEY: Objection.
A. The opinion speaks for itself. It was -- certainly, it was dictum, but it was certainly important, and that's what the court said. It wasn't a rule at the time.
Q. All right. But when you say it's preferred practice, was it optional in Saggese?
A. I'm sorry. Was what optional in Saggese?
Q. Was the -- for example, the requirement that the consent be in writing optional?
A. No. The court enforced the agreement even though it wasn't in writing.
Q. And the court said that it would apply to all future agreements, correct?
MS. LUKEY: Objection.
A. The opinion speaks for itself, sir. I can't get into the head of the court. That's

Page 27

the way I read the opinion.
Q. All right. But -- and the reason I asked you is because you used the expression "preferred practice."
And would you agree with me that preferred practice connotes that something is not mandated by the court?
A. That's a complicated question. It's unclear what the court meant when it said that this should be the practice going forward, because the rule was not amended in accordance with Saggese for many years.
And the SJC certainly had the authority to do that if it chose to.
Q. So as a practitioner after the Saggese case, but before the rule was codified to mirror that or to comply with that, how would you have advised a client with respect to a division of fees agreement? And by that specifically I mean whether to comply with Saggese. Was it optional?
A. When you say "as a practitioner," do you mean when I was a regulator prosecuting lawyers, or when I was a defense lawyer

Page 28

representing lawyers? Which do you mean?
Q. The latter. I'm saying, what would you have advised your client?
A. I would have advised my client to comply with the rules applicable at the time under the Code of Professional Responsibility or then Rules of Professional Conduct.
I would have advised my client, if I knew about Saggese, which I would have, presumably, that there was this case out there and to, you know, if possible, follow the greater formality that Saggese was suggesting, although I'm not sure that it really would have changed anything in this case.
But, I mean, as a defense lawyer for lawyers, I would have said that the lawyer is bound by the rule as it is written, not by a decision of a court, albeit, the high court of the Commonwealth of Massachusetts.
Q. So, in your view as a practitioner, advising clients, you would not have informed your client, you got to comply with Saggese?
A. Of course, I would have suggested to my client that the client comply with Saggese.

Page 29

Q. Okay.
A. But I don't think that changes anything, as I said.
Q. I'm not asking you if it changes anything.
A. I understand. Okay.
Q. If I could just get back to this phrase "informing the client that a division of fees will be made."
A. Yes.
Q. And ask you, outside of the retention letter, what other evidence do you have of that, that that was complied with?
A. Well, the declaration of George Hopkins.
Q. All right. And did George Hopkins claim to have been told about Damon Chargois?
A. Not in his declaration. He didn't say that in his declaration. He may have -- he said he wasn't interested.
Q. He said he wasn't interested.
And, in your view, is that sufficient to obviate any obligation on the part of the parties to inform the client about

Page 30

a division of fees?
MS. LUKEY: Objection.
A. Whether or not the client is interested, it doesn't obviate the obligation to say there will be a division of fees, no.
Q. All right. And, once again, going back to the engagement letter that we have already referenced, you pointed to the first sentence at the top of page 2 that says, "Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees or for other services performed in connection with the litigation," correct?
A. Correct.
Q. Now, where does it say there that a division of fees will be made?
A. It's the whole sentence says that. It says they have permission to do that. "May" means permission.
Q. Right. But permission and actually being informed are two different things, are they not?
MS. LUKEY: Objection.

Page 31

A. I don't agree.
Q. So when the rule says "informing the client that a division of fees will be made," you believe that this "may allocate" satisfies that?
A. Yes, sir.
Q. And as a long-time practitioner and regulator, it's not your view that had the rule wanted to convey that a division of fees may be made, it would have put it in the rule itself? That's not your belief?
MS. LUKEY: Objection.
A. I actually don't understand the question.
Q. Well, let's look at 1.5(e).
A. Okay.
Q. And change -- change the words, after it says "a division of fees between lawyers who are not in the same firm may be made only if, after informing the client that a division of fees may be made, the client consents to the joint participation and the total fee is reasonable."
Wouldn't that more accurately

Page 32

encapsulate your interpretation of that first sentence --
A. No.
Q. -- in the agreement?
A. No.
Q. Why not?
A. Because it's substantially the same thing. The client is being informed that there may be a division of fees, and the client needs -- doesn't need to know any more than that if the client is not affected by it because the overall fee is reasonable.
Q. And what legal authority do you have for that interpretation?
A. I don't have any legal authority for it other than the plain language and my knowledge of regulation and enforcement over the years and my experience in advising people about fee-sharing agreements.
Q. All right. So the answer is you do not have any legal authority for it?
MS. LUKEY: Objection.
A. Legal authority for what, sir?
Q. For your interpretation that, had

Page 33

the court wished to make that optional, if you will, it would have said, "Informing the client that a division of fees may be made."
A. When you say "legal authority," you're referring to either case law or ethics opinions. And you certainly -- there's a wealth of case law out there where courts have enforced imperfect or substantial compliance fee-splitting arrangements between -- when there's a fight between lawyers, where there's not a perfect following or compliance with this rule.
So I guess I would rely on that as well.
Q. Let me ask you this, sir.
In the requirement for -- that "the division of fees may be made only if, after informing the client that a division of fees will be made, the client consents to the joint participation," did you interpret "consent" to be informed consent?
MS. LUKEY: Objection.
A. There's a definition in New York that says that consent implies informed

Page 34

consent. I don't believe that there's a similar definition of consent or there was at that time in the Massachusetts Code of Professional Responsibility, but consent implies informed consent. And so I would read it into the rule.

Q. And reading it into the rule, as you do, what does the requirement that the consent be informed suggest with respect to what the client would be told?

MS. LUKEY: Objection.

A. Client would be told that there's going to be a fee splitting or there might be a fee-splitting arrangement between law firms.

THE SPECIAL MASTER: Nothing more than that?

THE WITNESS: The rule doesn't require anything more than that. And that's been the common understanding of the rule.

BY MR. SINNOTT:

Q. And it's your opinion that 1.5(e) did not require that Arkansas be informed of anything more than that Labaton may allocate

Page 35

fees to other attorneys who serve as local or liaison counsel, as referral fees or for other services performed in connection with the litigation.

Is that your opinion?

A. Yes, sir.

Q. And there was no requirement that Labaton inform Arkansas of the existence of Damon Chargois and his role in this case?

A. Not beyond what I just said.

Q. So, in your opinion, it was not necessary that, even though Labaton was aware of the role of Damon Chargois, that it inform Arkansas?

MS. LUKEY: Objection.

A. Inform Arkansas of what?

Q. Of his role and of his existence.

A. Of Chargois' existence?

Q. Yes, sir.

A. No.

Q. And the fact that informed consent would be at issue -- would be operative here does not change that opinion of yours?

MS. LUKEY: Objection.

Page 36

A. No, sir.

THE SPECIAL MASTER: Let me ask just a couple questions about what the engagement letter -- do you have a copy of it?

THE WITNESS: I have a copy of the quote.

MS. LUKEY: (Handing.) He has got it now.

THE SPECIAL MASTER: You quoted in your opinion, you can read the whole letter if you'd like, but I would like to focus on the paragraph at the top of page 2, which seems to be the operative language here.

And, by the way, we haven't met. I'm Gerry Rosen.

THE WITNESS: How do you do? Nice to meet you, Judge.

THE SPECIAL MASTER: Nice to meet you.

What do you interpret or infer Labaton was permitted, reading "may" as permissive, to do under this agreement?

Page 37

THE WITNESS: It seems to me that Labaton was basically trying to tell the client, and did tell the client, that they might need to retain local or liaison counsel, that they might need to pay a referral fee to such local counsel, and that they might need to pay somebody for services performed in connection with the litigation, and that they were getting the permission of the Arkansas Teacher Fund to do that.

THE SPECIAL MASTER: So you read the phrase who -- "may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees"?

MS. LUKEY: Objection.

THE SPECIAL MASTER: Modifying and referring back to local or liaison counsel.

MS. LUKEY: Objection.

THE WITNESS: No, I don't read it that way, sir.

THE SPECIAL MASTER: I'm sorry. I thought that's what you said.

Page 38

THE WITNESS: No, no. I read it that they have the right to, under this agreement, allocate fees to people who serve as local or liaison counsel or allocate fees as referral fees or allocate fees for other services performed in connection with the litigation. I read it as the --
THE SPECIAL MASTER: Each phrase in the disjunctive?
THE WITNESS: Yes.
THE SPECIAL MASTER: Of course, that's not what it says, is it?
MS. LUKEY: Objection.
THE SPECIAL MASTER: On its face.
MS. LUKEY: Objection.
THE WITNESS: I don't agree. That's the way I read it. It's plain language to me, sir.
THE SPECIAL MASTER: You don't read "as referral fees" as modifying local or liaison counsel?
THE WITNESS: No, I don't.
THE SPECIAL MASTER: You read it

Page 39

separately and independently as a permissive separate and independent payment?
THE WITNESS: I do.
THE SPECIAL MASTER: On page --
THE WITNESS: By the way, I'm not sure it makes a difference, but I do.
THE SPECIAL MASTER: Okay. Well, you agree that the contract forms the basis of the relationship and what Labaton is permitted to do under the contract?
MS. LUKEY: Objection.
THE WITNESS: I agree that a contract is a written agreement, sure.
THE SPECIAL MASTER: So if it were read as referral fees to modify local or liaison counsel, the payment would be made to Mr. Chargois in this case as a referral fee for serving as local counsel or for serving as liaison counsel.
THE WITNESS: It's possible. I don't read it that way.
THE SPECIAL MASTER: Or the payments could be made for other services

Page 40

performed, right?
THE WITNESS: I think there are three different possibilities there.
THE SPECIAL MASTER: Three different possibilities for payment?
THE WITNESS: For allocation of fees among counsel.
THE SPECIAL MASTER: Reading it the way you say you read it, there are four different possibilities, right?
THE WITNESS: Well, I suppose you could say local or liaison counsel could be two different possibilities, sure. Sure. So there could be four.
THE SPECIAL MASTER: In fact, there may well be.
THE WITNESS: Could be.
THE SPECIAL MASTER: But if you read it the other way this could be read, and parse the sentence differently, whereby, as referral fees modifying local or liaison counsel, that would indicate that the referral fees would be paid for serving as local or liaison counsel

Page 41

because it's an offset clause divided by commas.
MS. LUKEY: Objection.
THE WITNESS: You could read it that way. I just don't read it that way, sir.
THE SPECIAL MASTER: Okay. And the fact that the next phrase says "or for other services performed," does that not indicate that the agreement contemplates some form of services that relates to a fee?
MS. LUKEY: Objection.
THE WITNESS: I would imagine it relates to a fee, an allocation of fees to other counsel besides Labaton. That's what the purpose was.
THE SPECIAL MASTER: I'm interested in your view of what a referral fee is.
I have been interested from the beginning of this investigation as to what people's views are as a referral fee. People seem to have very different views about, first of all, what it was that Mr. Chargois got paid. We've had vastly

Page 42

different views, including Mr. Chargois' own view.
I'm interested in yours. What was the nature of the payment to Mr. Chargois?
THE WITNESS: As best I understand, it was a referral fee.
THE SPECIAL MASTER: What informs that view?
THE WITNESS: The fact that Mr. Chargois introduced the client to Labaton.
THE SPECIAL MASTER: But not in connection with this case specifically?
THE WITNESS: And it followed from this -- it followed, as part of the introduction, that there would be potential litigation, although, initially, it was monitoring. And that, therefore, the -- but for Chargois' introduction, Labaton would not have perhaps become counsel in the State Street litigation.
THE SPECIAL MASTER: So you read referral fee as any kind of a fee paid for an introduction that preceded the instant

Page 43

case by years, that the payment would be a referral fee?
THE WITNESS: Well, it depends on the facts and the circumstances, but I suppose it could conceivably be, yes.
THE SPECIAL MASTER: So let's talk about the facts and circumstances.
Assume that the deposition testimony, including Mr. Chargois', but also including the witnesses from Labaton, indicate that Mr. Chargois was asked to make an introduction to what was termed institutional investors, and that out of that came a phone call by Mr. Chargois to the executive director of Arkansas, and that out of that came a meeting, the first meeting at which Mr. Chargois participated. And after that, he participated in no other meetings.
But as a result of that, there was an agreement between Labaton and Mr. Chargois and Chargois & Herron that Mr. Chargois would receive 20 percent of every fee Labaton got in which Arkansas

Page 44

was either lead or co-lead plaintiff and Labaton was either lead or co-lead counsel.
And that this was the genesis of the relationship and the agreement, and that this continued forward until February 8 of 2011. And that it was pursuant to this agreement with this context that Labaton paid Mr. Chargois.
Is that a referral fee?
MS. LUKEY: Objection.
THE WITNESS: I think this is a referral fee, and it happens all the time, common.
THE SPECIAL MASTER: Do you see any difference between this and a finder's fee?
MS. LUKEY: Objection.
THE WITNESS: Finder's fee? I don't know what a finder's fee is.
THE SPECIAL MASTER: In other context, such as real estate or businesses in which a business agent goes out and finds a client for another business, it's

Page 45

often referred to as a finder's fee.
MS. LUKEY: Objection.
THE WITNESS: A referral fee, in my world of legal ethics, refers to a fee paid by one lawyer to another lawyer who is not affiliated with the first lawyer.
THE SPECIAL MASTER: For anything?
THE WITNESS: For referring a case or a matter.
THE SPECIAL MASTER: And is that what happened in this case? Was a case referred or was a matter referred?
THE WITNESS: Absolutely.
THE SPECIAL MASTER: And exactly when was this case referred?
THE WITNESS: Whenever the litigation was about to begin, to my knowledge.
THE SPECIAL MASTER: Mr. Chargois referred the State Street matter to Labaton. That's your understanding?
THE WITNESS: There was a referral fee arrangement between Labaton and the Chargois & Herron firm that had basically

Page 46

incorporated the notion that Labaton would be counsel in this kind of litigation. So that was the arrangement that they had. I don't understand why --

THE SPECIAL MASTER: And it didn't matter that it is not case specific at all?

THE WITNESS: No.

THE SPECIAL MASTER: But just that it's kind of a floating lien over all cases in which Labaton serves as lead counsel and Arkansas as lead plaintiff?

MS. LUKEY: Objection.

THE WITNESS: I can't answer the way you've described it as a floating lien, but it certainly is not an uncommon arrangement.

THE SPECIAL MASTER: How about a continuing interest, is that better?

THE WITNESS: I don't know. I can't -- I don't have an opinion on that.

THE SPECIAL MASTER: You say it's common that, where a lawyer makes an introduction to a client, that that

Page 47

lawyer, the introducing lawyer, receives a fee in every case that that client has going forward without limitation to specific referrals for specific cases.

THE WITNESS: Judge Rosen, I know a number of lawyers in New York, and probably in Massachusetts, although I can't think of anybody specifically in Massachusetts, I know a number of lawyers in New York who have referral fee arrangements on an ongoing basis with trial counsel who are not litigators, but who refer, essentially, all or most of their matters to trial counsel, and it's an understood, sometimes oral, but usually in writing at the outset agreement, and a stream of cases are referred to the same trial counsel because the referring lawyer knows that that trial counsel is an excellent litigator and has excellent results, and it's common.

THE SPECIAL MASTER: I want to parse that more carefully.

Is that on a case-by-case basis?

Page 48

When more clients come in, that referring lawyer gets the case and says, you know, I know Lawyer Smith, he's excellent, he has handled a number of cases, I'm going to refer it. Is that the situation you are referring to?

THE WITNESS: All the time.

THE SPECIAL MASTER: Okay. That didn't happen in this case, though.

MS. LUKEY: Objection.

THE WITNESS: I don't know what you mean by that.

THE SPECIAL MASTER: Well, let me explain it to you so you do.

THE WITNESS: Sure.

THE SPECIAL MASTER: Mr. Chargois had no involvement whatsoever, the testimony shows, no involvement whatsoever in this specific matter. His fee was paid simply and only for the original introduction with no specific involvement in this or any of the other nine cases he received a fee for.

MS. LUKEY: Objection.

Page 49

THE SPECIAL MASTER: So what I'm trying to parse down on here is whether, in all of these other cases you say happened, there is -- the referring lawyer has no contact whatsoever with the client, but only receives the fee for the initial introduction, not touching or having anything else to do with the specific case at issue.

THE WITNESS: It's common, Judge.

THE SPECIAL MASTER: So the lawyer who is referring makes no independent judgment, has no independent role, has no specific involvement or even touches on a case-by-case basis. He simply has a continuing interest in every single case.

THE WITNESS: It's common, Judge.

THE SPECIAL MASTER: What if the referring lawyer isn't involved at all? What if the relationship then reverts back to the lawyer that is being referred, in this case, Labaton, and the client, and the client continues to hire Labaton without any involvement of the initial

Page 50

lawyer?
MS. LUKEY: Objection.
THE WITNESS: Unless there is an understanding between the referring lawyer and the referred lawyer that that is going to be the case, then the fee agreement wouldn't be enforceable between the lawyers. But if there's an understanding between them, and the client is told that there is a fee-splitting agreement, that's sufficient, whether the lawyer, the referring lawyer does a stitch of work or not.
THE SPECIAL MASTER: I'm not focusing on the work.
THE WITNESS: I thought you were.
THE SPECIAL MASTER: No.
THE WITNESS: Okay.
THE SPECIAL MASTER: I am focusing on the act of referring a specific case.
THE WITNESS: I'm sorry, then. What's your question? I may have misunderstood it.
THE SPECIAL MASTER: Let me be clear

Page 51

again. I'm trying to be clear.
THE WITNESS: I understand.
THE SPECIAL MASTER: Okay. Let me be very clear.
THE WITNESS: Sure.
THE SPECIAL MASTER: As I understood your description, you say it's done all the time, where cases come into a lawyer and they say, I'm referring it to Lawyer Smith. That's a specific case.
And then other cases come in, maybe on the same matter or maybe on a different matter, and that lawyer says, I'm referring this to Lawyer Smith.
Is that the relationship you're referring to?
MS. LUKEY: Objection.
THE SPECIAL MASTER: As a referral fee?
THE WITNESS: Very frequently what happens is that lawyer A does a lot of advertising and gets people to respond to his or her advertising, and if it's a particular type of case which involves

Page 52

litigation, and lawyer A is not a specialist in litigation, if you can call him that, if he doesn't concentrate in litigation --
THE SPECIAL MASTER: Is lawyer A referring --
THE WITNESS: Yes. Then lawyer A will refer to lawyer B. And that's it. There is a relationship between lawyer A and lawyer B that is either written or unwritten, but that is an understanding of a fee-splitting arrangement and the client is told, in one form or another, that lawyer B will be handling the matter henceforth. And lawyer A doesn't do anything further. And that is common.
THE SPECIAL MASTER: I think we are talking past each other.
THE WITNESS: Maybe.
THE SPECIAL MASTER: In your hypothetical, lawyer A, the referring lawyer, is actually getting the cases or matters in. Whether he does any work or she does any work at all on it, he then

Page 53

refers it to lawyer B.
THE WITNESS: Correct.
THE SPECIAL MASTER: That didn't happen here.
What happened here is lawyer A, the referring lawyer, made an introduction three years before. Never touched the case. Never had any involvement in any other specific case in which Arkansas served. Well, there was one. Sorry.
There were eight cases in which he had no specific involvement at all. The relationship then was directly between lawyer B, Labaton, the referred lawyer, and the client. Lawyer A was never involved, Mr. Chargois. Never even knew about it until the cases were filed and, in some cases, after the cases were filed.
You see the distinction?
THE WITNESS: No.
THE SPECIAL MASTER: I'm not asking you now whether there is a legal distinction. I'm asking you if you see the factual distinction so that I can

Page 54

understand your view?
THE WITNESS: I don't see the factual distinction either, sir.
THE SPECIAL MASTER: I don't know what more I can do to explain it to you, except to say this directly to you.
In this case, as contra to the cases you described, lawyer A never touched this specific case, ever. The client did not come into him and say, I want to file a case and lawyer A then referred it to lawyer B.
In this case, lawyer A, the only thing he did, I'm not asking you whether it's proper or under 1.5, all that happened in this case was three years before or four years before, lawyer A opened the door, made the introduction, and then, in every subsequent case in which the client used lawyer B to represent the client in the case, totally divorced at this point from anything lawyer A did, other than the initial introduction, a fee was paid.

Page 55

And my only question to you, is that a referral fee?
THE WITNESS: Yes.
THE SPECIAL MASTER: Why?
THE WITNESS: Because A caused the introduction to be made and A caused the attorney/client relationship to come to be.
THE SPECIAL MASTER: And that's sufficient to be a referral fee, whether or not lawyer A has any more involvement whatsoever in any of the future cases?
THE WITNESS: In my opinion, yes.
THE SPECIAL MASTER: Now, you said it happens all the time. Common practice.
Is the description I have now given you common practice as a referral fee?
THE WITNESS: It's a variation on a theme, if I can put it that way. It's not common practice in the sense that I was describing a moment ago, but it's not dissimilar in substance. Same concept.
The real question here, for purposes of this case, I think, is what's the

Page 56

purpose of the referral fee rule, and who is supposed to be the beneficiary of the referral fee rule, and I have views on that, if you want to ask me.
THE SPECIAL MASTER: Does the referral fee rule not contemplate, at least in part, and the policy behind the referral fee, that a lawyer who, by virtue of his or her practice and expertise, is not or does not feel totally competent to handle a case, but knows of another lawyer who is more competent and more experienced to handle that case, refers the case out to that lawyer, who is more experienced and more competent.
THE WITNESS: I agree with that, yes.
THE SPECIAL MASTER: Okay. Does that not, just as a policy matter, imply that what we have been calling lawyer A, the referring lawyer, make some judgment, however modest, however scarce, however skimpy, that that lawyer makes some judgment that lawyer B should handle the

Page 57

case rather than him or her?
THE WITNESS: Yes.
THE SPECIAL MASTER: Okay. That's not what happened in this case.
MS. LUKEY: Objection.
THE SPECIAL MASTER: What happened in this case is that lawyer A, the referring lawyer, made an introduction. There's even some question in this case as to whether or not, by other experts not retained by the special master, as to whether or not, in that introduction, there was even a recommendation.
The previous expert testified that there was not even a recommendation, that it was simply an introduction.
Is the policy behind referral fees served in those circumstances?
THE WITNESS: The policy behind referral fees is served when clients are able to retain, through the referral process, competent counsel to handle their matter, whatever that may be.
THE SPECIAL MASTER: What's the

Page 58

difference between somebody who does what Mr. Chargois did here, makes an introduction, a lawyer who does it, and a non-lawyer who maybe knows the client, who calls him and says, hey, you know, I have got this friend who's a lawyer, and I'd love for you to meet him because he does this kind of work.

THE WITNESS: The rules preclude paying referral fees to non-lawyers.

THE SPECIAL MASTER: And that's the only difference?

THE WITNESS: That's one of the differences.

THE SPECIAL MASTER: So you see no significance right now just in terms of the policy basis behind referral fees, you see no significance in the fact that the cases in question, and this case in particular, developed out of the relationship that Labaton had with the client once it had -- once it was hired as monitoring counsel, and, at that point, Mr. Chargois is totally out of the

Page 59

relationship. You see no difference there?

THE WITNESS: No.

THE SPECIAL MASTER: In terms of the policy behind referral fees, do you see a difference?

THE WITNESS: No.

THE SPECIAL MASTER: So the fee can simply relate back?

THE WITNESS: Yes.

THE SPECIAL MASTER: This is what I was referring to when I said it was a floating lien, because that sure is what it sounds like to me.

MS. LUKEY: Objection.

THE SPECIAL MASTER: A floating interest in any cases that the client that was introduced, as to subsequent cases by the referred lawyer. It sounds to me like just simply -- you can call it a floating lien, you can call it a floating interest, but it doesn't sound like a referral fee in the way I've always thought of referral fees and I have seen them, at least in my

Page 60

court, because there is no judgment whatsoever exercised, no participation whatsoever exercised by lawyer A in these subsequent cases. He just has an interest in future cases.

Is there any professional -- that was a speech. Let me stop the speech and ask you a question.

Given the scenario, is there any professional aspect of this for which Mr. Chargois was compensated in his role as a lawyer?

MS. LUKEY: Objection.

THE WITNESS: There is a professional aspect, and it has to do with the referral fee rule and his right to referral fees if there's a referral fee arrangement.

THE SPECIAL MASTER: Isn't that circular?

THE WITNESS: Yes.

THE SPECIAL MASTER: It's a referral fee, because it's a referral fee because he's a lawyer.

Page 61

THE WITNESS: Because the purpose is for the client's benefit to have competent counsel, and if Chargois plays a role in that, a meaningful role in getting the client competent counsel, then under the rules as I understand them, the referring lawyer is entitled to a fee.

THE SPECIAL MASTER: Irrespective of whether he ever touched the case again, even whether he knew about the case?

THE WITNESS: That's what the rule says.

THE SPECIAL MASTER: Where does the rule say that, please? And we can look at the rule that was in effect at the time.

THE WITNESS: All the lawyer has to do is inform the client that a division of fees will be made and the client agrees and the total fee is reasonable. That's what happened here.

THE SPECIAL MASTER: It does say the client consents to the joint participation.

Where was Mr. Chargois'

Page 62

participation, please?
THE WITNESS: He was -- participated by referring the matter. That's sufficient for the rule.
THE SPECIAL MASTER: Joint participation can refer back however long ago it was?
THE WITNESS: The courts do not require that a lawyer be -- appear as co-counsel, file a notice of appearance, supervise the lawyer to whom the case is referred.
THE SPECIAL MASTER: Or do any work?
THE WITNESS: Or do any work.
THE SPECIAL MASTER: Or even know about the case?
MS. LUKEY: Objection.
THE WITNESS: I don't understand that question.
THE SPECIAL MASTER: Suppose Mr. Chargois didn't even know about this case until after it was filed and much later into its gestation. Suppose he doesn't know about that. Is that joint

Page 63

participation for purposes of the rule?
THE WITNESS: Yes.
THE SPECIAL MASTER: Because he initiated the relationship.
THE WITNESS: The relationship, yes.
THE SPECIAL MASTER: Years before.
THE WITNESS: Yes.
THE SPECIAL MASTER: And, again, tell me how the policy behind referral fees is served by that.
THE WITNESS: Because the idea is that the client should get counsel who is competent in the particular area, and it's for the client's benefit that we have the referral fee rule to encourage lawyers who are not specialists or practice in particular areas, to refer those matters rather than try to handle them and dabble in them or try to somehow participate so they can get some kind of a proportionate fee. That's why the rules changed so that it added the joint participation or joint responsibility as opposed to simply in proportion to the fee.

Page 64

It was never the case in Massachusetts, but it certainly was the case in other jurisdictions.
The ABA really went out of its way to liberalize the rules so to encourage referral fees. That was the idea.
THE SPECIAL MASTER: So the phrase "joint participation" connotes not a single, not a single piece of participation in the case itself?
THE WITNESS: I'm not going -- I'm not going to say that joint participation means that there is not a single piece of effort, but the effort that the courts have said is sufficient is the referral itself.
THE SPECIAL MASTER: I'm not -- not of the specific case, I'm not quibbling about that, of the client. It's really a referral of a client, not a case.
THE WITNESS: Referral of a client to a lawyer, that's right.
THE SPECIAL MASTER: And you think that's what joint participation

Page 65

anticipates in the rule?
THE WITNESS: That's what the courts have said, and that's the way I read it.
THE SPECIAL MASTER: Okay.
BY MR. SINNOTT:
Q. Let me direct your attention, Counsel, to page 16 of your report.
A. Sure.
Q. And specifically in the paragraph that begins near the top, "Both the Labaton partner."
The second sentence says, "Hopkins has also recently provided a declaration confirming that he retroactively approves of the instant fee-splitting arrangement. Indeed, Hopkins has affirmatively stated that he did not wish to be involved in discussions concerning fee allocation or becoming a referee between law firms because that would have districted him from focusing on protecting the class. His only concern about fees was that the overall attorney fee award remain the same."
Then you go on in the next paragraph

Page 66

to say that, "The foregoing facts support the conclusion that Labaton obtained ARTRS' consent to divide its fees with Chargois and, therefore, complied with Rule 1.5(e) as it then existed."

So let me focus on the declaration, Attorney Lieberman. What's the significance of this declaration which was drafted years after the engagement letter in this case?

MS. LUKEY: Objection.

A. Well, as I think about it, it may not be all that significant because Hopkins did sign the engagement letter. Just, I guess, the parties couldn't find a signed copy.

THE SPECIAL MASTER: So that's why the ratification declaration was necessary, because they couldn't find a signed copy?

THE WITNESS: I don't know. I don't know why it was necessary.

Q. Well, how is it significant to your report, or is it?

A. Well, it's simply -- it corroborates or reemphasize -- it reemphasizes that he gave,

Page 67

you know, gave consent and that he knew what he was doing and that he is a sophisticated individual who was focused on the more meaningful issue which was, you know, getting the right counsel for the case.

Q. Did you view any documents that seem to suggest that he did not consent in an informed fashion to referral fee arrangements or division of fees?

MS. LUKEY: Objection.

Q. Do you recall any such documents?

A. No, I don't.

Q. Would it have informed your interpretation of the declaration if you were to have learned that both before and after the engagement letters were signed that Eric Belfi took steps that might be interpreted to have concealed the involvement of Damon Chargois from Mr. Hopkins?

MS. LUKEY: Objection.

A. I don't know that Mr. Belfi did that, but, in any event, the main thing was Mr. Hopkins emphasized repeatedly, apparently, that he wasn't really concerned about that.

Page 68

That was something that was between the lawyers and he didn't want to know about it.

Q. But would you agree that, assuming that there was an attempt to circumvent Mr. Hopkins before and after the signing of that or the execution of that retention letter, that that would be significant on the issue of whether Mr. Hopkins had provided consent to this arrangement?

MS. LUKEY: Objection.

A. Not according to Mr. Hopkins. It wouldn't have mattered.

Q. Well, I'm asking, according to you?

A. I don't have an independent opinion of Mr. Hopkins. According to me, if Mr. Hopkins said it doesn't matter to him, it didn't matter. So it wouldn't change my opinion.

Q. What if, upon learning that, Mr. Hopkins had said, geez, I had no idea that they were going around my back with this guy, Chargois, who I just found out was paid $4.1 million, I never consented to that, would that have affected your opinion as to whether

Page 69

1.5(e) was complied with?

MS. LUKEY: Objection.

A. It would not have, because 1.5(e) doesn't require disclosure of the name of the firm. It simply requires disclosure of the fee-splitting arrangement. That's all it requires.

So, as a regulatory matter, it would be tough to prove that case against the lawyers.

Q. But you've indicated that the subjective view of Mr. Hopkins is relevant as to whether 1.5(e) was complied with, correct?

A. I have indicated that Mr. Hopkins testified and also provided the declaration and also signed an agreement that acknowledged the understanding that there was a fee-splitting agreement, but didn't care. That's what I said.

Q. All right. And, in your view, it's important that he didn't care, correct?

MS. LUKEY: Objection.

A. No. What's important is that the disclosure was made to him of the fee-splitting

Page 70

agreement, and that the overall fee was reasonable.
His subjective feelings about it -- if he had objected, presumably, that would be a different matter, but he consented, and that's all that counts.
Q. So that provision in the retention letter that indicates that Labaton may allocate attorneys' fees obviates, in your view, any attempt by Labaton to deprive Mr. Hopkins of information about the referring attorney?
MS. LUKEY: Objection.
A. I don't understand your question exactly. What do you mean "obviates"?
I think I testified that the important thing was the compliance with the rule and the terms of the rule, and the rule required disclosure and consent by the client and that the overall fee is reasonable, and those things were complied with.
I don't understand what else you are asking me.
Q. Can that disclosure be considered complete or sufficient if it does not

Page 71

contemplate or include information that the client is being deprived of important information?
MS. LUKEY: Objection.
A. The rule doesn't define what kind of information as long as there's a fee-splitting arrangement disclosed. It doesn't say specifically you have to say the name of the lawyer or lawyers. It doesn't say you have to say the amount of the fee split. It doesn't require any of that in Massachusetts.
Q. Sure. But my question to you is, can the client be considered to be informed if he's been consciously deprived of important information?
MS. LUKEY: Objection.
A. Again, the rule doesn't require important information be disclosed. It's a very simple rule. It only requires that information be disclosed -- to repeat myself -- about the fact of the fee-splitting arrangement -- a fee-splitting arrangement.
THE SPECIAL MASTER: And no details about the arrangement whatsoever, to whom

Page 72

it's going, whether or not any work will be done, whether or not this lawyer has ever touched the case, has anything to do with the case, or even knows about the case. None of that is required to get the informed consent of the client; is that right?
THE WITNESS: That's right.
THE SPECIAL MASTER: I'd like to go back to this issue. I'm stuck on this, I know, of what a referral fee is and the policies that we discussed.
Are you familiar with the secondary source, "Massachusetts Legal Ethics, Substance and Practice"?
MS. LUKEY: Is that the Gilda Tuoni?
THE WITNESS: Yes, I mentioned it in my footnote.
THE SPECIAL MASTER: I thought I saw it in yours. I couldn't immediately put my hands on it.
THE WITNESS: It's on the first page.
THE SPECIAL MASTER: Maybe that's

Page 73

why. I was looking further.
THE WITNESS: Yes, I knew her when she was actively practicing.
THE SPECIAL MASTER: Actually, it's not. This is a secondary source that was referred to by another expert, and it's called "Massachusetts Legal Ethics, Substance and Practice."
THE WITNESS: Who is the author, sir?
THE SPECIAL MASTER: I knew you would ask that, and I couldn't find it.
MS. McEVOY: It's the draft BBO treatise.
THE WITNESS: Oh, that's the 2015 draft.
MS. McEVOY: 2017 draft? I don't know which one, actually.
THE WITNESS: Yes, I am familiar with that. I know -- I used to work there.
THE SPECIAL MASTER: Okay. Good. So that treatise says, "Unlike almost every other jurisdiction in the nation,

Page 74

Massachusetts permits an attorneys' fee to be divided with a lawyer who does not practice in the firm of the primary lawyer, i.e., a referral fee, even if the referring lawyer does nothing more than refer the matter."

That sounds like what we were talking about when you initially told me what a referral fee was, refer the matter.

Can we read anything into referral fee in the context of 1.5(e) from that?

MS. LUKEY: Objection.

THE WITNESS: I think it reenforces my opinion.

THE SPECIAL MASTER: We're going around in circles here, Mr. Lieberman.

I want to know how Mr. Chargois referred the matter, State Street matter, in this case.

THE WITNESS: He referred ARTRS to Labaton. And subsequently --

THE SPECIAL MASTER: Referred Labaton to ARTRS.

THE WITNESS: I'm sorry. Well, he

Page 75

created -- he introduced them. Let's put it that way.

THE SPECIAL MASTER: And you believe that constitutes referring the State Street matter?

THE WITNESS: Yes, sir.

THE SPECIAL MASTER: Okay.

BY MR. SINNOTT:

Q. All right. Let me direct your attention to page 17, Counsel.

A. I'm there, sure.

Q. All right. The middle paragraph that begins, "Notably," and just for context, I'll read that.

"Notably, to the best of my knowledge, neither lawyer in Saggese was subsequently disciplined following the court's opinion, nor is there any evidence that the Massachusetts Board of Bar Overseers took or has ever taken the position that lawyers who engage in imperfectly documented, but, nonetheless, enforceable fee-splitting arrangements, are thereby automatically subject to discipline or sanctions for violating Mass.

Page 76

Rule 7.2 by sending a forwarding fee not to another law firm, but to a person."

And then you say, "I am not aware of any such bootstrapped interpretation or application of Rule 7.2 in any jurisdiction, and Professor Gillers cites no authority beyond his own expansive reading of the rules."

Drawing your attention to that last sentence, "I'm not aware of any such bootstrapped interpretation," does the fact that the courts have not discussed 7.2 and 1.5(e) in a single opinion make those rules ineffective as written, in your view?

A. I don't understand your question at all. I'm sorry.

Q. Is bootstrapped interpretation of Rule 7.2 in any jurisdiction, what specifically are you referring to when you say "bootstrapped interpretation"?

A. Well, there have been many situations where lawyers, in referral-fee arrangements, have not crossed their Ts and dot their Is, if I can put it that way, and the only litigation, to the best of my knowledge,

Page 77

has been between lawyers, one lawyer trying to enforce a fee arrangement, a referral fee agreement with another. I don't know of any litigation where clients have litigated the issue of a referral fee arrangement presumably because they are satisfied with the idea of the overall reasonableness of the fee.

So, in those cases, where lawyers have litigated referral fees and where disputes have arisen about referral fees, I don't know of any court that has ever said, because the referral fee arrangement was imperfect, therefore, the lawyer somehow violated Rule 7.2 by referring the matter and seeking a referral fee from a person as opposed to another lawyer. I don't know of any court that's ever said that or any ethics opinion has ever said that as between lawyer-to-lawyer referrals.

There may be some obscure ethics opinion somewhere that says something where those two rules are mentioned, but I don't know of anything that relates to anything close to this case where that would be the case.

I have never heard this

Page 78

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.

THE SPECIAL MASTER: Could I ask a question another way, please?

THE WITNESS: Sure.

THE SPECIAL MASTER: Suppose there's no attempt whatsoever to comply with 1.5(e)? There's just simply a recommendation by a lawyer to a client that another lawyer be used. Simply that. There's no notice to the client. No consent by the client, written or otherwise.

Are we then in 7.2(b)?

THE WITNESS: No, we're not.

THE SPECIAL MASTER: Why?

THE WITNESS: Because it's between lawyers. 7.2 doesn't talk about referrals to -- between lawyers. 7.2 talks about

Page 79

the policy of not seeking -- not paying non-lawyers for referrals. It has nothing to do with lawyers.

THE SPECIAL MASTER: Suppose the lawyer is no longer practicing, but maintains his law license.

MS. LUKEY: Objection.

THE WITNESS: If the lawyer is a member of the bar, then that takes it out of Rule 7.2, in my judgment.

THE SPECIAL MASTER: So a lawyer degree and being a member of the bar insulates any transaction from 7.2(b)?

THE WITNESS: I've never heard of an interpretation that 7.2(b) -- 7.2 or 7.2(b) would apply in that circumstance, ever.

THE SPECIAL MASTER: Then why have subsection 5 in 7.2(b), which looks to be a safe harbor provision for agreements that comply with 1.5(e)?

THE WITNESS: Right. Just to emphasize the very point that I just made.

THE SPECIAL MASTER: Surplusage, unnecessary and surplusage.

MS. LUKEY: Objection.

THE WITNESS: I wouldn't agree with that.

MS. LUKEY: Do we happen to have a copy of the rule or shall I pull it up electronically?

MS. McEVOY: I can give you a hard copy.

MS. LUKEY: 7.2(b).

THE WITNESS: This is the Massachusetts 7.2(b). I'm familiar with it.

MS. McEVOY: This is the language that's been consistent throughout.

THE WITNESS: This is the language in 2011?

MS. McEVOY: Currently.

THE SPECIAL MASTER: That's the current language.

MS. LUKEY: I think the language was the same, but it was 7.2(c) at the point.

THE SPECIAL MASTER: Yeah, it was a different number, 7.2(c).

Page 81

So it says, "7.2(b). A lawyer shall not give anything of value to a person for recommending the lawyer's services." And then there's an exception, "Except that a lawyer may," and then there are permissive applications and specifically permissive -- pay fees permitted by Rule 1.5(e).

THE WITNESS: Okay.

THE SPECIAL MASTER: So what's the purpose of that if, as long as the person doing the recommending is a lawyer, what's the purpose of subsection 5?

THE WITNESS: Just perfectly consistent with the rest of the rules. I have no idea why it was necessary, but if they put it in, they put it in. It doesn't change a thing in terms of what I just said.

THE SPECIAL MASTER: All right. So, for your purposes, a lawyer shall not give anything of value to a person. A lawyer is not a person under 7.2(b).

There are many people who would

Page 82

agree with that, but for purposes of construing that rule, a lawyer is not a person?
THE WITNESS: Correct.
THE SPECIAL MASTER: Period.
THE WITNESS: Period.
THE SPECIAL MASTER: So a law degree and membership in the bar insulates a person from violating 7.2(b), period?
THE WITNESS: Correct. Period.
THE SPECIAL MASTER: And 7.2(b)(5) is merely surplusage, unnecessary?
THE WITNESS: It's probably redundant.
THE SPECIAL MASTER: Redundant.
THE WITNESS: That's not the only place in the rules where the rules are redundant, but that's one of them.
THE SPECIAL MASTER: You are familiar with statutory construction, rules of statutory construction? Or maybe you're not.
THE WITNESS: I don't purport to be an expert in statutory construction.

Page 83

THE SPECIAL MASTER: Okay.
THE WITNESS: I understand something about it.
THE SPECIAL MASTER: There is a presumption that language in a statute is not surplus, that language in a statute is there for a purpose.
THE WITNESS: I can only tell you that I know something about the Rules of Professional Conduct and the prior Code of Professional Responsibility, and there is redundancy. That's all I can tell you, sir.
THE SPECIAL MASTER: And this would be one of those issues of redundancy?
THE WITNESS: It seems to be, yes.
THE SPECIAL MASTER: And it should be viewed as redundancy and not construed pursuant to normal rules of statutory construction, which is that we read rules, we read statutes as having a purpose and not to assume that statutory language or rules language is redundant or surplusage.
MS. LUKEY: Objection.

Page 84

THE WITNESS: I have no opinion on that one way or the other.
THE SPECIAL MASTER: So in considering whether 7.2(b) covers lawyers, just that question at the top, one should ignore 7.2(b)(5), yes?
MS. LUKEY: Objection.
THE WITNESS: I testified what I testified to. It's redundant.
THE SPECIAL MASTER: Has nothing to say about the construction of the rule?
MS. LUKEY: Objection.
THE WITNESS: Same answer.
THE SPECIAL MASTER: And your answer, correct, has nothing to say about construction of the rule?
THE WITNESS: No. My answer is that it's redundant.
THE SPECIAL MASTER: Okay.
BY MR. SINNOTT:
Q. Attorney Lieberman, let me direct your attention, again, to that middle paragraph on page 17. And the first sentence that I read before, "Notably, to the best of my knowledge,

Page 85

neither lawyer in Saggese was subsequently disciplined following the court's opinion."
Isn't it true, though, that the court, in Saggese, did say that the lawyers could be disciplined, even as it enforced the agreement between the lawyers?
A. I'd have to look at the Saggese opinion to see what it says on that. I don't think that's the wording of the opinion.
I just want to look at the opinion.
And can I have the specific reference, if you wouldn't mind?
Q. Yeah.
THE SPECIAL MASTER: Off the record.
(Discussion off the record.)
(Lieberman Exhibit 3, Saggese v. Kelley Decision, marked for identification.)
Q. If I could direct your attention to the page that has a 6 in the lower right of the page on the right-hand side.
A. Yep. I'm there.
Q. So the paragraph that begins, "These problems are avoidable in fee-sharing

Page 86

situations if the referring lawyer, who usually is in the best position to secure compliance with Rule 1.5(a), is required to disclose the fee-sharing agreement to the client before the referral is made and secures the client's consent in writing. This rule will be construed to require this in fee-sharing agreements that are formed after the issuance of the rescript in this decision."

I want to bring you down to the final sentence of that paragraph. "We emphasize that, although failure to comply with the rule may not necessarily render a contract unenforceable between lawyers, it may subject both lawyers to disciplinary action upon division of a fee."

A. Right.

Q. Does that refresh your memory as to what the court said?

A. It does.

Q. Let me direct your attention to --

THE SPECIAL MASTER: Could I ask a more general question? And I'm interested in your view.

Page 87

Let's assume here there was not compliance with 1.5(e), but there was an attempt to comply.

THE WITNESS: When you say "here," you mean in Saggese or in this case?

THE SPECIAL MASTER: In this case. There was an attempt to comply.

Does that go to whether or not the rule is technically violated or does it go to consideration of discipline and sanction?

MS. LUKEY: Objection.

THE WITNESS: Well, that's a good question, and a hard question to answer.

THE SPECIAL MASTER: And I'm very interested in your answer.

THE WITNESS: I can tell you, from a disciplinary and sanction standpoint, first, that the substantial compliance or imperfect compliance would be certainly taken into consideration. The equities would be looked at. But the most important factor, really, is letter of the rule.

Page 88

And if there is no notice that a rule requires, for example, disclosure of the name of the, you know, 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, notwithstanding that it says so in a case of the high court, because of the notice and due process concerns.

So from an enforcement standpoint, sanctions, discipline, what really counts is the attempt to and the substantial compliance with the rule as written in the code of professional responsibility.

From an enforcement standpoint in terms of enforcing a contract, the courts have pretty much said that they will enforce imperfect or substantially complied with fee-sharing agreements when the equities so suggest.

THE SPECIAL MASTER: As between the lawyers.

THE WITNESS: As between the lawyers, as was the case in Daynard, which

Page 89

was clearly -- I mean, kind of shocking for a law professor not to have anything but an oral agreement with a bunch of lawyers, law firms, but never the less, Judge Young took the position, hey, ten years of work.

THE SPECIAL MASTER: I was going to say, in Daynard, the lawyer did a lot of work.

THE WITNESS: I say ten years of work. And I knew Daynard when I was in Massachusetts.

So, I mean, I think it's, from all standpoints, this rule is viewed in context, very much in context.

THE SPECIAL MASTER: Okay. I want you to assume, as a hypothetical, there is consent to a division of fee, but it is not informed consent in the context of all the circumstances. It is not informed. Is that an imperfect compliance?

MS. LUKEY: Objection.

THE WITNESS: I don't think the rule says the word "informed." It says

Page 90

consent. You could read into it informed, but it doesn't say informed.
So according to -- if I'm a prosecutor and we are talking about discipline or if I'm looking at potential sanctions under Rule 11 or some other rule, I would not read into a rule language that's more than what's required by the rule for purposes of not only statutory construction, but also for purposes of due process.
THE SPECIAL MASTER: If the consent given is not based upon full and complete information, but only the bare minimum that there would be a division of fee in light of all the circumstances, and I'm going to have a follow-up question, is that imperfect compliance with the rule?
MS. LUKEY: Objection.
THE WITNESS: I'm not sure I would say it's imperfect. I would say it's in compliance with the rule as written.
THE SPECIAL MASTER: Because it gives bare consent to the division?

Page 91

THE WITNESS: Yes.
THE SPECIAL MASTER: What if there is imperfect compliance, does that then go to discipline and sanction?
MS. LUKEY: Objection.
THE WITNESS: I don't know of any disciplinary cases in New York, and there might be private admonitions, but I don't know of anybody who's been disciplined for imperfect compliance in New York. And I don't know of anybody in Massachusetts, but I'm not ruling out the possibility that somebody once received a letter of caution or a letter of admonition. I don't know. I have not seen a public case.
THE SPECIAL MASTER: So you can have imperfect compliance, not technically comply with the rule, and no discipline or sanction.
THE WITNESS: Judge, the bar disciplinary authorities are strapped for resources and money, and they focus on perjury, neglect, misappropriation of

Page 92

funds. And they don't focus, generally speaking, on imperfect compliance with the rule that ultimately benefits the client.
They're consumer protection agencies looking out for the rights and interest of the clients, vis-a-vis, the bar. They are not focused on disputes between lawyers, generally speaking.
So that's the emphasis. And I was -- I have been on both sides of that for many, many years. And I'm confident about that from a disciplinary standpoint, and from representing people in sanctions cases.
Could I possibly take a break and go to the washroom for a minute or two?
MR. SINNOTT: Absolutely.
THE SPECIAL MASTER: Let's break for 15 minutes.
(Recess taken.)
MR. SINNOTT: It's approximately 3:15.
BY MR. SINNOTT:
Q. Counsel, just to finish up on that

Page 93

middle paragraph on page 17, where you say, in the final sentence, "I'm not aware of any such bootstrapped interpretation or application of Rule 7.2 in any jurisdiction, and Professor Gillers cites no authority beyond his own expansive reading of the policies."
A. Of the rules.
Q. Of the rules. I'm sorry.
You mentioned, before the break, that there might have been private admonitions. And is it fair to say that those private admonitions might have reflected such an interpretation?
MS. LUKEY: Objection.
A. Anything is possible. I think the likelihood of that is practically zero.
Q. And why do you say that?
A. Because it doesn't make any sense, and I don't think that any bar disciplinary agency, and I have been involved with two of them, would interpret it that way.
Q. That's your --
A. That's my professional opinion.
Q. Your professional opinion.

Page 94

A. Yes, sir.
Q. Let me move on from that and direct your attention to the following page, page 18.
A. Sure.
THE SPECIAL MASTER: Before you do that, I want to test your core belief that 7.2(b) has no application whatsoever to a lawyer. Isn't that what you said?
THE WITNESS: To a member of the bar.
THE SPECIAL MASTER: To a member of the bar, okay.
We're talking about lawyers A and B. I can't remember which was the referring lawyer. Let's say -- let's say lawyer A is the referred lawyer. Lawyer B is the one who's doing the referring.
But, anyway, let's say that if lawyer A, member of the bar, routinely gives a fee every time lawyer B makes a recommendation of a client who ultimately retains lawyer A.
Are you with me?
THE WITNESS: I'm with you so far.

Page 95

THE SPECIAL MASTER: Without regard to the eventual size of the fee to lawyer A, could that be a violation of 7.2(b)?
MS. LUKEY: Objection.
THE WITNESS: I don't see how.
THE SPECIAL MASTER: What if the clients don't even know about the arrangement? In other words, it doesn't comply with 1.5(e).
MS. LUKEY: Objection.
THE WITNESS: I suppose the court could say that the agreement is unenforceable.
THE SPECIAL MASTER: But we are still not under 7.2?
THE WITNESS: No.
THE SPECIAL MASTER: I will add one more fact. There's no division of fee agreement whatsoever. So the client isn't told, and there is no agreement. He just gives him $5,000.
Are we then into 7.2(b)?
THE WITNESS: No.
THE SPECIAL MASTER: Period.

Page 96

THE WITNESS: Period.
THE SPECIAL MASTER: Okay. So you're pretty absolutist on this, right? If a referring lawyer or a recommending lawyer has a law degree and is a member of the bar and is paid a fee for doing the recommendation, nothing else matters. We are not under 7.2(b)?
THE WITNESS: Judge, I'm just giving you my best professional opinion.
THE SPECIAL MASTER: I'm just asking you a question.
THE WITNESS: I have never heard such an interpretation.
THE SPECIAL MASTER: Okay. And there's no purpose served in the --
THE WITNESS: Until now, I should say.
THE SPECIAL MASTER: Okay. Well, you've heard it from Professor Gillers.
THE WITNESS: That's right. Other than that, I have never heard it.
THE SPECIAL MASTER: Professor Gillers is a respected member of your

Page 97

profession.
THE WITNESS: He is.
THE SPECIAL MASTER: He is a nationally recognized expert in the area of legal ethics, is he not?
THE WITNESS: Absolutely. And he is a friend.
MS. LUKEY: I have to object to the fact that he is present, which I didn't do at the beginning.
THE WITNESS: Flattery won't matter to him.
MS. LUKEY: I just figured you are being nicer because he is here.
THE WITNESS: I would say that whether he is here or not.
THE SPECIAL MASTER: So this gets me to my last question. Why?
THE WITNESS: I doubt that it's your last question.
THE SPECIAL MASTER: My last question about 7.2(b). That reminds me of what I always said to lawyers when they told me they only had one more question,

Page 98

and half an hour later.
If that is the way the rule is to be construed, and by "it," I mean that as long as the recommender has a law degree and is a member of the bar, it does not come under 7.2(b), why in the world would they have put 7.2(b)(5) in it?
THE WITNESS: I think you have asked me that question before.
MS. LUKEY: Objection.
THE SPECIAL MASTER: I did ask it before. And I'm still searching for an answer.
THE WITNESS: I have no idea.
THE SPECIAL MASTER: Well, I do appreciate your candor.
BY MR. SINNOTT:
Q. Is it your testimony that person in 7.2(b) means non-lawyer?
A. Yes.
Q. How do you explain the fact that the drafters did not use the word "non-lawyer" when they used that word five other times in the rule or in its comment?

Page 99

A. Bad drafting.
Q. Bad drafting?
A. Perhaps.
Q. I know you say you are not an expert in statutory construction, nor am I, but doesn't it indicate that they would have used non-lawyer if that's what they wanted to use?
MS. LUKEY: Objection.
A. Maybe.
THE WITNESS: Sorry. I'm too fast.
MS. LUKEY: Yeah, you are.
A. Maybe.
Q. Let me direct your attention to page 18, and the top of the page. You describe Professor Gillers as "Professor Gillers labors mightily." I think I'm getting tired just reading that, "labors mightily to distinguish the circumstances in Saggese and Daynard by focusing on what he terms the equities," and you cite the page in his report.
You then say, "He claims that the equities are somehow different here, because in Saggese the lawyer tried to keep the fee for himself, justifying that claim, in part, by the

Page 100

fact that the referring lawyer did no work, and in Daynard, that the law professor, as referring counsel, contributed substantially to the success of the litigation."
And then you conclude as follows, "But neither of these alleged differentiating rationales holds water. Mass. Rule 1.5(e) does not require referring firm to do any work on the case, as Professor Gillers is aware. It is also unclear why the equities here are any different with respect to Daynard."
Does the court have the authority to enforce equities?
MS. LUKEY: Objection.
A. The court has -- certainly has the discretion to take into consideration the equities. I would agree with that.
Q. All right. Thank you.
Now, let me direct your attention to the bottom of the page and the paragraph that begins, "In short, in my opinion the equities here are not meaningfully different. The possible payment of a referral or forwarding fee was not kept from ARTRS, which agreed

Page 101

through its engagement letter that Labaton was free to pay referral fees to other firms. Hopkins, on behalf of ARTRS ratified the fee-splitting arrangement as well." And you cite the declaration.
And then you say, "As a matter of good policy and public interest, it is well recognized that the bar should encourage fee-sharing relationships that serve the client by helping to ensure that cases, especially litigation matters like this one, are handled by the best, most experienced lawyer in the particular area of law. That is exactly what happened here, and the results speak for themselves."
So going up to that statement "should encourage fee-sharing relationships that serve the client," who's the client in this case?
A. ARTRS.
Q. And how were the equities to the client served in this case?
A. How were the equities served? I don't understand what you mean by that.

Page 102

Q. Well --
A. The client's interests were served, if that's what you mean.
Q. Describe for me how the client's interest was served.
A. By the fact that it was, through Chargois, able to find or meet up with Labaton, and Labaton got a great result for them in the litigation matter that is at issue here.
Q. And beyond -- strike that.
Directing your attention to the following page.
A. I should say Labaton and other counsel. They didn't do it alone.
Q. All right. Because they are listening.
A. And they deserve to be.
MR. SINNOTT: On that note, Mike is going to walk out on us.
Q. In your final paragraph on page 19, you say, "The payment," under the heading C, "The payment to Chargois did not violate Rule 1.5(a)," and you reference that, "Professor Gillers recently testified that the payment to

Page 103

Chargois may have violated Mass Rule 1.5(a). In my opinion, this does not withstand scrutiny on its face. Mass. Rule 1.5(e) applies to fee divisions and requires only that the total fee is reasonable."
Shouldn't a reasonableness requirement be read into 1.5(e) for fee sharing?
A. I don't know where my friend came up with that idea. The answer is no.
Q. And what do you base that on?
A. First of all, there's no authority for that notion, that I'm aware of. And, secondly, it doesn't make any sense.
Q. Why not?
A. Because if you're going to have a rule that says that you don't have to share fees in proportion to the work done, but simply on the basis of a joint participation or joint responsibility, then there wouldn't be any scrutiny of fees at all.
So whether the fees were -- that were paid to the referring lawyer were $10,000 or $4.1 million wouldn't make any difference as

Page 104

long as the overall fee was reasonable for the client. And as I understand it in this case, the court has essentially concluded that it was.
THE SPECIAL MASTER: What if the recommending fee were 90 percent of the total fee?
THE WITNESS: It wouldn't matter. You can say 99.9 percent, Judge. I wouldn't change my opinion.
THE SPECIAL MASTER: Okay.
THE WITNESS: Just to be clear.
THE SPECIAL MASTER: Hal, I keep thinking of more questions to ask you about your view on 7.2(b).
THE WITNESS: I welcome your questions.
THE SPECIAL MASTER: I'm not going to say one more, because I keep thinking of more.
THE WITNESS: Fire away.
THE SPECIAL MASTER: Wouldn't your interpretation of 7.2(b) encourage ambulance chasing by lawyers who are

Page 105

members of the bar?
MS. LUKEY: Objection.
THE WITNESS: I'm not sure I follow why that would be the case.
THE SPECIAL MASTER: Because they can get a fee without being subject to 7.2(b) simply by finding clients and recommending them. For example, going to hospitals, finding people who have been injured and recommending them.
THE WITNESS: Well, there are rules against that, rules that apply to lawyers as well as to laypeople.
THE SPECIAL MASTER: Solicitation rules.
THE WITNESS: Solicitation rules. So that would be precluded under the solicitation rules, whether you're a lawyer or a layperson.
THE SPECIAL MASTER: So maybe a better way to think about your view, correct me, is that if a lawyer who has a law degree and is a member of the bar engages in solicitation.

Page 106

THE WITNESS: Improper solicitation, you mean? Engaging in solicitation is perfectly proper.
THE SPECIAL MASTER: Improper solicitation. Cold calling.
THE WITNESS: In-person solicitation would be improper, generally speaking, with some exceptions.
THE SPECIAL MASTER: Including a cold call by telephone?
THE WITNESS: Cold call or going to a hospital or talking to a person lying in the street after hit by a car, whatever.
THE SPECIAL MASTER: Okay. So if the lawyer does that, then the appropriate section 2, construe the lawyer's conduct under, is the solicitation rule, and not the -- and not Rule 7.2(b).
THE WITNESS: In my view, yes, Judge.
THE SPECIAL MASTER: So what if --
THE WITNESS: And, by the way, there is a criminal statute in New York about that as well. Not in Massachusetts, but

Page 107

in New York.
THE SPECIAL MASTER: So what if a lawyer engages in solicitation and receives a fee for it?
THE WITNESS: Proper or improper solicitation?
THE SPECIAL MASTER: Let's assume it's improper solicitation.
MS. LUKEY: Objection.
THE SPECIAL MASTER: Let's assume improper solicitation.
THE WITNESS: Well, the lawyer would be subject to discipline for improper solicitation, and the fee aspect would be, you know, just another add-on, but it would basically be -- the violation would be improper solicitation.
THE SPECIAL MASTER: So, in that situation, 7.2(b) would still not be implicated, but the solicitation rule would be?
THE WITNESS: Yes, sir. If I'm a disciplinary enforcement lawyer, yes, that's the way I would view it.

Page 108

THE SPECIAL MASTER: What if the lawyer picks up the phone on behalf of another lawyer and calls a client cold, doesn't even know the client, and says, I'm working with lawyer A, and I'd like you to have a meeting with him. Will you meet with him?
Is that improper or proper solicitation?
MS. LUKEY: Objection.
THE WITNESS: It's improper for lawyers to cold call people they don't have a relationship with and seek their business. It's not the proper way to go about getting the client business.
THE SPECIAL MASTER: Let's assume that that's what happened in this case by Mr. Chargois. Let's not focus on Labaton yet. Let's assume that Mr. Chargois cold called Arkansas, the executive director, says, I am working with a New York law firm that specializes in securities litigation. Will you meet with them?
THE WITNESS: And Mr. Chargois and

Page 109

the ARTRS has no -- they have no relationship, no knowledge, he just picks them out of the phone book.
THE SPECIAL MASTER: No pre-existing relationship.
MS. LUKEY: You two said two different things.
THE SPECIAL MASTER: We did. No pre-existing relationship, but there's a recommendation from a third party that that lawyer should call Arkansas, and he does.
THE WITNESS: Well, if there's a connection, if there's a reasonable connection, I'm not sure that would violate the solicitation rule, but if there wasn't, then that might violate the solicitation rule. It might.
THE SPECIAL MASTER: And then we are under the solicitation rule and not under 7.2(b).
THE WITNESS: I think that's right.
THE SPECIAL MASTER: Even if the lawyer gets paid a fee for facilitating

Page 110

that introduction?
THE WITNESS: It's -- the fee aspect of it is not really relevant to 7.2. That would be relevant, I suppose, to 1.5(e), depending on the way in which that went down, but it wouldn't be relevant to 7.2.
THE SPECIAL MASTER: Well, it is relevant because it says a lawyer shall not give anything of value.
A fee would be of value.
THE WITNESS: But to a person, that doesn't mean lawyers, as I read the rules, for what it's worth, based on my own experience in teaching and writing, there's a distinction.
THE SPECIAL MASTER: It simply excludes every person who has a law degree and is a member of the bar, period.
THE WITNESS: That's my reading of it.
THE SPECIAL MASTER: Okay. I keep not wanting to beat this dead horse, but --
THE WITNESS: I don't have to catch

Page 111

a train.
MS. LUKEY: I do.
BY MR. SINNOTT:
Q. Tell me if you agree with this statement, Counsel.
"Legal ethics experts should not offer an opinion, even if defensible, unless they would adopt that opinion if they were the judge in the case."
Do you agree with that?
A. I'm not sure I understand that. Could you read that again, please, just one more time?
Q. Absolutely.
A. Thank you.
Q. "Legal ethics experts should not offer an opinion, even if defensible, unless they would adopt that opinion if they were the judge in the case."
A. I don't think -- I don't agree with that. I mean, if the legal ethics expert believes there's a basis in law or ethics for a particular viewpoint on the Rules of Professional Conduct, I think the legal ethics

Page 112

expert can give that advice to the client.
I mean, if the judge -- the judge may not be knowledgeable or an expert in legal ethics. I mean, that's one of the reasons why expert opinions are provided to courts in this field.
Strange as it may seem, because it's about the law and the law of ethics, but we have often been asked to help the courts to address legal ethics issues and the courts have asked us to help them. Maybe I just said the same thing.
But I think that my opinion would be independent of what I thought a judge might adopt.
Q. Okay.
A. I wouldn't be offering an opinion that would be contrary to a judge's instruction or order or rule -- ruling, but I would try to be independent as I -- as I think I am in terms of that with clear respect for the court.
THE SPECIAL MASTER: Speaking of judges, let me ask this.
There's been an allusion, although I

Page 113

don't believe by an expert, but I would like your opinion on it, if a lawyer violates a rule handed down by the Supreme Judicial Court, but that rule has not been codified as a rule of conduct, how should that be handled?
THE WITNESS: Well, approaching it from the standpoint of regulatory or disciplinary lawyer, first of all, you used the testimony "rule of court," and if you are referring to, as I think you are, the Saggese decision and the court's admonition going forward, my problem would be, as 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, to the rule as it

Page 114

existed in the code, because the SJC, Supreme Judicial Court, is ultimately the authority for implementing and changing the rule. And if the SJC doesn't get around to changing the rule, but simply writes something that could be, arguably, called dictum in an opinion, there would be serious due process problems and notice problems.

And under, you know, under the Supreme Court juris prudence, you know, In re: Ruffalo, notice is the critical aspect of lawyer discipline from a due process standpoint.

THE SPECIAL MASTER: So are lawyers not held to have notice of rulings of the Supreme Judicial Court?

THE WITNESS: Like I just said, you know, there's an old phrase, you know, ignorance of the law is no excuse, but I would certainly argue, if I were before the Supreme Judicial Court, that they could not enforce the Saggese ruling prospectively or at the time against a

Page 115

lawyer who was going by and who relied on the rule as it was written, because the court hadn't changed the rule.

So I would be very careful to describe the Saggese ruling as a -- as a rule of conduct. And I disagree with the notion that the -- a lawyer could be disciplined or sanctioned or otherwise criticized for following the existing rule in the Code of Professional Responsibility until it was changed, and if it was materially changed.

THE SPECIAL MASTER: What if the change was adopted but yet not effective?

THE WITNESS: Same thing. Same thing. It's got to be effective.

As a prosecutor, I would never try to do that -- never try to charge somebody, just as I believe a criminal prosecutor would not charge somebody with a law that had not come into effect yet.

THE SPECIAL MASTER: So the fact that the Supreme Court adopts a rule and sets a future effective date --

Page 116

THE WITNESS: It's the effective date for me.

THE SPECIAL MASTER: Isn't the important thing notice?

THE WITNESS: Yeah.

THE SPECIAL MASTER: So, certainly, when the Supreme Court adopts a rule, the lawyer should have notice of a rule change.

THE WITNESS: Not necessarily. Not necessarily. It would be published, but it might not be -- it doesn't even matter. I mean, to me, it's about enforcing the letter of the rule as it exists at the time.

As a prosecutor, I have done this work for 15 years as a prosecutor, and then many years as a defense lawyer. And I think I would have a very good case for reversal if a disciplinary body tried to enforce a rule that wasn't in effect at the time in the courts, both in Massachusetts and New York, notwithstanding the SJC's decision in

Page 117

Saggese.

THE SPECIAL MASTER: You understand, to a judge, how counterintuitive that sounds?

MS. LUKEY: Objection.

THE WITNESS: With all due respect, I think I understand, but I stick by my position as a government lawyer, former government lawyer. I think prosecutors owe duties.

THE SPECIAL MASTER: The question of prosecutorial discretion and whether a prosecutor prosecutes under it is one thing. A question of whether a lawyer is bound by it is a different thing. You would acknowledge that.

THE WITNESS: Well, no. I mean, in the context of discipline, as a prosecutor, I owe a duty to prosecute only those cases where I believe that there is probable cause to believe that the lawyer will be found guilty of the violation, and that's my ethical obligation as a prosecutor.

Page 118

THE SPECIAL MASTER: That doesn't really answer my question at all.
My question is, is a lawyer bound by a decision of the highest court in the jurisdiction, is he bound by it as opposed to whether or not a prosecutor should exercise discretion in enforcing it? Two different things.
Can you answer that?
THE WITNESS: A lawyer is bound by it in the sense that a lawyer should not knowingly violate a court order or ruling of the court. There's a specific rule of conduct about that.
THE SPECIAL MASTER: And a lawyer, then, is not held to know the law as pronounced by the highest judicial body in the jurisdiction.
THE WITNESS: That's a real problem, because the law that the highest body may have pronounced may be inconsistent with the law that is in the statute or rule. And so what's the lawyer supposed to do?
THE SPECIAL MASTER: Well, it raises

Page 119

a good question. Which takes precedence, the rule or the highest judicial body interpreting that rule?
THE WITNESS: And I'm telling you, based on my own experience and my own views as a former government regulator and consumer protector, so to speak, that it would be the rule itself that would govern, and I would never prosecute somebody or charge them with misconduct based on an inconsistent ruling of the court when there's an existing rule.
THE SPECIAL MASTER: Even when the Supreme Court says this rule shall apply prospectively?
THE WITNESS: It wasn't codified. They could have codified it the next day.
THE SPECIAL MASTER: But that would have very strong, far-reaching, very far-reaching ramifications for rulings of supreme judicial bodies in every state and the United States, wouldn't it?
MS. LUKEY: Objection.
THE SPECIAL MASTER: Not only as to

Page 120

lawyers, but as to common citizens.
THE WITNESS: 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 or a rule -- disciplinary rule under the old code. I have never seen a case. Maybe you know of one. I don't.
THE SPECIAL MASTER: So lawyers should -- are held to know the law of the land or the jurisdiction. They're held to know it, yes?
THE WITNESS: In theory. I mean, we all know certain things, but I wouldn't presume to tell you that I know the law of the land in every instance. I would never presume that.
THE SPECIAL MASTER: So lawyers are not held to know the law of the land that governs their professional conduct?
THE WITNESS: They absolutely are.
THE SPECIAL MASTER: Okay. So what are you saying?

Page 121

THE WITNESS: I'm saying that they are bound by the rules that are set forth in the lawyer's code or the lawyer's Rules of Professional Conduct. That's what they need to know.
THE SPECIAL MASTER: Maybe I should ask it a different way.
A lawyer is not bound to conform with the law of the land as pronounced by the highest court of the jurisdiction if the rule is different. Is that what you're saying?
MS. LUKEY: Objection.
THE WITNESS: The way -- the way the rules work is that a lawyer is bound not to engage in conduct that is illegal, fraudulent, dishonest or violates a particular Rule of Conduct.
To charge the lawyer with knowledge of what might be subtle distinctions between a ruling of a court and the actual rule, as written, would be unreasonable and unfair.
THE SPECIAL MASTER: Does that go to

Page 122

the wilfulness of the misconduct?
THE WITNESS: Absolutely.
THE SPECIAL MASTER: And does that get considered at -- in prosecutorial discretion as to whether to charge or if discipline is charged at the time the discipline is enforced?
THE WITNESS: I believe both.
THE SPECIAL MASTER: So, in summary, we can have a violation of a law imposed by the Supreme Court, which has not yet been codified, and there is no actionable conduct by the lawyer.
THE WITNESS: It depends on the context and the facts. I don't know if you have given me enough facts.
If you are saying that the lawyer knowingly violates a law that he is aware of, that is embodied in a case in the Supreme Judicial Court of Massachusetts, that may be one thing. If you are saying a law or the lawyer did something that technically was inconsistent with the ruling of the court, but conformed to the

Page 123

Rule of Professional Conduct, absolutely not. There would be no disciplinary action and no significant enforcement of it, in my view, by any reasonable court.
THE SPECIAL MASTER: So for purposes of the Rules of Professional Conduct, a lawyer is not held to know the law.
MS. LUKEY: Objection.
THE WITNESS: That's not what I said.
THE SPECIAL MASTER: Let me amend it.
A lawyer is not held to know the law as pronounced by the highest judicial authority --
THE WITNESS: How could that possibly be?
THE SPECIAL MASTER: -- of a jurisdiction.
MS. LUKEY: Objection.
THE WITNESS: How could a lawyer possibly know every case? I wouldn't presume to know the law as set forth by the New York Court of Appeals and the

Page 124

Massachusetts SJC in all fields all the time. How could I know that?
THE SPECIAL MASTER: So I think the answer to my question is yes, that's true.
MS. LUKEY: Objection.
THE SPECIAL MASTER: Let me restate the question.
A lawyer is not held to know the law of the land as pronounced by the highest court in the jurisdiction if that law has not been codified.
THE WITNESS: No, that's not what I testified to.
THE SPECIAL MASTER: I'm not sure what you're testifying to.
You're telling me that somebody can violate the law, as pronounced by the Supreme Judicial Court, not comply with it, but because that law has not been codified, it's not a violation of the governing law of professional conduct. That seems to be what you're saying.
MS. LUKEY: Objection.
THE SPECIAL MASTER: I'm not asking

Page 125

you whether it should be disciplined or sanctioned. I'm only asking you whether it's a violation.
MS. LUKEY: Objection.
THE WITNESS: It might be considered by some people to be a violation. I wouldn't consider it to be a violation of the Rules of Professional Conduct or the rules of -- or the Code of Professional Responsibility. It might be a violation of what the SJC said, but --
THE SPECIAL MASTER: About the Rules of Professional Conduct.
THE WITNESS: About what the rules should be. What the rules should be, Judge. Not what it is.
BY MR. SINNOTT:
Q. Let me focus on the word "actionable."
And you have been discussing this in terms of bar discipline authorities, but let's say an attorney, after Saggese, advises a client using pre-Saggese standards. And he doesn't inform the client of things like the

Page 126

writing requirement.
And, at a later point in time, the client is not happy and wants to take action against his attorney based on the lawyer's failure to inform him of the post-Saggese requirements, what the court had pronounced.
Is that actionable?
A. Actionable in what context?
Q. Can the lawyer reasonably -- can the lawyer reasonably be sued, for example, by the client?
MS. LUKEY: Objection.
A. I doubt it. If the lawyer complied with the Rules of Professional Conduct or the -- whatever the existing rule was at the time, 1.5(e) at the time, I think the courts heavily rely on the language of the rules in their interpretation of -- in civil litigation.
I mean, the basic idea is that the rules are not, themselves, the basis for a cause of action. But the courts will interpret the rules in conjunction with actual recognized civil causes of action, violations of contract, conflicts of interest issues, disqualification

Page 127

motions and those things.
Q. So you don't think that there would be a private right of action on the part of that claim?
A. Not on the basis of 1.5(e). There might be a private right of action if there's a claim of breach of contract in some way, but not on the basis of 1.5(e).
MR. SINNOTT: Do you want to beat that dead horse some more, Judge?
THE SPECIAL MASTER: Not that one.
Did you believe that the rule pronounced by Saggese and its interpretation of 1.5(e), then existing 1.5(e), was dicta?
THE WITNESS: Well, it was certainly an add-on. They didn't need to say all that stuff to make the decision they made.
They were instructing the bar. It's not dissimilar from other cases I can think of where the Supreme Court of the United States, for example, added significant dicta to otherwise important rulings.

Page 128

For example, in the case back in the day where the Supreme Court of the United States said there ought to be a rule on trial publicity, and the ABA went ahead and tried to adopt a rule they had never adopted before. That was dicta, but it was court dicta. It happens all the time. Well, maybe not all the time, but sometimes.
BY MR. SINNOTT:
Q. Let me ask you about, again, that private action that I asked previously.
What if the client sought to retract his consent under 1.5(e) because of the attorney's non-compliance with Saggese? Could he do so?
MS. LUKEY: Objection.
A. I think it would depend on the -- not only the equities of the matter, but also the contract or the retainer agreement, engagement letter between the attorney and the lawyer -- attorney and the client and what it said and what the client was told about the engagement. I think it would be a contract

Page 129

issue.
Q. And would you look to the equities?
A. Well, that would be a factor, for sure. I mean, there are some times where courts will enforce oral agreements, for example, based on the equities even if they -- you know, there's a dispute about them.
THE SPECIAL MASTER: Do you have a view on who the client was in this case?
THE WITNESS: I mean, I have a view for purposes of my opinion that it was ARTRS. I understand that there's some discussion about class members being clients, but I'm not a class action lawyer, and I don't have an opinion about that.
THE SPECIAL MASTER: You don't have an opinion about whether, at the time that the class was certified, they became a client? They, the class members?
THE WITNESS: I don't have an opinion about that.
THE SPECIAL MASTER: Okay. Do you have an opinion about, if they did become

Page 130

clients, should there have been further compliance with 1.5(e) by notice and consent of the class to a fee-sharing agreement?
THE WITNESS: No. I don't have an opinion about that.
THE SPECIAL MASTER: And just to tie up Saggese a little bit, this is the rule we are talking about, which I finally found. I thought it was in a different place.
The court says, "These problems are avoidable in fee-sharing situations if the referring lawyer, who usually is in the best position to secure compliance with Rule 1.5(e), is required to disclose the fee-sharing agreement to the client before the referral is made and secures the client's consent in writing. The rule will be construed to require this in fee-sharing agreements that are formed after the issuance of the rescript of this decision."
Is that dicta?

Page 131

THE WITNESS: It is dicta, it seems. I also don't understand what they are talking about when they say "disclose the fee-sharing agreement to the client before the referral is made." It doesn't make any sense, actually, in terms of the real world.
Usually, it's at the time of the referral, not before. So I don't quite understand what the court is saying. And it certainly didn't make its way into the rule. But, you know, you can characterize it any way you like.
THE SPECIAL MASTER: At what point should it be?
THE WITNESS: Should what be?
MS. LUKEY: Objection.
THE SPECIAL MASTER: Disclosed. The referral fee.
THE WITNESS: At or about the time of the engagement. And that's what I think the rule does say these days.
THE SPECIAL MASTER: And if the engagement changes and the client changes,

Page 132

does there have to be a notice to the additional client?
THE WITNESS: When you say "the engagement changes," I don't know exactly what you mean, Judge.
THE SPECIAL MASTER: At the time of the engagement here, ATRS was the client.
THE WITNESS: Yes.
THE SPECIAL MASTER: After the certification of the class, I want you to assume that the class became the client.
MS. LUKEY: Objection.
THE WITNESS: And as I testified before, I don't have an opinion on that.
THE SPECIAL MASTER: Okay. So then you don't have an opinion as to whether there should be a further notice to the class.
THE WITNESS: Yes.
THE SPECIAL MASTER: I assume you meant yes, you don't have an opinion.
THE WITNESS: Yes, I don't have an opinion.
THE SPECIAL MASTER: All right.

Page 133

BY MR. SINNOTT:
Q. So let me just follow up on something you said.
Because you're not a class action expert, your opinions here do not take into consideration, one way or the other, that ATRS, Arkansas, was a putative class representative and, eventually, class representative for a certified class?
MS. LUKEY: Objection.
A. I'm sorry. What's the question?
Q. Sure. The question is, your opinions here do not take into consideration, one way or the other, that Arkansas was a putative class representative and eventually class representative for a certified class?
A. Right.
Q. Thank you.
MR. SINNOTT: Anything else, Judge?
THE SPECIAL MASTER: Oh, I've got lots more questions, but I don't need to ask them.
MR. SINNOTT: I have nothing further.

Joan, any questions?
MS. LUKEY: No questions.
MR. SINNOTT: Richard I do not see.
Brian?
MR. KELLY: No questions.
MR. SINNOTT: David, on behalf of Keller Rohrback?
MR. COPLEY: I have nothing. No questions. Thank you.
MR. SINNOTT: Okay. All right. Hearing -- and there's no one on the phone from Lieff, is there?
Okay. So that concludes our examination.
Thank you, Attorney Lieberman.
THE WITNESS: You're very welcome.
(Time noted: 4:02 p.m.)

A C K N O W L E D G M E N T

STATE OF)
:ss
COUNTY OF)

I, HAL LIEBERMAN, hereby certify that I have read the transcript of my testimony taken under oath in my deposition; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____
HAL LIEBERMAN

Signed and subscribed to before me this _____ day of _____, 2018.

_____
Notary Public, State of _____

C E R T I F I C A T E

STATE OF NEW YORK)
:ss
COUNTY OF RICHMOND)

I, MELISSA GILMORE, a Notary Public within and for the State of New York, do hereby certify:
That HAL LIEBERMAN, 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 such witness.
I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of April, 2018.

MELISSA GILMORE

M

S

T

U

EX. 229

Volume: 1
Pages: 1-216
Exhibits: 1-6

JAMS

Reference No. 1345000011/C.A. No. 11-10230-MLW

----------X

In Re: STATE STREET ATTORNEYS FEES

----------X

630 8th Avenue
New York, New York

April 3, 2018
8:48 a.m. to 1:00 p.m.

B E F O R E:

Special Master Honorable GERALD ROSEN,
United States District Court, Retired

MELISSA GILMORE, Reporter

DEPOSITION OF

WILLIAM BRADLEY WENDEL

Page 2

A P P E A R A N C E S:

BARRETT & SINGAL
On Behalf of the Special Master
One Beacon Street, Suite 1320
Boston, Massachusetts 02108-3106
BY: WILLIAM F. SINNOTT, ESQ.
ELIZABETH J. McEVOY, ESQ.
617-720-5090
wsinnott@barrettsingal.com
emcevoy@barrettsingal.com

JAMS
150 West Jefferson, Suite 850
Detroit, Michigan 48226
BY: THE HON. GERALD ROSEN (Ret.), ESQ.
313-872-1100

Page 3

A P P E A R A N C E S: (Cont'd)

CHOATE HALL & STEWART LLP
On Behalf of Labaton Sucharow
Two International Place
Boston, Massachusetts 02110
BY: JOAN A. LUKEY, ESQ.
STUART M. GLASS, ESQ.
617-248-5000
joan.lukey@choate.com
sglass@choate.com

NIXON PEABODY, LLP
On Behalf of Thornton Law Firm
100 Summer Street
Boston, Massachusetts 02110-2131
BY: BRIAN T. KELLY, ESQ.
JOSHUA SHARP, ESQ. (Via telephone)
EMILY CRANDALL HARLAN, ESQ. (Via telephone)
617-345-1065
bkelly@nixonpeabody.com

Page 4

A P P E A R A N C E S: (Cont'd)

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
On Behalf of Lieff Cabraser
275 Battery Street, 29th Floor
San Francisco, California 94111
BY: RICHARD M. HEIMANN, ESQ.
ROBERT L. LIEFF, ESQ.
415-956-1000
rheimann@lchb.com

KELLER ROHRBACK, LLP
On Behalf of ERISA Plaintiffs
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
BY: T. DAVID COPLEY, ESQ. (Via telephone)
206-623-1900
dcopley@kellerrohrback.com

Page 5

A P P E A R A N C E S: (Cont'd)

ALSO PRESENT:
MICHAEL CANTY, Labaton Sucharow
MICHAEL THORNTON, Thornton Law Firm
LINDA HYLENSKI, ESQ., JAMS
PROFESSOR STEPHEN GILLERS

INDEX

WITNESS	EXAMINATION BY	PAGE
WILLIAM BRADLEY WENDEL	MR. SINNOTT	9

EXHIBITS

WENDEL	DESCRIPTION	FOR I.D.
Exhibit 1	Curriculum Vitae of W. Bradley Wendel	12
Exhibit 2	Expert Report of Professor W. Bradley Wendel, dated March 26, 2018	14
Exhibit 3	Letter from Labaton Sucharow, dated February 8, 2011, Bates Stamped LBS011060 through 11062	24
Exhibit 4	E-Mail Chain, Bates Stamped LBS017455 through 17456	33

EXHIBITS (Cont'd)

WENDEL	DESCRIPTION	FOR I.D.
Exhibit 5	Joint Response by Labaton Sucharow LLP and Chargois & Herron, LLP, dated July 30, 2008, Bates Stamped LBS017738 through 17755	134
Exhibit 6	Excerpt of Deposition of George Hopkins, dated September 5, 2017	142

(EXHIBITS TO BE PRODUCED)

PROCEEDINGS

MR. SINNOTT: For the record, this is a deposition, and the matter is Arkansas Teacher Retirement System, Number 11-cv-10230-MLW. Special Master Gerald Rosen, who is to my right, has been appointed by the Honorable Mark Wolf as the special master in this investigation.

And, in addition to Judge Rosen, my name is William Sinnott, S-I-N-N-O-T-T, from the firm of Barrett & Singal.

To my left also on our team is Attorney Elizabeth McEvoy, M-C, capital E-V-O-Y, of our firm, and to her left is Professor Stephen Gillers, who has also previously testified as an expert in this matter.

Madam Court Reporter, if the witness could be sworn.

WILLIAM BRADLEY WENDEL, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

MS. LUKEY: Before we begin, may I

just note for the record an objection to having Professor Gillers present for the testimony of Labaton's experts. I don't understand why somebody who's proffered as an expert would be present for the other experts, and I do think it causes some discomfort in a relatively small field where everybody knows each other. We obviously have not had experts present.

THE SPECIAL MASTER: You haven't asked. I would have certainly permitted it.

MS. LUKEY: Well, it's not the norm, usually, in civil discovery, but these have been unusual proceedings, shall we say. So I note our objection for the record. Thank you.

MR. KELLY: The Thornton firm joins that objection.

MR. SINNOTT: Any other comments before we begin?

EXAMINATION BY

MR. SINNOTT:

Q. Professor, if you could state your

Page 10

full name for the record?
A. Sure. My name is William Bradley Wendel, W-E-N-D-E-L. I go by Brad.
Q. Thank you, sir. And we will talk more about your background in a moment.
MR. SINNOTT: But if counsel could identify themselves, beginning with Joan, and going around the table?
MS. LUKEY: Certainly. Joan Lukey from Choate Hall, on behalf of Labaton Sucharow.
MR. CANTY: Michael Canty from Labaton Sucharow.
MR. GLASS: Stuart Glass, Choate Hall, also for Labaton.
MR. HEIMANN: Richard Heimann from Lieff Cabraser.
MR. LIEFF: Robert Lieff, Lieff Cabraser.
MR. THORNTON: Michael Thornton from Thornton Law Firm.
MR. KELLY: Brian Kelly, Nixon Peabody, for the Thornton Law Firm.
MR. SINNOTT: On the telephone,

Page 11

beginning with David, could you identify yourself and your affiliation?
MR. COPLEY: Yes. David Copley, Keller Rohrback, representing the ERISA plaintiffs.
MR. SINNOTT: Okay. And, Emily, if you could identify yourself.
MS. HARLAN: Emily Harlan of Nixon Peabody, for the Thornton Law Firm.
MR. SINNOTT: Thank you. And Josh?
MR. SHARP: Joshua Sharp of Nixon Peabody for the Thornton Law Firm.
MR. SINNOTT: And has anyone else joined us on the telephone?
All right. Hearing none.
BY MR. SINNOTT:
Q. Good morning, sir.
A. Good morning.
Q. Professor, if you could please answer some questions that I will have, just very brief questions on your background, but let me first ask you, a CV was provided to us with your report.
Is that CV a current CV?

Page 12

A. Yes.
MR. SINNOTT: And Madam Court Reporter, if this could be marked as Exhibit 1.
(Wendel Exhibit 1, Curriculum Vitae of W. Bradley Wendel, marked for identification.)
Q. And, Professor, looking at that item that's been marked as Exhibit 1, is that your current CV?
A. Yes, it is.
Q. Are there any changes or additions that need to be made to that CV?
A. No.
Q. Is there any other relevant experience that informs your opinions beyond what's in that CV?
A. No.
Q. And are you being paid to render your opinions here today?
A. Yes, I'm being paid for my time in preparing and taking this deposition.
Q. All right, sir. And what's the rate at which you are being compensated?

Page 13

A. $650 per hour.
Q. All right. And approximately how many hours have you spent, up until this point, in rendering your opinions and the time you spent preparing?
A. Probably about 15, 15 or 20.
Q. Okay. And do you have any idea what the amount that you've been compensated or you are due to be compensated is?
A. Well, I haven't looked exactly, but that times my hourly rate.
Q. All right, sir. And how did you prepare for your testimony today?
A. Today -- well, so yesterday, I came in and met with Joan and Mike and Stu and just talked about my report and my opinions.
Q. All right, sir. And your report that was submitted --
MR. SINNOTT: Madam Court Reporter, if I could ask that this item be marked as Exhibit 2.
(Wendel Exhibit 2, Expert Report of Professor W. Bradley Wendel, dated March 26, 2018, marked for

Page 14

identification.)
Q. Sir, I'm showing you this item that's been marked as Exhibit 2, and the heading is "Expert Report, March 26, 2018, Professor W. Bradley Wendel."
Is that the report that you've submitted in this case?
A. Yes, it is.
Q. And between pages 2 and 11 in that report, there is a factual statement.
Do you see that, sir?
A. Yes, I do.
Q. All right. Who drafted that factual statement?
A. That was prepared by counsel just for convenience, really. I offered to do the facts myself based on the documents, but they have the citations handy and they were able to do it, so they agreed to do it for me.
Q. All right. Could you describe how that process worked? Was it all done at the same time or was there an interactive element to it? What do you recall as far as the compilation of that factual statement?

Page 15

A. Well, it was interactive in the sense that they initially sent me a few documents to review to understand the case and to start formulating opinions and start talking about what my opinions would be, and then as I needed more documents, I requested more, and they sent more and I looked at those and read depositions.
They drafted the statement of facts and I looked at it, and then took a look at the underlying documents in support.
Q. All right. And what were the underlying documents that you --
A. Deposition transcripts, e-mails, reports, mostly deposition transcripts.
Q. All right. And do you recall which deposition transcripts you reviewed?
A. Well, so Hopkins, I remember reviewing that, Belfi. You know, there are a lot of names. I'm kind of trying to remember who -- Chargois, I looked at that one.
MS. LUKEY: If it helps, I believe we provided what's cited in the facts, and you will find the facts should carry over

Page 16

among all experts. We prepared the submission and gave it to each of them. I don't know if any of them made any modifications, but that's what we did.
THE WITNESS: No, I didn't modify the facts.
Q. Who decided what documents you would receive?
A. It was kind of interactive. They sent me things, and then I said I would like to see this, and they sent me some more things. We went back and forth.
Q. With respect to the transcripts you referred to, did you receive entire transcripts or just excerpts?
A. Entire transcripts.
Q. And did you read the entire transcripts or just portions that were pointed out to you?
A. They weren't pointed out to me. I searched them. I, you know, used a word search and looked through them that way. I kind of skimmed them all, and then looked more carefully at specific portions of them.

Page 17

Q. And with respect to your opinions in Exhibit 2, begin on page 11 and go to page 22, and page 11, who wrote those opinions?
A. I wrote them.
Q. Did you have any assistance in writing those?
A. No. They looked at them and made a couple suggestions and comments, but I drafted this.
Q. All right. Did any other attorneys, outside of yourself, engage in an interactive process on the opinions?
A. We talked about them a little bit, but there was really very little back and forth. We talked about what my opinion would be, and then once I drafted it, I sent it to them for comments, but it was mostly my work.
Q. And when you say "for comments," did you receive any comments?
A. I did. I received a few suggestions.
Q. All right. Do you remember what those suggestions were?
A. Just editorial things, really.

Page 18

Nothing changing the substance of the opinion.
Q. And with respect to the research that went into your opinion, did you conduct that?
A. I did, yes.
Q. Did you receive any assistance in that?
A. No.
Q. All right. So you did all of that by yourself and none of it was done by counsel?
A. That's correct.
Q. All right. Let me ask you some questions with respect to your opinions contained in Exhibit 2.
So let me ask you this, Professor. You discuss in your report ATRS -- and if I could refer to them as Arkansas for short?
A. Sure.
Q. Written consent to the fee-sharing agreement and Labaton firm's compliance with Rule 1.5(e). You write about the compliance with the pre-2011 rule which provides that a division of a fee between lawyers who are not in the same firm may be made only if, after

Page 19

informing the client that a division of fees will be made, the client consents to the joint participation and the total fee is reasonable, correct, sir?
A. That's correct.
Q. And upon what disclosures do you base your opinion that Arkansas was informed that a division of fees would be made and that it consented to joint participation?
MS. LUKEY: Objection. By "disclosures," do you mean what material provided to him or documents? Just wondering about the word "disclosures."
MR. SINNOTT: Yeah.
Q. The documents that were provided to you.
A. So I may not have exactly all of the chronology memorized, but as I reviewed the documents, it appeared that there was quite a bit of discussion back and forth between partners from the Labaton firm and representatives of Arkansas Teachers, Christa Clark, Paul Doane, and then subsequently the new executive director, George Hopkins.

Page 20

There was a lot of discussion about the structure of that engagement, who would be providing legal services and what they would be doing, and whether they would be associating with local counsel.
Now, I understand local counsel is a term that -- is a term of art, maybe. I don't mean it to be a term of art. I just mean it to be there's a local law firm that will be doing something, leaving open for now what that is, but Labaton lawyers talked to Arkansas Teachers' representatives and told them that they may be working with a local law firm and may be dividing their fees with that firm.
Q. All right. And you referenced Christa Clark.
What were the documents from Christa Clark that you reviewed in formulating your opinion?
A. Well, again, I don't remember whether that was an e-mail or a letter or someone testifying to this, but I think it was an e-mail, actually. I think she e-mailed back to someone at Labaton saying I understand that

Page 21

you may be working with the local law firm, and that's fine.
There was also some -- some communication pertaining to the, I would call it an RFP, but I guess they call it an RFQ process of getting Labaton approved to be a provider of services to the state, and Labaton said to her, we may be working with a local law firm, can we both be on this RFQ. And she said, well, no, just because of the way the state procurement system works, we need only one law firm being the principal law firm, and then beyond that, if you want to share your fees with somebody else, that's fine. We just need one law firm to be the principal law firm and we would like that to be you.
Q. And have you reviewed the RFQ?
A. The document itself, no, I have not.
Q. Then how did you receive information on that RFQ?
A. Well, again, there was e-mail back and forth. I have a bunch of e-mails. They are all listed by Bates numbers, so I don't really remember which one is which, but there

Page 22

was an e-mail from Christa Clark to Labaton lawyers discussing this process.
Q. All right. And in addition to the RFQ and the Christa Clark exchange, which you're not sure whether it was an e-mail or other correspondence, what other documents did you review with respect to Labaton's compliance with 1.5(e)?
A. Well, there were a number of e-mails back and forth between Labaton lawyers and Hopkins ultimately culminating in a written engagement agreement which went through a couple of drafts. And both drafts of that engagement letter mention the possibility of fee division with another law firm.
And then ultimately -- ultimately, Hopkins agreed with that, and there were some e-mails back and forth where Hopkins said, you know, yes, I understand this, and that's fine with -- with us, fine with Arkansas Teachers.
Q. All right. So when did these e-mails take place?
A. They took place before the engagement. I think the time was something

Page 23

like February 2011, I don't recall exactly, February or March, but it was before the work started up on this State Street matter.
Q. And when was the retention agreement that you referred to executed?
A. I don't know exactly, February or March, I believe.
Q. And you read that retention agreement?
A. I did.
Q. And that retention agreement states, does it not, that Arkansas agrees that Labaton may allocate fees to local or liaison counsel as referral fees or for other services performed in connection with the litigation?
MS. LUKEY: Objection. If you're purporting to quote the document, you did not quote it accurately. If you're not purporting to quote it, please tell the witness that what you're reading from is not the document.
MR. SINNOTT: Well, let me provide the document itself.
MS. LUKEY: Please.

Page 24

MR. SINNOTT: Madam Court Reporter, if this could be marked as Exhibit 3.
(Linda Hylenski joins on the telephone at this time.)
(Wendel Exhibit 3, Letter from Labaton Sucharow, dated February 8, 2011, Bates Stamped LBS011060 through 11062, marked for identification.)
MR. HEIMANN: Since you are not circulating copies of these documents, would you be very precise what it is so we know what you're talking about?
MR. SINNOTT: I have some additional copies, Richard.
MR. HEIMANN: Thank you.
BY MR. SINNOTT:
Q. Looking at Exhibit 3, Professor, let me direct your attention to the top of page 2. And let me read it verbatim.
"Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel as referral fees or for other services performed in connection with the litigation."

Page 25

Is that an accurate statement?
A. Yes.
MR. SINNOTT: And give me a moment. Judge?
THE SPECIAL MASTER: Yeah, let me, just for clarification, the sentence that Bill Sinnott was just referring to, how do you read that? Do you read -- in this sense, do you read that as -- the clause "as referral fees" set off by commas as modifying the previous local or liaison counsel as referral fees or do you read it as a self-standing permission for referral fees?
THE WITNESS: Well, I read that sentence as providing notice to the client that other attorneys may serve as local or liaison counsel or they may receive referral fees or they may provide other services. That's how I read that sentence.
THE SPECIAL MASTER: So three separate clauses there; serving as local or liaison counsel, as referral fees, or

Page 26

for other services.
THE WITNESS: That's right.
THE SPECIAL MASTER: And you don't read "or for other services" as modifying the previous "who serve as local or liaison counsel, as referral fees."
THE WITNESS: I read those as alternatives. They are not exclusive alternatives. They could be referral fees or other services or both, but they are alternatives to an entitlement to compensation for these other attorneys.
THE SPECIAL MASTER: Okay. So you don't read, "as referral fees" as simply modifying the previous clause "who serve as local or liaison counsel"?
THE WITNESS: No. I see them as alternatives.
THE SPECIAL MASTER: Okay.
BY MR. SINNOTT:
Q. All right, sir. And with respect to your report on page 14, actually beginning on page 13, you talk about the Saggese case, correct?

Page 27

A. Yes.
Q. And is it fair to say that you believe that Saggese is distinguishable from this case because the fee-sharing arrangement between Saggese and the Kelleys arose after the Kelleys had already started representing Doe; is that correct?
A. Yes.
Q. Let me ask you this, isn't it true that the Saggese courts -- the Saggese court referred to the fact that the Kelleys acquiesced in a referral fee to Saggese on the Doe matter two months into their representation? And you recall that, don't you, sir?
A. Yes.
Q. But didn't the court make that reference only to make the point that this was the time Doe's consent could have been obtained because it's the first time that the division of fee agreement was reached?
MS. LUKEY: Objection.
A. Well, there are -- there are a lot of things going on in Saggese. I don't think

Page 28

the only important fact is the midstream modification. I think that is an important fact. And I cited that ABA opinion in my report just to highlight that. That's something that I spend time on in class to make sure that students understand that once you have an ongoing matter and there's already been a fee arrangement agreed to, modifications are viewed somewhat skeptically and there has to be disclosure and, basically, a reason for the changed arrangement after the matter has commenced.
That's an important fact. That's not the only fact driving Saggese. The court clearly wanted to announce a new rule prospectively and require written consent. And so it did that. So the lack of writing is also a fact, but there's not only one factor that underlies the result in Saggese.
THE SPECIAL MASTER: Could I ask, you do, in your report, call out the difference between an agreement made at the inception which continues on, and what you characterize as a midstream change.

Page 29

And you say that midstream changes are looked at with more skepticism.
THE WITNESS: Right.
THE SPECIAL MASTER: You also, in your report, I think, rely upon, in finding consent, the original RFQ process which took place some time up to October of 2008, and you indicate that that informs the relationship between Arkansas and ATRS as it relates to Mr. Chargois, correct?
MS. LUKEY: Objection.
THE WITNESS: Yes.
THE SPECIAL MASTER: And then you focus on the agreement that was reached on February 8 of 2011 in the retention agreement and say that that constitutes consent to a referral fee.
THE WITNESS: Yes.
THE SPECIAL MASTER: And I believe it's your view, and correct me, that these two, taken together, and the conversations that Ms. Clark had with Mr. Belfi, although I think you would acknowledge you

Page 30

personally don't have any idea what took place in those conversations, as creating the relationship which provides the context for the consent given February 8 of 2011; is that right?

MS. LUKEY: Objection.

THE WITNESS: I would be a little careful here. And you see this in places in the rules. There are times when an attorney's duties are viewed in the context of a relationship, an ongoing client relationship. And then there are times when the duties depend upon particular matters. There are kind of matter-by-matter rules.

So one of the fee rules, 1.5(b), I think, says that the attorney, at the outset of a matter, has an obligation to explain the basis of a fee. So there are matter-by-matter duties, and then there are relationship-wide duties.

The midstream modification stuff from the ABA opinion really talks about an ongoing matter. So the question is,

Page 31

during the pendency of a matter is an attorney trying to change the fee arrangement. And there, there will be some skepticism if the attorney is trying to change things around.

That's different from saying what information does the client need to understand, what does an attorney have to communicate to a client. That takes place in the context of an ongoing relationship. So some of the things that happened earlier can inform the client's decision at a later point in time.

So I would just be careful in distinguishing between kind of relationship duties and matter-by-matter duties.

THE SPECIAL MASTER: A fair point. Let's look at the e-mail from Christa Clark, who was Arkansas' chief counsel, in October of 2008, back to Mr. Belfi, and what it contemplated, okay? Because I think your answer to my question about whether this informed the relationship was

Page 32

yes. Yes?

THE WITNESS: Yes.

THE SPECIAL MASTER: Okay. I'm not going to read the whole thing. You can maybe call it out for him, but I will read the --

MS. LUKEY: Well, I don't have it.

THE SPECIAL MASTER: It's the October 13, 2008.

MS. LUKEY: I know what it is. I did not bring the boxes of documents.

THE WITNESS: You are testing my memory here.

THE SPECIAL MASTER: It's in page 6 of the facts in your report.

So, looking at paragraph 2, she says, "If your firm is doing the monitoring and providing the financial backing for the case, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm," meaning Chargois & Herron, because she refers to that back in the first

Page 33

paragraph.

MS. LUKEY: I'm going to place it in front of -- the full document which Elizabeth just handed me.

THE SPECIAL MASTER: This is the October 13, 2008 e-mail, LBS017456.

(Wendel Exhibit 4, E-Mail Chain, Bates Stamped LBS017455 through 17456, marked for identification.)

THE SPECIAL MASTER: "Your firm may affiliate that firm or utilize them as independent contractors. If you deem," it says "is appropriate," but it could be -- should be probably if, "if you deem it appropriate," or "if you deem it is appropriate, on a case-by-case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of the case," correct?

THE WITNESS: That's what it says.

THE SPECIAL MASTER: Okay. So given the background and at other parts in your report, you indicate that the relationship between Labaton and Chargois started off

Page 34

initially with the contemplation that Mr. Chargois and his firm was going to be serving as local or liaison counsel.
THE WITNESS: Yes.
THE SPECIAL MASTER: And then, at some point later, when that didn't work out, this arrangement or agreement that we have all been referring to in which Mr. Chargois and his firm would receive 20 percent of any fees in which Labaton served as lead or co-lead counsel and Arkansas was lead or co-lead plaintiff, right?
THE WITNESS: Right.
THE SPECIAL MASTER: So that relationship changed. He was no longer going to be serving as a local or liaison role. He was simply going to be getting a fee as a percentage of every case in which Labaton was lead counsel and Arkansas was lead plaintiff, right? So that changed, didn't it?
THE WITNESS: Which he was entitled to under the agreement, yes. The

Page 35

relationship changed in that Hopkins said, I don't need to work through local counsel.
THE SPECIAL MASTER: We will get to Mr. Hopkins.
THE WITNESS: But that's the nature of the change, is that he said I don't need to work through some local counsel. I can work directly with Labaton. That's what changed about the relationship.
What didn't change is the underlying agreement, the contract, that Labaton and Chargois had to pay a referral fee.
THE SPECIAL MASTER: We will get to that.
THE WITNESS: Okay.
THE SPECIAL MASTER: The relationship changed from a situation in which, at the time of the application as monitoring counsel, Chargois & Herron were on the application, and were going to serve as joint monitoring counsel, and the contemplation was that there would be local -- that Chargois would serve in a

Page 36

capacity as local or liaison counsel, right?
THE WITNESS: You said a couple things. You said that they would serve as joint monitoring counsel. I don't think that was ever contemplated, but they would serve as local or liaison counsel at the outset.
THE SPECIAL MASTER: Well, you're right. Let me break it down.
The application was an application for monitoring counsel, and it was made jointly between Labaton and Chargois & Herron, right?
THE WITNESS: Before Clark bounced it back.
THE SPECIAL MASTER: Yes.
THE WITNESS: Yes, yes.
THE SPECIAL MASTER: And, at the time, at the very least as between Labaton and Chargois, it was their contemplation that Mr. Chargois and his firm would serve in a capacity as local or liaison counsel at the time.

Page 37

THE WITNESS: That was one of the things they were being compensated for, yes, at the time.
THE SPECIAL MASTER: Okay. And then later on, February 8 of 2011, when the retention agreement was signed, and reading it the way you read it, there is a permissive payment of referral fees separate and independent from local or liaison counsel, right?
THE WITNESS: Right. So the language in the retention agreement permits the payment of fees for service either as local or liaison counsel or for referral fees.
THE SPECIAL MASTER: Okay. By this time, the relationship between Labaton and the Chargois & Herron firm had changed.
THE WITNESS: Yes.
THE SPECIAL MASTER: And, by this time, the relationship was that there would be a fee for the original introduction of the Labaton firm to ATRS without any requirement that it be -- that

Page 38

he be local counsel or liaison counsel, right?
THE WITNESS: Well, the fee was for whatever it was for. So there was an agreement between Labaton and the Chargois firm to provide introductions to serve as liaison counsel and also to receive referral fees. And so there was this ongoing entitlement to a fee that Chargois had which continued through to the 2011 engagement.
THE SPECIAL MASTER: So nothing in that relationship changed to the extent that Arkansas should have been more fully informed as to what was then, on February 8 of 2011, the nature of the relationship as opposed to local or liaison counsel, nothing changed.
MS. LUKEY: Objection.
THE WITNESS: Well, you said we will get to Hopkins later, so maybe we can hold this until we talk about Hopkins, but the engagement letter has to be read in the context of what Hopkins knew and the

Page 39

negotiations back and forth. And he basically said, yes, I know you have this relationship with the local firm. I don't want to get into the details. That's between you. I'm fine with that.
And then the language of this engagement agreement was drafted with that understanding in mind.
THE SPECIAL MASTER: So this was not any kind of a midstream change, the fact that the original contemplation, and we can go back and look at the permissive language in Christa Clark's e-mail, and then the broader language as referral fees, because he was certainly not acting as local or liaison counsel by this time.
THE WITNESS: Right. The midstream thing, I want to be careful with this, because now we are back on matter by matter. And that ABA opinion talks about changes in fee arrangements within a particular matter. So we don't have the matter in question starting yet.
This engagement agreement pertains

Page 40

to the new matter, the State Street matter, and there's negotiation back and forth between the parties about what should the fee arrangement be. That's established. Here it is in the engagement agreement. Now we have a matter.
From here, going forward, any modification is midstream as that ABA opinion understands that term.
But the midstream idea doesn't pertain to an attorney/client relationship. It pertains to matter-by-matter fee arrangements for a particular matter.
THE SPECIAL MASTER: So the Christa Clark e-mail you can consider in the context of creating the entire relationship, but then when a letter comes three years later, almost three years later -- well, two and a half years later -- two and a half years later in which the relationship between Labaton and Chargois and the basis upon which Chargois is being paid has changed fairly

Page 41

significantly.
MS. LUKEY: Objection.
THE SPECIAL MASTER: And that does not have to be disclosed in further detail to the client, to Arkansas, in this case.
MS. LUKEY: Objection.
THE WITNESS: There has to be a communication between the lawyer and client sufficient to inform the client as much as the client needs to know to make a decision about whether the client will accept that fee arrangement.
So a lot of these rules you have to kind of read altogether. So I think about the discussions around the fees as also informed by the reasonable communication rule, Rule 1.4. And Rule 1.4 requires reasonable communication.
The Christa Clark e-mail goes toward understanding whether the law firm had communicated in a reasonable manner with the client. This is information that the client needed to know.
Subsequent communications back and

Page 42

forth between Arkansas Teachers' agents and the law firm also goes to the duty of communication, and it goes to whether the client's decision was adequately informed to constitute consent.

And here you have, in 2011, communication back and forth between a representative of Arkansas Teachers and Labaton, where the Arkansas Teachers' representative said, look, I don't want to be involved in how you allocate fees as long as the total fee is reasonable.

This is somebody who's experienced in hiring these sorts of outside counsel. He knows the kinds of disputes and issues that might arise and he said, that's not my concern.

So that goes to show that the client knows what it needs to know in order to protect its interests and in order to negotiate with the law firm about what the fee arrangement should be.

THE SPECIAL MASTER: I think, on page 13 of your opinion, you imply, at

Page 43

least, if not state directly, that the consent that's given must be informed consent.

THE WITNESS: No.

THE SPECIAL MASTER: Okay.

THE WITNESS: I do not say that. I don't mean to imply that. Informed consent is a defined term in the rules. The drafters of the rules know how to use that language when they want to use it, and it does not appear in the fee rule.

THE SPECIAL MASTER: So under 1.5(e), is it your testimony that the consent given by the client does not have to be informed consent as used in the rules?

THE WITNESS: That is correct. It does not have to be informed consent as that term is defined in Rule 1.5, yes.

THE SPECIAL MASTER: What public policy would that serve if a client does not have to be given sufficient information to make a decision about a relationship or payments that are going to

Page 44

be made?

MS. LUKEY: Objection.

THE WITNESS: Well, there actually is a difference between places in the rules where informed consent is used and the fee rules. And I talk about this when we do fees.

An interesting aspect of attorneys' fees is the lawyer and client start out in kind of an arm's length relationship, and they are beginning as any parties would to a contract. They are negotiating back and forth. They can drive hard bargains. That's okay.

Once the matter is started, once there is a fiduciary relationship, then things change a little bit, and fiduciary duties may sometimes require specific disclosure in order to predicate consent. So conflicts, for example, that's the classic place where informed consent is the language.

Once you have a fiduciary relationship, the conflict rules recognize

Page 45

that, and place the onus on the lawyer to provide certain consent and, basically, put the lawyer on notice that if subsequently there's a question about adequacy of disclosure, it's the burden on the lawyer to provide the full disclosure.

That recognizes the transition from a kind of arm's length market transaction into a fiduciary relationship. And it's subtle, because there can be fiduciary aspects to fee arrangements, that's the point of the ABA opinion on the midstream modifications, but at the outset, particularly with sophisticated parties, commercial parties, this is an arm's length negotiation, and the rules permit that. And elsewhere in the restatement, for example, it talks about contract law basically governing fee contracts.

They are contracts in that sense. And they are importantly different from places where lawyers have fiduciary obligations to clients.

THE SPECIAL MASTER: So, in a

Page 46

contract, a party to the contract may withhold, as part of the relationship, material information from the other party in negotiating that contract.

MS. LUKEY: Objection.

THE WITNESS: Well, not withhold, but suppose there's a negotiation where one party says, I have a supplier and we have a contract and the terms go like this, and the other party to the contract says, I don't want to get into that, how much are you going to sell me the widgets for. I don't really care about your supplier relationship. Just tell me, what's the price of the widgets, what's the quality of the widgets, what do I have to pay for it.

That's fine, as a matter of contract law. And that's the sort of negotiation that the parties are permitted to engage in.

THE SPECIAL MASTER: So if I understand your testimony, there is no contract relationship specifically as to

Page 47

Mr. Chargois arising out of the e-mail from Christa Clark.

MS. LUKEY: Objection.

THE WITNESS: I don't have an opinion about whether there was a contract between Arkansas Teachers and Chargois.

THE SPECIAL MASTER: No, no. Maybe I misstated it.

There is nothing that is part of the contract relationship in the Arkansas/State Street case in the e-mail from Christa Clark that is part of the contractual relationship as to the State Street case.

THE WITNESS: Well, it goes into the parties' knowledge, and it goes into the context of the bargaining. So the State Street matter was negotiated, not out of the blue, but in the context of an ongoing attorney/client relationship where both parties knew something about the other.

So this informs the subsequent deal, subsequent bargaining, but it does not, itself -- it's not conclusive of the terms

Page 48

of that arrangement. It's background information.

THE SPECIAL MASTER: And then, when they get to the actual relationship itself in the State Street case, the retention letter that was executed February 8 of 2011 creates the actual contractual relationship and nothing else?

THE WITNESS: So I would call that "the matter." Again, I want to distinguish between the attorney/client relationship, which may be ongoing across a number of matters, and the terms of the financial relationship -- sorry -- that's the wrong word -- the terms of the financial arrangement with respect to that matter.

So you can have matter-by-matter renegotiation of terms in a kind of arm's length posture. And, again, the rules contemplate that. So you have an ongoing attorney/client relationship. There are some duties owed. There are ongoing duties of confidentiality. There are

Page 49

conflicts duties. There are things like that.

But can the fee terms be renegotiated matter by matter without invoking the whole apparatus of that ABA opinion? Yes.

So the terms of the financial arrangement are particular to the State Street representation, and they were negotiated in 2011.

Again, against the background of what the parties know about each other.

THE SPECIAL MASTER: And when that changes or when that relationship begins, the informed consent in the document that formalizes the agreement as to the matter does not require informed consent?

THE WITNESS: Right. I want to be, again, very careful with terms that are used in the rules as terms of art, and informed consent is one.

And it's not in the fee rules, again, I think, for the policy reasons we have been talking about, to recognize that

Page 50

the negotiation of a fee arrangement is not fundamentally within the context of fiduciary obligations.

And, again, the drafters of the rules know how to use that language when they want to and they drop it in where needed. It's quite interesting that it's not in the fee rules. And there's a reason for that. And that is because this is an arm's length bargaining situation.

THE SPECIAL MASTER: Even though there was a pre-existing relationship?

THE WITNESS: Yes.

THE SPECIAL MASTER: And, in fact, they had, by this point, a number of cases in which Arkansas had been represented by Labaton and Mr. Chargois had paid a fee -- had been paid a fee.

MS. LUKEY: Objection.

THE WITNESS: It's interesting, right? The attorney/client relationship is a blend of fiduciary duties and contract duties. That's just fundamental to that relationship.

Page 51

And it makes it important to be careful about which context you're in because those are two different kinds of legal regimes of rules and they apply in different ways at different times to the representation of clients.

THE SPECIAL MASTER: So let me ask you this question. If informed consent was required as to the nature of the relationship between Labaton and Chargois in February of 2011, I want you to assume that it was required, would the consent given in this case comply with the consent requirement that was in effect at the time, the notice and consent requirement that was in effect at the time, February of 2011?

MS. LUKEY: Objection. I'm going to note for the record just that hypotheticals are supposed to be based either upon facts in evidence or to be in evidence. So I object.

THE WITNESS: That's a very interesting question, actually. And the

Page 52

paradigm of informed consent is where you have a bunch of information spelled out for the client about the risks and benefits and available alternatives and all that good stuff, and the client signs.

When you have a client that already knows that stuff and says, yeah, yeah, I got that, I don't need you to explain this to me, I'm willing to consent, does that constitute informed consent? I would argue yes, but I would also, if I were a general counsel to a law firm, say you want to make sure you get this in writing just so that subsequently, if this is litigated, you have a record of what was disclosed to the client.

But, in principle, if the client knows the information the client needs to know or has said, I'm not interested in finding that out, I think that that does constitute informed consent. However, that's dangerous as a matter of practice.

And so it's best practices to get written consent, to get the predicate for

Page 53

consent in the document and have that in your files.

THE SPECIAL MASTER: So I'm trying to understand your answer.

If Arkansas did not know that the relationship had changed between Labaton and Chargois and that Chargois was going to be getting 20 percent on every single case in which Arkansas was lead counsel for doing no work, and Arkansas was never told this at any time, that would, nevertheless, be informed consent?

MS. LUKEY: Objection.

THE WITNESS: Well, let me give you another -- a counterhypothetical --

THE SPECIAL MASTER: I would like you to just answer the question, please, and then give me a counterhypothetical.

MS. LUKEY: If you can answer, go ahead and answer, please.

THE WITNESS: Okay. I was going to do that with reference to a situation in which informed consent was clearly required, which is a conflict situation.

Page 54

And one could imagine a case in which the client, who has to give informed consent to the conflict, already knows or says I have a feeling I know what's going on here, and I really don't want to get into it, so you don't have to tell me, I'm willing to waive the conflict.
That's close to the situation that you posit, and I think that's close, but could be informed consent.
So to answer your question and, again, informed consent is not the standard, I just want to be clear that we are working with hypotheticals here, informed consent is not the standard.
I think this is a close and extremely interesting case it would be fun to write about, but it's on the right side of the line here, and it can constitute informed consent.
THE SPECIAL MASTER: Would you say that, in procuring the consent from the client, it was not material that the client know that Mr. Chargois was not only

Page 55

in the picture, but in the picture in a different way? He would not be performing local counsel responsibilities or liaison counsel responsibilities. He would only be getting a fee. Is that a material fact or not --
MS. LUKEY: Objection.
THE SPECIAL MASTER: -- to informing the client of a division of fees?
MS. LUKEY: Objection.
THE WITNESS: Okay. Two-part answer. This is where I think we differ in our assumption about what's going on in the facts.
THE SPECIAL MASTER: I'm just asking --
MS. LUKEY: He's answering, Your Honor, with all due respect.
THE SPECIAL MASTER: Excuse me, Joan.
MS. LUKEY: He is answering the question. Would you please let him answer?
THE SPECIAL MASTER: He's changing

Page 56

the question.
MS. LUKEY: He is not. You have repeatedly, when you didn't like the way the answer was coming out, interrupted witnesses. Please let this expert answer.
He said he was going to respond in two different ways to your question. Please allow him to do that, sir.
THE SPECIAL MASTER: I still want an answer to my question. Is it a material fact? Then you can answer however you want.
THE WITNESS: Okay. The answer is I believe that Arkansas Teachers was aware of that fact. I believe, from reading the testimony of Hopkins, that he is well aware that the national counsel he deals with as monitoring counsel have referral relationships with local counsel. So I believe he was aware of that.
In addition, it is a material fact that there is another local counsel relationship, but given the permissible fee divisions contemplated by Rule 1.5(e),

Page 57

I think all the client needs to know is there is local counsel.
Now, the client may ask, what are they doing? And the lawyer then must answer truthfully, but the existence of local counsel, liaison counsel, referral counsel, whatever you want to call it, is required to be disclosed to the client. The client needs to know that. We know that.
What exactly that local counsel is doing is the sort of thing that the client can ask about, but, in this case, the client was uninterested in finding out the details. So in that sense, it is material, but it was well within the knowledge of the parties that there was this relationship with this law firm in Texas and Arkansas.
THE SPECIAL MASTER: You've kind of conflated a number of different things and I want to drill down.
I think you said that Mr. Hopkins was aware of this fact. I want to make

Page 58

sure we are focusing on the same fact.
The fact I'm asking you to focus on is that Mr. Chargois and his firm would no longer be acting in a local counsel or liaison counsel capacity despite February of 2011, but, rather, he would simply be being paid an ongoing fee in every matter of 20 percent of Labaton's total fee. That's the fact that I'm asking you is material.
MS. LUKEY: Objection.
THE WITNESS: Right. And so Hopkins clearly knew the first thing, because he said, I don't want to deal with Chargois. So he knew --
THE SPECIAL MASTER: The first thing being?
THE WITNESS: You said two things. You said, here is the material fact, this is, I think, what you asked, was Hopkins aware that Chargois & Herron would no longer be serving as local counsel and that they were entitled to a referral fee. So that's two pieces of this.

Page 59

THE SPECIAL MASTER: Okay.
THE WITNESS: He is clearly aware of the first piece of this, because he said, I don't want to deal with them anymore.
As to the second, is he aware that they have a contractual entitlement to a referral fee, I don't know. But he is a sophisticated guy who understands how the plaintiff's class action bar works, and I'm certain that he must have known that, and certainly could have asked and followed up.
THE SPECIAL MASTER: Known? By that you mean?
THE WITNESS: Sorry. The second piece of this, which is that there may be a referral agreement between Chargois & Herron and Labaton. Now, I may be misremembering the testimony. There may be some point where he said, yeah, I knew about the referral fee.
But I don't remember whether he knew about that or not. I do know that he said, I don't really want to know about

Page 60

the financial relationship between your two law firms. That's not my concern.
My concern is that Labaton receive a reasonable fee and perform quality services for us, and that's all I want to know about.
THE SPECIAL MASTER: So the fact that Mr. Chargois was going to receive 20 percent in every case, including State Street, for doing no work, just that piece of it, is that a material fact that should have been disclosed to the client?
MS. LUKEY: Objection.
THE WITNESS: Under the rules, there is no requirement that that be made explicit. And that's the difference between what I think you're driving at and trying to kind of put into the idea of informed consent and what the rules actually require.
So the short answer to your question is no.
Now, it's hard to give a short answer because materiality isn't really

Page 61

the idea. It's a question of informed consent versus consent. It's a question of disclosure and reasonable communication. These are all words and concepts that are used in the Rules of Professional Conduct.
But to the extent my opinion is about the Rules of Professional Conduct and not contract law or something outside of that, the word "materiality" isn't in there anywhere. That idea isn't doing any work.
So I want to keep coming back to this informed consent versus consent, you know, written, whatever. I want to make sure that we stay in the four corners of the rules.
THE SPECIAL MASTER: So let me just -- as I understand your answers, taken at large, on this issue of the relationship having changed between Labaton and Chargois from one that was contemplated to be local counsel, liaison counsel, vis-a-vis, Arkansas, to one in

Page 62

which he was receiving only a fee, in that context, correct me -- I'm going to go through to make sure I understand your testimony, each piece of it, okay?
One, what I'll refer to as the 20 percent piece.
THE WITNESS: Okay.
THE SPECIAL MASTER: Which means 20 percent --
THE WITNESS: Entitlement.
THE SPECIAL MASTER: -- entitlement. I will refer to that as the 20 percent piece.
THE WITNESS: Okay.
THE SPECIAL MASTER: That is not a material piece of information to informing the client and obtaining the client's consent under 1.5(e).
MS. LUKEY: Objection.
THE WITNESS: Again, I want to be careful because I was specifically asked to talk about the Rules of Professional Conduct. Materiality is not part of that analysis. There are other places in the

Page 63

rules where materiality is a word, but it's not used here.
The rules I'm looking at and thinking about in forming this opinion are Rule 1.4, reasonable communication, 1.5 on fees.
The word "material" doesn't appear anywhere in there. I'm not trying to be difficult, but I want to be precise. And there's a difference between consent and informed consent. So I want to be careful with those words, too.
I don't want the word "material" to be in this analysis. It's not in my opinion, and it doesn't do any work in the rules that we're talking about here.
THE SPECIAL MASTER: Is part of your answer to my question on informed consent, which is the larger question that you identified, is part of your answer that the change of the relationship to what became the 20 percent relationship is not material to obtaining consent under the rule?

Page 64

MS. LUKEY: Objection. Your Honor, he has twice told you the materiality and informed consent are not the proper terms. And, yet, you continue to ask it.
THE SPECIAL MASTER: All right, Joan. I had to instruct you the other day on Rule 30(c). I don't want to have to instruct you again.
You will not suggest answers in your questions.
MS. LUKEY: I am not suggesting anything, Your Honor. And may I remind you that this is supposed to be an investigative proceeding, not a prosecution?
THE SPECIAL MASTER: I'm trying to get an answer.
MS. LUKEY: Well, he can't answer you. You built into the preface of your last question that he had said on the issue of informed consent, and you went on from there. He has told you informed consent is not in these rules. Materiality is not in the rules.

Page 65

THE SPECIAL MASTER: I now consider you in violation of Rule 30(c).
All right. Next. Do you understand my question?
THE WITNESS: I do. And I'm not trying to be difficult.
THE SPECIAL MASTER: Thank you.
THE WITNESS: But a couple things. I don't think informed consent is the right analytical framework.
Number two, even if it were -- so I'm going to accept the premise of your question, even if it were, which I don't think it is the right analytical framework, and, again, I'm not trying to be difficult, materiality is the not language. The definition of informed consent is full disclosure of risks and benefits and available alternatives.
And, look, I'm sorry to be picky about this. But, you know, this is the way the rules work. They are drafted like a statute. And so you really take the language seriously.

Page 66

So I want to keep the word "materiality" out. I'm happy to talk about, in a hypothetical sense, informed consent, but if we are going to talk about informed consent, then the language is full disclosure of risks and benefits and available alternatives.

THE SPECIAL MASTER: Okay. I understand that.

THE WITNESS: Okay.

THE SPECIAL MASTER: But what I'm trying to do is to understand each piece of your opinion that the consent that was obtained under Rule 1.5(e) was appropriate to the rule or in compliance with the rule. One piece of that is whether or not the disclosure that the relationship had changed was, I'm using the word "material," you can use the word "important to receiving the consent," my question remains the same, was it important in obtaining the consent for Arkansas to know that?

MS. LUKEY: Objection.

Page 67

THE WITNESS: Okay. So now I understand that we are back on my opinion. So the train had gone off on a side track here, talking about informed consent. And that was a hypothetical, and that was fine. I'm happy to talk about hypotheticals.

But now if we are back to my opinion, what my opinion is in reliance on the language of Rule 1.5(e) is, based on the idea of consent in Rule 1.5(e) and reasonable communication in Rule 1.4. So I know you don't like this idea of there's already been information conveyed to the client and the client knows that, and the fee agreement was negotiated in the context of that information that had already been conveyed, but the information about the presence of Chargois and what the contractual relationship was between Chargois and Labaton had been conveyed to Arkansas Teachers' representatives and they knew enough to either, if they chose, follow up and ask for more details and

Page 68

drill down farther into the relationship, or say, we know enough, this is fine, I'll sign here.

That's a combination of the consent requirement in 1.5(e), which was modified by Saggese to become written consent, and 1.4 on reasonable communication. That's my opinion.

THE SPECIAL MASTER: So as to this change in the relationship, and given the context that you have identified, the burden was on the client to ask further questions about the nature of the relationship between Chargois & Herron and Labaton.

THE WITNESS: I know that sounds kind of strange. But, yes. You know, that's this interesting mix of contractual and fiduciary, market and fiduciary norms that is part of the negotiation of a fee arrangement.

It is, in fact, between sophisticated parties, on the client to say, okay, you've told me you have this

Page 69

relationship with this other law firm, can you tell me more about it.

Now, if the client had asked that, the law firm would have to answer truthfully. But if the client said, I don't care, that's okay. There's no further duty on the lawyer at that point to provide additional information. That's what it means to be in an arm's length bargaining situation and not in a fiduciary negotiation.

THE SPECIAL MASTER: Okay. And I think part of your answer was, if informed consent as defined in the rules was read into 1.5(e), nevertheless, there would be informed consent here; is that right?

THE WITNESS: Yes.

THE SPECIAL MASTER: Okay.

BY MR. SINNOTT:

Q. So let me just get away even from the word "informed" or "materiality" and ask you a couple questions.

So in order to comply with the consent requirement of 1.5(e), it's your

Page 70

testimony that it was not necessary that Belfi inform Hopkins about the 20 percent. Is that your testimony?
A. Yes.
Q. All right. But it would be necessary for consent under 1.5(e) that Belfi inform Hopkins about Chargois' existence or the fact that Chargois had a relationship with the firm; is that correct?
MS. LUKEY: Objection.
A. Well, that there may be local counsel or co-counsel or some other law firm with whom we will be dividing fees. There has to be some information about the possibility of a fee division with another law firm. That's in the language of the rule, but not the details of the relationship between Labaton and Chargois.
Q. But, in this particular case, I believe you testified that, according to Belfi, Hopkins said to him, I'm aware of that relationship with local counsel, but not interested, correct?
A. Right.

Page 71

Q. You would agree that that level, basic as it is, is necessary in order for there to be consent under 1.5(e), correct?
MS. LUKEY: Objection.
A. Well, again, this is a hypothetical, but I don't know that it's necessary to identify the law firm. I would be willing to say that the consent required under Rule 1.5(e) would be satisfied by a disclosure that we may engage local counsel. We may engage another law firm to provide services and we may divide our fee with that firm.
Q. So it's your testimony that, in order to satisfy the consent requirement of 1.5(e), a specific relationship does not have to be referenced?
A. Right. This is -- the rules -- here's the thing with the rules. The rules are a floor. They don't purport to exhaust all of what a lawyer should do in the relationship with a client.
And so outside the context of a client that already knows about the relationship with this law firm, Chargois, if a

Page 72

lawyer said what I said a second ago, we may retain co-counsel, of course, the client is going to say, who, for what purpose? And that's part of the negotiation and part of the communication.
So the rule doesn't purport to say all of the things that a lawyer ought to do. It merely sets a floor. It says, at a minimum, you got to do this. And other things that a lawyer may have to do, which is part of best practices or things your liability insurer tells you to do, the rules don't purport to recognize all of those principles and duties.
So is it in compliance with the rule to say we may retain co-counsel, we may associate with co-counsel, we may have a local counsel, that satisfies the rule. But, of course, in any attorney/client relationship, there's going to be communication back and forth and negotiation back and forth beyond what the rule requires as a floor.
Q. So just to take that a step further. So that requirement of consent can be to any -- any law firm in the world. Is that what you're

Page 73

saying?
A. Sure. In fact, there are ethics opinions on using law firms in the world. You have a law firm in India that does your document review for you or something. That's part of it.
Q. And, in your opinion, it's sufficient for consent that there be a reference to -- that there not be a reference to a specific firm, correct?
A. For consent as required by the rules, yes.
Q. Now, 1.5(e) says, "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 participation and the total fee is reasonable."
MS. LUKEY: Could I just establish you're reading from the rule that was in effect at the time?
MR. SINNOTT: The earlier rule, yes.
MS. LUKEY: Thank you.
Q. That's your understanding of the

Page 74

rule, correct?
A. That's the rule.
Q. Yeah. And would you agree that the clause "after informing the client that a division of fees will be made" is a, in time terms, temporal terms, a very specific statement?
MS. LUKEY: Objection.
A. Well, it's interesting in temporal terms, especially when you read that rule in the context of Saggese and the timing requirement there. The rule kind of contemplates different stages.
So, at the outset, the client is informed that we may associate with another law firm. Then, subsequently, the client needs to know this is, you know, this is the fee that we are paying to the other law firm based on whatever contractual arrangement there is or whatever grounds the entitlement of the other law firm to a fee.
But so there's kind of a going forward, like an ex ante information requirement, and then, subsequently, further

Page 75

information may need to be provided, again, as a matter of reasonable communication.
Q. So you don't believe that the statement that "a division of fees will be made" is specific as to a particular division of fees?
A. Well, no.
MS. LUKEY: Objection.
A. In some ways, it can't be, in some cases where the other law firm's entitlement to fees isn't established until latter. The rule just requires that, at the outset, the client be informed about the possibility of dividing fees with another firm.
Q. So it could be, once again, any other firm, correct?
A. Yes.
Q. But that wasn't the case here based on your understanding of the facts, was it?
A. Right. So, again, the background to this engagement agreement is the understanding that the Chargois is the other firm in the scenario.
Q. What was, in your understanding,

Page 76

Hopkins told by Belfi?
A. I could go back and look at the facts. If you are asking what do I recall sitting here now, I believe that Hopkins was told by Belfi something to the effect that, and I'm not trying to quote anybody's testimony, you know we have this relationship with this Chargois firm in Texas and Arkansas, right, and Hopkins said, yeah.
So there was a reference to the firm that Arkansas Teachers had already dealt with, and Hopkins knew that they were still around.
Q. And what do you base that recollection of the facts on?
A. Again, this is what I recall as I sit here now. I read the deposition of Belfi, the deposition of Hopkins, the e-mail traffic back and forth. It's just kind of based on all of that reading.
Q. But you testified, in questioning by Judge Rosen, that this is a close case, correct?
MS. LUKEY: Objection.
A. Let me, again, be careful. What is

Page 77

a close case is if, contrary to the way the rules work, if the idea of informed consent, as that concept is used elsewhere in the model rules, if that were to apply to this situation, that would be a close case. I actually think kind of interesting, might be a fun law school exam question to write.
But that's in the counterfactual world in which informed consent provides the standard.
If that were the standard, this would be a close and interesting case, but it's not the standard.
THE SPECIAL MASTER: Could I just interject here?
You're aware that the retention agreement contemplated a class action, and that Arkansas would be the class representative?
THE WITNESS: Yes.
THE SPECIAL MASTER: Does that change your opinion at all as to the nature of consent that is required?
THE WITNESS: No.

Page 78

THE SPECIAL MASTER: By being class representative, there would be duties to the class and to adequately represent the class, correct?
MS. LUKEY: Objection.
THE WITNESS: Yes.
THE SPECIAL MASTER: And the fact that Arkansas is now undertaking this case and Labaton to represent Arkansas on behalf of a class does not change the nature of the consent required in understanding, the client understanding who's going to be paid what?
THE WITNESS: No. Because the duly authorized agent of the class representative, Arkansas Teachers, is Hopkins. You can only communicate with an entity through natural person agents, and the client representative here is Hopkins.
THE SPECIAL MASTER: So Arkansas' responsibilities are no greater as a class representative than it would be if Labaton was representing it only independently and not as a class representative.

Page 79

MS. LUKEY: Objection. Your Honor, I'm not objecting to your questioning. I just want to point out he's not proffered as a class expert.
THE SPECIAL MASTER: I understand.
THE WITNESS: I don't know if you meant to say this, but you said Arkansas Teachers' responsibility and Labaton. I don't know if you meant to use separate parties.
Labaton's responsibilities to its client are the same in this case. Arkansas Teachers, the client, as the class representative, this is outside my area of expertise. I'm not a civil procedures person at all. They may have duties to the class as a matter of Rule 23. I don't know that stuff. So I'm not going to go there, but Labaton's duties are to its client. That's to whom the duties are owed.
THE SPECIAL MASTER: And the fact that its client is now going to be or contemplated to be performing class

Page 80

representative -- in a class representative role, responsible for class representative obligations to a class or a putative class, that's -- that doesn't play into your opinion?
MS. LUKEY: Objection.
THE WITNESS: No, because the basic agency structure of the attorney/client relationship is the same. You have the principal here, Arkansas Teachers, which is responsible for making decisions about protecting itself and presumably carrying out other duties that it owes to others, and it communicates through its authorized representative with the law firm about how the law firm should carry out its obligations. And that works the same in a ordinary one-off single client representation and a class. The agency structure is the same.
Now, I'm not opining about what duties arise out of Rule 23 or anything else. That's not my area of expertise.
THE SPECIAL MASTER: Okay. So just

Page 81

to summarize. As to your opinion as to compliance with Rule 1.5(e), it is not relevant to your opinion that Arkansas would have duties to a putative class or a later certified class?
THE WITNESS: That's correct.
BY MR. SINNOTT:
Q. Let me just take it back, if I might, Professor, to 1.5(e) in effect at the time.
So after saying that -- after informing the client that a division of fees will be made, the client consents to the joint participation and the total fee is reasonable, what does the phrase "joint participation" mean to you?
A. Did you read the Mass. rule or the model rule?
Q. The Mass. rule in effect pre-2011.
A. Pre-Saggese.
MS. LUKEY: Not pre-Saggese. Pre-amendment to the rule.
A. Well, joint participation just means that they are entitled to participate in the

Page 82

division of fee. I know that sounds circular, but that goes back to the interesting question that divides Massachusetts and other states which is what may a law firm receive fees for. And, in Massachusetts, the answer is referrals in addition to providing other sorts of legal services.

So the joint participation is just a shorthand way of saying "for whatever they are entitled to receive fees for."

Q. And, in your opinion, that would include for nothing?

A. In Massachusetts, it could also be for a referral. It could be for a referral from one firm to another of a client.

Q. Would you agree that Massachusetts is a bit of an outlier in that respect?

A. Well, that's a minority position. I actually -- I don't know the 50-state count, but there are other states that permit bare referral fees.

Q. Does California permit it?

A. I don't recall.

Q. Does Texas permit it?

Page 83

A. I'm pretty sure Texas does not. I think I remember doing some work in Texas a while ago, and I'm pretty sure they do not.

Q. Does Virginia permit it?

A. I don't recall.

Q. Do you know if Labaton informed any of the other jurisdictions, in which there were Arkansas cases, of Damon Chargois?

MS. LUKEY: Objection.

A. I have no idea.

Q. If those cases were required notification beyond just this general referral, a division of fees may take place with some lawyers in the future, is that your understanding -- let me rephrase that.

In these other states, that would not be sufficient, correct?

MS. LUKEY: Objection. He has not been tendered for other states. I really consider this to be quite an inappropriate questioning, Bill. That's not within the scope of what the special master is directed to investigate.

MR. SINNOTT: Thank you.

Page 84

A. Are you asking me whether Chargois had to comply with different states' rules because he was a Texas lawyer or Arkansas lawyer?

Q. No. I'm asking you if Labaton had to comply.

MS. LUKEY: Objection.

A. No. Because Massachusetts law governs this.

Q. Do you know if Labaton revealed its relationship with Damon Chargois in any of the other Arkansas cases?

MS. LUKEY: Objection.

A. I don't know.

Q. But, in this case, in any event, I believe you testified that, according to Belfi, Hopkins had told him I'm aware of that relationship with local counsel, but not interested, in so many words, correct?

A. Yes.

Q. And that I don't want to deal with Chargois, I believe you said as well, correct?

MS. LUKEY: Objection.

A. I don't recall him saying I don't

Page 85

want to deal with Chargois. I -- and you summarized it well at first, which is I'm just not interested in getting into the details of the relationship you have with local counsel.

Q. All right. And when did these conversations take place?

A. I don't recall exactly the timing. They were prior to the engagement letter. So I assume in 2010, late 2010, early 2011. I don't have the exact dates.

Q. All right. What's the significance of those statements to your opinion?

A. The significance is that the communications back and forth between Belfi and Hopkins go to both the duty of reasonable communication and the duty of obtaining consent to the division of fees with the Chargois firm.

Q. And how do they go to the issue of consent?

A. Well, in order for the client to consent, the client has to have the opportunity to participate meaningfully in a conversation about the matter under discussion, and it is the client's option to ask for more information

Page 86

and to say I want to see the contract that you have with Chargois. Hopkins could have done that.

It's also the client's option to say, whatever. That's for you all to worry about, not my concern.

That's the meaningful conversation and communication that has to occur in order for the client to consent to the fee arrangement.

Q. And you would agree that those statements to Hopkins, those statements by Hopkins to Belfi indicated that he was communicating and he was consenting, correct?

A. Sure.

Q. And they were prerequisite to 1.5(e), correct?

A. Well, something like that. So it doesn't have to be exactly that communication, but there has to be some kind of meaningful communication, meaningful participation by the client in the decision-making process.

Q. All right. And you believe that Mr. Hopkins was given that opportunity?

Page 87

A. Clearly.

Q. All right. And he needed to be given that opportunity, correct?

A. Yes.

Q. Otherwise, this would not satisfy 1.5(e)'s consent requirement?

A. Just one small footnote. Hopkins or another authorized class representative. It doesn't have to be Hopkins. But it's someone authorized to speak and act on behalf of the client.

Q. And, in this case, the representative was Hopkins, correct?

A. Yes.

Q. And he was speaking on behalf of the class, correct?

MS. LUKEY: Objection.

A. Now we're getting into civil procedure, which I don't know. He's speaking on behalf of Arkansas Teachers.

Q. All right. Thank you.

Just to get back quickly to the --

(Discussion off the record.)

Q. You may recall that I was asking you

Page 88

about the Saggese case earlier, and I believe I asked you that -- whether it was true that the Saggese court referred to the fact that the Kelleys acquiesced in a referral fee to Saggese on that Doe matter two months into their representation, only to make the point that this was the time Doe's consent could have been obtained because it's the first time that the division of fee agreement was reached, correct?

MS. LUKEY: Objection.

A. So, again, this is back to that two-part timing issue in Rule 1.5(e). I think, and I can't quote Saggese chapter and verse, but -- but what should have happened is that the lawyer should have said, I have a relationship with another law firm and I may share the fee, and then later there would be a more particularized basis for making the division of the fee, and then you inform the client of that.

But the reason it becomes, again, to use the term "midstream modification," is that this kind of gets sprung on the client after the relationship had commenced, after there had

Page 89

already been an arrangement about the attorney's entitlement to compensation.

Q. But isn't it true that, in Saggese, that fee-sharing agreement wasn't reached until two months into the Kelleys work on behalf of Doe?

A. Well, and that's the problem. And so it's not that midstream modifications can't happen, it's just that they have to be accompanied by a lot of conversation and disclosure.

And so if you could imagine the lawyer saying, okay -- the other thing is there should be some change of circumstances to justify a change in the middle of a matter. Well, you know, why all of a sudden is this new law firm coming around? The client needs to know about that.

And so one could imagine this case coming out differently if the lawyer had said, hey, it's become necessary to associate another law firm. Who knows why. Maybe there are issues that are outside our area of expertise. Maybe we need specialized representation on

Page 90

something. It's not going to drive up your total fee, but we need to share now with expert outside counsel in something related that just came up in the case, is that okay. And the client says, yeah, thanks for letting us know. Sure, it's fine, as long as it doesn't increase our total fee. That could have happened.

So I don't want you to misunderstand my reliance on that ABA opinion. It's not saying you can never change fee arrangements in the middle of a matter. It's just that there has to be communication with the client about the reasons for it.

Q. But you would agree that, because the fee-sharing agreement wasn't reached until two months into the case, until the Kelleys work for Doe, they couldn't have informed Doe earlier, could they?

A. Well, in that case, if there wasn't an agreement until later, then, no, they couldn't inform them until there was an agreement. But, at that point, there has to be conversation and information about the relationship with the other law firm.

Page 91

Q. Sure. But you agree that they could not have informed them of a fee-sharing agreement that hadn't taken place yet, correct?

A. Well, sure. If it doesn't exist, then you can't inform the client about it.

Q. So there was no midstream in that case, was there?

A. It's still midstream modification. So the clients and the lawyer have a fee arrangement, and then the matter is moving forward. Now, the law firm wants to associate other counsel for whatever reason. That is a midstream modification.

Q. So you consider it a midstream modification even if there was no way that they could have notified them later on?

A. Sure. And, again, the ABA opinion doesn't say you can't do. It just says you have to then inform the client and have a conversation about the basis for the modification.

Q. So the failure to inform Doe earlier didn't affect the court's holding in that case, did it?

Page 92

A. Boy, you're asking me about a case that I don't live with and teach and know intimately. But I think that sounds right.

Q. All right. So that case would have been decided the same way, even if the division of fee agreement had predated the time that the Kelleys accepted Doe as a client?

A. No. That, I don't think is right. Then it may be the case that the court would say you failed in your duty of reasonable communication. And, again, I want to make sure you are reading 1.4 and 1.5 together.

If that arrangement had existed and predated the two months in or whatever that was, then the lawyer could be said to have done something improper. You knew about this and didn't inform the client. Why did you do that?

That's different from the relationship is cooking along and the matter is moving forward, and then it becomes necessary to associate outside counsel. There is no failure of communication up to that point because there was no relationship with outside counsel.

Page 93

So it would be different if there had been a relationship with outside counsel that would have been relevant to negotiating the original fee arrangement that the law firm didn't mention to the client.

Q. So you'd agree that, unlike Saggese, the Chargois arrangement, by a long time, predated the agreement in State Street, correct?

A. Yes.

Q. So would you agree that what you referred in your report as the court's concern in Saggese would have required Labaton to comply with 1.5(e) at or before ATRS retained it for the State Street matter?

MS. LUKEY: Objection.

A. Yes. And they did. So they were required to inform Arkansas Teachers of the possibility of sharing fees with local counsel. They did. And because that relationship predated their retention in the State Street matter, that's part of what reasonable communication would have required.

Q. So when did that reasonable

Page 94

communication take place?
A. Well, again, I don't know the exact dates.
And, also, to repeat what I said earlier, this negotiation happened in the context of a background of a lot of information that the parties already had. So the reasonable communication included the Christa Clark exchange. It included the Belfi Hopkins exchange. It included what the parties knew about the relationship Labaton had with Chargois. That's all part of the background.
The specific negotiation about State Street happened in the late 2010, early 2011 time frame. But, again, that wasn't in a vacuum. That was in the context of what the parties already knew about each other.
Q. And what specifically did Arkansas need to know about the Chargois relationship?
A. What they wanted to know, and I mean that -- you know, they had the opportunity to participate meaningfully in the conversation. Hopkins, the executive director of Arkansas Teachers, had a chance to ask whatever

Page 95

questions he wanted.
The law firm wasn't hiding anything. They weren't refusing to disclose something. They simply said, Mr. Hopkins, do you want to know about this? And he said, no. He said, I've been in this business a long time. I know how the class action bar works. I don't want to deal with this. It's a mess. It's complicated. I'm satisfied if you provide the services you're going to provide and the total fee be reasonable.
So he was given the opportunity to find out whatever he wanted to know.
Q. All right. And is there any significance, in your opinion, to events that happened prior to Hopkins' tenure as executive director?
A. Any significance? Well, so the relationship between client and counsel is an ongoing thing. And, you know, organizational clients are legal persons. They are legal fictions. Agents come and go.
So you had Doane replaced by Hopkins. There was a relationship between

Page 96

Doane and Labaton, but that's a relationship between Arkansas Teachers and Labaton. So that information is kind of corporate knowledge. It's part of the organizational client's background and knowledge.
And it would be relevant to what the client knew about its law firm's relationship with Chargois.
Q. So that background would not be dispositive to any agreement. Is that your testimony?
MS. LUKEY: Objection.
A. Well, no one thing is dispositive. This is all part of the knowledge that the parties have about each other.
Q. What did Doane know about the Chargois arrangement?
A. I don't recall specifically what he knew. He dealt with Chargois. I don't know what details he knew about the relationship Chargois had with Labaton.
Q. What did, if you know, Christa Clark know about the relationship between Chargois and Labaton?

Page 97

A. All I know about Christa Clark is what was in that e-mail exchange. And, you know, she said there's another law firm, they are doing other work, we'd just as soon you be the sole firm on our state procurement system, and you can work out the division of fees among yourselves. That's what Christa Clark knew about them.
Q. All right. And what about the RFQ, what did that say with respect to the relationship between Chargois and Labaton?
A. I don't recall specifically, and I'm sorry, I sort of blanked on that.
I do remember looking at it, and there was some language in there about, you know, what we are going to do. I just don't have, as we sit here now, a clear recollection of what exactly that language was.
Q. Would you agree that that RFQ was specifically about service of these firms or of Labaton ultimately selected as monitoring counsel, correct?
MS. LUKEY: So, Bill, you are referring to the response to the RFQ? You

Page 98

are talking about the response as opposed to --
MR. SINNOTT: I'm sorry. Let me clarify that.
A. You mean the documents submitted in response to the RFQ?
Q. That's right.
A. So that was the firm bidding. You know, state procurement law is not my expertise at all. But my understanding is the firm was bidding to be, I don't know what you call it, panel counsel or something like that, available to do work for the state. And so they were requesting to be on a state registry of law firms that would do work along these lines, securities class action stuff, monitoring, that kind of work.
Q. And would you agree that the State Street case was not referenced in that application?
A. I don't recall. Given the timing of these two things, it seems odd that it would be. So I'm guessing that, no, it wasn't referenced, but I don't recall specifically.

Page 99

Q. And would you agree that that application did not contemplate a referral arrangement?
A. I don't recall.
Q. But you've seen that application, correct?
A. I did in the process of working through my report. I just, right now, sorry, I'm blanking on it. There's a lot of documents in this case.
Q. Let me just show you a copy of it.
THE SPECIAL MASTER: I just want to, while he is looking for the document, I want to clarify one thing.
Is it your belief that Mr. Hopkins himself knew about Mr. Chargois in any capacity or Chargois and Herron or the law firm of Chargois & Herron? And I'm referring here only to the state of Mr. Hopkins' knowledge.
THE WITNESS: It is my belief, and I don't know that I could give you documentary proof of this, but it is my belief that Hopkins knew exactly what was

Page 100

going on. He has been around Arkansas a long time. He knows the players. He knows exactly what's going on.
He is familiar with the practices of the securities class action bar. You know, he knows who's who. He gets it. It's my belief that he is actually quite well informed about what he needs to know.
THE SPECIAL MASTER: You said what he needs to know. Does that include -- do you believe that Mr. Hopkins knew specifically about Mr. Chargois and the Chargois Herron firm?
MS. LUKEY: Objection.
THE WITNESS: I believe, and this is now just all speculation, but I do believe, and as I was reading this, I was forming my own narrative about what must be going on, I believe that Hopkins knows exactly how referral arrangements work in a plaintiff's bar, and he gets it.
And he understands that there are local firms that originate clients and they have relationships with clients, and

Page 101

they refer it out to national counsel and they get paid for it.
Clearly, he understands how this all works. And that's why he didn't want to get into it. Because he said, it's all a mess. I don't want to be part of this. I don't want to be inundated with local law firms who are trying to suck up to me and broker these Arkansas cases out to national firms. I got to beat them off with a stick, and I'd just as soon avoid the whole thing.
He has been around and he knows the players. So it's my belief that he understands exactly how this works.
THE SPECIAL MASTER: That's different from whether or not he knew about Chargois and Chargois & Herron.
THE WITNESS: Well, he knew that Chargois had had a relationship with Labaton, and he knew who Chargois was. They had an Arkansas office.
THE SPECIAL MASTER: What do you base that on?

Page 102

THE WITNESS: You're asking me to speculate. I'm kind of filling in the details for myself, thinking who this guy is and what he must know, and what his experience is in his position. Arkansas is a small state. Little Rock is a small town. He knows the players.

I'm just -- again, this is -- I couldn't, you know, cite this in a deposition, because I'm just kind of filling this all in, but, of course, when you read documents, you think, what must be going on here.

You're asking me, what's my belief. That's my belief.

THE SPECIAL MASTER: Mr. Hopkins testified that he didn't know Mr. Chargois, didn't know anything about the relationship until this -- until this matter, until the special master's investigation.

THE WITNESS: He did, but he also said -- it was a funny bit in his deposition, where he said, I'm just

Page 103

inundated by these guys. And I think he probably saw Chargois as just one of these many, many local lawyers who were just constantly pestering him for work.

That was a very striking part of his deposition testimony. So, to me, it feels like he was saying, geez, these guys are all the same. There's just hundreds of them buzzing around Little Rock. That was the impression that I got from his testimony.

THE SPECIAL MASTER: I want you to assume this. I'm not indicating here that I have found this, but I want you to assume this.

If, as part of Arkansas' responsibility as class representative, it was required to have knowledge of the relationship here, what we have referred to as the 20 percent relationship, would it have been important for Labaton to have informed Arkansas of the Chargois 20 percent relationship in obtaining consent under Rule 1.5(e)?

Page 104

MS. LUKEY: Objection.

THE WITNESS: Okay. So I'm happy to grant that assumption.

My reaction to that assumption is if that's truly the duty of the class representative, then Hopkins failed. Then Hopkins fell down on the job.

You know, he didn't do the due diligence that he was required to do. And, you know, if, that's really, in fact, his duty, then bad on him as executive director of Arkansas Teachers.

I don't know if Rule 23, in fact, imposes that requirement -- yeah, yeah, yeah. But if that is, in fact, his requirement, then Hopkins should be -- you know, hang his head in shame for not doing due diligence in this case.

THE SPECIAL MASTER: And should Labaton have informed, as class counsel or counsel for the putative class, should Labaton have informed Hopkins of this relationship, the 20 percent relationship?

MS. LUKEY: Objection.

Page 105

THE WITNESS: No, because nothing in the rules purports to speak to whatever the client's due diligence requirements are.

The rules require reasonable communication. The rules require consent. The rules aren't trying to anticipate what every client may need to know or may want to know.

So if that is, in fact, a due diligence requirement of Arkansas Teachers here, that's for Arkansas Teachers. The rules only speak to one side of that relationship. They speak to what lawyers have to do.

And the rules don't purport to speak to what clients have to do as part of their own obligations to whomever they owe obligations to.

THE SPECIAL MASTER: So even if it is a responsibility of the class representative to be informed on these kinds of fee relationships, and particularly here, a fee for which a

Page 106

lawyer is going to be performing no work, the lawyer has no responsibility, under Rule 1.5(e), to inform the client of this relationship in obtaining the consent?
MS. LUKEY: Objection.
THE WITNESS: That is correct, particularly when the client has said, I'm not going there. I don't want to know about it.
The rules are based on a division of responsibility between lawyer and client, and when the client says, I'm satisfied, the lawyer has no obligation to say anything more beyond that.
THE SPECIAL MASTER: So, in that sense, the failure would be the client's not to ask and not the lawyer's not to inform?
MS. LUKEY: Objection.
THE WITNESS: Exactly.
THE SPECIAL MASTER: Are you ready for a break?
MR. SINNOTT: On the phone, we are going to take a 15-minute break. So we

Page 107

will be back here at 10:45.
(Recess taken.)
BY MR. SINNOTT:
Q. Professor, I want to pick up on a couple of things just before the break that were discussed in your testimony, and specifically something that was discussed both with myself and with Judge Rosen.
Is it your testimony that, once Hopkins said to Belfi, I don't want to know about the division of fees with Chargois, that Labaton's duty to Arkansas was satisfied?
A. Yes.
Q. So your testimony is that Labaton was not obliged to counsel Hopkins on the potential risks or implications to its members?
A. That's right.
Q. No obligation at all?
A. That's correct.
THE SPECIAL MASTER: What if, by taking this position, Mr. Hopkins' position, I don't want to know, I don't want to know anything about referral fees, I don't want to know anything about

Page 108

division of fees, I don't want to know anything about local counsel or liaison counsel, I don't want to know anything about any of these things, Arkansas, in its role as class representative, was going to be at risk for not being able to perform its duties to the class.
MS. LUKEY: Objection.
THE WITNESS: That's my testimony in the context of this case with this representative, Hopkins, his knowledge, his experience and the course of dealing between the parties and what he knew.
I'm not making this as a general proposition. I'm just stating that, given what Hopkins knew and his experience working with Labaton, specifically, and monitoring counsel, generally, he reasonably could have decided not to involve himself in the details of the fee-sharing arrangement.
THE SPECIAL MASTER: And if, by doing that in this case, in which Arkansas was going to be class representative, if

Page 109

by doing that, Arkansas was putting itself at risk of violating duties to the class, Labaton would have no responsibility to inform Hopkins of the nature of the Chargois relationship in order to seek its consent under Rule 1.5(e)?
MS. LUKEY: Objection.
THE WITNESS: Well, that's kind of a way-out hypothetical, because I think this is a long, long way from the cases in which a lawyer with an ongoing professional relationship with a client may have an obligation to counsel the client about something that it may be doing that may cause it to incur liability.
I understand those cases are out there, and there aren't too many of them, actually. I teach a few of them, and they are kind of increasingly older and outliary cases, but there are cases in which a lawyer would have a duty to a client to basically protect the client from incurring legal liability to someone

Page 110

else. That is true.
I just think this is so far from one of those cases that I don't even really know how to answer that question. It's just a completely different universe, but there are cases in which a lawyer's duty might potentially be to inform a client that, by the way, you have this duty.
THE SPECIAL MASTER: So the agreement that we're talking about, the retention agreement, is at a relatively early stage in this case, in fact.
THE WITNESS: You mean the 2011?
THE SPECIAL MASTER: The 2011, right.
THE WITNESS: Uh-huh.
THE SPECIAL MASTER: There's a contemplation, I think you would agree, that Arkansas would be class counsel -- I'm sorry -- class representative, and that Labaton would be class counsel, correct?
MS. LUKEY: Objection.
THE WITNESS: Yes.

Page 111

THE SPECIAL MASTER: There was a contemplation that Arkansas would be class representative, yes?
THE WITNESS: I think so. I don't know, but I think so.
THE SPECIAL MASTER: And a contemplation that Labaton would be class counsel, yes.
MS. LUKEY: Objection.
THE WITNESS: I think so.
THE SPECIAL MASTER: Which would then trigger the obligation to Mr. Chargois, under this larger agreement, what we have called the 20 percent obligation.
MS. LUKEY: Objection.
THE WITNESS: Well, the obligation to Chargois was there anyway. So there was an agreement to pay 20 percent of fees that arose out of the relationship between the two law firms. That's not contingent upon anything -- well, sorry.
It's just a general obligation to share fees with Chargois.

Page 112

THE SPECIAL MASTER: Okay. But with respect to this specific case, the retention of Labaton by Arkansas in its role as a potential class representative, would trigger the obligation to Chargois in this case.
THE WITNESS: Correct.
THE SPECIAL MASTER: Okay. Now, that's in an early stage, yes? Because they -- at this point, the case hasn't been filed, right?
THE WITNESS: Right.
THE SPECIAL MASTER: What if the nature of Arkansas' obligations change at the point at which the class is certified, and it becomes definite that there is now a certified class, does the nature of Labaton's obligations to inform Arkansas change to more fully tell Arkansas, which is now the class representative, of the nature of this relationship?
THE WITNESS: I don't have enough information, really, to answer that. I'm not trying to be evasive. I just don't

Page 113

consider myself a civil procedure expert.
And one of the things that I always emphasize when I teach professional responsibility is that these obligations kind of sit on top of other duties. And so what duties the lawyer owes to the client are provided by some substantive area of law, and then there are professional responsibility obligations on top of that.
So in order for me to have an opinion in any meaningful way about what the lawyer's duties would be, I would have to know more than I do about the obligations created under the Rules of Civil Procedure that would be obligations of Arkansas Teachers to the class.
I have had this experience, you know, getting burned by not knowing the underlying law of X, and I'm teaching this stuff in class, and there's some smart person in the back who sticks up their hand and says, no, you're totally out to lunch about this.

Page 114

So I just don't want to get into speculating about something that I don't know enough about.

THE SPECIAL MASTER: Well, I would like you to assume, for purposes of asking that question, and, again, I quickly add, I have not formed an opinion on this, but I would like you to assume that, at the point at which the class is certified and Arkansas is class representative for that class, that, at that point, Arkansas has obligations to the class to be informed on the nature of the fee relationships, including the Chargois relationship, who was being paid in this case 20 percent of Labaton's fees for doing no work.

MS. LUKEY: Objection.

THE WITNESS: Again, not trying to be difficult, but is that obligation something that a reasonable lawyer doing securities class action work would have reason to know about or is it an obligation specific to that case somehow that the lawyers wouldn't have been able

Page 115

to anticipate? The reason I ask that question is that lawyer's reasonable care obligations, which include all sorts of things, including disclosure and counseling clients, really depend on what a reasonable lawyer should know.

This sounds to me like something that is kind of unusual and different in class action practice. So if something kind of comes up that's new and different, I wouldn't expect the lawyers to necessarily be able to anticipate that.

On the other hand, if it were something that is just normal and routine and part of class action practice, then the lawyers should probably be able to anticipate it and would have addressed it earlier. So I'm just not quite sure what the nature of that duty is.

And these cases about advising clients to protect them from the client getting into trouble generally rely upon it being knowable to a reasonable lawyer that the client is going to find itself in

Page 116

a situation of legal liability.

THE SPECIAL MASTER: Okay. I'm asking you to assume that, at least at the point -- or just for purposes of answering, at least at the point when the class is certified, that Arkansas would have an obligation to be informed of the Chargois relationship, would Labaton, at this point at least, at that point the class is certified, have a concomitant obligation to inform Arkansas of the nature of the Chargois relationship?

MS. LUKEY: Objection.

THE WITNESS: Can you just tell me, sorry, is that obligation something that they should have known was going to be Arkansas Teachers' obligation?

THE SPECIAL MASTER: If it was important to the obligation of a class representative to know this as part of its responsibilities as class representative, would Labaton have had an obligation then to inform Arkansas of the Chargois relationship?

Page 117

MS. LUKEY: Objection.

THE WITNESS: And there's case law establishing this duty?

THE SPECIAL MASTER: I'm just asking you to assume it.

MS. LUKEY: Objection.

THE WITNESS: Okay. But let's craft the hypothetical together.

Is there case law, is it clear to the lawyer at the outset that the class representative will have this obligation?

THE SPECIAL MASTER: Whether it was clear or should be clear, if it was an important obligation of a class representative to know about this relationship in its role as representative of a class --

MS. LUKEY: Objection.

THE SPECIAL MASTER: -- should the law firm then know or should the law firm then inform the class representative of the relationship?

MS. LUKEY: Objection.

THE WITNESS: Okay. Here's the

Page 118

answer that I'm going to give, which will pick up your hypothetical, but I can't modify it beyond this.

If and to the extent that it is established that the class representative will have this obligation, then, yes, the law firm may, I'm not saying must, but may have a duty to go back and have a further communication with the client. That's my answer.

THE SPECIAL MASTER: About the Chargois relationship?

THE WITNESS: Yes.

BY MR. SINNOTT:

Q. Let me follow up on that, Professor.

You talked about Mr. Hopkins being a sophisticated class representative, correct?

A. Yes.

Q. What have you assumed that George Hopkins knew about the responsibilities of the named class plaintiff to the class?

MS. LUKEY: Objection.

A. Well, I'm assuming that, as someone who has worked with outside counsel in

Page 119

securities class actions cases in the past, he understands the nature of those obligations. What exactly those are is something that I don't know, I don't do, but I assume that he's familiar with what is required as being class representative in a securities class action case.

Q. So you're making an assumption based on a general category of what an individual placed as he is would know were his obligations?

MS. LUKEY: Objection.

A. Yes.

Q. You are not basing it on anything specific in the record, correct?

MS. LUKEY: Objection.

A. That's correct.

Q. Let me pick up on that. Page 14 and 15, you talk about the ratification by Hopkins.

Do you recall discussing that?

A. Yes.

Q. So it's fair to say that Mr. Hopkins purported to ratify the Chargois arrangement in that affidavit, correct?

Page 120

A. Yes.

Q. Now, some of this is going to sound a little familiar, but it's a little bit different in this context.

Assume, for the purposes of my question, that, at the time George Hopkins signed that affidavit that Arkansas continued as a class representative for the plaintiff class, okay?

A. Okay.

Q. Does a class representative have a fiduciary duty to the class?

A. I believe, based on what I know about class action procedure, the answer is yes, but I'm not an expert in that area.

Q. All right. What are the elements of fiduciary duty?

MS. LUKEY: Objection, only because it's outside his report, not to the form of the question.

A. That's also a big and complicated question and something that a bunch of people in the field are actively researching right now.

Page 121

The short answer is it varies quite a bit by context. So fiduciary duty is a broad umbrella term. It includes duties of corporate officers and directors, trustees, lawyers to clients. There are all sorts of fiduciary duties.

So the precise scope of the duties and their specifications varies by what context we are talking about.

Q. So in the context of a class representative and his class, what are the elements of the fiduciary duty?

A. I don't know.

Q. Before it asked Mr. Hopkins to file his affidavit, do you believe that Labaton, as counsel to Arkansas, had a duty to inform him of the requirements imposed by his organization's fiduciary duty to the class and of any risk to Arkansas in ratifying a $4.1 million payment to Chargois?

MS. LUKEY: Objection.

A. In this case, given his experience, given his position, given that he is a lawyer, no.

Page 122

Q. They had no obligation?
A. In this case, under those assumptions.
Q. Do you know if Labaton gave any advice in this regard?
A. I don't.
Q. If they had, would that have affected your opinion?
MS. LUKEY: Objection.
A. It would depend on what the advice was, what they were called upon to advise him on. I don't know.
Q. But you're saying that even if they didn't, doesn't matter, because they weren't obliged to, correct?
MS. LUKEY: Objection.
A. Yes.
Q. Let's assume that Judge Wolf has the power to redirect the money that was paid to Chargois to the class which Arkansas represented as a fiduciary, and you would agree that Arkansas represented that class as a fiduciary, correct?
MS. LUKEY: Objection.

Page 123

A. Again, based on what I know about class action procedure, yes.
Q. With that in mind, do you have a view on whether Hopkins acted properly as a fiduciary to the class in ratifying the Chargois arrangement?
MS. LUKEY: Objection.
A. No. That's outside my area of expertise.
Q. We know what the benefit would be to the class if that $4.1 million that had been paid to Chargois went to the class, correct?
MS. LUKEY: Objection.
A. Yes.
Q. What benefit was there to the class in Hopkins ratifying the payment to Chargois?
MS. LUKEY: Objection.
A. This is part of the way a lot of different plaintiff-side representations are structured. Mass tort cases work this way. Securities class action cases work this way.
It's often necessary to combine the functions of finding clients, financing representation, providing legal services. This

Page 124

is all part of what plaintiffs' lawyers do.
And it's often divided up among different law firms. And it's easy, after the fact, to say a referring law firm got a windfall. But, ex ante, it may make sense for a national law firm to have relationships with referring law firms around the country because they don't have access to the local networks where they would find clients.
They don't have the ability to develop clients on their own. They need to partner with other law firms.
This is actually very common in personal injury and mass tort cases and class action representations.
Q. So based on the record in this case, what was the benefit to the class in Hopkins signing the ratification?
MS. LUKEY: Objection.
A. Hopkins signing the ratification simply acknowledged an obligation that the law firm already had.
The benefit to the class has to be viewed ex ante. And I'm not trying to be all

Page 125

academic on this, but it is true that sometimes things look like a windfall in hindsight, which made sense at the outset.
This is a classic problem of contingency fees. Suppose a lawyer is able to settle a case early on, with less work than a lawyer had anticipated. It might look like a windfall. It might look like, wow, the lawyer got paid an effective hourly rate of some big number.
But, at the outset, it might have been a reasonable decision to make about the risks that the parties were accepting.
Here, you have a referral arrangement entered into with Chargois that I would assume, these are competent lawyers who entered into this agreement, I would assume made sense at the time. And things changed. Later, there is what seems to be a windfall, but my understanding and what I take Hopkins to be doing is simply saying, look, a deal is a deal. They had a contract, I'm going to abide by that.
That's what I understand him to be

Page 126

doing, and there actually is a benefit to the class if you see it from the point of view of what the parties contemplated at the outset.
Q. So who decides what the benefit is to the class?
MS. LUKEY: Objection.
A. The lawyers negotiate among themselves about how to divvy up the provision of legal services, and then the law firm negotiates with the client about how the law firm will be compensated, and the law firm and the client representative make a decision about what fee arrangement appears to them to be fair and reasonable.
Q. And you've discussed something that sounds like a process, a discussion. Is that a fair statement?
A. Yes.
Q. And did that discussion take place in this case?
MS. LUKEY: Objection.
A. Absolutely.
Q. Tell me how it took place.
A. Well, we have talked about this

Page 127

earlier, but it's the series of communications between representatives of Arkansas Teachers and Labaton lawyers about the nature of the services to be provided, whether there would be other law firms involved and whether there would be fee sharing.
That, I assume, is only one part of a much larger discussion about setting the fee amount, negotiating about all sorts of other things that I assume were negotiated. They are not part of this issue, so I didn't look at it, but I assume that there were a lot of issues that were discussed between Labaton and Arkansas Teachers.
Q. And it's your testimony that the direct benefit to a class of $4.1 million was outweighed by other benefits?
MS. LUKEY: Objection.
A. No. My testimony is that you can't meaningfully evaluate reasonableness in hindsight. You have to look at what risks and responsibilities are allocated among all of the parties at the outset, and these are big, complicated cases, and it can be difficult to

Page 128

forecast how everything exactly will shake out in the end.
But there are reasonable fees that may be agreed to at the outset which may later, in hindsight, turn out to look like somebody got a windfall, but that's just what happens with contracts. You allocate risks and benefits and sometimes one party does better than the other. That's just the way contracts are. But they have to be evaluated for reasonableness when -- at the time they were entered into.
Q. All right. Let me just ask you to assume that Judge Wolf concludes that Hopkins, and this is a hypothetical, that Hopkins can no longer adequately represent the class at the time he signed this affidavit. So there was no ratification.
Assuming that, do any of your opinions change?
MS. LUKEY: Objection.
A. I'm sorry. Not to be picky, but do you mean that he decides that Arkansas Teachers can no longer represent the class? Because I

Page 129

take it that's the class representative. Or is he making a decision kind of within corporate law about Hopkins' compliance with his duties to his client?
Q. The latter.
A. How does he have the authority to do that?
Q. He has the authority to accept or reject the -- the allocation, and this would be part of that power.
MS. LUKEY: Objection. Bill, I want to be clear on the record that we are not contending the ratification by George was for the class. We are only -- it was submitted as ratification for Arkansas, not for the class, in case there was any question about that. I think I said that at the last deposition, but just to be clear.
MR. SINNOTT: Yep.
A. Do you want me to keep going? I assume --
Q. Does that change your opinion? That's the question that's outstanding.

Page 130

A. Given what Joan just said, no.
Q. All right.
THE SPECIAL MASTER: Could I ask, on this issue of client, once the class is certified, does the class become a client of Labaton?
MS. LUKEY: Objection.
THE WITNESS: No, the client remains Arkansas Teachers. The representation of Arkansas Teachers and the duties that are owed to that client are in light of that client's role as representative of the class, but the class does not become a client of the law firm.
THE SPECIAL MASTER: Who is, then, the lawyers for the class, if not Labaton? You understand Labaton was lead counsel here.
THE WITNESS: I do. And that's the interesting thing about class action procedure. Again, what I know about it is that, because of exactly that problem that you identify, there are a lot of procedural protections for the class to

Page 131

make sure that the class is treated fairly.
There are duties on the part of the class representative. The district court makes findings about the adequacy of representation. And there's a supervisory power in the court that is not present in non-class litigation.
So there are procedural protections to deal with exactly that problem, which is who is the lawyer for the class. And the answer is it's dealt with procedurally. The lawyer's client is the class representative.
THE SPECIAL MASTER: So there would be no obligation, then, of Arkansas to be -- I'm sorry. Let me rephrase it.
There would be no obligation of Labaton to inform the members of the class of these kinds of fee arrangements so that the class could make determinations as to whether or not this fee arrangement was in the class' interest?
MS. LUKEY: Objection.

Page 132

THE WITNESS: Unless 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.
THE SPECIAL MASTER: Who's representing the interests of the class, then, before the court?
MS. LUKEY: Objection.
THE WITNESS: Again, now we are outside my area of expertise again. But this is exactly why the whole process is designed in the way that it is, to require a lot of review by the court of the adequacy of the class representation to represent the interests of class. Rule 23 has these requirements of the representative, of adequacy and all that.
That's meant to take that concern into account. This is dealt with procedurally by the rules. It's not -- and this is true in a lot of context, actually, in legal ethics, there may be a responsibility someplace out there in the

Page 133

system, but that doesn't mean that it all falls on the lawyer to personally satisfy all sorts of other obligations that other actors owe. So it's dealt with by Rule 23.
THE SPECIAL MASTER: So for purposes of the Chargois relationship, the 20 percent relationship that we have called it, at the time the class is certified, Labaton has no broader responsibilities of providing information to the class than it had before the class was certified.
MS. LUKEY: Objection.
THE WITNESS: No. And here I am relying on people who know more about class action procedure than I do, but I believe this is actually completely routine, that arrangements like this exist all the time in class action procedure, and they are never disclosed to the court. They are never inquired into.
They are just allowed to be part of the fee arrangement that the class

Page 134

representative has with its counsel and it's customary to do it this way.
THE SPECIAL MASTER: So the class, then, after it's certified, is not Labaton's client.
MS. LUKEY: Objection.
THE SPECIAL MASTER: Is that right?
THE WITNESS: Yes.
THE SPECIAL MASTER: Is that your understanding?
THE WITNESS: Yes.
BY MR. SINNOTT:
Q. Professor, let me show you --
MR. SINNOTT: And before I ask, have it marked, the document that begins LBS017738, the RFQ, if you will, dated July 30, 2008.
(Wendel Exhibit 5, Joint Response by Labaton Sucharow LLP and Chargois & Herron, LLP, dated July 30, 2008, Bates Stamped LBS017738 through 17755, marked for identification.)
Q. And my question is going to reference page 13, but look at the document for

Page 135

as long as you need to, to familiarize yourself with it.
Have you seen this document before?
A. I have, yes. (Perusing.)
Q. All right. Professor, I would like you to look at page 13, and section 5.10. And just for the record, you've seen RFQs in the past and RFPs in the past, correct?
A. Yes. Although, in my own practice, we didn't deal with government entities. And so I'm not very familiar with government procurement procedures.
Q. Would it be a fair statement, even based on that limited knowledge of procedures, to say that the documents themselves typically contain a series of questions for the applicant to fill in about their firm and their background and their capacity to perform the contract? Would that be a fair statement?
A. Yes.
MS. LUKEY: Objection, just because it's outside the scope of the report and his expertise.
Q. So looking at 5.10, and indulge me

Page 136

while I read this.
"Please describe proposed billing arrangements, including contingency fees, for securities litigation. If other than contingency fees are contemplated, please state the range of hourly billing rates, by timekeeper status (paralegal, first or third-year associate, et cetera, staff attorney, shareholder or partner, of counsel, et cetera) of all attorneys and paralegals proposed for assignment to ATRS matters. State what discount, if any, to these rates the firm proposes to provide to ATRS.
"While this RFQ primarily seeks the services of one lead attorney, the involvement of other firm attorneys may be required from time to time, depending on the matter."
So do you see that?
A. Yes.
Q. And would you agree with me that there is a response of Labaton that goes on to the next page, page 14?
A. Yes.
Q. And then there's a response by

Page 137

Chargois & Herron that goes onto the next page, and then ends at the bottom of the next page, page 15?
A. Yes.
Q. So looking at those responses, where do you see a referral relationship referenced by either Labaton or Chargois & Herron?
A. It's not in this document. This is just an explanation of the fees that they may charge if engaged by Arkansas Teachers directly. This doesn't speak to what ended up being the relationship, which is the retention of Labaton. And then it kind of -- I know Christa Clark used the term "subcontractor." That's not exactly right.
THE SPECIAL MASTER: Independent contractor.
THE WITNESS: Yeah, something like that.
A. So the relationship that was eventually formed isn't really addressed by this. This is just what a direct retention of these two firms would -- would look like.
Q. All right. So would you agree with

Page 138

me that this document, at least with respect to that question, 5.10, on LBS017751, and the responses of Labaton and Chargois on the following pages, does not satisfy 1.5(e)'s requirement that the client be informed that a division of fees will be made?
MS. LUKEY: Objection.
A. Well, by itself, no. But it certainly is part of the conversation that would happen between the client and the law firms.
Suppose that they were both retained and, you know, there was a sharing -- one firm billed the client for some amount and shared it with the other, that would be discussed, but this document by itself does not spell out that relationship.
Q. Well, in what conversation did Labaton and Hopkins discuss this RFQ?
MS. LUKEY: Objection.
A. Yeah. No, this is, sorry, getting outside my area of expertise. But I understand that the RFQ merely qualified the law firm to be available to the state entities, including

Page 139

Arkansas Teachers, as counsel. It got it on a panel, basically, of lawyers, and it was not really contemplated as a retention agreement. It was just basically getting it in the system, so to speak.
So once it's in the system, there has to be a further conversation about a particular retention in a particular matter. That's what I'm kind of piecing together based on what I know about this, this process, which isn't that much.
Q. All right. But my question is, you said that this was part of the conversation.
Was it part of the conversation with Hopkins?
MS. LUKEY: Objection.
A. Well, it's part of the conversation with Arkansas Teachers. So Hopkins and Clark and Doane and others are representatives of the client. You know, organizational clients are funny. They have legal personhood, but they only act through human person agents.
And so there's knowledge imputed to the corporation, the entity here, and how does

Page 140

it get that knowledge? Through human representatives.
So this is part of what Arkansas Teachers knows. It's information that is relevant to the ultimate retention of the firm, but it's not itself a retention agreement.
Q. And you agree it does not refer to referrals or fee arrangements, correct?
MS. LUKEY: Objection.
A. Yes.
Q. And when you talk about that conversation, it's your testimony that that conversation need not be with the individual that's making the decision on whether to approve a referral arrangement?
A. Well, it ordinarily would be someone who is responsible for that sort of thing.
One could imagine, again, this is all hypothetical, that this is dealt with by somebody in the procurement office or something, and they get the firm qualified as panel counsel, and then, at some point, a representative, let's say an in-house lawyer or the managing director or someone like that,

Page 141

comes back to the law firm and says, we want to retain you.
Now, I would assume that person would then go back and look at this, and would go back and look through the files they have on this law firm, and they would learn what the organization has to know. I would assume that's part of the contracting process, but that's on the client side.
The law firm deals with the client representative and assumes that person speaks on behalf of the client and within the scope of their authority.
Q. So you're not claiming that Hopkins was ever made aware of this document by Labaton, are you?
MS. LUKEY: Objection.
A. I'm assuming that Hopkins looked at it, but I don't know one way or the other. I would assume that's just part of what he does in retaining a law firm, but I don't know.
Q. You're just making that assumption based on, once again, the position of George Hopkins in Arkansas, correct?

Page 142

MS. LUKEY: Objection.
A. Yes, and what one would normally do in a situation like this.
MR. SINNOTT: Madam Court Reporter, if I could have this document marked as an exhibit. And this is an excerpt from the deposition of George Hopkins, dated September 5, 2017, as Exhibit 6.
(Wendel Exhibit 6, Excerpt of Deposition of George Hopkins, dated September 5, 2017, marked for identification.)
Q. And, sir, looking at Exhibit 6, if you could direct your attention to page 59, and you will see that, beginning on line 5, I ask Mr. Hopkins a question, "To your knowledge, George, did anyone -- and I'm not looking for anyone who mentioned a name -- but did anyone ever tell you about a referring attorney -- Eric or Christopher tell you about an attorney having referred you -- referred them to Arkansas Teachers?"
And Hopkins responds, "No," correct?
A. Yes.

Page 143

Q. And then I ask, "And is it fair to say that it's just within the last several weeks that you became aware of a referring attorney?"
And Mr. Hopkins responds, "Yes. But can I speak to that a little bit?"
And I said, "Of course."
And he says, "In a small state like Arkansas, you've already heard some of the background that I've given that, you know, that it's -- you know, if you're not careful, you end up over there, you know, in somebody's senate office or house office, and people crowding around you, you know, asking you a bunch of questions and trying to persuade you, pressure you to do all those kinds of things."
And I believe you referenced Hopkins' concern about people trying to get contracts through him, correct?
MS. LUKEY: Objection. Just for the record, that wasn't the end of his answer.
MR. SINNOTT: No. Okay.
MS. LUKEY: It's a long answer. I understand that.

Page 144

A. I did reference this several-page explanation by Hopkins. I did mention that earlier, yes.
Q. All right. Would you agree with me that, as to the question of whether anyone told him about a referring attorney, that his answer was no?
MS. LUKEY: Objection.
A. He says that.
Q. I want to go back to something you said earlier in response to my question about -- one of my questions about 1.5(e), and I believe you said that 1.5(e) is satisfied even if the referring law firm is not identified in the request for consent, correct?
A. Yes.
Q. Let me ask you this, and excluding matters in -- where a fee is paid to -- cases in which the fee is paid to a referring attorney, passed on as an expense, can you cite any authority to support that opinion, that 1.5(e) is satisfied even if the law firm is not identified in the request for consent?
A. I don't have a case name, but the

Page 145

practice in the plaintiffs' personal injury bar, mass tort cases and things like that, is to make reference to outside counsel. They may or may not be identified. A law firm may contemplate that it's going to need to retain separate outside counsel for a matter. It may leave that open ended, because it hasn't yet found the firm that it wants to retain, but it wants to get the client's consent at the outset to the retention of outside counsel.
It's just a very common practice to say -- I've seen many, many, many engagement agreements between law firms and their clients, and they will say things like, we may, from time to time, need to retain outside counsel and, you know, we will do so for the purposes of providing specialized expertise or something like that. That's fairly common.
Q. All right. Aside from the fact of whether it's common, can you cite a case that's upheld that as being sufficient for 1.5(e) to be satisfied?
A. Well, let's put it this way. I can't think of a case in which it's held that

Page 146

it's not. So I can't recall doing research on -- and I have done this work in -- not just in this case, but advising clients in other cases -- when I have looked through the Lawyers' Manual on Professional Conduct or the ABA Annotated Model Rules or something like that, I can't recall seeing a case that said because you didn't name the other law firm, the disclosure is not sufficient.

Q. All right. But the answer to my question, I guess, is no, that you can't cite a case that says that that's sufficient?

A. I can't think of one off the top of my head, no.

Q. All right. On page 21 of your report, you discuss Massachusetts Rule of Professional Conduct 3.3.

And would you agree with me that, in comment 3 to Rule 3.3, it's forbidden -- I'm sorry, 3.3, comment 3 forbids a true statement that's intended to mislead through omission?

A. I think that's a reasonable interpretation of that comment. And, you know, I picked up on a suggestion in Professor

Page 147

Gillers' report with a citation to Bronston, which kind of stands for that proposition in the field, that the comment should be interpreted to regulate kind of literally true, but misleading statements.

Q. Well, in fact, in Bronston, that was a non-responsive statement, wasn't it?

A. Well, Bronston is funny. The court held that that was not a sufficient basis for a perjury conviction. It's sort of non-responsive, but it's sort of a cute evasion also. I love teaching this case, because the students kind of split on whether it was non-responsive or evasive or a lie. It's kind of dancing around the truth.

Q. But, ultimately, he was cleared of that charge, correct?

A. As a matter of federal perjury law, yes.

Q. And I think you were just referencing this. In his report, Professor Gillers cited two state bar opinions on the application of 3.3. And in one opinion, these were called half truths.

Page 148

Did you read those opinions?

A. I did not read those opinions. I know the law of half truths, and I certainly teach this stuff. I don't recall which ones he cited.

Q. Do you agree with this statement, "A representation stating the truth, so far as it goes, but which the maker knows or believes to be materially misleading because of its failure to state additional or qualifying matter, is a fraudulent misrepresentation"?

Do you agree with that statement?

MS. LUKEY: Objection.

A. I would never venture an opinion on that proposition in the abstract. And I'm not trying to be evasive here.

What all of these cases reveal, and I know Judge Rosen's case, the DeZarn case, I have taught that case, too, what all of these cases about fraud and Rule 3.3 and perjury and all of this reveal is you have to be extremely attentive to the context.

And what the question was and what the answer was, and what was known, I would

Page 149

never venture an opinion about something at that level of generality.

Q. So you are not prepared to agree or disagree with that statement?

A. Not at that level of generality, no.

Q. Would you agree that a statement that is a fraudulent misrepresentation through omission, in Massachusetts, also violates Rule 3.3(a)?

MS. LUKEY: Objection.

A. Well, Rule 3.3 is only about duties to the court. Older case law used to talk, and older rules, I think, talk about fraud on the tribunal. And the rules have moved away from that phraseology and they now talk about false statements of law or fact.

So the rule on statements to the tribunal is 3.3(a), and that's the language that I want to use.

I don't want to talk about fraud. Now, there is a rule on fraud on the tribunal, and that encompasses things like witness tampering or obstruction of justice. So there is an incorporation of that, but the false

Page 150

statements rule doesn't really use the word "fraud."
So I want to talk in terms of false statement of law or fact.
Q. All right. Would you agree that, with respect to a tribunal, that a fraudulent misrepresentation, or however you want to characterize it, is also a violation of 3.3(a)?
MS. LUKEY: Objection.
A. So Rule 3.3(a) says a lawyer may not make a false statement of law or fact. That's what 3.3 says.
Q. As you may know, but I want you to assume, the notice of pendency to the class informed recipients that, in September, the lawyer's fee petitions would be placed on the website for the State Street FX class action.
Assume that this happened, and the petition listed the Lodestar of numerous firms, including customer class counsel.
My question is, would it be rational for a class member to conclude, from the fee petition, that only lawyers listed on it would receive a payment from the class recovery?

Page 151

MS. LUKEY: Objection.
A. I'm sorry, but I have no opinion at all about what a member of the class might take that to mean. I honestly have no idea.
Q. All right. I want you to assume, hypothetically, once again, assume hypothetically that there was no e-mail from Christa Clark and no reference to other counsel in the retention agreement.
Is it still your opinion that Labaton would have complied, however imperfectly, with Rule 1.5(e)?
MS. LUKEY: Objection.
A. So if the only facts you're changing are no Christa Clark e-mail and no reference in the engagement agreement, we still have the back and forth with Hopkins. Is that part of the facts I can work with?
Q. Sure. Tell me, would that be sufficient?
A. In that case, it's sufficient, yes.
Q. So you would have to have that back and forth with Hopkins?
A. You would have to have some

Page 152

informing Hopkins of the possibility of a fee sharing, yes, or someone like Hopkins in his position.
Q. I want you to assume, hypothetically, that the court were to conclude that when the Chargois arrangement was entered into, Labaton lawyers never viewed it as a division of fee agreement within the meaning of the applicable division of fee rules in each of the jurisdictions in which Labaton represented Arkansas, and that they never intended to inform Arkansas about the Chargois arrangement.
On those assumptions, would Labaton have violated 1.5(e)?
MS. LUKEY: Objection. Again, I don't think it's proper to be inquiring about other jurisdictions. And I object to the form as well, and the assumptions.
A. So let me make sure I have the facts right, and taking Joan's restriction to Massachusetts, because that is what I'm testifying about, are you asking whether the communications back and forth with Hopkins would have been sufficient if -- I'm sorry.

Page 153

This is where I'm not quite sure I understand your question.
Are you just varying the subjective beliefs of the Labaton lawyers or the objective facts of this transaction? And I'm not trying to be academic and difficult. I honestly don't quite know what the question is.
Q. No. I will read it again, because it's a long question, but I think those points are clear.
Assume hypothetically that the court were to conclude that, when the Chargois arrangement was entered, Labaton lawyers never viewed it as a division of fee agreement within the meaning of the applicable division of fee rules in each of the jurisdictions in which Labaton represented Arkansas, first off. And that they never intended to inform Arkansas about the Chargois arrangement.
Assuming those two hypothetical factors, would Labaton have violated 1.5(e)?
MS. LUKEY: Objection. Again, I must object to the reference to other jurisdictions. That is not within the

Page 154

purview of this investigation.
MR. SINNOTT: Thank you.
A. Okay. I know you say that's clear, but I'm having a hard time.
So on the assumption that Labaton believed that it did not have an obligation to disclose this to the client because it didn't fall within Rule 1.5(e), the reason I'm making that assumption is that you said Labaton did not believe it to be a fee division agreement, so if they didn't believe it to be a fee division agreement, they must think it's something else.
So if they think it's something else, it must be something like an outside contractor that provides, I don't know, e-discovery service or something like that, let's just say.
So if they thought it was something like that, that was not required to be disclosed to the client under Rule 1.5(e), then they didn't disclose it to the client under Rule 1.5(e), they wouldn't have violated the rule.

Page 155

Now, I'm not basing that on their subjective belief that it doesn't violate the rule. I'm just saying that they presumably believed that because it was the sort of thing that wouldn't have to be disclosed.
Now, if you are asking me if they just made a mistake, maybe they might have, they might not have, but the record doesn't show that they did.
If you are asking if they are mistaken in failing to provide some information, then, yeah, that might happen, but that's not what happened here.
Q. Right. But I'm asking you to assume that it wasn't a mistake, that Labaton never viewed this as a division of fee agreement, and that they never intended to inform Arkansas about the arrangement. They never intended to inform Arkansas of the arrangement, hypothetical.
MS. LUKEY: Objection.
Q. On those assumptions, would there have been a violation of 1.5(e)?
A. Could I take a look at 1.5(e) quickly?

Page 156

Q. Absolutely.
THE SPECIAL MASTER: As it existed in February 2011.
A. (Perusing.) Okay. So I take it what you're getting at is the lawyer's mental state, and I'm kind of a hawk on that when I teach this stuff.
And there's a very interesting, kind of undiscussed issue in the Rules of Professional Conduct where there's no express mens rea term. Some rules talk about a lawyer shall not knowingly, a lawyer reasonably should know, or whatever, but there are rules where the mens rea term is silent. And there's a question whether that's strict liability rule or something else.
And my colleague, Nancy Moore, has a really, really interesting article on that. And she says, look, it's not necessarily the case that it's a strict liability rule. You have to use techniques of statutory interpretation to figure out what the mens rea should be.

Page 157

So, here, I don't know. I honestly haven't thought about it, and I would have to go back and look hard at this to figure out whether this rule means to be a strict liability rule. Meaning if the fee arrangement has to be disclosed and they didn't disclose it, then they are subject to discipline. That's a strict liability rule.
If, on the other hand, the rule should be if they should have known that it was required to be disclosed and they didn't disclose it, that's a negligence rule, and it could be a knowledge rule, too.
I honestly don't know what mens rea term should be filled in there. I haven't thought about it.
THE SPECIAL MASTER: So picking up on Bill's point, assuming that when Labaton did this retention agreement in February of 2011 with Arkansas, 1.5(e) was never even in its contemplation, they never considered it, and it was not attempting to comply with Rule 1.5(e) or with Saggese, it was simply a retention

Page 158

agreement, would your answer still be the same, that there was no obligation to inform the client of the Chargois relationship and the nature of the Chargois relationship?
MS. LUKEY: Objection.
THE WITNESS: What I would say to that is the subjective motivations of the lawyer at the time are irrelevant.
So I look at engagement agreements all the time. And there are things in there that I know the law firm's general counsel has put in there because their insurer banged on them about it, or they read a case or something like that, and I bet you nine out of ten partners in that law firm would have no idea why that provision is in the agreement. It's in there because it has to be, and the law firm is protecting itself, and the lawyers don't subjectively have any view, one way or the other, about what that provision is doing in there.
These are objective tests in the

Page 159

sense that the client is entitled to a certain amount of disclosure and a certain amount of information. The client either got it or didn't.
And the standard is not what the lawyers meant a particular communication to be. It is, is there information exchanged back and forth from a kind of objective point of view.
I don't mean to impugn lawyers, but the law of lawyering can sometimes be technical, and I don't necessarily think that every engagement partner necessarily understands what every single line of an engagement agreement is meant to do from the point of view of loss prevention or liability or compliance with the rules.
THE SPECIAL MASTER: So it's an objective test?
THE WITNESS: Yes.
THE SPECIAL MASTER: Did the lawyers comply with 1.5(e) or didn't they?
THE WITNESS: That's right.
THE SPECIAL MASTER: And their

Page 160

intent to comply at the time is not relevant to the inquiry.
THE WITNESS: Correct.
THE SPECIAL MASTER: So if, and I will qualify this in just a moment, if Labaton, in fact, had other agreements, retention agreements with Arkansas in other cases in which those jurisdictions did require something more than was required at the time in the Massachusetts rule, and those did not comply with those jurisdictions, and circumstantially that might indicate that Labaton was not looking to comply with 1.5(e) at all, that it was oblivious to it or simply didn't -- wasn't concerned with compliance, that would not change your answer because it's an objective test. They either complied in Massachusetts or they didn't.
MS. LUKEY: Objection.
THE WITNESS: That's correct.
THE SPECIAL MASTER: Okay.
BY MR. SINNOTT:
Q. Would your analysis be the same for

Page 161

7.2(b)?
MS. LUKEY: Sorry. What analysis?
MR. SINNOTT: His reluctance to make that finding.
MS. LUKEY: I'm sorry. I don't understand the question, Bill. Would you state the whole thing?
THE SPECIAL MASTER: Yes. You have to state the whole thing for the witness with the preface that you want.
MR. SINNOTT: I will come back to that in a moment.
BY MR. SINNOTT:
Q. I want you to assume that Attorney Smith tells Attorney Jones, I'm going to give you 10 percent of any fee I get from a client you recommend. Nothing in writing. Client is never told -- no client is ever told about the arrangement.
Jones then recommends that the client -- that clients retain Smith. Smith gives Jones 10 percent of all the fees he gets from those matters.
Has Smith violated 7.2(b)?

Page 162

MS. LUKEY: Objection.
A. No.
Q. When Arkansas retained Labaton in the State Street matter, the retainer agreement anticipated that it would be a class action with Arkansas as the named plaintiff, correct?
A. (Perusing.)
Q. I believe you answered this one when Judge Rosen asked earlier, but maybe it's slightly different.
A. Well, I get tangled up sometimes in where I have gone with these hypotheticals. I don't remember whether I said that it assumed that it would be class counsel. The letter says what it says.
THE SPECIAL MASTER: I think I used the word "contemplated."
THE WITNESS: Okay. Contemplated, I can live with.
Q. Okay. What do you understand to be the obligations of a class representative to a putative class?
MS. LUKEY: Objection.
A. I don't know.

Page 163

Q. You don't know. Okay.
What do you understand the obligations of a class representative to a certified settlement class?
MS. LUKEY: Objection.
A. I'm not a civil procedure expert. I don't know.
Q. Okay.
THE SPECIAL MASTER: Could I pick up on that?
And if you don't know this, then, just say it. In terms of the procedural posture of this case, do you understand that there were three cases that were consolidated for pre-trial purposes?
THE WITNESS: Yes.
THE SPECIAL MASTER: Do you understand that two of those cases involved claims of violation of ERISA -- of provisions of the ERISA statute?
THE WITNESS: Yes.
THE SPECIAL MASTER: In one of those cases, you had an institutional class representative called Andover.

Page 164

Do you understand that?
THE WITNESS: I did not follow the details of the ERISA litigation, so I don't know. I'm willing to assume that that's the case.
THE SPECIAL MASTER: And in the other, what we will call the ERISA case, there were four individuals who were members of -- I will use a word that's going to cause you to pop up here and say it's not a word, but ERISA-fied plans.
Do you know what I mean?
MS. LUKEY: Objection.
MR. SINNOTT: It's a good word.
THE WITNESS: I know nothing about ERISA. I'm willing to assume that there is such a thing as ERISA-fied plans.
THE SPECIAL MASTER: Plans covered by ERISA, and these were four individuals.
THE WITNESS: Yes.
THE SPECIAL MASTER: These three cases were all consolidated for pre-trial purposes.
THE WITNESS: Yes.

Page 165

THE SPECIAL MASTER: Okay. The class was then certified at a preliminary hearing after settlement was reached.
Do you understand that?
THE WITNESS: Okay. Yes.
THE SPECIAL MASTER: And as part of that certified class, there were members of the class that included the named class representatives in the other two classes, Andover and these four individuals.
MS. LUKEY: You mean the other two cases?
THE SPECIAL MASTER: I'm sorry. Yes, the other two cases.
Do you understand that?
THE WITNESS: I'm willing to accept it. I don't have that at my fingertips from having read the background materials, but I'm willing to agree with that.
THE SPECIAL MASTER: Okay. And that, in fact, the application for preliminary approval was triple captioned with these three cases.
THE WITNESS: Okay.

Page 166

THE SPECIAL MASTER: Do you know that?
THE WITNESS: I'm willing to accept it.
THE SPECIAL MASTER: Is it your testimony, then, that -- one other fact. Sorry.
Labaton was appointed lead counsel for the certified class.
THE WITNESS: Which of the three certified classes?
THE SPECIAL MASTER: There were not three certified classes. There was just one settlement class certified.
THE WITNESS: Okay.
THE SPECIAL MASTER: That included the named representatives of the other two classes, as well as all the members --
THE WITNESS: Okay.
THE SPECIAL MASTER: -- of those what we call the ERISA plans.
THE WITNESS: Got it.
THE SPECIAL MASTER: Okay. And now you can assume that Labaton was appointed

Page 167

lead counsel of that settlement class. If you want, I can read you the definition of the class.
THE WITNESS: I'm fine with that.
THE SPECIAL MASTER: Okay. Is it your testimony that Labaton owed no duty of disclosure, first, to the class representatives of those two ERISA classes, to disclose the Chargois agreement to them?
MS. LUKEY: Objection.
MR. HEIMANN: Objection.
MS. LUKEY: This is outside his area.
THE SPECIAL MASTER: I want to understand what he knows.
THE WITNESS: 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, and I would say, hey, Zack, I have a question for you. I have no idea.
One thing that I've learned from

Page 168

teaching since 1999 is I stay within the lines. I know what I know, and what I don't know, I ask for help.
I have no idea, and I wouldn't venture an opinion on that if someone asked me.
THE SPECIAL MASTER: Okay. Would your answer, then, be the same as to whether or not, first, the class, as a whole, was a client of Labaton?
MS. LUKEY: Objection.
THE SPECIAL MASTER: The certified class.
MS. LUKEY: Objection.
THE WITNESS: So I don't want to reopen stuff we talked about before, but I do think that it's important to be careful about what is owed and who the client is.
The client is who the client is. What the lawyer's duties are may vary by underlying substantive law that I am not expressing an opinion about.
So to the extent any of your questions are asking for opinions about

Page 169

what Rule 23 or other aspects of class procedure require, I don't know. I am giving an opinion about what the Rules of Professional Conduct require as between Labaton and Arkansas Teachers.
THE SPECIAL MASTER: But not Arkansas Teachers in its role as class representative and its obligations to the class?
THE WITNESS: That's right.
THE SPECIAL MASTER: Okay. Would your answer, then, be the same as to whether or not Labaton, as class lead counsel, owed any duty of disclosure under 1.5(e) to the ERISA class representatives?
MS. LUKEY: Objection.
THE SPECIAL MASTER: I'm sorry. Let me rephrase it.
To the named ERISA class representatives in the other two cases.
MS. LUKEY: Objection.
THE WITNESS: Well, not only do they owe no duty, but those parties are separately represented. And so Labaton

Page 170

had better not be talking to them, actually.
THE SPECIAL MASTER: Would Labaton owe a duty of disclosure to the lawyers for those class representatives in the other two cases --
MS. LUKEY: Objection.
THE SPECIAL MASTER: -- such that the lawyers could disclose to the ERISA class representatives in those other two cases?
MS. LUKEY: Objection.
THE WITNESS: No.
THE SPECIAL MASTER: Would Labaton owe a duty of full disclosure, and here I'm changing a little bit, and by full disclosure I'm talking about the entire scope of the relationship to its co-counsel for what we have called the customer class, and here I'm specifically referring to the Lieff Cabraser firm and to the Thornton law firm.
MS. LUKEY: Objection.
THE WITNESS: No.

Page 171

THE SPECIAL MASTER: So if the Lieff Cabraser firm and the Thornton firm undertook to share the Chargois fee in equal parts, would Labaton owe a duty of disclosure to those two firms to disclose the full nature of the relationship in the sense of Chargois not performing any work but receiving, as part of an earlier agreement, the 20 percent share?
MS. LUKEY: Objection.
THE WITNESS: No. And keep in mind that the rule here protects the client, and it's about the communication with the client, not co-counsel.
Co-counsel have communications back and forth. They make whatever agreements they do, but those aren't governed by this rule, which is about the attorney's relationship with the attorney's client.
THE SPECIAL MASTER: So there's nothing -- you're only opining, I gather, on the Massachusetts Rules of Professional Responsibility, right?
THE WITNESS: That's correct.

Page 172

THE SPECIAL MASTER: Okay. So there is nothing in the Massachusetts Rules of Professional Responsibility that would require Labaton to fully disclose the nature of its relationship with Chargois and specifically the fact that Chargois was doing no work on this case to Lieff and Thornton, despite the fact that they had agreed, or they were agreeing, to share in the fee?
MS. LUKEY: Objection.
THE WITNESS: That's correct.
THE SPECIAL MASTER: Is it within your area of expertise to opine on legal obligations between lawyers outside the Rules of Professional Conduct?
MS. LUKEY: Objection. Do you mean like contract obligations?
THE SPECIAL MASTER: Or other legal obligations.
We are trying to conduct a deposition here. You are not on mute, Linda.
MR. SINNOTT: Linda, could you put

Page 173

it on mute, please?
MS. HYLENSKI: It's not me.
(Discussion off the record.)
THE WITNESS: No, in answer to your question. I would not consider myself an expert on contract law or, for example, there are people who write about intra firm duties that, you know, associates owe the firm or whatever. I don't consider myself an expert on that.
THE SPECIAL MASTER: So you're not here to testify upon the obligations that Labaton, as lead counsel, would have had to its co-counsel and what we've referred to as the customer class, or to the lawyers in the ERISA, representing the ERISA members in the other two cases?
THE WITNESS: That's right.
BY MR. SINNOTT:
Q. Let me ask some similar sounding questions, but unrelated to duties of communication to disclosure or contract law.
Are conflicts of interest within your area of expertise?

Page 174

A. Yes.
Q. All right. Let's assume that Judge Wolf, had he been informed of the Chargois arrangement, could have disallowed the payment to Chargois and ordered that the money, instead, be awarded to the class.
Assume that he had that authority.
What interest, if any, did the members of the settlement class have in preferring that Chargois & Herron get the money instead?
MS. LUKEY: Objection.
A. I don't see that as a conflict of interest issue. It's a question about whether a lawyer could reasonably conclude, on behalf of a client, that there was something potentially beneficial to the representation of affected institutions in having a network of referral relationships with local law firms.
That's not a conflict. That's really a question of is it worth it to have these referral relationships, and that's just a question of the lawyer's judgment in entering into these referral arrangements.
It doesn't -- it doesn't really hang

Page 175

on the conflict of interest rules in any way.
Q. Let me ask another question. Assume further that the customer class counsel represented the class before Judge Wolf after certification of the settlement class. In other words, I want you to assume, as a matter of law, that the class was the client of Labaton, Lieff and Thornton.
On that assumption, did these firms have any responsibilities to try to secure the Chargois payment for the benefit of their client, the class?
MR. HEIMANN: Objection.
Q. Rather than for Chargois?
MS. LUKEY: Objection.
A. Are you asking whether they should have tried to get out of a contractual obligation that they had entered into with the Chargois & Herron firm?
Q. Well, I'm asking you whether they had a responsibility to do that.
MS. LUKEY: Objection.
A. Boy, I would never want to say that a law firm has an obligation to try to get out

Page 176

of a contract it had. It might choose to do so, but that's certainly not an obligation that the firm has.
Q. So is it your testimony that agreements between lawyers supersede responsibilities to a class?
MS. LUKEY: Objection.
Q. Or to a client?
MS. LUKEY: Objection.
A. No. My testimony is a deal is a deal. I don't want law firms believing they're duty bound to try to break contracts. That's a really terrible thing to think that law firms ought to do.
I'm not saying it's a super session issue. It's just that they have this deal and it's a deal. They stand by it.
It seems kind of perverse to say, oh, the rules of legal ethics require me to try to break contracts. I would never conclude that.
THE SPECIAL MASTER: Could I interject a question here? You may have answered this, but I want to give you

Page 177

another opportunity, okay?
Assume that the class members, after certification of the class, were Labaton's clients. I want you to assume that, okay?
Would Labaton have had an obligation, then, to inform the class, as its clients, of the Chargois relationship?
MS. LUKEY: Objection.
MR. HEIMANN: Objection.
THE WITNESS: So this is something that comes a lot when you teach the rule on organizational relationships and client's Rule 1.13. And, you know, for a while there, there was an idea that you may have an obligation to a group or to an agglomeration of individuals somehow. And it's still sometimes the case that, with small, informal organizations, a lawyer may have an obligation to the group. That's an extremely scary and dangerous situation to be in and wise lawyers avoid it if at all possible.
But with respect to just about any other kind of organization you can

Page 178

imagine, there is a law constituting that organization and setting out lines of authority. And the obligation under Rule 1.13(a) is you follow the lines of authority.

And I teach this from day one when we do corporate representation. You know, don't start trying to take into account the interests of all the members of some organization. Go by chain of command. And that's to prevent lawyers from getting stuck between, you know, conflicting obligations.

So now is where I have to go next door to my colleague and ask what class action procedure establishes as the chain of command. I would find out what that requires, and I would say to the law firm to go through chain of command.

Don't see yourself as having an obligation to something called the group or the class. That's really dangerous.

So -- and, you know, again, how that procedure works, I don't know for sure.

Page 179

I'm more comfortable thinking that through in the corporate context, because I have read those cases and taught them a lot, but the basic principle is the same. There's a line of authority established. Work through it.

THE SPECIAL MASTER: You're making my question a little more complex than it needs to be.

I'm asking you to assume that the class members were Labaton's clients. We can go through the record. There are portions -- parts in the record in which both Labaton lawyers and other lawyers make statements that they recognize the ERISA people as their clients, maybe not solely their clients, maybe clients of others as well, but as their clients.

But what I want you to assume, just for purposes of this question, is that once the class was certified, the class was -- the class members were Labaton's clients.

MS. LUKEY: Objection.

Page 180

THE WITNESS: I don't think I'm trying to overcomplicate this. It's like saying, imagine that Citibank shareholders are your clients.

You know, in a manner of speaking, that may be true, and I think lawyers who represent corporate clients sometimes think all these shareholders are our clients. And that may be true as a manner of speaking, but in terms of operationalizing duties that are owed, you have to look at who is empowered to speak and act on behalf of this group, Citibank shareholders or the class.

I'm really trying to simplify, not complicate this, actually. Because if you have duties to the class in this general sense, then you could conceivably have duties to all kinds of different people or entities, and they might conflict. And the same is true of Citibank shareholders, which is why there are procedures for figuring out who's authorized to act on behalf of that group.

Page 181

If a law firm ever were in a situation where it laterally had duties to a hundred different people, I would say withdraw immediately. It's dangerous.

But that's why it's only a manner of speaking to say the duty is to the class. That's just kind of a way of thinking about who ultimately has the legal entitlements that the law firm is representing.

But that's only a manner of speaking. It's not the way that duties actually ever get worked out under the Rules of Professional Conduct.

THE SPECIAL MASTER: Assume that Labaton viewed, in this case, the ERISA class members as their clients. Assume that.

Did they, then, have an obligation to disclose the Chargois relationship to the ERISA class members? Or at least to their lawyers so that their lawyers could then inform them?

MS. LUKEY: Objection.

Page 182

THE WITNESS: So, again, I think this has got to be only understood as a manner of speaking. And I don't think a literal lawyer/client relationship gets established by the certification of that settlement class to include the ERISA class members such that all sorts of other obligations under the Rules of Professional Conduct attach to that class.

Now, if someone, who is an expert in class action law can tell me, oh, yes, they become actually literally clients of the law firm for conflicts purposes, for confidentiality, all that kind of stuff, then I think class action procedure would have to be remade in a lot of ways.

I think it would be very, very complicated to work out how the Rules of Professional Conduct intersect with that.

So if that were the case, then I think a whole lot of things would be different. I really just don't know how to think about it in that case.

THE SPECIAL MASTER: So if there's

Page 183

no obligation of Labaton to the class as the client or to the ERISA members of the class and their lawyers to inform them, and the ERISA members of the class interests diverge from the class representative, Arkansas, how does the class get protected?

MS. LUKEY: Objection.

THE WITNESS: Well, that's an issue that I only know a little bit about from having taught cases involving classes with subclasses and things like that. And that starts to get very complicated and law firms find themselves in tricky situations sometimes.

The answer may be that the court supervision is adequate to deal with that. The answer may be that you might need to appoint separate counsel for subclasses. Again, this is more of a class action procedure issue than I'm comfortable talking about.

I do know enough that, when I get into this area, I slow down and talk to

Page 184

people who know something about this and collaborate. I would talk to people who know something more about class action procedure than I do to answer that question.

THE SPECIAL MASTER: So you're simply not able to answer the question.

THE WITNESS: That's correct.

THE SPECIAL MASTER: It's not within your area of expertise.

THE WITNESS: Well, you know, look, my area of expertise is what it is, but I also believe in collaborating with people who know more than I do about other things, and I don't want to go off, you know, half cocked on a class procedure when I wouldn't do it if I were advising a client.

You know, I would associate with somebody who's an expert in this area.

THE SPECIAL MASTER: I'm just trying to understand what your view is on who protects class members where the specific class members may have divergent interests

Page 185

from the class representative and from lead counsel, and those class members are not given information about something that they might object to. Who protects them?

MS. LUKEY: Objection.

THE WITNESS: So my view about that is it is probably dealt with in all of the litigation that goes into and all of the hearings and all of the submissions that go into selecting class counsel and identifying class representatives for representativeness and all of that.

I am confident that there is an answer in Rule 23 someplace. I just don't know what it is.

THE SPECIAL MASTER: What if the court is told, we can represent everybody in this class?

MS. LUKEY: Objection.

THE WITNESS: Well, I'm pretty sure that's not how it works. I assume there's more than just a kind of bare assertion.

THE SPECIAL MASTER: Assume there is an assertion at several points that these

Page 186

are our clients, we can represent everybody.
MS. LUKEY: Objection.
THE WITNESS: My point is there's more than an assertion. There's a record. There's a lot of submission. And I assume that the court has enough to go on to make that decision.
BY MR. SINNOTT:
Q. Professor, on page 10 of your report, footnote 8, you write that, "Although it became apparent that Chargois' total contribution would be limited to the initial assistance in introducing Labaton to ARTRS, Chargois maintained that he was entitled to 20 percent of any fee earned by Labaton," and there's some Bates and transcript references.
The footnote then goes on to say, "Chargois intimated that he would seek legal redress to vindicate his perceived contractual rights if necessary." And there are more cites.
And then it says, "Labaton was concerned by the possibility of litigation in

Page 187

Texas state court."
Did I accurately read that outside of the references --
A. Yes.
Q. -- the citations?
Did Labaton have a conflict of interest between the interest of the certified class on the one hand and its own interest in wishing to avoid a lawsuit in Texas state court by Chargois?
MS. LUKEY: Objection.
A. Well, I don't want to talk about duties to a certified class. I'm not accepting that formulation of what their obligations are. They have duties to Labaton as their client.
On that assumption, however, there's no conflict between the duties they owe to Labaton and the concern for --
Q. Do you mean to Arkansas?
A. Sorry, sorry, sorry. Arkansas, yes.
There is no conflict between duties they owe to Arkansas Teachers and their own interests because they are not trying to protect a purely personal interest. They are

Page 188

acting pursuant to a contractual obligation that they have to Chargois.
They are simply saying the contract requires this. We owe this obligation under the contract.
Q. So you're saying there is no conflict with respect to Arkansas, and you can't give an opinion as to whether there was a conflict with the certified class?
MS. LUKEY: Objection.
A. That's right.
MS. LUKEY: Slow down.
Q. Can a finding that a class counsel -- strike that.
Can a finding that class counsel labored under a conflict between the interest of the class and their own interest support a financial sanction in the exercise of a district judge's discretion?
MS. LUKEY: Objection.
A. The sanctions that are available for conflict of interest are generally limited to whatever is necessary to rectify the impact of that conflict on the trial process.

Page 189

So there actually are tons of inherent power cases involving the trial court's authority to disqualify counsel for a conflict of interest.
It's well established that that is about ensuring the integrity of the trial process. It's not really a disciplinary process. It's not really about enforcing duties that the law firm has to a client. It's really just about maintaining the integrity of the process.
So the district court would not have authority in this case to order financial penalties for a conflict of interest.
Q. Do you agree with the statement "A competent lawyer representing a class representative in a putative or certified class action should advise the client on his obligations, including his fiduciary obligations to the putative or settlement class"?
MS. LUKEY: Objection.
A. At that level of generality, that's just kind of a truism. A lawyer has an

Page 190

obligation to effectively represent the client. And if the client seeks advice on some matter, the lawyer should provide effective advice.
If the lawyer reasonably should know that the client needs protection, the lawyer should provide it, but that's just saying that a lawyer has an obligation of reasonable care. And so, yes, I agree with that.
Q. All right. And I believe this was part of what you just stated on your own, but you agree that, in that situation, the lawyer must protect the client against claims that the client violated his fiduciary or other duties to the class?
MS. LUKEY: Objection.
A. No, that's not what I said.
Q. All right. Could you clarify?
A. What I said is that the lawyer has an obligation to provide reasonably competent assistance.
Now, as a subset of that, there may be a case in which the lawyer knows that the client is about to incur liability, let's just say to some third party or something, and the

Page 191

client doesn't realize that the client is going to incur liability, and this activity is within the scope of representation, there may be, although this is a little bit tricky, there may be situations in which a lawyer has to provide advice to prevent the client from incurring legal liability.
But, again, I don't want to do this at a very high level of generality. It's kind of meaningless.
Q. But I believe you used the expression previously, and I didn't hear it in your clarification that the lawyer must protect the client, correct?
MS. LUKEY: Objection.
A. The reason you didn't hear it in my clarification is because I think, stated at that high level of abstraction, it's not really a meaningful principle.
It's -- yeah, it's true in the sense that, you know, a lawyer has got to be a good lawyer, but what's interesting is what does that actually mean? What specific duties does that entail? And that's going to depend on the

Page 192

facts.
Q. So under the facts, assuming that the facts were that Mr. Hopkins might be considered to have a violated his fiduciary or other duties to Arkansas, is it your testimony that that's too abstract to opine on whether the law firm advising Hopkins had a duty to advise him as to that risk?
MS. LUKEY: Objection.
A. Yes, it is too abstract. You would need to specify in what respect is he allegedly violating his duties, to whom, why, what does the law firm know about this, what should the law firm know about this, is there a duty of inquiry, is there a duty of taking responsibility for this aspect of Hopkins' duties to his employer. Those are all things that would have to be specified before I could say anything meaningful about that.
THE SPECIAL MASTER: Could I ask you, you referred earlier in our colloquy to the lawyer's obligation of explanation in procuring a client's consent. And I think you said that it was necessary to

Page 193

explain to the client or to make the client aware sufficiently to permit the client to make informed decisions regarding the representation; is that right?
MS. LUKEY: Objection.
THE WITNESS: I want to be very careful here, because we went off on a whole bunch of tangents about informed consent.
So if we're talking about a decision that is governed by the informed consent requirement, so let's just take an example like conflicts of interest, which clearly are governed by the requirement of informed consent, then the burden is on the lawyer to ensure that the client has adequate knowledge of the risks, benefits and alternatives, if we are in an informed consent context.
THE SPECIAL MASTER: Okay. And is it your testimony that 1.5(e) is not an informed consent context?
THE WITNESS: That is correct.

Page 194

THE SPECIAL MASTER: So under 1.5(e), there is no obligation to explain a matter to the client, Arkansas, to the extent reasonably necessary to permit Arkansas to make informed decisions regarding representation; is that right?
MS. LUKEY: Objection.
THE WITNESS: So I'm going to fall back on the language of Rule 1.5(e), which says the client has to consent to the joint participation.
So that really could be just a matter of the client knows that there's a joint participation. It's all the rule requires. It's considerably less than informed consent.
THE SPECIAL MASTER: You are familiar with Rule 1.4?
THE WITNESS: Sure.
MS. LUKEY: Your Honor, if I may, respectfully --
THE SPECIAL MASTER: Massachusetts Rule 1.4.
MS. LUKEY: It appeared that the

Page 195

questions were being provided by Professor Gillers, and, for the record, we object to the use of, presumably, an independent expert for that purpose.
THE WITNESS: Did you ask if I'm familiar with Massachusetts Rule 1.4?
THE SPECIAL MASTER: Yes.
THE WITNESS: Yes.
THE SPECIAL MASTER: Okay. So is it your testimony, then, that Massachusetts Rule 1.4(b), which requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, is it your testimony that that does not apply to Rule 1.5(e)?
THE WITNESS: No. It does apply to the lawyer/client relationship generally, but it doesn't get you all the way to the level of informed consent.
So Rule 1.4 is a tailored contextual rule. It says reasonable, as reasonably necessary. That may vary quite a lot, depending on what the client already

Page 196

knows, the client's level of sophistication, the client's preferences regarding involvement in the decision making.
So one of the things that I teach when I teach the communication rule is one of the benefits clients get from hiring lawyers is they don't have to be involved in all these decisions. They can offload that to the lawyer and say, here, you deal with it. That's your problem.
And that's reasonable. So reasonable communication has to be understood in that context.
And so reasonable communication here means just that, reasonable under the circumstances. It doesn't shift the burden. It just means that the lawyer has to provide whatever communication is reasonable under the circumstances.
THE SPECIAL MASTER: So I want to understand. Is Rule 1.4(b) read into Rule 1.5(e)?
THE WITNESS: I wouldn't say --

Page 197

MS. LUKEY: Objection.
THE WITNESS: I wouldn't say it's read into. I would say they both state duties that apply in connection with forming a lawyer/client relationship and negotiating a fee agreement.
THE SPECIAL MASTER: So, in this particular retention agreement that we are talking about between Labaton and Arkansas, does 1.4(b) apply?
THE WITNESS: Yes.
THE SPECIAL MASTER: Okay. I take it from your previous answers, and now this answer, that you believe that Labaton sufficiently explained the Chargois relationship to the extent it was reasonably necessary to permit Arkansas to make informed decisions regarding the representation?
THE WITNESS: Yes. Although I think you put the word "informed" in there.
THE SPECIAL MASTER: That's because it's in the rule.
THE WITNESS: So to make fully

Page 198

informed decisions. I just want to make sure that we don't --
THE SPECIAL MASTER: It's in the rule.
MS. LUKEY: It's in 1.4.
THE SPECIAL MASTER: 1.4(b).
MS. LUKEY: Not in 1.5(e).
THE SPECIAL MASTER: Correct.
THE WITNESS: Right. And the question you just asked me, the answer is yes. I just want to make sure we are clear that we are not up to the informed consent level, which is a different animal.
THE SPECIAL MASTER: I'm not sure, with all that back and forth, we got the clear answer. So let me restate the question and the answer.
The question was, you believe that the information that Arkansas had at the time that it signed the retention agreement, that Labaton had sufficiently explained the matter to the extent reasonably necessary to permit Arkansas to

Page 199

make informed decisions regarding the representation.
THE WITNESS: Yes.
THE SPECIAL MASTER: Okay. Now, I want to go back to my earlier question about the class as clients.
I want you to assume that the class was a client of Labaton. I want you to assume that. Did Labaton satisfy its obligation to the class to explain the Chargois relationship to the extent reasonably necessary to permit the client, the class members, to make informed decisions regarding the representation?
MS. LUKEY: Objection.
MR. HEIMANN: Objection as well.
THE WITNESS: Okay. My answer is going to be based on the assumption that there is procedure and there's chain of command. And that Arkansas Teachers is the class representative.
If that turns out not to be right as a matter of class action law, you can disregard this opinion but on the

Page 200

assumption that that is the procedure for communicating with the class, then my answer is yes.
THE SPECIAL MASTER: That Arkansas had sufficient information, as class representation, to be informed of the matter to the extent reasonably necessary to permit the client, the class, to make informed decisions regarding the representation in this case, Labaton's representation as lead counsel of the class?
MS. LUKEY: Objection.
MR. HEIMANN: Objection.
THE WITNESS: Yes.
THE SPECIAL MASTER: Okay. Again, I want you to assume that the class and its members, including the ERISA plans and the ERISA individuals as well as all other members of the plans were clients.
MR. HEIMANN: Your Honor, can we have a continuing objection to any question that includes the notion that the class members were clients of these law

Page 201

firms?
THE SPECIAL MASTER: Sure.
MR. HEIMANN: Thank you.
MS. LUKEY: I may assert it, anyway, but fine.
MR. KELLY: Same for us as well, for Thornton.
MS. LUKEY: Your Honor, just respectfully, a reminder, with the time constraints, that the next witness is here, Professor Joy. He has e-mailed that he is sitting outside.
THE SPECIAL MASTER: We are at 18 minutes to one.
MS. LUKEY: Right.
THE SPECIAL MASTER: When the class was certified under 1.4(a), did Labaton have an obligation to promptly inform the client, by this I am talking about the class representatives here or including the ERISA -- including the ERISA members of the class, of the circumstance of the Chargois relationship?
MS. LUKEY: Objection.

Page 202

THE SPECIAL MASTER: Under 1.4(a).
MS. LUKEY: Objection.
THE WITNESS: I'm going to answer I don't know, because your question depends on assumptions about things that I just don't know whether they even happen. So I'm just going to say I don't know.
THE SPECIAL MASTER: Okay.
BY MR. SINNOTT:
Q. And let me just follow up.
You agreed with Judge Rosen that Labaton reasonably explained its relationship with Damon Chargois to George Hopkins, correct?
MS. LUKEY: Objection.
A. Yes.
Q. In the course of your review of -- strike that.
And I believe earlier you testified that you inferred from Hopkins' experience that he was a sophisticated player, if you will; is that correct?
MS. LUKEY: Objection.
A. Yes.
Q. All right. In the course of

Page 203

reviewing this matter for purposes of writing your report, were you shown a series of e-mails in which Eric Belfi blind copied Damon Chargois on his communications with -- certain communications with George Hopkins?
A. I don't specifically remember that.
Q. For example, on May 10, 2010, LBS018439, Chargois & Herron were blind copied on an e-mail from Belfi to Hopkins concerning a blue ribbon report for Goldman Sachs litigation.
Does that refresh your memory at all?
A. Unfortunately, it doesn't. I reviewed a lot of e-mails. I don't specifically recall that e-mail now sitting here.
Q. And do you recall an e-mail on May 6 of 2010, LBS017505 -- and, by the way, these are cited on page 39 of Professor Gillers' report, and in that one, Tim Herron was blind copied on an e-mail from Belfi to Hopkins updating him on the status of the Hartford securities litigation.

Page 204

Do you remember seeing that one?
A. I don't. I'm sorry.
Q. And LBS018437 to 438, a May 15 and 16, 2010 e-mail chain from Hopkins to Belfi concerning the potential joint filing of a case with Nix Patterson, which was forwarded by Belfi to Chargois without any copy to Hopkins.
Do you remember seeing that?
A. I don't. Sorry. The e-mails all were among the first things I reviewed, and then I read a bunch of deposition transcripts. And I'm sorry, I'm just blanking on it right now.
Q. Well, rather than read the other several bullets, did you read these particular e-mails, a series of e-mails in which Belfi blind copied Chargois or Chargois & Herron on communications with client, George Hopkins?
MS. LUKEY: Objection.
A. I believe I did, but could you explain the significance of that for my opinion? I would be happy to answer a question if you kind of fill in the facts what this is driving at.

Page 205

Q. Let me just lay the foundation first by asking if you --
A. Yes, I did.
Q. You did read those.
And it's fair to say that there were seven, I believe, in the record conversations in 2010 and 2013 in which communications with Hopkins were either forwarded without Hopkins being cc'd on the forwarding or in which Chargois or Chargois & Herron were blind copied? Do you recall seeing those?
MS. LUKEY: Objection. He said he recalled generally. You're asking if he specifically recalled seven in those two years?
Q. Approximately seven?
MS. LUKEY: Objection.
A. That sounds right. And I think I see what you're driving at. He's blind copied, and you're saying he should be face copied so that Hopkins can see that Chargois is out there someplace?
Q. Is that what you believe?
A. No, I don't believe that. Because

Page 206

Hopkins has said, I don't want to know about your relationships with local counsel. And I think it was appropriate to blind copy or forward and not pester Hopkins with this after Hopkins has said, I don't want communications about your relationship with Chargois or any other local counsel.
Q. Assume that Hopkins never told Belfi, I don't want to know about your local counsel.
Would it be reasonable to infer that these blind copies and forwarding of messages would indicate an attempt to keep information away from George Hopkins?
MS. LUKEY: Objection.
A. No. I think it's an attempt to honor his expectation that his e-mail box not be cluttered. The reasonable communication rule very clearly doesn't require that you communicate every little thing to your client. You would drive your client to despair if you did that.
So the reasonable communication rule requires only communication of what the client

Page 207

needs to know in order to participate intelligently in the representation. And cc'ing the client on every piece of e-mail back and forth would be wrong, in fact. Not a violation of the rules, but it would be annoying.
And it's certainly not the sort of thing that the rules require.
Q. But I don't know if you listened to my question carefully.
Assume that Hopkins never told Belfi, I don't want to know about your local counsel.
MS. LUKEY: Objection.
Q. So, in other words, Hopkins is in the dark about this referral relationship.
MS. LUKEY: Objection.
Q. Assuming that, do these e-mails indicate to you an attempt to circumvent George Hopkins?
MS. LUKEY: Objection.
A. I was assuming that Hopkins had said, I don't want to know the details about local counsel in which case it would be

Page 208

appropriate not to share the details.
If Hopkins had no idea that there was local counsel, then we are back to square one with Rule 1.5(e). There wouldn't be consent to the division of fees.
Q. Right. But my question --
MR. KELLY: I object to asking him to assume things that are not only not in the record, but are contradicted by the record. And then asking him to speculate about such things.
MS. LUKEY: That's an objection I made previously, Bill, but the hypothetical rule is what it is.
MR. SINNOTT: I understand the objection.
THE SPECIAL MASTER: All right.
BY MR. SINNOTT:
Q. So your testimony is that that would not be in compliance with 1.5(e)?
A. Yes.
Q. Thank you.
MR. SINNOTT: For everyone's purposes, we are wrapping up.

Page 209

Q. On page 16 of your report, Professor, you indicate that Rule 7.2(b) prohibits only payments to non-lawyers.
Is that a fair statement?
A. Yes.
Q. Where in the rule do you read that 7.2(b) applies to referrals with non-lawyers?
A. It's the only way to make sense of the relationship between 7.2(b) and 1.5(e). There are different rules in the Rules of Professional Conduct dealing with different situations. And as a basic matter of statutory interpretation, you interpret one provision to harmonize and make sense with the other.
And so you have a rule on sharing fees with lawyers, which, in Massachusetts permits referral fees. And then you have a rule that says no payments for referrals. That has to mean from non-lawyers. Otherwise, it wouldn't make sense. It would be a non-super fluidy or whatever. There's some principle of statutory interpretation that says you read two provisions together to make sense.
Q. All right. So you're making a

Page 210

statutory interpretation. You're not suggesting that it's contained within 7.2(b) itself?
A. Well, it's the only sensible way to read Rule 7.2(b).
Q. All right. Let me ask you this. I want you to assume that Attorney Smith recommends that a personal injury client retains Attorney Jones. Smith and Jones have a written fee-sharing agreement, but the client is not told about it.
Jones settles the case for $300,000. Jones then gives Smith 20 percent of the settlement pursuant to his agreement with Smith.
Later on, the client is told about the agreement for the first time, and asked to ratify it. The client refuses to ratify it.
Has Jones violated 1.5(e)?
MS. LUKEY: Objection.
A. I got a bit lost in the facts, but I think you said that the client never knew of the fee-sharing agreement.
Q. That's correct.

Page 211

A. So then that would be a violation of the rule, yes.
Q. All right. Thank you.
Do you agree with this statement, "Legal ethics experts should not offer an opinion, even if defensible, unless they would adopt that opinion if they were the judge in the case"?
A. I don't agree with that. I know Professor Gillers has said that. And he and I, I think, come out a little bit differently on this.
I would be willing to, and have, offered an opinion that is defensible. I don't like to offer opinions that are aggressive or out there. I like to stay well within my comfort zone. But that's different from saying what I would do if I were a judge.
Now, it happens in this case that all of my opinions are what I would do if I were a judge, but I actually don't think his statement about the ethics of experts is exactly right. It's close, but it's not exactly right.

Page 212

Q. Let's say you were called to testify in court on the issue of why the $4.1 million payment should not be given to the class, what would you say in support of upholding the payment?
MS. LUKEY: Objection.
A. I would say what I said here. You know, here's my heuristic for expert work. I think sometimes these reports get disclosed. They are available on Westlaw. They get searched. They get read. People write about them. I gave an opinion in a case that became the basis of a Law Review article. So I have to give opinions that I'm comfortable with. And I do.
And, in this case, what I would say is what I said before. The folk morality of this is a deal is a deal. And there's a contract with Chargois, and it makes sense. It's the sort of thing that goes on in the plaintiffs' bar.
It's the way client development happens in this area of practice. It's common. And there is a benefit to the class. This is

Page 213

how you get classes constructed and certified.
You find clients. And that often occurs through referral arrangements. And so the $4.1 million fee is just the value that that 20 percent interest happened to have, given the settlement that was reached in the attorneys' fees portion of the settlement. So I would be very comfortable testifying in court and for that opinion to be disclosed.
I would defend it publicly, to say that the law firm entered into what, ex ante, seemed like a reasonable referral arrangement with another law firm and this is the result.
Q. All right. Thank you, sir.
MR. SINNOTT: That's all I have. Joan?
MS. LUKEY: I have no questions for the witness.
MR. SINNOTT: Okay. Richard?
MR. HEIMANN: No questions.
MR. SINNOTT: Brian?
MR. KELLY: No assumptions. No hypotheticals. No questions.
MR. SINNOTT: On the line, David, on

behalf of Keller Rohrback, any questions?

MR. COPLEY: No questions. Thank you.

MR. SINNOTT: Okay. And seeing how there are no further questions, this deposition is concluded. So we can go off the record.

(Time noted: 1:00 p.m.)

A C K N O W L E D G M E N T

STATE OF)
:ss
COUNTY OF)

I, WILLIAM BRADLEY WENDEL, hereby certify that I have read the transcript of my testimony taken under oath in my deposition; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____
WILLIAM BRADLEY WENDEL

Signed and subscribed to before me this _____ day of _____, 2018.

_____
Notary Public, State of _____

C E R T I F I C A T E

STATE OF NEW YORK)
:ss
COUNTY OF RICHMOND)

I, MELISSA GILMORE, a Notary Public within and for the State of New York, do hereby certify:

That WILLIAM BRADLEY WENDEL, 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 such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of April, 2018.

MELISSA GILMORE

B

C

E

F

M

Q

R

S

EX. 230

Volume: 1
Pages: 1-181
Exhibits: 1-6

JAMS

Reference No. 1345000011/C.A. No. 11-10230-MLW

----------X

In Re: STATE STREET ATTORNEYS FEES

----------X

620 8th Avenue
New York, New York

April 4, 2018
8:40 a.m. to 12:34 p.m.

B E F O R E:

Special Master Honorable GERALD ROSEN,
United States District Court, Retired

MELISSA GILMORE, Reporter

DEPOSITION OF

BRUCE GREEN

Page 2

APPEARANCES:

BARRETT & SINGAL
On Behalf of the Special Master
One Beacon Street, Suite 1320
Boston, Massachusetts 02108-3106
BY: WILLIAM F. SINNOTT, ESQ.
ELIZABETH J. McEVOY, ESQ.
617-720-5090
wsinnott@barrettsingal.com
emcevoy@barrettsingal.com

JAMS
150 West Jefferson, Suite 850
Detroit, Michigan 48226
BY: THE HON. GERALD ROSEN (Ret.), ESQ.
313-872-1100

Page 3

APPEARANCES: (Cont'd)

CHOATE HALL & STEWART LLP
On Behalf of Labaton Sucharow
Two International Place
Boston, Massachusetts 02110
BY: JOAN A. LUKEY, ESQ.
STUART M. GLASS, ESQ.
617-248-5000
joan.lukey@choate.com
sglass@choate.com

NIXON PEABODY, LLP
On Behalf of Thornton Law Firm
100 Summer Street
Boston, Massachusetts 02110-2131
BY: BRIAN T. KELLY, ESQ.
JOSHUA SHARP, ESQ. (Via telephone)
EMILY CRANDALL HARLAN, ESQ. (Via telephone)
617-345-1065
bkelly@nixonpeabody.com

Page 4

APPEARANCES: (Cont'd)

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
On Behalf of Lieff Cabraser
275 Battery Street, 29th Floor
San Francisco, California 94111
BY: RICHARD M. HEIMANN, ESQ.
ROBERT L. LIEFF, ESQ.
415-956-1000
rheimann@lchb.com

KELLER ROHRBACK, LLP
On Behalf of ERISA Plaintiffs
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
BY: T. DAVID COPLEY, ESQ. (Via telephone)
206-623-1900
dcopley@kellerrohrback.com

Page 5

APPEARANCES: (Cont'd)

ALSO PRESENT:
MICHAEL CANTY, Labaton Sucharow
MICHAEL THORNTON, Thornton Law Firm
LINDA HYLENSKI, ESQ., JAMS (Via telephone)
PROFESSOR STEPHEN GILLERS

B R U C E G R E E N, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

MR. SINNOTT: My name is William Sinnott, S-I-N-O-T-T-T. I'm with the firm of Barrett & Singal. 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. And this is a special investigation related to Arkansas Teacher Retirement System versus State Street Bank, Number 11-cv-10230-MLW.

Also on the special master's team to my left is Attorney Elizabeth McEvoy, also of the firm of Barrett & Singal. And Professor Stephen Gillers is to her left of New York University Law School.

On the telephone line for the special master's team is Attorney Linda Hylenski.

And, at this time, I'd ask that the participants that are in the room identify themselves, beginning with our witness. Bruce, if you could identify yourself for the record.

THE WITNESS: Bruce Green.

MS. LUKEY: Joan Lukey from Choate Hall for Labaton Sucharow. And while I'm speaking, let me note my objection to Professor Gillers' presence.

MR. CANTY: Michael Canty for Labaton.

MR. GLASS: Stuart Glass, Choate Hall, for Labaton.

MR. HEIMANN: Richard Heimann from Lieff Cabraser.

MR. LIEFF: Robert Lieff, Lieff Cabraser.

MR. THORNTON: Michael Thornton, Thornton Law Firm.

MR. KELLY: Brian Kelly from Nixon Peabody on behalf of Thornton Law Firm,

and we join in Labaton's objection to Professor Gillers' presence here.

MR. SINNOTT: Thank you.

And on the telephone, I would ask that each party introduce themselves, beginning with Josh.

MR. SHARP: This is Joshua Sharp of Nixon Peabody for the Thornton Law Firm.

MR. SINNOTT: David?

MR. COPLEY: David Copley, Keller Rohrback, on behalf of the ERISA plaintiffs.

MR. SINNOTT: And other than Linda Hylenski on the phone, whom I have already identified, has anyone joined the telephone conversation?

Okay. Hearing no response. As usual, if those of you that are on the telephone have difficulty hearing any of the questioning or answers, please let us know at the soon as possible point so that we don't have to repeat or call on the court reporter to read the examination back.

Page 10

And, by the same token, I'd ask that everyone that is in the room, should you ask a question or give a response, please try to keep your voices up so that those on the phone can hear it as well.
All right. Good morning, everyone. This is the examination of Professor Bruce Green.
And Madam Court Reporter, at this time, I'm going to hand you Professor Green's CV and ask that that be marked as an exhibit.
(Green Exhibit 1, Curriculum Vitae of Bruce A. Green, marked for identification.)
EXAMINATION BY
MR. SINNOTT:
Q. And, Professor Green, I'm showing you Exhibit 1.
Is that the CV that you attached to your expert report?
A. I assume it is. It's my CV.
Q. All right. Looking at that now, is that the most recent copy of your CV?

Page 11

A. (Perusing.) No. This was as of the time I signed my expert report, but my current CV would have some additional programs in which I've spoken.
Q. Okay. Could you just briefly tell us what those would be, without getting into specifics?
A. I don't know if I remember them all, but I spoke recently at an NYU program based around an article that a Cardoza professor named Jessica Roth wrote. And since -- I see that the last program here is March 2. So I think there were other programs in March at which I spoke.
Q. Okay. And in addition to those programs, any other changes or additions that you can recall?
A. There are some -- there's at least one additional writing. Maybe more. But the one that comes to mind is an article online in The Hill on the question of whether the president can direct the Department of Justice in criminal cases.
Q. Okay. I'm sure that's one we would

Page 12

all like to go and read after this examination.
THE SPECIAL MASTER: Try telling him he can't, or anything else he can't do.
Q. Beyond those programs --
MR. SHARP: Bill, I can hear you and the judge perfectly. I'm having a little bit of difficulty hearing the witness.
THE SPECIAL MASTER: Let's push this a little closer. We need one of those yellow construction site banners over those wires.
MR. SINNOTT: Josh, we will do our best, but please let us know if anyone on the phone is having a similar problem.
BY MR. SINNOTT:
Q. Okay. Professor, other than those programs and articles that you've mentioned, are there any other relevant experiences that inform the opinion that you submitted in this case?
A. I don't know that those were relevant to my opinion in this case either, but nothing in the past month.
Q. Okay. And are you being compensated

Page 13

for your time here today?
A. Yes.
Q. And what's your rate of compensation?
A. $950 an hour.
Q. And approximately how many hours have you spent on this case so far?
A. Maybe around 60.
Q. And did you prepare for your testimony today?
A. I did.
Q. And how did you do that?
A. I reread my report. I read the deposition transcripts I was given and looked at the documents I was given.
I met on Friday with Ms. Lukey and spoke with her. I read, again, Professor Gillers' report. I thought about the case.
Q. Okay.
A. And I met for several minutes this morning with Ms. Lukey.
Q. All right. Thank you, sir.
Now, you drafted a rebuttal report in this case, correct?

Page 14

A. Yes.
MR. SINNOTT: And Madam Court Reporter, if I could ask that this be marked as Exhibit 2.
(Green Exhibit 2, Report of Bruce A. Green, dated March 25, 2018, marked for identification.)
Q. Sir, would you look at that and tell me, is that the rebuttal report that you drafted in this case?
A. Yes.
Q. And I direct your attention to the factual statement that appears on page 3 to 12 of your report, which is now marked as Exhibit 2.
Who drafted that factual statement?
A. I don't know which lawyer drafted it. It was drafted by -- it was provided to me by counsel for Labaton.
Q. What, if any, involvement did you have in the process of drafting it?
A. Of drafting the facts?
Q. Yes.
A. I didn't physically draft this at

Page 15

all, but throughout the process of preparing my report I had conversations with counsel for Labaton which may have or may not have informed how they drafted it.
Q. Did the factual statement change at all during the course of your participation in the process?
A. From the time I was retained, you mean?
Q. Yes, sir.
A. I was provided prior drafts that differed from the one that's in my report.
Q. And did you do -- in the course of your examination of the facts in that report, did you suggest additional facts were needed at any time?
A. I may have, yes.
Q. Did the facts that were presented to you remain static through the completion of your report or did that factual statement change at some point in time?
A. Well, as I said, I was given an earlier draft that was different from the one that's ultimately included in my report.

Page 16

Q. Okay. So the one that was ultimately included involved changes from that earlier draft?
A. Right.
Q. And did you review the underlying documents cited in your report?
A. I have reviewed them.
Q. Okay. And which ones did you review?
A. I reviewed probably all of them. I reviewed the deposition transcripts that are cited here. I reviewed the documents that are cited here. As I understand, I was provided them all and I read what I was provided.
Q. For the deposition transcripts, did you read the entire transcript or did you just read specific portions that you were directed to?
A. Neither one, really. I read the transcripts, but I skimmed the parts that appeared to have no relevance to my opinion.
Q. All right, sir. Thank you.
And, sir, directing your attention to pages 12 to 25 of your report, who wrote

Page 17

those opinions?
A. I did.
Q. And did you have any assistance?
A. Well, I wrote prior drafts that were reviewed by Labaton's counsel. So I guess, to that extent, I had assistance or input, but I don't rely on, for example, student research assistants.
Q. Okay. And the review by Labaton's counsel, did that result in any changes to your opinion?
A. Yes.
Q. All right. Tell us about that.
A. About the process?
Q. Yes.
A. I prepared a draft. It was reviewed by Labaton's counsel. They sent me suggestions. I had further conversations with them. I incorporated some of the suggestions. I did another draft. We did that, I think, more than once.
And then, ultimately, I was done and signed the report.
Q. And do you remember what it was that

Page 18

the counsel suggested to you with respect to your opinions?
A. I don't.
Q. But is it fair to say that your drafting of these opinions was an interactive process with counsel for Labaton?
A. I'm not sure what you mean by interactive. It was essentially the process that I described. I had the primary responsibility for it. I did the first draft and I had ultimate responsibility for the opinions starting on page 12, but I did get input.
Q. All right. And you say that you did not use student researchers.
Did you personally perform all of the research that's summarized in your opinion?
A. Yes and no. I'm not sure what you mean by the research summarized in my opinion.
There was certainly cases that were provided to me early on or that were reflected in Professor Gillers' report. And so to that extent, I guess I wasn't doing the research because the research had already been done, but

Page 19

to the extent that that's not the case, I did the research.
Q. Did Labaton or counsel for Labaton do any of the research for you?
A. Again, I'm not sure what you mean. They did, for example, early in preparing this, provide either cites to material or copies to material, and some of the material in here was provided to me by them either at the outset or while I was drafting this. So to that extent, I received material from them.
I also, as I said, you know, reviewed Professor Gillers' report and looked at the material that derived from Professor Gillers' research, but other than that, this reflects my own research.
Q. All right. Thank you.
And let me just ask you this. I think it's implicit in your question, but were there any occasions when you expressed to counsel for Labaton, we need to look into the following areas?
A. No.
Q. All right.

Page 20

A. Not that I recall.
Q. All right, sir. Thank you.
Now, sir, looking at your report and specifically the section that begins on page 14 that Rule 7.2(b) is inapplicable, is it fair to say that the crux of this statement is that it's inapplicable because Chargois, Damon Chargois was not compensated for recommending a client?
MS. LUKEY: Objection.
A. No, that's not fair to say.
Q. All right. But you do say that he did not recommend a client, correct?
A. No, I don't say that.
Q. Well, do you say he simply facilitated an introduction?
A. Where are you reading? The second line from the bottom of page 14 --
Q. Yes.
A. -- of the report says, "Chargois simply facilitated an introduction." That's a direct quote.
THE SPECIAL MASTER: And if I could direct you to the paragraph on top of

Page 21

that, just above the subsection A. You say, "7.2(b) does not apply here for two independent reasons. One, Labaton did not compensate Chargois for recommending its services."
THE WITNESS: I did say that, but that's not the question I was asked.
THE SPECIAL MASTER: Okay. So is one of your independent bases that -- for finding 7.2(b) does not apply, that Mr. Chargois was not compensated for recommending his services?
THE WITNESS: Labaton was not compensated -- did not compensate Chargois for recommending Labaton's services. I think that -- when the question was asked to me, the question was about recommending a client.
The point is here that Chargois did not recommend Labaton to the Arkansas Teacher.
THE SPECIAL MASTER: Okay.
BY MR. SINNOTT:
Q. Thank you for that clarification.

Page 22

Would it be fair to say that, operating from the facts that were given to you, you don't know what Chargois or Herron might have said to Executive Director Doane or Senator Faris, do you?

A. Obviously, I wasn't there, but I would say, based on the facts I was given and also the depositions, including responses to the questions that were asked to Damon Chargois and to Labaton's counsel, there was no -- nothing in the deposition transcripts, as I read them, to suggest that a recommendation was made as defined by the comment to 7.2.

So I think there's -- it's not just based on the facts, the assumed facts that I was given. It's also based on the -- the evidence that's underlying the assumed facts.

Q. What was it about the facts, as you were familiar with them, and as were presented to you by counsel for Labaton, that took this out of the ambit of a recommendation?

A. Okay. So the comment defines a recommendation, essentially, as an endorsement or vouching for the lawyer's credentials,

Page 23

abilities, competences, character or other professional qualities.

There was no evidence that I saw that anyone from the Chargois firm endorsed or vouched for the Labaton firm's credentials, abilities, competence, character or other professional qualities in communications with representatives of Arkansas Teachers.

When the interaction was described by Chargois, it was described as an introduction to Senator Faris. And I think he even may have recalled a phone call, but there was nothing in the phone call that, as described by him that I recall, that reflected a recommendation.

Also, in the testimony of the Labaton representatives, when they testified about what they understood Chargois did or what they were compensating Chargois for, they never reflected in their testimony and they were examined by -- by you, they never reflected in their testimony that they had made a recommendation.

And I actually recall, in one of the

Page 24

deposition transcripts, where the special master described in a question, I think, the interaction as door opening, perhaps, or something, but I never saw anything in the special master's characterization of the interaction as a recommendation or a vouching.

So my clear impression, based on everything I've read as well as the assumed facts is that there is no evidence in the record that a recommendation was made.

THE SPECIAL MASTER: Can I ask you -- you used the word, I think, on page 15, rather than a recommendation that he facilitated the opening.

Is the facilitation and recommendation, if there was a recommendation, mutually exclusive? Is it possible to facilitate and recommend?

THE WITNESS: Sure.

MS. LUKEY: Objection.

THE WITNESS: It's possible to make a recommendation and to facilitate a relationship.

In this case, I didn't see any

Page 25

evidence in the deposition transcripts, and I would say I understand that, at the time of the depositions, that there was a theory that there might have been a recommendation under 7.2 and, to me, the deposition examinations were pretty rigorous, and there were times when I thought the witnesses' recollections were probed pretty vigorously.

And so one would have expected, I would have expected, reading this, that if there were recommendations made, that would have been explored and elicited through the questions. And so I drew the inference that, since the people who would know were questioned and weren't -- you know, didn't testify about any recommendations, that there's no -- were no recommendations or at least there's no evidence of recommendations.

THE SPECIAL MASTER: Would you agree that the difference between a facilitation and a recommendation that there would be -- there can be a gray area?

Page 26

MS. LUKEY: Objection.
THE WITNESS: I'm not exactly sure what the question means.
Facilitation is not a word used in the rules. It's my own characterization of what I think occurred. The recommendation is the word used in 7.2.
I think there can be areas where there's a clear recommendation and areas where it's ambiguous whether recommendations were made.
So, in that sense, I think there is certainly room for grayness. I didn't see any grayness here because there was no suggestion in the evidence that I saw, at least in my reading of it, that there was a recommendation made by anyone from the Chargois firm.
THE SPECIAL MASTER: What if Mr. Chargois calls Mr. Doane cold, as he testified he did, and says I've been working with a law firm from New York that specializes in securities litigation and helping institutional investors. I've

Page 27

worked with them extensively, and they are really terrific, and we would like to have an opportunity to come in and meet with you and talk to you about the services.
Is that a recommendation?
MS. LUKEY: Objection.
THE WITNESS: I think saying they are really terrific is endorsing or vouching for their abilities.
THE SPECIAL MASTER: Okay. And if they say, I'm working with a New York law firm that specializes in institutional investors, there's a difference there?
MS. LUKEY: Objection.
THE WITNESS: Well, there's certainly a difference because you don't have the explicit vouching for their abilities that you would have when you say they are terrific.
If the question is could somebody view that as a recommendation, leaving aside the other half of my opinion, I think if a non-lawyer in a situation said a law firm, you know, specializes in

Page 28

whatever, to me, that's a statement of fact. It's not endorsement or vouching for their abilities, credentials, whatever, but I could see saying, in that situation, that's gray.
THE SPECIAL MASTER: Okay. Is there a difference, for purposes of 7.2(b), between a recommendation under the rule and solicitation under the rule?
THE WITNESS: Yes.
THE SPECIAL MASTER: Could you tell us what that difference is?
THE WITNESS: Okay. I don't have the Massachusetts rule in front of me, but I will tell you what I think solicitation generally means. And I say generally because, for example, in my state of New York, words like advertising and solicitation are given defined meanings that are not necessarily the meanings they have in other places.
But, in general, solicitation means, for purposes of the rules, means in-person communication by a lawyer with a

Page 29

prospective client in order to secure the client's engagement of the lawyer or a telephonic or something like equivalent communication initiated by the lawyer for the purposes of trying to undertake an engagement.
THE SPECIAL MASTER: So under the New York rule that you're referring to would what happened here between Mr. Chargois and Paul Doane, would that be a solicitation?
MS. LUKEY: Objection.
THE WITNESS: So what I was giving was my understanding of the general definition of solicitation.
THE SPECIAL MASTER: I'm sorry. I thought you were --
THE WITNESS: No. So New York has a complicated advertising and solicitation rule, which I can't even begin to remember.
THE SPECIAL MASTER: In your understanding, just -- is what Mr. Chargois did here in this set of

Page 30

facts, is that solicitation as opposed to recommendation?
MS. LUKEY: Objection.
THE WITNESS: Well, you're asking me, based on your description of Mr. Chargois' testimony of what he did?
THE SPECIAL MASTER: It's actually based on his testimony. I can read his testimony.
MS. LUKEY: It's your memory of his testimony.
THE WITNESS: I don't remember his testimony that well, and I know issues were contested, but if Chargois cold called a non-lawyer, who was a prospective client, then I suppose that's potentially a solicitation. I would need to know how it's defined in whatever jurisdiction defines solicitation.
THE SPECIAL MASTER: I don't want to try to play games or mislead you. So let me read his testimony. There's certainly other parts, but this is the operative part of the content.

Page 31

This is Mr. Chargois' testimony on page 33, starting on -- I'm trying not to read too much. We are all familiar with this, but you're not. And I do want to give you some context, in fairness.
To get the full relationship, you have to read page 31 and 32, but I think I can summarize it. I'm sure Joan will object.
But, basically, Mr. Chargois says that he was asked if he could introduce Mr. Belfi and others from Labaton to institutional investors.
Mr. Chargois indicated -- I'm trying to find the line, but he indicated -- somebody can help me here -- but he did indicate he really didn't even know what an intuitional investor was.
MR. HEIMANN: I don't think that's correct, Your Honor. I don't think he ever said that.
MS. LUKEY: It's not in the part we had yesterday.
THE SPECIAL MASTER: I know it's

Page 32

not. It's in another part. Let me read the language, please. It's in the same deposition.
"When you say they asked you to make introductions, what type of persons did they want to meet?
"**ANSWER:** Eric explained to me that he -- part of his job at Labaton was networking and client development or cultivation -- I don't remember the word, but something along those lines, and that they did not have a presence in Little Rock and that we did and that if we could help introduce them to institutional investors or folks that could help them get introductions to institutional investors.
"And what was the basis of your knowledge of institutional investors?
"**ANSWER:** I had none."
I can keep reading if you want.
"Again, if you could just give us a timeframe.
"Around the same timeframe, early

Page 33

2007.
"Same timeframe as the HCC case?" And he goes on.
Then he says, "Why do you think Labaton asked" --
"**QUESTION:** Why do you think Labaton asked you to help them meet institutional investors when you didn't have any history in that world?
"**ANSWER:** When Eric Belfi came down -- this is prior to Little Rock. He came down to Houston, I believe it was a hearing in the HCC matter. We got to know each other in talking what do you do, what do you do, what else do you do, and I told him we had a Little Rock law firm."
So, at best, Mr. Chargois had little history or knowledge of what an institutional investor was.
MS. LUKEY: Objection.
MR. HEIMANN: Objection.
MR. SINNOTT: Madam Court Reporter, could we mark that as Exhibit 3, please?
(Green Exhibit 3, Excerpt of

Page 34

Deposition Transcript of Damon Chargois, dated October 2, 2017, marked for identification.)

THE SPECIAL MASTER: At any rate, after this, there is a phone conversation or a meeting with a Senator Faris, who was the senator chairing the state senate committee with oversight responsibilities for state pensions. And the testimony is that Senator Faris suggested to Mr. Herron that they contact Mr. Doane, who was then the executive director of Arkansas, and the relationship went on.

At some point, I mean, there's six or seven pages of testimony here, and I'm trying to encapsulate it for you, but at some point he says that he, Mr. Chargois, called Mr. Doane, that it was a cold call.

And question to -- the question is, "Tell us about that.

"Tim was friends with Senator Faris -- Steve Faris, and asked him do you know anyone or point us to anyone we might be able to talk to, and he told Tim that

Page 35

recently a gentleman named Paul Doane had taken over Arkansas Teachers, and you might want to give him a try. Good luck.

"Did he facilitate that introduction in any way?

"ANSWER: No, sir. Tim just told me about it and I looked up Paul Doane and called him.

"THE SPECIAL MASTER: Cold?

"THE WITNESS: Yes, sir.

"QUESTION: And what was Mr. Doane's response when you called him?

"ANSWER: The gist of it was who are you and why are you calling me, but I told him who I was and who our firm was. We're local not far from your office and how I got his name and why I was calling.

"QUESTION: Okay. And did he offer to help you?

"ANSWER: I don't understand.

"QUESTION: Did he ask you to come in for a meeting? Or did he --

"WITNESS: No, sir.

"QUESTION: -- extend -- you know,

Page 36

try to arrange for you to talk again with him?

"ANSWER: No, sir.

"QUESTION: All right. What did he say?

"ANSWER: He listened to what I had to say, and I asked him if I could meet with him. And then I told him that, you know, I was working with a New York law firm that specializes in institutional investors.

"QUESTION: Okay. So how did you leave it after that conversation?

"ANSWER: Let me know if you're willing to give us some time.

"QUESTION: Okay. And what happened next?

"ANSWER: He -- I don't know if it was a follow-up call by me or if it was that call, but he ultimately agreed to meet.

"QUESTION: Okay. And did you meet with him by yourself or were you accompanied by someone else?

Page 37

"ANSWER: The Labaton -- I believe it was Eric Belfi and Chris Keller, but I can't swear to that. I know Eric Belfi was there. I don't know if Chris Keller was there."

And it goes on.

Just in the context of what I've now read to you, would you characterize that as a solicitation?

MS. LUKEY: Objection.

THE WITNESS: So I guess I would say a couple of things. And one is I don't have the Arkansas rule, which I think would govern, so -- and I'm not an Arkansas ethicist. I think, given how solicitation is generally understood, that cold calling a potential client who's not a lawyer is generally regarded as a solicitation.

I would say that cold calling a corporate executive, or the equivalent in this case, I have never seen somebody disciplined for something like this. So if it's a solicitation under Arkansas

Page 38

ethics rules, I would think it's a pretty de minimis one.
And just to put it into context of this case and the rest of the part that you read, I didn't see anything that suggested that the Labaton firm was asking Mr. Chargois to solicit or to cold call.
I think my recollection is they understood that Chargois had a relationship with Arkansas Teachers, but in any event, the part that you read me suggested that they were looking for an introduction, not a solicitation in violation of solicitation rules.
THE SPECIAL MASTER: What is the difference, please?
THE WITNESS: Between an introduction and solicitation?
THE SPECIAL MASTER: When it's a cold call, the person doing the calling.
THE WITNESS: Well, they could have arranged -- well, they could have done either of two things, Chargois. One is if they had a relationship already, which I

Page 39

think the Labaton firm assumed they did, with Arkansas Teachers, then the phone call would not have been a solicitation.
And, second of all, they could have initiated the contact with Mr. Doane by e-mail or, you know, letter or by other means that are not conventionally regarded as solicitation under the rules, and those also would have facilitated.
THE SPECIAL MASTER: There may be a factual difference between what Labaton testifies it believed was any pre-existing relationship between Arkansas and Mr. Chargois and Mr. Chargois' belief. Put that aside.
Separately, based on Mr. Chargois' testimony, is that a solicitation?
MS. LUKEY: Objection.
THE WITNESS: So you're asking me if -- if Chargois, in fact, cold called a non-lawyer representative of Arkansas Teachers, and I'm assuming that Doane isn't a lawyer, would that technically be solicitation under Arkansas Rules of

Page 40

Professional Conduct. And my answer is I don't know the Arkansas Rules of Professional Conduct. I don't know how they're interpreted, so I can't really answer that question.
I think that if it were regarded as a solicitation, it would be about the most de minimis solicitation one could imagine, and I would highly doubt that it would be disciplined anywhere in the country.
THE SPECIAL MASTER: Are you familiar with any of the Massachusetts rules that govern solicitation?
THE WITNESS: I have not studied them in connection with my testimony. That wasn't one of the subjects of my testimony.
THE SPECIAL MASTER: So you are not prepared to offer an opinion as to whether this would be solicitation under the Massachusetts rule?
THE WITNESS: Well, I think it's plainly not solicitation under the Massachusetts rule, because the

Page 41

Massachusetts rule would not have applied in 2008 to whatever communications Mr. Chargois had with Arkansas Teachers.
THE SPECIAL MASTER: So the rule that would have applied to solicitation would be the Arkansas rule?
THE WITNESS: I believe, if Mr. Chargois is a Little Rock, Arkansas, lawyer communicating with a prospective Arkansas client in Arkansas, that the Arkansas rules would apply.
THE SPECIAL MASTER: If it was a solicitation on behalf of a New York firm, would the New York rules have anything to say about it or have any application?
MS. LUKEY: Objection.
THE WITNESS: So you're asking me what I believe is a choice of law question in New York?
THE SPECIAL MASTER: Right.
THE WITNESS: Whether New York disciplinary authorities, if they were bringing a disciplinary action against the Labaton firm for causing someone to

Page 42

solicit in Arkansas, whether they would apply the Arkansas rules or the New York rules.

One point I would make here is, from the testimony I've seen, Labaton didn't cause Chargois to cold call somebody who Chargois didn't, in fact, have a relationship with. And so I don't see how the Labaton firm could be the subject of a New York disciplinary action here based on having caused Chargois to solicit, but I suppose if you change the facts here and ask the question, I think that's a really interesting question.

I'm not sure I a hundred percent know the answer. It would seem to me the answer would be that if the solicitation is permissible under Arkansas law, then Labaton hasn't caused Chargois to do anything improper and, therefore, I don't see the New York rule as being applied in a New York disciplinary action.

But, of course, the whole thing is hypothetical in the extreme because it's

Page 43

almost inconceivable that a New York disciplinary authority would proceed after a firm in Labaton's position based on facts like these.

THE SPECIAL MASTER: We got into this through the doorway of my question, what the difference was between solicitation and a recommendation.

Would you agree, at least from -- based on Mr. Chargois' testimony of the cold call and he says he's working with a New York firm, I'm quoting now from page 34, I will quote it directly, line 19, "He listened to what I had to say and I asked him if I could meet him. And then I told him that, you know, I was working with a New York law firm that specializes in institutional investors."

Is there, in that, an implicit recommendation?

MS. LUKEY: Objection.

THE WITNESS: So I don't think -- well, I don't think there's a recommendation for purposes of 7.2(b). I

Page 44

don't know that 7.2(b) applies, in general, to implicit recommendations. I don't think -- now you're asking me to parse his recollection, I'm not sure how many years later, almost a decade later, of a conversation that he had or that he thinks he had with Mr. Doane.

It's not a verbatim account. I doubt very much that it's a verbatim recollection. And so I'm a little leery -- wary of sort of parsing his reconstructed recollection of a nine-year-old conversation and saying that that's an implied recommendation.

I was an English major, so I did spend a lot of time parsing, you know, language and reading things into it, but I certainly don't think, based on this testimony, you can make a finding fairly that there was a recommendation under 7.2(b).

THE SPECIAL MASTER: Let me try it again.

THE WITNESS: Okay.

Page 45

THE SPECIAL MASTER: I'm not asking you to try to peel back the skin of Mr. Chargois' memory. I'm not asking you to parse through his memory.

I'm asking you only on the face of what he testified to, lines 19 through 23, whether that testimony, assuming it's right or accurate, would constitute an implicit recommendation?

MS. LUKEY: Objection.

THE WITNESS: So my opinion is if Chargois said to Doane, "I am working with a New York law firm that specializes in institutional investors," that would not be a recommendation for purposes of 7.2(b).

THE SPECIAL MASTER: Okay. Explicit or implicit?

MS. LUKEY: Objection.

THE WITNESS: I don't know that an implicit recommendation of this kind would come within 7.2(b).

My opinion is if you want to characterize it as an implicit

Page 46

recommendation, it doesn't come under 7.2(b). I don't know, myself, what's implicitly being said here about the qualifications of the Labaton firm.
THE SPECIAL MASTER: Beyond that they specialize --
THE WITNESS: Well, that's explicit.
THE SPECIAL MASTER: Yeah. And that's not -- the fact that they said -- that Mr. Chargois said a New York firm that specializes does not carry a recommendation connotation to it?
MS. LUKEY: Objection.
THE WITNESS: To me, that's a description of the work that the Labaton firm does. If they did personal injury work, it would not be -- this would not be a relevant introduction.
THE SPECIAL MASTER: Bill.
BY MR. SINNOTT:
Q. Are you familiar with what Mr. Chargois -- how Mr. Chargois viewed his role with Arkansas?
MS. LUKEY: Objection.

Page 47

Q. Well, let me phrase it this way.
What's your understanding with respect to the issue of solicitation as to how Damon Chargois viewed his role in bringing Arkansas to Labaton?
MS. LUKEY: Objection.
A. I guess I don't understand your question.
Q. Sure. Let me be a little bit more specific.
Among the materials that you were shown, do you recall if you were shown an e-mail thread dated October 18, 2014, and I'm referring to LBS017593 and 594, from Damon Chargois to Eric Belfi, and specifically --
MR. SINNOTT: What exhibit number was that yesterday?
MS. LUKEY: Exhibit 3.
MR. SINNOTT: Mark this as Exhibit 4 for today's deposition.
(Green Exhibit 4, E-Mail Chain, Bates Stamped LBS017593 through 17594, marked for identification.)
Q. So, Professor, I'd ask that you look

Page 48

at that document and you're welcome to look at the entire document, but my question will deal with the final, what appears to be the final e-mail on that thread, which begins at the bottom of that first page where it says, "Original message from Damon Chargois," and goes onto the next page.
A. Is there a particular paragraph you want me to look at?
Q. Yes. I want you to look at the second paragraph of that message, but if you need to look at the first --
A. Can you just tell me how it begins?
Q. Sure. "I am very concerned."
A. Sure. I see it. (Perusing.)
Q. All right. So you have had a chance to look at that?
A. Yes.
Q. Have you seen this before?
A. Yes.
Q. Having seen this before, what do you understand the context of that particular e-mail to be? What prompted that e-mail?
A. My understanding is that there was a

Page 49

question about whether the Chargois firm would receive any money upon the successful conclusion of the State Street Bank case, and that this was a -- Mr. Chargois' communication with Eric Belfi of Labaton on why the Chargois firm ought to be receiving money.
Q. All right. And specifically with respect to that paragraph that I asked you to look at, for the record, it says, and this is Mr. Chargois to Mr. Belfi, "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."
Now, is it fair to say that, in that paragraph, in that sentence that I just read, Mr. Chargois describes the activities that were undertaken in obtaining Arkansas as a client for Labaton?

Page 50

MS. LUKEY: Objection.
A. Are you asking me based on personal knowledge, based on my having read the rest of the evidence or something else?
Q. No. I'm saying, based on that sentence that I just read, does Mr. Chargois not say here that -- let me break it down.
"We got you ATRS as a client," correct?
A. Are you asking me if that's what it says here?
MS. LUKEY: Objection.
Q. Yes.
A. Yes, you correctly read it.
Q. And then, in parentheses, he describes, does he not, the steps that Chargois took in getting ATRS as a client?
MS. LUKEY: Objection.
A. Again, I would say, are you asking me based on personal knowledge? I don't have any knowledge.
Q. No, I'm not asking your personal knowledge.
A. You asked me, are these the steps

Page 51

that he took. I don't know whether these are the steps that he took.
Q. I'm asking you if that's what it says, that he's describing the steps that he took.
A. That isn't what you asked.
MS. LUKEY: We will stipulate to the writing, if you want, that that's what is written there, as you read it correctly, that's fine.
A. He's describing steps he claims he took, but I don't know whether he is describing steps that he, in fact, took. In the material that Judge Rosen read to me before, it makes it pretty plain that Mr. Chargois didn't take these steps.
THE SPECIAL MASTER: In fairness, I only read you the snippet of the deposition dealing with the opening of the relationship.
THE WITNESS: Okay.
A. Well, either he took these steps or he didn't. I have no basis of knowledge.
Q. All right. But, of course, you

Page 52

don't have personal knowledge.
A. Right. I do not have personal knowledge.
Q. But what I'm asking is --
THE SPECIAL MASTER: Just as you don't have personal knowledges of any of the conversations that Mr. Belfi had that he testified to about what the relationship was, right?
THE WITNESS: I have no personal knowledge of any of the facts in this case.
Q. Is it clear to you, in that sentence that I referred you to, that Damon Chargois is claiming to have expended considerable favors, political activity, money spent and time dedicated in Arkansas in getting ATRS as a client for Labaton?
A. That's how I read that.
Q. Thank you. Is that solicitation?
MS. LUKEY: Objection.
THE SPECIAL MASTER: Assume that it's true. For purposes of the question, assume that it's true.

Page 53

A. I have no idea. It doesn't say here whose favors or what political activity or how the money was spent or how he dedicated his time. If he dedicated his time to solicitation, he solicited. If he dedicated his time to something else, it wasn't solicitation.
Q. But the fact is you don't have any knowledge, either personal knowledge or based on the facts that were presented to you by counsel for Labaton, as to what Chargois or Herron actually said to Mr. Doane or to Senator Faris about Labaton, correct?
A. That was -- I lost track of the question.
I certainly have no personal knowledge. The only knowledge I have is based on my having read the transcripts that I was provided.
Q. All right. Does it follow from your opinion, Professor, that if Chargois & Herron did not recommend Labaton within the meaning of 7.2(b), then Labaton did not need to comply with 1.5(e) to avoid violating 7.2(b)?

Page 54

MS. LUKEY: Objection.
A. I truly don't understand what you just said, but I think I could respond.
Q. Please do.
A. Okay. It's my opinion that if Labaton did not pay Chargois to recommend Labaton's services to Arkansas Teachers, then Labaton did not violate Rule 7.2(b), period.
It may be, and it would require a separate analysis, that Labaton violated Rule 1.5(e). That would be a separate question. That is independent of the question under Rule 7.2(b).
Q. All right. So let me see if I can follow up on that.
Is it your view, under this part of your report, that Labaton paid Chargois for an introduction only, and that, therefore, it was not dividing a fee with Chargois & Herron?
MS. LUKEY: Objection.
A. Are you asking, is that the opinion I'm expressing at page 14?
Q. Yes, sir.
A. No, I'm not expressing that opinion

Page 55

at page 14.
Q. Let me ask you if you are expressing that view anywhere. Is it your view that Labaton paid Chargois for an introduction only, and that as a result, it was not dividing a fee with Chargois & Herron?
MS. LUKEY: Objection.
A. No, that's not my opinion. My opinion is, one, Labaton did not violate Rule 7.2(b).
And, two, and separately, for separate reasons expressed later in my report, Labaton did not violate Rule 1.5(e).
Q. Well, did Labaton need to comply with 1.5(e) at all if Chargois & Herron merely facilitated an introduction?
MS. LUKEY: Objection.
A. Labaton needed to comply with Rule 1.5(e) if Rule 1.5(e) was applicable, if there was an agreement to share fees with Chargois. That is an independent question from the question of whether Rule 7.2(b) applies based on your theory or a theory that Labaton paid Chargois for recommending Labaton's services.

Page 56

Those are two separate questions.
THE SPECIAL MASTER: Your testimony here raises an interesting question that I would like your opinion on.
7.2(b), on its face, says that a lawyer may not give anything of value. I don't have it in front of me, but --
THE WITNESS: (Handing.)
THE SPECIAL MASTER: Okay. Good.
A lawyer shall not give anything of value to a person for recommending a lawyer's services.
There is a subsection in (b)(5) that excepts out a division of fees under 1.5(e).
Do you view 1.5(e) as a safe harbor from the general prohibition in 7.2(b)?
THE WITNESS: So I address this beginning at page 15 of my report. I'm not sure I would describe it as a safe harbor.
What I would say is that fee-sharing arrangements between lawyers are not regarded as recommendations for purposes

Page 57

of one point -- for purposes of 7.2(b).
And do you want me to elaborate?
THE SPECIAL MASTER: Yeah. I was going to ask you what the distinction you're drawing is.
THE WITNESS: Between -- I'm not sure.
THE SPECIAL MASTER: Between safe harbor, at least as I understand what a safe harbor is, and what you say it is.
I think you said that subsection 5 says it doesn't apply to fee-sharing agreements under Rule 1.5(e).
MS. LUKEY: Objection.
THE SPECIAL MASTER: So what I'm asking you is, isn't that a safe harbor from the larger prohibition?
MS. LUKEY: Objection.
THE WITNESS: So I guess partly turns on what you mean by safe harbor. It's not a phrase that I'm using.
And so what I think -- well, I don't want to guess on what you mean. So there is that problem.

Page 58

THE SPECIAL MASTER: I don't want you to guess on what I mean by safe harbor.
Is it an exception to the general proscription under 7.2(b)?
THE WITNESS: Okay. No, I don't read it that way. And so Massachusetts has this provision 7.2(b). It's not in the ABA model rules.
And the model rule states, I think it's generally understood, that fee-sharing arrangements that may involve a recommendation are not what 7.2(b) covers. Here, the Massachusetts rule makes it crystal clear by having this provision.
I think what it means is to emphasize that fee-sharing arrangements are okay in Massachusetts. Massachusetts, by the way, has a more liberal fee-sharing rule than other states. And that fee sharing that's generally covered by 1.5(e) is not the sort of thing that 7.2(b) is meant to cover.

Page 59

I don't know that I would call it an exception. I think it -- because even absent this provision, fee sharing wouldn't be covered under 7.2(b).
THE SPECIAL MASTER: Does the rule not characterize Rule 7.2(b)(5) as an exception?
THE WITNESS: Yes.
THE SPECIAL MASTER: But you don't believe it's an exception.
THE WITNESS: Well, I guess the question is, in what sense you mean.
I think that fee sharing, generally, is excluded from the rule. I think this provision is designed to make that crystal clear.
I think, absent this provision, that would still be the case, as it is in Model Rule 6.
THE SPECIAL MASTER: Then why put (b)(5) in?
MS. LUKEY: Objection.
THE SPECIAL MASTER: If that's true, why put (b)(5) in? Would that not be

Page 60

surplusage?
MS. LUKEY: Objection.
THE WITNESS: Actually, I think this is surplusage. And I think the reason is what we know about the Massachusetts fee-sharing provision. Massachusetts is more open to fee sharing than most, if not all, other states.
In other states that have the model rule provision, it's restricted to arrangements where there's joint responsibility between the two lawyers who are sharing fees or where the fee sharing is based on the amount of work each does.
In Massachusetts, based on what I've read, including the Saggese case, they are more open to fee sharing. I think it's fair in the context of the history and in the context of 1.5(e) to read this as, indeed, surplusage, but making it crystal clear, as I say, that fee sharing is not prohibited by 7.2(b).
THE SPECIAL MASTER: So even if subsection 5 were not in the rule, a

Page 61

lawyer who fails to comply with 1.5(e) and blatantly gives something of value to a person for recommending the lawyer's services is not subject to 7.2(b), is that your understanding? Absent the exception.
MS. LUKEY: Objection.
THE WITNESS: You asked the question as if it follows from what I said, but just to parse the question, first of all, you said "who gives something of value to someone." Well, clearly, none of this relates to giving something of value to non-lawyers.
So I assume you mean who gives something of value to a lawyer, but I don't want to make that assumption because you asked the question --
THE SPECIAL MASTER: Then let me read it as you've defined it, rather than my question.
"A lawyer shall not give anything of value to a lawyer for recommending the lawyer's services."
And you can read it without the

Page 62

exception in subsection 5.
MS. LUKEY: Objection.
THE SPECIAL MASTER: That would not -- that would not implicate Rule 7.2(b).
MS. LUKEY: Objection.
THE WITNESS: Well, if it's -- a lawyer gives something of value to a lawyer to recommend the first lawyer's services, and it's not in the context of a fee-sharing provision, then I guess it could be taken back to 7.2, and that would be true in Massachusetts or in a model rule state, but that's not the question you asked me before.
THE SPECIAL MASTER: So your testimony, then, would be 7.2(b) has nothing to say about a lawyer who gives something of value to another lawyer for recommending the lawyer's services.
THE WITNESS: Are you asking if that was my testimony?
THE SPECIAL MASTER: Is that your understanding of the rule?

Page 63

THE WITNESS: No.
THE SPECIAL MASTER: What is your understanding of the rule?
THE WITNESS: My understanding of the rule is, as relevant here, that giving something of value -- I mean, it's easier if I give the lawyer's names, but if Labaton gave something of value to Chargois to recommend Labaton's services, and it wasn't in the context of a fee-sharing agreement, then it might well be taken back to 7.2(b), and that would be true in the model rules or in Massachusetts.
THE SPECIAL MASTER: Thank you. And is that why you believe that subsection 5, the exception, is surplusage?
MS. LUKEY: Objection.
THE WITNESS: I think it's surplusage because, even without that language, in all of the states that don't have that language, it's understood that fee-sharing arrangements are not violations of 7.2(b), even if, in the

Page 64

context of the fee-sharing arrangement, a recommendation is made.
And so I believe that the Massachusetts rule is, even without that language, it would come out the same.
BY MR. SINNOTT:
Q. Professor, let me direct your attention to page 16 of your report, specifically to footnote 13. And footnote 13 reads, "I am unaware of any drafting history suggesting that the Massachusetts drafters intended Rule 7.2(b) to apply where lawyers enter into fee-division agreements that are generally permitted by Rule 1.5(e), but that do not fully satisfy Rule 1.5(e)'s procedural requirement."
Could you explain that analysis? What do you mean by that?
A. By that sentence?
Q. Yes, sir.
A. Okay. 1.5(e) has both a substantive and a procedural requirement. The substantive requirement is that the total fee has to be reasonable, and that's, I think, the main point

Page 65

of the rule.
And so if you look at the Saggese decision, it says that the purpose of the rule is to make sure that, in the context of a fee-sharing arrangement, the total fee is not excessive, but there's also a procedural requirement.
The current rule, the procedural requirement, includes both notice and written consent. In the rule, as it existed at the time, it didn't require the writing, but I -- it required notice of a fee-sharing arrangement and consent.
In the Saggese case, they use the term, I think, "imperfect fee splitting arrangement" to express a situation where you have a fee-sharing arrangement that would be permissible, generally, under 1.5(e) or under the prior code provision, but that the procedural aspect of this was not fully complied with.
What I -- and that is my understanding of the potential argument that may be made here about what happened here. I

Page 66

don't think anybody is arguing, as I understand, that the total fee was unreasonable, but I think there's a suggestion in some of what I've read, and in the questions that have been asked, that the procedural requirement was not perfectly complied with.

So what I wanted to know was, in that kind of situation, if there is a recommendation that's made in the context of an imperfect fee-sharing arrangement, might 7.2(b) apply to that recommendation.

And so one of the questions I wanted to know was whether, from what I could tell of the drafting history, and I only saw, you know, what was published, obviously, I have no insight in the conversations that took place, was there anything in the drafting history of 7.2(b) and 1.5(e) to suggest that an imperfect -- a procedurally imperfect fee-sharing arrangement that involved a recommendation might violate 7.2(b) because there was compensation for recommendation of the lawyer's services.

And what I'm saying here is I'm not

Page 67

aware of anything in the drafting history that suggests that the Massachusetts drafters meant 7.2(b) to apply to that situation.

THE SPECIAL MASTER: Could I ask you this? Is your view that 7.2(b) does not -- is not implicated by what you call an imperfect fee-sharing arrangement, is that something that would go to the nature of any sanction or discipline under 7.2(b) or is that your view simply as a matter of law, that if 1.5(e) is not complied with then 7.2(b) even if it is not complied with, does not apply?

THE WITNESS: I would say the latter. My opinion is that 7.2(b), where a recommendation is made in the context of an imperfect fee-sharing arrangement does not apply. 1.5(e), obviously, would apply. And so if you have a fee-sharing arrangement that's generally subject to 1.5(e), and you don't have, under today's rule, for example, if you don't have a writing, you have consent, but it's oral, you have notice, you have, you know, an

Page 68

imperfect fee-sharing arrangement because the procedural aspect isn't complied with, even though the total fee is reasonable, I think that would be a violation of 1.5(e). Whether it's sanctioned or not is a different question, but I don't think it would be a violation of 7.2(b) for reasons I express in my report, which I would be happy to explain.

THE SPECIAL MASTER: All right. So your view is that, if it's an imperfect attempt to comply with 1.5(e), 7.2(b) simply has nothing to say about discipline or sanction or anything else? It's simply not a violation at all of 7.2(b)?

THE WITNESS: Well, first of all, you need a recommendation. Otherwise, 7.2(b) doesn't even kick in. But if there is a recommendation made in the context of the procedurally imperfect fee-sharing arrangement, I do not believe 7.2(b) applies, period.

THE SPECIAL MASTER: Suppose there's no attempt at all, I'm not saying that

Page 69

happened here, but just suppose there's no attempt at all to comply with 1.5(e), no notice to the client of division of fees, no consent by the client, just a bare recommendation and a payment for that. Would 7.2(b) then be implicated?

MS. LUKEY: Objection.

THE WITNESS: Yeah, I think it could be. If it's not a fee-sharing arrangement, but it's a pure payment for a recommendation, I think 7.2(b) could apply.

THE SPECIAL MASTER: Okay. So your distinction there as to the inapplicability of 7.2(b) rests on imperfect compliance?

MS. LUKEY: Objection.

THE WITNESS: In this case, it rests on two things. One is there's not a recommendation, but leaving that aside, where there is a recommendation, yes, I think there's a difference between imperfect compliance because you still have a fee-sharing arrangement that's

Page 70

generally subject to 1.5(e) and something that's not a fee-sharing arrangement that's not subject to 1.5(e).

THE SPECIAL MASTER: So is another way of saying this, if a lawyer attempts to comply with 1.5(e), but falls short, gives notice to the client that a referral fee may be paid, but falls short of the specific requirements, at that point, 7.2(b) falls away and has nothing to say about the lawyer's conduct.

THE WITNESS: I wouldn't describe it that way. I would say that 1.5(e) governs fee-sharing arrangements, and 7.2(b) does not govern fee-sharing arrangements, and so if you have a fee-sharing arrangement that doesn't adequately comply with the requirements of 1.5(e), then you have a violation of 1.5(e). That's what the rule is there to do, to govern fee-sharing arrangements.

7.2(b) is there to govern payments to others for recommending the lawyer's services. In general, the history of it

Page 71

wasn't about payments to lawyers. It was about, you know, ambulance chasers or things like that.

I think that conceivably can apply to payments of lawyers if lawyers are acting as ambulance chasers. The fact that they have a law license doesn't make them privileged to chase ambulances, but a 1.5(e) fee-sharing arrangement is not ambulance chasing.

THE SPECIAL MASTER: Okay. Let me see if we can agree on this, then, because I think I do understand you now.

For disciplinary purposes, when a lawyer has a fee-sharing agreement, imperfect or not -- let's take yours, imperfect. A lawyer has an imperfect fee-sharing agreement with another lawyer that fails to comply with 1.5(e). 7.2(b) is not implicated at all for purposes of discipline. It falls only under 1.5(e); is that correct?

THE WITNESS: That's fair.

THE SPECIAL MASTER: Okay. Thank

Page 72

you.

BY MR. SINNOTT:

Q. Let me just circle back to --

THE SPECIAL MASTER: I just want to close the loop.

A complete failure to even attempt to comply, no notice, no consent by the client, no notice to the client, no consent by the client, just a bare recommendation, that implicates 7.2(b), yes?

MS. LUKEY: Objection.

THE WITNESS: So the question, to me, would be are you paying for the recommendation, period. Or do you have a fee-sharing arrangement?

THE SPECIAL MASTER: I'm asking you to assume -- I'm asking you to assume that all there is is a recommendation and no attempt to comply with 1.5(e), no notice to the client, no consent by the client.

MS. LUKEY: Objection.

THE WITNESS: Well, again, if it's a pure payment, for example, I'll give you

Page 73

$10,000 for making a recommendation. I think that's within 7.2.

If it's I'll pay you $10,000 if I snag the client, if you make a recommendation, I think that's within 7.2.

If you have a fee-sharing arrangement and the fee, total fee is reasonable, but you didn't do the procedural stuff that you're supposed to do, I think that's a 1.5(e) problem.

THE SPECIAL MASTER: So, in that latter situation, you've called out 1.5(e) occupies the field totally, and 7.2(b) has nothing to say about it?

THE WITNESS: Right. I think, if it's a fee-sharing arrangement, that's generally governed by 1.5(e), it's governed by 1.5(e).

I think the disciplinary authorities in Massachusetts have the full range of discipline available to them based on how serious they think the Rule 1.5 violation is.

So whether or not it's 1.5(e) or 7.2

Page 74

doesn't limit their disciplinary authority, but I think that the authorities would look to 1.5(e) as the basis for discipline.
THE SPECIAL MASTER: You've read Professor Gillers' report?
THE WITNESS: I did.
THE SPECIAL MASTER: So perhaps this is where you part company with him?
THE WITNESS: We definitely see it differently here.
THE SPECIAL MASTER: And the point at which you part company with him is what happens if a lawyer fails to comply with 1.5(e). I believe Professor Gillers would say, if the lawyer does not comply with 1.5(e), then you are into 7.2(b).
Your view is that so long as there is an attempt to comply with 1.5(e), 7.2(b) is not implicated at all; is that right?
THE WITNESS: I wouldn't put it that way. I'd say if you have a fee-sharing arrangement, that's generally governed by

Page 75

1.5(e).
THE SPECIAL MASTER: How is that different than what I said, please?
THE WITNESS: Could you read back what the judge said?
THE SPECIAL MASTER: I'm truly trying to understand where you and Professor Gillers part company.
(Record read.)
THE WITNESS: So I'm not sure what you mean by "an attempt to comply." So if by attempt to comply you mean there's a fee-sharing arrangement, but you don't adequately give notice or adequate consent or adequate writing, then I would agree with that. But since I didn't know exactly what you meant --
THE SPECIAL MASTER: I will accept it. That's what I meant.
THE WITNESS: Okay.
BY MR. SINNOTT:
Q. Let me just follow up on that, Professor.
Does a client's refusal to consent

Page 76

to an agreement to divide fees take it out of 1.5(e) so that 7.2(b) applies?
MS. LUKEY: Objection.
A. I'm sorry. Could you ask that again?
Q. Sure. Let's say the client refuses to consent to an agreement to divide fees. That takes it out of 1.5(e), correct?
MS. LUKEY: Objection.
A. I don't understand the question. Where is the recommendation here? So far, in your question, there's not a recommendation.
Q. And then there's a recommendation, but the precedent to that or the follow-up to that, I should say, is the client then says I'm not going to consent to that agreement.
A. Was there a payment for the recommendation?
Q. Yes.
A. So can you just tell me the sequence of events?
Q. So there is an agreement between counsel for recommendation to divide fees.

Page 77

There is a payment for that, and then the client says, I didn't agree to that.
Under your analysis, what does that mean?
A. So, again -- so lawyer A says to lawyer B, please recommend my services to the client, and pays lawyer B, at that point, to make the recommendation?
Q. Yes.
A. That doesn't sound like fee splitting to me. It sounds like payment for recommendation.
Q. Okay. Let me just back up a little bit. And this is an assumption I want you to make, a hypothetical assumption.
A prospective client consults with Attorney Jones, who says I don't handle that kind of work, but let me introduce you to Attorney Smith.
Now, my question is, would it be rational for the client to conclude that Attorney Jones is recommending Attorney Smith?
MS. LUKEY: Objection.
A. I would say it would not be

Page 78

irrational.
Q. It would not be irrational?
A. Right.
Q. So it would be rational?
A. Yeah.
Q. And, in this particular case, would it not be irrational for Executive Director Doane to conclude, in light of the fact that Chargois has contacted a state senator who's made an introduction to Mr. Doane, that Mr. Doane has agreed to sit down with Chargois and Labaton Attorney Eric Belfi, and Chargois and Belfi, in fact, do go and meet with Mr. Doane, would it not be irrational for Mr. Doane to conclude that Chargois is recommending Eric Belfi and Labaton?
MS. LUKEY: Objection.
A. Do you want me to view that as a pure hypothetical or do you want me to view it in the context of what I know or something else?
Q. I want you to assume those facts are true, and tell me if, based on those facts, just as you did for the previous hypothetical,

Page 79

you can conclude that it would not be irrational or it would be rational, to put it another way, for Doane to conclude that Chargois is recommending Eric Belfi?
MS. LUKEY: Objection.
A. So, again, it's hard for me to -- if assuming I could remember what you said, it would be hard for me to separate it from what I know in this case and view it as the equivalent of Smith and Jones.
In the context of this case, where Doane apparently doesn't know Chargois from a hole in the wall, so that Chargois' recommendation, even if there were one, that was explicit, these guys are terrific lawyers, wouldn't mean anything to Doane; where Chargois doesn't do this kind of work, and so doesn't even have a basis for forming a judgment about whether Labaton is terrific; where, in order to get Arkansas Teachers as a client, you have to basically go through an RFQ process; where, in fact, Labaton basically pitches its own qualifications, I don't think that, in the context of this case, there's an implied or

Page 80

express or meaningful recommendation.
I don't know what Doane would think, and whatever Doane thinks, I doubt he's irrational. So I'm sure whatever he, in fact, thought was rational.
But, to me, there's a sort of angels dancing on the head of a pin quality to your question because you have to think about the purpose of the rule, right?
The purpose of the rule is to make sure that clients aren't -- or prospective clients aren't misled to think that somebody is making a disinterested recommendation that would influence the client because they are trusted by the client when, in fact, it's not disinterested, it's paid for.
Nobody in Doane's situation, if there is a recommendation made, is going to give it any weight. Nobody is going to think that Chargois is disinterested since, you know, Chargois presumably wants to collaborate with Labaton. Nobody is going to be -- the purposes of the rule are not implicated at all.
And so to parse the meaning of the

Page 81

word "recommendation" and then to parse what Chargois thinks he remembers having said or what one imagines having been said or what the implications are of the meeting seems, I don't want to say ridiculous, because I think that would be sort of unfairly derogatory, but I just don't think it gets at what Rule 7.2(b) is trying to accomplish, and I don't think that a disciplinary authority or a court exercising disciplinary authority would think that the rule was violated here.
Q. But that's not what I asked you.
MS. LUKEY: Objection.
A. Well, I don't know what you're asking me, then. I thought it was a responsive answer.
Q. All of those things that you cited that made this a non-recommendation, including the RFQ, including what you claim Doane knew about Chargois' familiarity with Labaton, what could Chargois have done or said that would have made it a recommendation?
MS. LUKEY: Objection.
A. Well, I think if Chargois said, I'm

Page 82

familiar with Labaton's qualifications and the nature of the work that they do, and they do excellent work as -- on behalf of institutional investors in class actions, I would think that's a recommendation.

I would also think it's meaningless and not the sort of thing that a disciplinary authority would care about, but I think it would be, technically, on the language of the rules, defined in the comment that would be a recommendation.

Q. But didn't you say earlier that even if Chargois had said to Doane, I recommend these people, that Doane would have discounted it?

MS. LUKEY: Objection.

A. Well, based on what I understand in this case, Chargois' recommendation would not be significant the way it would be if a client's general counsel or trusted lawyer friend made a recommendation of a lawyer to represent that individual, because, A, there's a whole process, the RFQ process that you have to go through here; B, Doane is a pretty

Page 83

sophisticated person acting on behalf of a fairly sophisticated client.

So I don't think the problems that the rule is directed at would be implicated even if there were a recommendation, but, of course, Chargois could have made a recommendation.

Q. By your view, an attorney can say to another attorney, I highly recommend this person, this attorney, and you're not prepared to accept, on face value, that in every case that would constitute a recommendation?

MS. LUKEY: Objection.

A. Are you asking if that's what I said or if that's what I think?

Q. If that's what you think.

A. No. I think, if a lawyer recommends or, rather, if someone recommends a lawyer's services, I recommend this lawyer, that's a recommendation under the rule.

Is it something that the disciplinary authorities would regard as a violation of 7.2(b), that they would pursue in disciplinary cases? It depends on the context.

Page 84

Here, I think the context makes any recommendation by Chargois, if one was made, trivial, and not something that implicates the purposes of the rule.

It doesn't create the harms against which the rule was designed to protect. It's not something that a serious disciplinary authority would care about and may not be something that they would even think violates the rule, because the rules, in the end of the day, are supposed to be rules of reason, and where the purposes of the rules are not implicated, oftentimes, they are not thought to be violated.

But, of course, a recommendation is a recommendation.

Q. Thank you. And, again, would it be rational for Doane to conclude, in light of the services that Chargois claimed had happened, if they were true, that Chargois was recommending Labaton?

MS. LUKEY: Objection.

A. I don't know what Doane thought, but if Doane thought that Chargois was implicitly

Page 85

vouching for the quality of Labaton's work, based on the very little knowledge that Chargois had, I don't think it would implicate -- violate 7.2(b), but whatever he thought, he would have thought. He wasn't an irrational person.

THE SPECIAL MASTER: This raises an interesting question of your view of the interpretation of 7.2(b).

Is it viewed from an objective standard or from a subjective standard? Do you understand what I'm getting at? In other words, do you view it objectively, what an objective, disinterested person would look at the rule, or subjectively by virtue of the intent of the "recommender" and the recipient of the recommendation?

THE WITNESS: So I think the rule has a subjective quality to it, but most of the rules, and this one included, are also objective.

So the rule says a lawyer shall not give anything of value to a person for recommending the lawyer's services. So

Page 86

there is a subjective aspect to this in that the question is, what did Labaton think it was giving money to Chargois for.
So if Labaton thought they were buying a car -- if Labaton thought they were buying a car from Chargois, and that's what they thought they were giving the money for, and they don't get a car, they get a recommendation, then I don't think Labaton violated the rule. So to that extent, it's subjective, but what is a recommendation? That, I think, is an objective standard.
THE SPECIAL MASTER: Do you believe, based on the facts that you know here, that Labaton did not think that Mr. Chargois was making a recommendation of Labaton to Mr. Doane?
THE WITNESS: I haven't seen anything, and I read deposition transcripts of three Labaton lawyers, I didn't see anything there that indicated they thought they were buying recommendations.

Page 87

They thought they were -- that Chargois was making, as I understand it, was making introductions, and that was the word that I saw over and over again.
THE SPECIAL MASTER: Or as you put it, a facilitation of the relationship?
THE WITNESS: That's my description. I think the word that was used in the testimony was introduction.
THE SPECIAL MASTER: So you don't think that Labaton, in asking, from Labaton's perspective, in asking Mr. Doane for a meeting to hear about Labaton's services, that there was an implicit recommendation, that they expected from Mr. Chargois an implicit recommendation?
MS. LUKEY: Objection.
THE WITNESS: From what I've read, not only in the transcripts but also in some of the documents, Labaton was pitching its own services. This wasn't the kind of situation that 7.2(b) is concerned about, where a client has a relationship with lawyer A, who it trusts

Page 88

or actually, if you're talking about 7.2(b), with person A, who the prospective client trusts, and person A recommends a lawyer and the prospective client relies on that recommendation.
I think, here, Labaton pitched its services when Doane went up to New York to visit Labaton. They pitched their services when they made the response to the RFQ. I think that -- from what we now know if, in fact, Chargois had no relationship with Arkansas Teachers, but cold called Doane, any, quote/unquote, recommendation would have been trivial, de minimus, meaningless for purposes of 7.2.
THE SPECIAL MASTER: So you think Labaton engaged Chargois to make this introduction with no expectation whatsoever that Mr. Chargois would say something positive about Labaton?
THE WITNESS: I don't know what Labaton's expectation was, but my understanding, from what I read of what they were paying for, was not

Page 89

recommendations, but door-opening introductions.
THE SPECIAL MASTER: And following up on that, implicit in the kind of door opening that they were asking Mr. Chargois to do, is not a recommendation of services.
MS. LUKEY: Objection.
THE WITNESS: In my reading of the transcripts, I didn't see it.
THE SPECIAL MASTER: Why on earth would somebody ask somebody to make a recommendation of services for purposes of an introduction if they didn't think it was going to be a positive recommendation?
MS. LUKEY: Objection.
THE SPECIAL MASTER: Let me rephrase that to be fair.
Why on earth would somebody ask somebody to make an introduction, who is familiar with that lawyer's services and ability to serve a client, and not believe that the person who is making the introduction would say something positive

Page 90

about the law firm?
MS. LUKEY: Objection.
THE WITNESS: You are asking the abstract or in the context of this case?
THE SPECIAL MASTER: You can take it any way you want. I'm asking you to -- I'm asking you to impose a little common sense and understanding of human nature. That's all I'm asking you to do.
MS. LUKEY: Objection.
THE WITNESS: So in the context of this case, Labaton wanted to get a face-to-face meeting with Doane. It wanted to get its foot in the door.
What it cared about was an opportunity to pitch its services. It wasn't looking to Chargois to pitch its services. It was going to pitch its own services. It was going to explain its own qualifications.
THE SPECIAL MASTER: Is that exclusive? Because it's going to pitch its own services, is that exclusive of believing that Mr. Chargois would also put

Page 91

his seal of approval on their services?
MS. LUKEY: Objection.
THE WITNESS: No, they are not exclusive. But, you know, I can only testify based on the facts I'm given, which include depositions, which -- where I think really able and vigorous lawyers had the opportunity to question three Labaton lawyers about what they thought. And I didn't see in there, and maybe I missed it, but I didn't see in their testimony where they said they thought that they were paying Chargois for a recommendation for something that comes within 7.2(b), and as I read it, it was clear that that's not what they wanted, because they were capable of explaining their own value, explaining their own qualifications, explaining their own experience, explaining why they should be hired to monitor the Arkansas Teachers', you know, stock holdings.
THE SPECIAL MASTER: So, in your view, all Mr. Chargois was doing was

Page 92

making a cold call and opening the door.
MS. LUKEY: Objection.
THE SPECIAL MASTER: Is that right?
THE WITNESS: I'm not -- A, I wasn't there, so I have no personal view. B, I'm not the fact finder here. But C, based on what I've read, I didn't see any evidence of a recommendation. I just didn't see it. And the language in which everybody has talked about this, that I noticed in the transcripts, was introduction, not recommendation.
So I didn't see that that's what Labaton thought it was paying for. I didn't see that's what Chargois actually did. I just didn't see it. And if I missed it, then I missed it.
BY MR. SINNOTT:
Q. But you've testified that even if there was the language of a recommendation, that that would not necessarily be dispositive for you that there was a recommendation in this case, correct?
MS. LUKEY: Objection.

Page 93

A. If there's a recommendation, there's a recommendation. Is it something that I think, in the context of this case, would violate 7.2(b)? Well, first of all, I don't because there was a fee-sharing arrangement, but leaving that aside, I think that, in the context of this case, it's so trivial or de minimus or meaningless, it does not implicate the purposes of the rule or create the harms that the rules is designed to protect against.
So I think there's a pretty good argument that the rule itself is not violated, even if you want to call this a recommendation.
Q. When was the fee-sharing agreement perfected in this case?
A. I don't know what you mean by "perfected."
Q. Well, when was it --
THE SPECIAL MASTER: Executed?
Q. -- executed or drafted?
MS. LUKEY: Objection.
A. Well, in my recollection of the testimony, is that there wasn't a signed agreement, or at least nobody found one. That

Page 94

there were writings that memorialized an understanding, and that the understanding was reached around 2008 or 2009. I think 2008.
Q. When were those e-mails, as far as you recall?
A. I don't recall the date.
Q. Assuming that those e-mails took place long after this introduction or recommendation or however we want to characterize the Doane meeting, what would you point to as constituting a division of fees agreement?
MS. LUKEY: Objection.
A. What would I point to? My understanding is that there was an oral understanding or arrangement, certainly, Chargois thought there was, that was reached before Arkansas Teachers formally retained Labaton as monitoring counsel, and that that then gets reflected in a draft agreement that nobody can find a signed copy of, and that may not have been signed.
It gets reflected in e-mail communications. It gets reflected in

Page 95

conversations.
Q. But prior to the Doane meeting, what can you point to as indicative of a fee-sharing agreement?
A. Prior to the Doane meeting?
Q. Yes, sir.
A. I don't know the timing of the conversation that the Labaton and Chargois firms had concerning what -- their understanding about a fee-sharing arrangement, I don't know the timing.
Q. When did the clients, in this case, Arkansas, consent to the joint participation of Labaton?
MS. LUKEY: I'm sorry. In what manner? In what context? Are you talking about this case, State Street?
MR. SINNOTT: Yes, of course.
MS. LUKEY: In the context of State Street.
A. What do you mean by "the joint participation of Labaton"?
Q. I know you're familiar with 1.5 and 1.5(e). A division of a fee between lawyers

Page 96

who are not in the same firm may be made only if, after informing the client that the division of fees will be made, the client consents to the joint participation and the total fee is reasonable.
You are very familiar with that, sir?
A. Yes.
Q. When was the client's consent effected with respect to Damon Chargois and Labaton in this matter?
A. Are you asking me, when did they give consent under -- that complied with 1.5(e) or are you asking something else?
Q. Yes, under 1.5(e).
A. I think, on the date that Arkansas Teachers signed the retention letter in the State Street Bank case, they gave consent that satisfied 1.5(e). I can't remember the date, but if I can look through the facts, I can --
Q. February of 2011, would that refresh your memory?
THE SPECIAL MASTER: February 8, does that refresh your recollection?

Page 97

MS. LUKEY: I will stipulate that's the date on the engagement letter.
A. Yeah. I am looking now at page 9 of my report.
Q. Before we discuss 1.5 at length, let me just ask you a couple of questions.
Do Massachusetts rules restrict the amount of money that a law firm can pay for an introduction?
MS. LUKEY: Objection.
A. To pay them for an introduction? You're sort of putting this in the context of 1.5(e), in the context of a fee-sharing arrangement?
Q. Yes, sir.
A. So I think 1.5(e) requires that the total fee be reasonable. So that if a lawyer has a fee agreement with a client for the lawyer to receive an hourly rate or a percentage -- percentage fee basis or something else, the total fee has to be reasonable. I don't believe that 1.5(e) regulates how that total fee gets divided as between the lawyers who are in a fee-sharing arrangement under

Page 98

1.5(e).
THE SPECIAL MASTER: So is that to say that there is no limit?
THE WITNESS: Well, it's limited by the total amount -- I'm sorry. I interrupted you.
THE SPECIAL MASTER: If the total amount is reasonable, is that to say there is no limit on the amount that can be paid for an introduction pursuant to a fee-sharing agreement?
THE WITNESS: Well, assuming the fees are shared between two lawyers, one of whom makes an introduction, that's what they are being paid for?
THE SPECIAL MASTER: And only that.
THE WITNESS: No, I don't think it regulates. 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.
THE SPECIAL MASTER: So if, just hypothetically, it's not what we have

Page 99

here, before everybody objects, but if, just hypothetically, because I'm trying to understand your view, the division of fee provided 50 percent to the introducing lawyer, and the total fee was reasonable, there is no -- that's not a problem under Massachusetts rule?
THE WITNESS: That doesn't violate 1.5(e) or 1.5(a).
So, for example, let's suppose I'm a very wealthy lawyer, and I have made all the money I need to make, but I love trying cases and I'm looking for a client who I can represent in a constitutional challenge to, I don't want to complete the sentence because, you know, it will offend somebody, constitutional challenge to something that I don't like, and I say to a lawyer, if you can find me a client who has standing, I don't need the money, I'll give you half my fee to do this constitutional civil rights action, where I'm going to be entitled to fees, because the money means nothing to me. I want the

Page 100

challenge, the glory, you know, or take, for example, you know, David Boies and Ted Olsen, who did, you know -- you know, to them, I don't think the money meant anything. I thought making the point, arguing in the Supreme Court, there's a lot of it that gave them joy and was of great value to them.
I don't think, assuming they received a fee, that it would have been about the fee.
I don't think Rule 1.5(e) and 1.5(a) would have precluded Ted Olsen and David Boies from giving away their fee to anybody, including the person who introduced them to clients, who had standing, who were willing to stay the course, who were willing to be deposed, who were willing to be out in public, who were willing to be the face of the case.
I think that would have been perfectly fine under the Massachusetts rule.
THE SPECIAL MASTER: In such a case,

Page 101

do you think the client should be told the amount, where there is more than a relatively small share of the total fee, where the share is very large, do you think the client should be told that there is going to be a fee paid?
MS. LUKEY: Objection.
THE SPECIAL MASTER: That -- for the introduction that is very large?
MS. LUKEY: Objection.
THE WITNESS: So I guess you could take the question a number of different ways. I don't know -- if you're asking, is it required under 1.5(e) or under the Massachusetts rules? Generally, I'd say no.
If you're asking, is it best practices? I don't know. It kind of depends on whether and why it would be significant to the client. So I think it's contextual.
MR. SINNOTT: Can I suggest a break?
THE SPECIAL MASTER: Fine.
MR. SINNOTT: We are going to take a

Page 102

15-minute break. So we will be back here at five minutes -- six minutes before 11. Let's call it five minutes before 11.
(Recess taken.)
MR. SINNOTT: We are back on the record. It's 11:00, and just to take the roll call of phone participants. Josh, are you there?
MR. SHARP: Yes.
MR. SINNOTT: And David? David Copley?
Okay. Linda? Linda, are you there?
MS. HYLENSKI: I'm here.
MR. SINNOTT: Okay. Thanks, Linda.
David, have you joined us?
Okay. So we have Josh and Linda on the phone line. Has anyone else joined us? Okay. Thank you.
BY MR. SINNOTT:
Q. Professor, I wanted to just kind of close out my questioning on 7.2(b) before the break, but let me start with that and then we will move on.
On page 16 or 17 of your report, you

Page 103

say that -- I believe it's the bottom of page 16, that you are aware of no judicial decision.
A. Unaware.
MS. LUKEY: He said you are aware of none.
Q. I will read it, rather than paraphrasing it.
"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)."
Does the fact that courts or regulatory bodies have not discussed Rule 7.2(b) and 1.5(e) in a single opinion render those rules ineffective as written?
MS. LUKEY: Objection.
A. I think the rules are both effective as written if by effective you mean by effective in the law.
Q. So the rules are effective?
A. Both rules are effective.
Q. All right. And are you familiar

Page 104

with a New York ethics opinion and, obviously, I'll show you this because I can't imagine the numbers would resonate with you, New York Ethics Opinion 1128, New York State Bar Association Committee on Professional Ethics. Topic, referral fees, division of fees with the state and with other attorneys, Opinion Number 1128.
MR. SINNOTT: And, Madam Court Reporter, if we can have that marked as an exhibit.
(Green Exhibit 5, New York Ethics Opinion 1128, New York State Bar Association Committee on Professional Ethics, marked for identification.)
A. (Perusing.)
Q. Have you seen this before, Professor?
A. I should have because I'm on the committee.
Q. Okay.
A. I wasn't involved in the drafting of it. I don't remember it, but I certainly had the opportunity to.

Page 105

Q. And would it be fair to state, based on your familiarity with New York and Massachusetts Rules of Professional Conduct, that where there is a reference to 1.5(g) in this opinion, it's the equivalent of Massachusetts Rule 1.5(e)?
MS. LUKEY: Objection.
Q. Except for bare referrals?
A. Are you asking if they are the same? They both deal with fee sharing among lawyers. Obviously, they are drafted differently.
Q. Okay. And that 7.2(a), as referred to here, is the equivalent of 7.2(b) in Massachusetts Rules of Professional Conduct?
A. It's the counterpart. They both deal with payments to somebody for a recommendation of a lawyer's services, but they are also drafted differently, I believe.
Q. All right. Thank you.
Now, obviously, this, as most opinions, are fact specific, but in looking at this opinion, would you agree with me that 7.2(b) or the New York equivalent, and 1.5(e) or the New York equivalent, are, in fact,

Page 106

discussed in a single opinion as applying to fee sharing between lawyers?
MS. LUKEY: Objection.
A. Are you asking whether this opinion refers to both rules? Yes.
Q. And it's an opinion relative to fee sharing between lawyers, correct?
MS. LUKEY: Objection.
A. Among other things.
Q. Among other things. But you had not referred to this or reviewed this when you wrote your report, correct?
A. Correct.
Q. All right, sir. Let me talk about Labaton's compliance with 1.5(e) and, obviously, we touched on it during our discussion of 7.2(b), but because the language is important, let me just read it again.
"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 participation and the total fee is reasonable."

Page 107

Now, how did Labaton -- I want to you ask how Labaton met the requirements of 1.5(e). And we are going to refer to 1.5(e) here in the context of how it was written prior to February of -- as of February 2011, when the retention agreement was signed.
So what I want to ask you is this, Professor. Upon what information in the factual statement provided to you did you assume that Arkansas, and I'll use ATRS and Arkansas interchangeably, that Arkansas knew that Labaton would divide fees with lawyers who are not in the same firm?
A. Well, I relied, in part, on the draft retention letter from September 24, 2010 and the signed final retention letter of February 8, 2011, and on Mr. Hopkins -- well, I think -- I don't know if this was explicit in the facts I was given, but it's pretty clear that Mr. Hopkins understood that if this became a class action, there would be other lawyers involved in the class action who would be splitting the fees that were awarded by the court if it was a successful class action.

Page 108

Q. I'm sorry. With respect to Mr. Hopkins, that last part, what was the information you relied on?
A. I don't remember if it was explicit in the facts given to me, but I think -- I assumed, and I think I made it clear in my report, that Mr. Hopkins understood that if the class action became a class action and was successful, that there would be other lawyers involved that would be receiving whatever fee the court ultimately awarded.
Q. And what do you base that assumption on, what facts?
A. Well, I now base it on the fact that he was a lawyer, he was a very attentive representative of the class representative, which had been a class representative in other class actions, that it's typical in class actions for there to be multiple lawyers involved, that, in general, in class actions, the court, if it's successful, the court awards the attorney's fee, that the multiple lawyers involved in class actions conventionally share the fee that's awarded by the court.

Page 109

I think, as a lawyer, he would have known that.
Q. So you infer knowledge on the part of Mr. Hopkins based on the fact that he's a lawyer, correct?
MS. LUKEY: Objection.
A. He's a lawyer. He's a lawyer for an entity that goes out of its way to become a class representative, that's been a class representative in other class actions, who, as I understand it, was regarded as being a pretty attentive, involved representative of the class representative in the lawsuit.
So I think it's a -- and when I drew that inference, the lawyers who retained me as an expert didn't contradict it. So I assume that it was something that they are prepared to prove.
Q. Aside from the fact that you had an experienced, highly-placed lawyer in Mr. Hopkins, what was Mr. Hopkins told about division of fees?
MS. LUKEY: Objection.
A. Are you asking my recollection of

Page 110

his testimony?
Q. I'm asking you --
A. I have no personal knowledge of what he was told.
Q. Of course you don't have any knowledge, but as far as the facts that were presented to you, did you strictly rely on the fact that he was an experienced, well-placed lawyer, or were there other facts that led you to conclude that Hopkins was aware that Labaton would be working with Chargois & Herron moving forward?
MS. LUKEY: Objection.
A. That's a different question from what you asked me before. Before, you were asking me about fee sharing generally. And my understanding is, and I can't imagine that it's disputed here, that Hopkins would have known, in general terms, that there would be fee sharing, that there would be more than one lawyer beyond the Labaton firm working on the matter, and that the ultimate fee awarded by the court, if there was one, would be shared among the lawyers.

Page 111

Now you're asking me about Chargois. So I just want to be clear that I wasn't testifying about Chargois.
Q. No, I understand.
But getting back to the fee sharing in general, is it your testimony that a client does not need to be informed of fee sharing?
MS. LUKEY: Objection.
A. Well, if there is fee sharing, then I think 1.5(e) required the lawyer to be informed that division of fees will be made.
Q. Okay. And how was Hopkins informed that a division of fees would be made?
A. Well, again, I think it's clear from the circumstances both that, in the draft retention letter and the February 8, 2011, retention letter, that Arkansas Teacher agreed that fees could be shared.
And I think it's a very, very strong assumption that Mr. Hopkins understood that there would, in fact, be fee sharing in this case, because that's conventionally how class actions worked, and he was familiar with how class actions worked.

Page 112

Q. All right. So if you've got a experienced, savvy or well-placed lawyer --
A. If I -- and I apologize for interrupting -- certainly, as the case progressed, he knew that there were multiple lawyers involved in the case, because Labaton was not the only lawyer who appeared as counsel in this case, the Lieff Cabraser firm and the Thornton firm as well, and I -- though I don't recall whether it's specifically in the facts I was asked to assume, but it's certainly reflected in, I think, his testimony that, you know, that he was engaged. So he would have known that there were at least those three firms involved.
THE SPECIAL MASTER: Did you see in the record that, in fact, Labaton specifically advised Mr. Hopkins that Lieff and Thornton would be involved in the case on behalf of Arkansas?
THE WITNESS: I don't recall that, but if he did, then that's a better answer to the question I was giving than the ones I have been giving so far, because then he

Page 113

did specifically have notice that there would be fee sharing.
THE SPECIAL MASTER: Fee sharing between those firms.
THE WITNESS: That's correct.
BY MR. SINNOTT:
Q. Was Hopkins aware that Labaton would be fee sharing specifically with Damon Chargois or his firm?
A. I don't believe so.
MS. LUKEY: Objection.
A. Not -- not until this -- the post -- whatever you call these proceedings.
Q. The investigation?
A. Yeah, if you -- yes.
Q. Did he need to be informed that Chargois & Herron would be part of a fee-sharing agreement?
A. Not under Rule 1.5(e).
THE SPECIAL MASTER: Could I follow up, please?
THE WITNESS: Sure.
THE SPECIAL MASTER: Under Rule 1.5(e), what is the extent of information

Page 114

required to be given to the client about a division of fees?
THE WITNESS: Well, the rule says, after informing the client that a division of fees will be made, which, to me, means that a division of fees will be made. It doesn't say with whom or in what amount.
There are other Professional Conduct Rules that are explicit about what's required and/or are interpreted to require more, but I don't think this one did at the time.
THE SPECIAL MASTER: So as long as the lawyer says to the client, we are going to divide fees with other lawyers, that complies with 1.5(e)?
THE WITNESS: As 1.5(e) existed in Massachusetts at the time, I believe so.
THE SPECIAL MASTER: Putting aside Saggese, which did require a writing, putting aside Saggese.
THE WITNESS: Right.
THE SPECIAL MASTER: So no further explanation, no further information need

Page 115

to be -- need be given in order to fall under the protections of 1.5(e).
THE WITNESS: Well, if the client asks, then I think you give more information. So it's an invitation for a conversation, but I don't think the rule itself required you to give more information to a client who wasn't interested in hearing more or didn't express interest.
THE SPECIAL MASTER: Do we have the retention letter? I might be jumping ahead of you a little bit.
MR. SINNOTT: That's fine.
THE SPECIAL MASTER: Do you have that?
MS. LUKEY: I have it.
MR. SINNOTT: It was introduced to both witnesses yesterday.
THE SPECIAL MASTER: Let's mark this as a separate exhibit.
(Green Exhibit 6, Letter from Labaton Sucharow, dated February 8, 2011, marked for identification.)

Page 116

THE SPECIAL MASTER: So it's not a lengthy document, but there are several pages to it, a page and a half to two pages here.
Could I ask you to just look at that and indicate which part of that letter provides the information to the client that there would be a division of fees?
THE WITNESS: I think the paragraph at the top of page 2 provides the client's consent to a fee division, and I think the notice of the fee, that there would be a fee division.
This obviously provides notice that there could be a fee division, but that there would be, would be a combination of what you described before, that Arkansas Teacher was told that Lieff Cabraser and the Thornton firm would, in fact, be participating.
And I think Hopkins' general knowledge of the way these things work would have, combined with this, provided information that the client -- excuse

Page 117

me -- that a fee division would, in fact, be made.
THE SPECIAL MASTER: So you don't have to tell the client anything more than, under the Massachusetts rule and under Saggese, in effect, at the time -- I want to put aside the writing requirement, but you don't have to tell the client anything more than we are going to divide fees in this case.
THE WITNESS: As I read the rule, no, at that time. If the client asked, obviously, you would answer the client's questions. Here, the client didn't want to know and affirmatively indicated that, but the rule itself does not require more, as I read the rule.
THE SPECIAL MASTER: Okay. As regards Mr. Chargois now, and the agreement that Labaton had with Mr. Chargois, which portion of that paragraph that you've pointed to does Mr. Chargois fall under?
THE WITNESS: When you say "which

Page 118

portion does he fall under," are you meaning which portion provides consent to dividing fee --

THE SPECIAL MASTER: Provides notice. And as to Mr. Chargois, which portion provides notice that Mr. Chargois, not him specifically, but that somebody who was involved in the case, as he was, was going to be involved.

MS. LUKEY: Objection.

THE WITNESS: So if you're asking what provides notice for -- that's required by the rule?

THE SPECIAL MASTER: Uh-huh.

THE WITNESS: I think the rule requires informing the client that a division of fees will be made, and that the client was informed that a division of fees will be made.

It didn't require informing the client specifically with whom, all of the lawyers with whom fees would be divided. It didn't require specifically how the fee division will be made. It didn't require

Page 119

those things.

So I think that this is adequate consent. I think the notice is provided by this, together with other things, but I don't think that this specifically refers to Chargois. I think it permits the fee sharing with Chargois.

THE SPECIAL MASTER: Okay. But this paragraph does call out fee sharing for specific purposes, right?

THE WITNESS: It allows -- it authorizes Labaton to share fees with attorneys who serve as local counsel, serve as liaison counsel, who -- to provide fees as referral fees or to provide fees for other services performed in connection with the litigation.

THE SPECIAL MASTER: There's been a lot of discussion. You were an English major, apparently.

THE WITNESS: I was.

THE SPECIAL MASTER: There's been a lot of discussion about how to deconstruct that sentence. And I think there are a

Page 120

number of different ways. I don't know if you and I had similar grammar teachers who approached it similar, but I don't want to get into that.

Under which part of these permissive roles does Mr. Chargois fall in the context of the State Street case?

THE WITNESS: Right. I would say that, as I understand the facts, you could view the payment as a referral fee. You could view it as a payment for their availability to serve as liaison counsel, although, in fact, they didn't serve in that role, but I would say referral fee would probably be the more descriptive one.

THE SPECIAL MASTER: Okay. As you may or may not know, there has been a lot of discussion in this investigation about exactly what it was that Mr. Chargois was doing for his fee, and some disagreement, including by Mr. Chargois, who said he was not receiving a referral fee.

To him, he said -- his testimony

Page 121

was, we can get it out, this was not a referral fee. I asked him if he was local counsel in this case. No. Was he liaison counsel? No. Was this a referral fee? No. He said it was just an agreement. But put that aside.

Do you believe that what Mr. Chargois did in this case was a referral for purposes of being paid a referral fee?

MS. LUKEY: Objection to the first part.

THE WITNESS: So, as an English major, I would say, to parse your question, do you mean was this a referral fee within the meaning of 1.5(e), which specifically refers to referral fees? Was this a referral fee for purposes of Labaton's agreement with Arkansas Teacher? Or do you mean, is this a referral fee in some other sense?

THE SPECIAL MASTER: Let's take it one by one.

Was, as you understand it within the

Page 122

meaning of the Rules of Professional Conduct, including the Massachusetts rule here, was this a referral fee?
THE WITNESS: So I would say that this was a payment that was permitted by 1.5(e). Whether you call it a referral fee or not, I don't think anything turns on that, because 1.5(e) itself doesn't limit the reasons for which you're sharing a fee with another lawyer.
THE SPECIAL MASTER: Except for one thing, right? The contract here, the retention agreement, calls out the specific purposes for which payments may be divided, fees may be divided.
THE WITNESS: Well, you asked me to take it one at a time. So I was starting with 1.5(e).
THE SPECIAL MASTER: Oh, I see. I'm sorry.
THE WITNESS: So, again, whether it's a referral fee under 1.5(e) or not, I don't think anything turns on it. I tend to think it's a referral fee under 1.5(e),

Page 123

but you wouldn't need to -- you know, you wouldn't get interpretive opinions because whether it is or it isn't, the fee sharing is permitted.
Whether it is under the contract or not is a contract interpretation question, I guess. Since the contract was drafted by Labaton, you'd kind of construe it in light of what Arkansas Teachers understood because, generally, you construe ambiguities, if there is one here, against the lawyer drafter.
I don't know what Hopkins thought, but from what I gather, Hopkins thinks that this fee-sharing arrangement is fine.
THE SPECIAL MASTER: Ex post facto?
MS. LUKEY: Objection.
THE WITNESS: If you discredit his testimony, then there's no evidence about what he thought at all. So I don't know that you can draw the contrary conclusion.
THE SPECIAL MASTER: Let's take it one at a time.
The contract permits, as you said,

Page 124

Labaton to allocate fees to other attorneys who serve as, and I'm going to read it the way you want to read it, not the other way that it could be read, but I will read it the way you want to read it, who serve as local counsel, right?
MS. LUKEY: Objection.
THE SPECIAL MASTER: Is there any possibility that, in this case to which this agreement applied, that Mr. Chargois' role could be construed as local counsel?
THE WITNESS: Well, from what I read, there was a lot of back and forth about what local counsel means as well. If, by local counsel, you mean a lawyer who's admitted to the local bar who appears before the court as local counsel, then, obviously, he's not local counsel.
If you mean somebody who's counsel in the location where the client is, I think he was willing to serve as local counsel, or at least Labaton thought he was here, which may be the same as liaison counsel.

Page 125

THE SPECIAL MASTER: Yes. We are talking about at the time the contract was executed.
THE WITNESS: Right. My understanding is that Labaton -- and all I'm doing, by the way, I have no firsthand knowledge. I'm just drawing on my recollection of the testimony.
My understanding is Labaton thought that -- oh, I guess, by the time of the contract, they probably didn't expect Chargois to act as local counsel or as liaison counsel. They did at the time of the fee-sharing arrangement, I think.
THE SPECIAL MASTER: Let's skip over referral fees for now, okay, and go to "or for other services performed in connection with the litigation," capital L, meaning the case, right?
THE WITNESS: Right.
THE SPECIAL MASTER: Would you agree that he performed, he, Chargois, performed no other services in connection with the litigation?

Page 126

THE WITNESS: Yes.
THE SPECIAL MASTER: So let's go back to referral fees.
Was this, what he was paid here, a referral fee for this litigation?
THE WITNESS: I guess I would need to know what you mean by referral fee for this litigation.
THE SPECIAL MASTER: You are the expert. I want to know what you think.
MS. LUKEY: You added another phrase.
THE WITNESS: You asked the question, is this a referral fee for this litigation.
THE SPECIAL MASTER: I'm reading -- I am reading directly from the permissive use, according to the construction that he wants.
MS. LUKEY: But you added the phrase "for this litigation."
THE SPECIAL MASTER: Yes.
MS. LUKEY: It says "referral fee."
THE SPECIAL MASTER: All right. I'm

Page 127

sorry. In connection with the litigation, in connection with the litigation. That's what it says.
MS. LUKEY: Objection. It's a question of which phrase is modifying on the end portion as well, and I'm not -- that's up to him.
THE WITNESS: Well, I was going to make a similar point.
THE SPECIAL MASTER: I'm sure you were. That's the problem. But go ahead. We have had this discussion.
MS. LUKEY: I really respectfully object.
THE SPECIAL MASTER: I know, Joan.
MS. LUKEY: And this is something you and I need to discuss.
THE SPECIAL MASTER: We are going to have a direct discussion about this. I promise you.
MS. LUKEY: We are going to have a very direct discussion, because it's very troubling to me, the things you have said.
THE SPECIAL MASTER: And me, Joan.

Page 128

I have been doing this for 27 years, and I have been teaching evidence for 27 years. I know exactly what a speaking objection is and I know exactly what Rule 30(c) permits. We will have a discussion about it later, okay.
MS. LUKEY: I hope that we will, because this has been troubling me deeply, and I think I have been maligned unfairly. I just want that to be on the record.
And I respectfully request that you refrain from making the comments, such as "I'm sure you did" to this witness. That was unnecessary, sir.
So let's go ahead, and let's you and I have a talk, because this is a serious matter.
THE SPECIAL MASTER: It is serious, Joan.
MS. LUKEY: More so to me than to you, I suspect. And we should discuss it.
THE SPECIAL MASTER: All right.
THE WITNESS: Okay.
MR. HEIMANN: I missed the question.

Page 129

I'm sorry. Is there a question pending?
THE SPECIAL MASTER: Good point, Richard. Let me re-ask the question.
We have gone through the other permitted roles and services that were permitted by the agreement.
"Who serve as local counsel or liaison counsel," I think you said that Mr. Chargois, in connection with this case, did not serve as either local or liaison counsel, correct?
THE WITNESS: Correct.
THE SPECIAL MASTER: And I think we have also agreed that he provided no other services in this litigation, correct?
THE WITNESS: Correct.
THE SPECIAL MASTER: So that gets us to referral fees.
My question to you is, in this litigation, was this a referral fee?
THE WITNESS: Okay. I think it's fairly construed as a referral fee, and I gather, after the fact, Mr. Hopkins thinks so as well.

Page 130

THE SPECIAL MASTER: Okay. Which begs the question, what is a referral fee?
THE WITNESS: I don't think it's a defined term in the Massachusetts rule, so I think it generally refers to a fee given to another lawyer for referring a client, which could be any number of things.
It could be a lawyer who has an established lawyer/client relationship with the client who recommends the lawyer's services. It could be a lead. It could be something that leads to the creation of a lawyer/client relationship. I don't think it has any specific meaning.
THE SPECIAL MASTER: It's just a phrase without meaning?
THE WITNESS: No, it's not without meaning. I think it's not a specifically defined term. I think some of the terms in Rules of Professional Conduct are defined. There's a definition, section 1.0, that gives you definitions. I don't think this is defined, at least as far as I recall, in the Massachusetts rules.

Page 131

If you're talking about what it means in here, in the contract, it's not specifically defined either. So I can't speak to what Arkansas Teachers and Labaton understood at the time. All I can tell you is what I think it means, and I did.
THE SPECIAL MASTER: So on page 17 of your opinion, if you could turn to that, please.
At the bottom, you cite Massachusetts Legal Ethics, Substance and Practice, at page 185.
Do you see that?
THE WITNESS: Yes.
THE SPECIAL MASTER: And it says, explaining that "unlike most every other jurisdiction in the nation, Massachusetts permits an attorney's fee to be divided with a lawyer who does not practice in the firm of the primary lawyer (i.e., a referral fee) even if the referring lawyer does nothing more than refer the matter."
I should complete the sentence,

Page 132

which is "quintessentially a Massachusetts practice and tradition."
Is there not an implication there that referral fee refers to referring the matter, being the case at hand?
MS. LUKEY: Objection.
THE WITNESS: Are you asking my reading of the -- the secondary authority, the Massachusetts Legal Ethics, Substance and Practice?
THE SPECIAL MASTER: Which you cited.
THE WITNESS: Yeah. I think that in the context of this quote, that the author of that secondary authority is referring to referring matters, not referring clients. I think that's the normal -- not normal. I think that's the -- ordinarily what happens. It's probably rarer to refer a client who has multiple matters in sequence than it is to refer somebody who has just one matter.
THE SPECIAL MASTER: You earlier characterized the relationship that

Page 133

Mr. Chargois, as between Labaton and Arkansas, as being an introduction.
THE WITNESS: I think that's how the witnesses characterized it.
THE SPECIAL MASTER: You characterized it in your report as a facilitation.
THE WITNESS: Right.
THE SPECIAL MASTER: Either one. Take either one.
THE WITNESS: Okay.
THE SPECIAL MASTER: Do you agree that it was not an introduction or a facilitation for this matter, the State Street matter?
MS. LUKEY: Objection.
THE WITNESS: I don't think the State Street matter was specifically contemplated at the time, but it was certainly contemplated that it was an introduction for purposes of Labaton eventually representing Arkansas in fee-generating class action cases, not simply to represent them as an unpaid

Page 134

monitor of their stock portfolio.
THE SPECIAL MASTER: And that is sufficient, in your view, to be a referral fee within the contemplation of the February 8 letter?
THE WITNESS: You know --
MS. LUKEY: Objection.
THE WITNESS: Again, I would say I'm not here as a contract expert. I don't know what Mr. Hopkins and Labaton understood this to mean.
I do understand that Mr. Hopkins has no objection to this. So, presumably, thinks it's contemplated by the letter.
I don't see why it wouldn't be a referral fee within the contemplation of the agreement, but I certainly think it's a referral fee within my understanding of the term.
THE SPECIAL MASTER: So a lawyer who makes an initial introduction, three years before, for a general monitoring relationship which may lead to cases or not, but may lead to cases, thereby has a

Page 135

referral fee for every individual case in which that client is involved? Yes? Is that your view?
MS. LUKEY: Objection.
THE WITNESS: So I'm not sure I understand the question.
Are you asking me if, assuming there is such an arrangement --
THE SPECIAL MASTER: Yes.
THE WITNESS: -- to receive a fee growing out of future cases, whether that's fairly described as a referral fee?
THE SPECIAL MASTER: For the introduction.
THE WITNESS: I think, if the introduction leads to future cases for that client and there's an agreement that the lawyer receiving the referral will divide fees in those future cases, then that's fairly described as a referral fee, and I will just give you -- I will give you an example.
I chaired for three years the committee that oversees the New York City

Page 136

Bar's referral service. And they believe that what they were doing was referring lawyers to prospective clients. And their rules provided for a fee. And it was a fee based on a percentage of the fee that was generated, growing out of the referral.
And I know, at one time, we had the conversation, what if we refer a client and multiple matters develop in sequence, not just the matter that we made the referral for, can we seek a fee for those?
Now, I don't remember whether, in the end, they decided to receive the fee -- seek the fee or not. That was a question of what the local rules of the referral service were, but I think, if they -- their rules provided for a fee in sequential matters, that would be, in an equivalent situation with a lawyer, not a referral service, it would be a referral fee.
I don't know why the fee for the first matter would be a referral fee,

Page 137

which I assume everyone agrees it would be, and for successive matters would be called something else. I'm not sure what else you would call it.
THE SPECIAL MASTER: Successive unrelated matters with different parties, different roles?
MS. LUKEY: Objection.
THE WITNESS: Well, the same client.
THE SPECIAL MASTER: Same client.
THE WITNESS: Right. So if you make an arrangement that I will receive a referral fee for this particular matter, and future matters, I won't receive a fee, that's fine. But if you make an arrangement, I will receive a fee for the first class action and any other class actions in which Arkansas is a class representative, I don't know what else you would call that fee other than a referral fee. It seems to be fairly characterized as a referral fee.
THE SPECIAL MASTER: How about a finder's fee?

Page 138

MS. LUKEY: Objection.
THE SPECIAL MASTER: Doesn't that sound like a finder's fee?
MS. LUKEY: Objection.
THE WITNESS: I have never seen the term "finder's fee" used in connection with lawyers referring clients.
I suppose you could -- you know, I don't know what the finder's fee conventionally means, but I've never seen it used in this context.
THE SPECIAL MASTER: So a fee that is paid across the board for all cases arising out of the introduction of the client is a referral fee within the division of fee rule, the Massachusetts Rule 1.5(e)?
THE WITNESS: Well, I guess I would say again, nothing turns on that, because 1.5(e) doesn't limit the purposes for which you are sharing the fee with a lawyer, but I do think it's fairly characterized as a referral fee under 1.5(e) of Massachusetts.

Page 139

THE SPECIAL MASTER: So do you not agree, then, with the characterization in the secondary source you cited on page 17, even if the referring lawyer does nothing more than refer the matter?
MS. LUKEY: Objection.
THE WITNESS: Well, I agree with the source, and I quoted the source.
I don't think it goes on to say, however, if the referring lawyer did not refer this specific matter, but merely referred the client or referred a previous matter involving the client, then that's not a referral fee under the rule. It doesn't say that.
So I don't read into this an implied exclusion of the referral fee in this case.
THE SPECIAL MASTER: Does the fact that the client was not referred in this matter say anything about the level of information that should be given to the client or the nature of the consent that should be given by the client?

Page 140

MS. LUKEY: Objection.
THE WITNESS: When you say "should," I'm assuming you mean required under Rule 1.5(e)?
THE SPECIAL MASTER: Yes.
THE WITNESS: No.
THE SPECIAL MASTER: So there is no obligation in this case for Labaton to have said anything more than we are going to -- under the rule, anything more than we are going to be allocating fees to other lawyers in this case?
THE WITNESS: And get consent.
THE SPECIAL MASTER: And get consent to that.
THE WITNESS: Yes. I think that's what the rule required.
THE SPECIAL MASTER: Does the rule require informed consent?
THE WITNESS: Not by its terms.
THE SPECIAL MASTER: So we would not read into the rule any level of information beyond that which you've said need be given -- need be given to the

Page 141

client?
THE WITNESS: Right. I don't think you could discipline a lawyer -- well, I mean, the rule is not in effect now, but at the time, I don't think a lawyer in Massachusetts would be disciplined for failing to give additional information beyond what the rule itself, on its face, requires, unless asked, of course.
In that case, I think you have to be candid with the client and answer the questions.
THE SPECIAL MASTER: So simply saying there is going to be a division of a fee is sufficient?
THE WITNESS: Yes. I think if you say I'm going to be bringing in other lawyers outside the Labaton firm, we are going to divide fees, and the client says, I don't want to know about the fee-sharing arrangement, I don't care, that's fine with me, I don't think you have to shove more information down the client's throat.
THE SPECIAL MASTER: Is there an

Page 142

implication in what you've just said, and we can have the court reporter read it back, that bringing in other lawyers in this case means that those lawyers are going to provide some value to the case, some service in the case?

MS. LUKEY: Objection.

THE WITNESS: Well, you know, I made up a quote. It wasn't, I think, the only way in which you could satisfy the rule.

I think if you say to the client, which the client already knows, I'm going to be dividing fees with other lawyers outside my firm, and the client has no interest in knowing more and affirmatively tells you that, I think you have satisfied the rules that the client gives consent.

THE SPECIAL MASTER: Suppose the rule is required to -- is read, rather, to require something more. And at the time the agreement is made, nothing more is told other than what we have talked about, that there will be a division of a fee, but later the client learns that, in fact,

Page 143

the division of the fee is going to go to a lawyer who did no work in the case, didn't appear in the case, didn't appear on the Lodestar petitions, is it appropriate for the client later to ratify the fee?

MS. LUKEY: Objection.

THE WITNESS: So I'm not sure exactly what you're asking. I don't think there's anything inappropriate about a client ratifying. I mean, that goes to, I suppose, how the client construes its own interests.

Clients can do what they want to. I'm assuming what you really mean is, is the ratification effective in some way to --

THE SPECIAL MASTER: Yes.

THE WITNESS: So I guess the question -- one question, I wonder, I'm trying to wind back, your original question is, when you say assuming the rule required more, more disclosure than was given.

Page 144

THE SPECIAL MASTER: Correct.

THE WITNESS: Whether you mean the rule itself or do you mean the Saggese case or do you mean something else?

THE SPECIAL MASTER: Let's broaden it, and say existing law at the time required something more than just a bare statement that there would be a division of fees.

MS. LUKEY: Objection.

THE SPECIAL MASTER: Let's say that -- let's assume it's read that way. And the client knows nothing more until much later and says, oh, it's okay, I ratify it retroactively.

MS. LUKEY: Objection.

THE SPECIAL MASTER: Is that ratification effective?

THE WITNESS: Apparently, in Massachusetts, under Saggese, it's effective. I didn't write the opinion.

THE SPECIAL MASTER: What if the client refuses, then what?

MS. LUKEY: To ratify?

Page 145

THE SPECIAL MASTER: Yeah. What if the client says, hey, wait a minute. I didn't know that you were going to be giving a very large fee to somebody who added no value to this case, did nothing in this case, never appeared in the case, was not disclosed to the court, I'm not going to approve that, I'm not going to agree to it, then what?

MS. LUKEY: Objection.

THE WITNESS: Then what for -- with regard to the lawyer's obligation to the other lawyer, the lawyer's contractual obligation to the client, for discipline or something else?

THE SPECIAL MASTER: The lawyer's obligation to the client.

THE WITNESS: Okay.

MS. LUKEY: Objection.

THE WITNESS: I think that if the client refused to pay the fee, and I'm taking it out of this case now, so let's suppose a conventional case where a lawyer and client have a conventional fee

Page 146

arrangement, for whatever, $15 an hour or a percentage or whatever.
And then, when it came time at the end -- okay. When it came time to pay the fee, the client said, you violated 1.5(e) because you didn't give me adequate notice when I agreed to the fee-sharing arrangement, I suppose you could have a contract dispute between the lawyer and the client regarding whether and to what extent the fee agreement is enforceable and, if not, you know, whether there's quantum meruit or something else, and I can say I have not studied the issue of how it would play out in Massachusetts at the time, but I think that, you know, a court would have to figure out whether this is a substantial breach of the fee agreement and whether it's meaningful for purposes of enforcing the fee.
I would think a court would say, where you have a fee-sharing agreement that was consented to, but there was another piece of information that wasn't

Page 147

disclosed, you would probably want to know whether that was really meaningful information or not, and whether it would have made a difference. And if it would have made a difference to the client, then how does that factor into a contract action.
That's all beyond what I've looked at in this case.
THE SPECIAL MASTER: If a court were to find that it was, in your word, meaningful information that the client should have had, would that take it out of 1.5(e)?
MS. LUKEY: Objection.
THE WITNESS: I'm not sure what you mean. I was talking about a contract.
THE SPECIAL MASTER: Let me rephrase the question.
I want you to assume that a court were to find that there was insufficient information given to the client to procure the client's consent under 1.5(e), and the client says, I'm not agreeing to it, you

Page 148

never told me about this, this or this, and I'm not agreeing to this division of fee, would that take the division of fee out of 1.5(e)?
MS. LUKEY: Objection.
THE WITNESS: I don't know what you mean by "out of 1.5(e)." Do you mean would it violate 1.5(e)?
THE SPECIAL MASTER: You can put it that way.
THE WITNESS: Okay. So if you have a rule different from the Massachusetts rule that requires specific information to be given and the specific information isn't given, then I guess, by definition, that violates 1.5(e).
THE SPECIAL MASTER: So another way of saying this might be that, as we read 1.5(e) at the time, where it says "may be made only if, after informing the client that a division of fee will be made," construction would turn on the phrase "informing the client" and what that means; is that right?

Page 149

MS. LUKEY: Objection.
THE WITNESS: I think that the conversation we are having is about the meaning of informing the client.
THE SPECIAL MASTER: Yes. And your view, and if I'm misstating your view, please tell me, that it is sufficient to comply with 1.5(e) to simply tell the client that a division of fee will be made; is that right?
THE WITNESS: That's exactly what the rule says.
THE SPECIAL MASTER: No further information need be given?
THE WITNESS: The rule doesn't provide for it, unlike the rules of some other jurisdictions.
THE SPECIAL MASTER: All of that calls into question who the client is in a class action in which the contemplated case is a class action, and it is contemplated that the client will be the class representative. Then the question is who the client is, right?

Page 150

MS. LUKEY: Objection.
THE WITNESS: I don't agree with you.
THE SPECIAL MASTER: It says "the client," right?
MS. LUKEY: Objection.
THE WITNESS: It does say "the client." Are you asking me my reason?
THE SPECIAL MASTER: I will.
THE WITNESS: The rule does say "the client."
THE SPECIAL MASTER: And you agree that the retention agreement here contemplates Labaton serving as a class representative in a class action.
MR. HEIMANN: I think you misspoke.
MS. LUKEY: You said Labaton.
THE SPECIAL MASTER: I'm sorry. Arkansas. Thank you.
THE WITNESS: The agreement contemplates the possibility that Arkansas Teacher will be class representative in a class action.
THE SPECIAL MASTER: Okay. So, at

Page 151

the point at which a class is certified, does a class become a client?
MS. LUKEY: Objection.
THE WITNESS: I think the class probably becomes a client, the nascent class before the class is certified.
THE SPECIAL MASTER: Okay. Is there then an obligation, and I do want you to assume that Arkansas, I almost said Labaton again, I do want you to assume that Arkansas is the class representative for the class.
Is the class a client for purposes of this retention agreement?
MS. LUKEY: Objection.
THE WITNESS: Not in my reading of this, no.
THE SPECIAL MASTER: I want you to assume further that, at the time the class is certified, Labaton is named lead counsel for the class, and that that's contemplated in the agreement.
Is the class a client of Labaton?
THE WITNESS: The class is a client

Page 152

of Labaton when Labaton becomes class counsel, for sure.
THE SPECIAL MASTER: At that point, is there an obligation to go to the class and provide information about the fee-sharing agreement and that there would be a division of fee to the entire class?
MS. LUKEY: Objection.
THE WITNESS: Are you asking is there an obligation under 1.5(e) or is there an obligation?
In my view the kinds of notice you give to a class is governed by Rule 23 and case law that develops under Rule 23. I'm not a civil procedure expert or a Rule 23 expert. I haven't studied the case law as it applies in this case.
I don't think that the rules, in general, were meant to deal with what kinds of notice you give to classes after a class is certified.
MS. LUKEY: I'm sorry. Can we just clarify which rules he meant in his answer?

Page 153

THE WITNESS: The Rules of Professional Conduct.
THE SPECIAL MASTER: Putting it another way, once the class is certified and becomes a client of Labaton, is there any -- under Rule 1.5(e), is there any obligation to give any kind of further notice to the class about a division of a fee.
THE WITNESS: Not under Rule 1.5(e).
THE SPECIAL MASTER: So the notice that was given to Labaton -- to Arkansas by Labaton in the February 8 agreement is sufficient for the class?
THE WITNESS: I didn't say that. I think, if there's another obligation, the source of the obligation is not the Rules of Professional Conduct. It's the case law that has developed over the years under rule -- under Rule 23 of the Rules of Civil Procedure.
THE SPECIAL MASTER: Okay. I assume you are not here to opine on those rules.
THE WITNESS: I am not.

Page 154

BY MR. SINNOTT:
Q. Let me just back up a little bit, Professor, and ask you a couple more questions about the engagement and the surrounding circumstances.
I believe you testified that Hopkins was informed by Labaton that Lieff Cabraser and Thornton law firm would be participating in the case, correct?
A. I'm almost tempted to say I thought Judge Rosen testified to that.
THE SPECIAL MASTER: I did. I said that. I wasn't testifying. I was assuming it as a fact in evidence.
Q. Is that your understanding?
A. It is now.
Q. All right. At the time that you wrote your opinion, were you aware that Labaton had informed Hopkins that Lieff and Thornton would participate?
A. I don't believe so.
Q. All right. Would that have been significant to you?
A. I think it would have further

Page 155

bolstered the opinions that I had already reached.
Q. Well, let's say that Labaton and Lieff's presence in the case had been discussed with Mr. Hopkins.
Would it have been covered in this February 8, 2011, engagement letter?
MS. LUKEY: Objection.
Q. Would it have been appropriate, under Rule 1.5(e), in this -- based on this engagement letter?
MS. LUKEY: Objection.
A. I think that fee sharing of the total fee awarded by Judge Wolf with Lieff Cabraser and the Thornton firm was both permissible under 1.5(e) and permitted by the February 8, 2011, contract.
Q. And what, in the February 8, 2011, contract permitted it?
A. I believe this would be covered by the sentence, "Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other

Page 156

services performed in connection with the litigation."
And if it's not specifically covered by that, I think that it's fairly implicit in the agreement because, surely, Arkansas would have understood that if a fee is awarded by the court, it will be shared among the lawyers who work on the matter.
Q. So let's assume that Hopkins was informed that Lieff Cabraser and Thornton Law Firm would be participating in the case, okay?
Would it be reasonable for Hopkins, at a later point in time, such as in September of 2017, after the settlement of the case, to say, look, you told me specifically about the participation of those two firms. You never told me about this guy, I don't consent to it?
MS. LUKEY: Objection.
Q. Would that have been reasonable?
MS. LUKEY: Sorry. Objection.
A. Well, so you're sort of not asking a question about Rules of Professional Conduct, which is where I do my work.
You are asking me about what would

Page 157

be reasonable for a representative of the lead plaintiff.
I don't really have a basis to judge the reasonableness of that, but viewed in the context of the evidence, my opinion, not really as an expert on how lead plaintiffs are supposed to conduct themselves, I would say it would seem pretty unreasonable, given that Hopkins had previously said he doesn't want to know details about how the fees are being divided, and he said that at the outset to Labaton. It would be kind of unreasonable for him to say, but I wish you'd told me this particular detail.
Q. Let me direct your attention to page 20 of your report. And three lines up from the bottom you say, "There is nothing to suggest that ATRS wanted or needed more information about how class counsel's court-awarded fees would be divided."
Do you see that, sir?
A. Yes.
Q. When you say "there was nothing to suggest," are you stating that there is an

Page 158

absence in the record that was presented to you, the factual record, of information on that or are you saying that you drew inferences from the information that was presented to you?
MS. LUKEY: Objection.
A. I'm not exactly sure how to answer that, but Hopkins, as I understand it, made it plain to Labaton that he didn't want information about the fee division. So I think that that, which is a fact, that both I was asked to assume and that is reflected in the deposition transcript, supports that observation of mine at the bottom of page 20.
Q. All right. And just above that, Professor, you say, "In this case, ATRS knew, in general, that multiple counsel would be involved in the class action and would divide fees, and its consent was memorialized in writing, which in any event, was not required by the text of Rule 1.5(e) at the time."
What, if anything, do you assume that George Hopkins knew about the existence or role of a referring attorney in the State Street case?

Page 159

MS. LUKEY: Objection.
A. I don't assume he knew anything about the existence of a referring attorney. I think he authorized fee sharing with a referring attorney if there was any.
So he knew that there was a possibility of a referring attorney, but I don't think he had specific knowledge that Chargois had made a referral.
Q. Do you have any legal authority to support your opinion that Hopkins' knowledge of the possibility of a fee-sharing arrangement was sufficient to satisfy 1.5(e)?
A. I don't think that alone would be sufficient to satisfy Rule 1.5(e).
I think what you need is information that there will be a division of fees among lawyers, and you need consent to that division.
Q. And is it your opinion that that consent can be to the possibility of a future fee-sharing agreement?
A. Yes.
Q. Now, I want to direct your attention to page 21 to 23, where you opine that

Page 160

Labaton's imperfect fee-sharing arrangement does not warrant sanction.
MS. LUKEY: Objection. I think he said "if," but I won't say anything more.
MR. SINNOTT: Did I read that improperly, Labaton's imperfect?
MS. LUKEY: I don't think I'm supposed to say anything, so I'm not going to say anything.
THE SPECIAL MASTER: I think you were intending to read the subsection on page 21, "Labaton's imperfect fee-sharing agreement does not warrant sanction."
MR. SINNOTT: Did I not read that correctly?
THE SPECIAL MASTER: No. I think you did, but the record will be what it is.
BY MR. SINNOTT:
Q. So you talk about the Daynard decision.
A. Uh-huh.
Q. And is it fair to say that it's your conclusion that nothing in Daynard suggests

Page 161

that a law firm should forfeit fees for failing to comply with 1.5(e)? Is that a correct assessment?
A. I would say nothing in Daynard suggests there should be fee forfeiture for imperfect fee sharing of the kind that is -- is argued occurred here, and as arguably occurred in Daynard.
Q. Did Daynard address the impact that fee disclosure would have on the class in a class action matter?
A. No.
Q. And on page 24 to 25 of your opinion, following the heading "Labaton's Fee Sharing with Chargois Did Not Violate Rule 1.5(a)."
THE SPECIAL MASTER: On page 24.
MR. SINNOTT: 24, yeah.
Q. I'm going on to page 25. Is it fair to say that you take issue with Professor Gillers' interpretation that 1.5(a) applies to individual referral fees paid under a Rule 1.5(e) fee-sharing arrangement?
A. If that's Professor Gillers'

Page 162

opinion, that the fee to Chargois here is governed by 1.5(a), then I disagree with that.
Q. In fact, you opine that no separate analysis is appropriate under Rule 1.5(a) in circumstances where a fee division relates to a referral fee, correct?
MS. LUKEY: Objection.
A. Where are you reading?
Q. On 24.
A. Yes.
Q. Do you see that?
A. Yes.
Q. All right. So that's a correct statement of your opinion, correct?
A. That is a quote from my opinion in the context of the four paragraphs I devote to this issue, yes.
Q. Well, what's your legal authority for that opinion?
A. When you say "legal authority," are you asking, is there a case that I'm citing? I'm obviously not citing a case.
Are you asking, what's my reason for the opinion?

Page 163

Q. Well, let me start with the cases or other legal authority. Is there any?
A. I think that what significance is an absence of authority for Professor Gillers' view. So there are many, many, many cases in Massachusetts and throughout the country in which lawyers participate in fee-sharing agreements that are governed by 1.5(e).
In some of them, the division of fees is in proportion of the work done by the lawyers, but in many, many cases, it's not.
In jurisdictions governed by the Model Rules of Professional Conduct, you can share a fee with a lawyer who does absolutely no work on the case, as long as the lawyer shares -- has joint responsibility, which, in many jurisdictions, just means that you're on the hook for a malpractice judgment.
In those jurisdictions, and including in Massachusetts, where you don't even need joint authority, as far as I know, there is not a single case where the court has said or disciplinary authority has said or anybody else with authority has said you view

Page 164

both portions of the referral fee under 1.5(a) and Professor Gillers hasn't cited a case either, as far as I know.
(Emily Harlan attends telephonically at this time.)
A. And so what I think is most important here, or particularly important, is the absence of authority for a proposition that would obviously be relevant in many, many, many cases if that proposition were true, which I don't believe it is.
Q. And would you agree that there is an absence of authority for your opinion as well?
MS. LUKEY: Objection.
A. I think it has never occurred to anybody who writes on this that the portion, the individual portions of a shared fee would be each subject to 1.5(a) analysis. And so, yes, there's no opinion that I'm aware of, even considering that proposition.
Q. Would 1.5(a) ever apply to a referral fee -- a referral fee payment to another lawyer?
A. I guess I'm not really sure what you

Page 165

mean. You mean in the context of a fee-sharing arrangement or something else?
Q. Yes, yes.
A. Well, if it's a fee-sharing arrangement governed by 1.5(e), the requirement is that the total fee be reasonable. It doesn't require that each portion, in itself, be reasonable or not excessive.
Q. So there are reasonableness limitations on such a fee, correct?
A. The total fee must be reasonable, which I assume Judge Wolf thought it was, because he authorized the fee.
THE SPECIAL MASTER: He didn't know about the Chargois agreement and the proposed payment at the time to Chargois, though.
MS. LUKEY: Objection.
THE SPECIAL MASTER: You understand that?
MS. LUKEY: Objection.
THE WITNESS: That I understand? Is that a question?
THE SPECIAL MASTER: Yes. You

Page 166

understand that, question mark.
THE WITNESS: Yes.
THE SPECIAL MASTER: While he's looking, are you here to offer any opinions on whether there was an obligation by lead counsel to inform the court of the payment to be paid to Mr. Chargois?
THE WITNESS: No, I'm not here to give an opinion on that, just to be clear, by no means.
THE SPECIAL MASTER: Just to close the loop on this. I'm not here talking about under 1.5(e).
Assume that other counsel in the case were not told about the Chargois agreement, specifically the lawyers that were representing the ERISA plaintiffs in the other two cases that were tri-captioned, are you here to offer an opinion about whether there was an obligation to tell those lawyers about the Chargois agreement in their capacity as representing the ERISA members of the

Page 167

class?
THE WITNESS: I'm not here to offer an opinion on that.
THE SPECIAL MASTER: Assume there is testimony from co-counsel for the customer class that, although they were told about the Chargois agreement, they were not told that he did no work and that they were not told that he would -- that he would be contributing no value to the case, and that they were not told that the obligation to Mr. Chargois went back to an agreement that preexisted the case.
Do you have any opinion on whether there was an obligation to inform co-counsel for the customer class?
MS. LUKEY: Objection.
THE WITNESS: I wasn't asked to give an opinion on that. I didn't focus on the facts relevant to that. I don't have an opinion on that.
BY MR. SINNOTT:
Q. Professor, at page 24, the last paragraph, you talk about the fairness of

Page 168

division among lawyers, and just to put it in context, the paragraph begins, "When one lawyer shares a legal fee with another, Rule 1.5(e) expressly provides that the total fee must be reasonable, but the rule does not say or intimate that if the fee is then shared with others, no share may be excessive.
"And the rules provide no benchmarks for calculating whether a lawyer who makes a referral or who, in a state adopting the ABA model rule formulation, assumes joint responsibility, is receiving a clearly excessive portion of an otherwise reasonable fee.
"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.
"The Professional Conduct Rules are meant to protect clients and the public, not to protect lawyers from overreaching by their colleagues."
Do the Mass. Rules of Professional Conduct govern the fairness of division among

Page 169

lawyers?
A. I think not. That's the point I'm making, that Rule 1.5 is meant to protect clients from excessive fees, and 1.5(e), in particular, according to the Massachusetts Supreme Judicial Court, is meant to protect clients from excessive fees.
So I don't think the rule is designed to make sure that, as between two lawyers who are sharing a reasonable fee, that the fee division is fair as between them. They can take care of themselves. They don't need 1.5(e) to protect them.
Q. Well, other than Rule 1.5(e), are you aware of any other rules or principles that apply to the fairness of the division of fees among lawyers?
MS. LUKEY: Objection.
A. In a fee-sharing context?
Q. Yes.
A. I suppose, if the lawyers are partners in a law firm, the partnership agreement might govern. If the lawyers are in an employment relationship, the contract

Page 170

governing the relationship may govern the fairness of the allocation.

If they are in a fee-sharing arrangement, as you allegedly have here, I think you have here, then that arrangement would govern the allocation.

I don't know which other principles, but I don't think that the Rules of Professional Conduct would govern.

Q. Let me ask you --

MS. LUKEY: Can I just respectfully point out we've got seven minutes, just because I'm concerned about his --

THE SPECIAL MASTER: Could I ask you this? I want to test your hypothesis that Rule 1.5(a) has nothing to say about the referral fee here.

What if the referral fee, I'm not implying that it was, but what if the referral fee in question to the lawyer who did no work on the case, contributed no value, was 90 percent of the total fee in the case, but the total fee was reasonable, are you saying that Rule

Page 171

1.5(e) has nothing to say? It's not implicated at all in the court's determination?

THE WITNESS: Sure. That's exactly what I'm saying.

THE SPECIAL MASTER: Okay.

BY MR. SINNOTT:

Q. Tell me if you agree with this statement, Professor.

"Legal ethics experts should not offer an opinion, even if defensible, unless they would adopt that opinion if they were the judge in the case."

Do you agree with that?

MS. LUKEY: Objection.

A. I would need to know the context in which it was written. I think there's a lot of situations where ethics experts give opinion where there is no judge, and won't be a judge, and I think it's fine to give opinions in those cases as well.

So I'd really need to know more about the context. I think people who are ethics experts should give opinions that they

Page 172

believe.

Q. All right. And are you prepared to testify in court before Judge Wolf that he should rule as you've opined today?

MS. LUKEY: Objection.

A. I wouldn't presume to tell a judge how to rule. I would tell the judge what I believe to be true about the rules and their application. If the judge asked me, I suppose I would answer whatever question the judge asked, but I wouldn't, going in, expect to give that testimony.

THE SPECIAL MASTER: So if the judge said -- if you were testifying and if the judge said, do you expect me to rely on your opinion, what would you say?

THE WITNESS: I'm not sure what -- when the spirit moves me in that event, but I think that courts give varying degrees of weight to expert testimony. I don't know whether courts always need expert testimony on the meaning of Rules of Professional Conduct, which are domestic law.

Page 173

I think, to the extent that the judge is looking to experts and cares about their testimony, the court should really give my testimony whatever weight he thinks it deserves based on how persuasive my reasoning is and anything else that the court thinks is relevant.

THE SPECIAL MASTER: Just one or two final questions. We have got five minutes.

Do you think Rule 1.5(e), as you construe it, the Massachusetts rule, provides adequate protection to clients?

MS. LUKEY: Objection.

THE WITNESS: So now you're asking me if I were a rule drafter in Massachusetts, is this the rule that I would draft?

THE SPECIAL MASTER: You can phrase it that way.

THE WITNESS: I'm trying to understand.

THE SPECIAL MASTER: I want you to assume that the rule is as you've

Page 174

construed it.
THE WITNESS: Uh-huh. Right.
THE SPECIAL MASTER: It doesn't mean I'm going to construe it that way, but assuming that the rule is as you've construed it, do you think it provides adequate protection to clients to make decisions about fee allocations and divisions of fees?
THE WITNESS: So part of the reason I find that hard is because Massachusetts itself is trying to achieve a more limited purpose than the rules of other jurisdictions.
As I understand the Massachusetts court, it sees the principal function or the one that it expresses in Saggese as -- or Saggese -- as preventing an excessive fee.
I think that the rule --
THE SPECIAL MASTER: And protecting clients. There's language in Saggese that talks about protecting -- the purpose of the rule is protecting clients.

Page 175

THE WITNESS: Right. I think, in the context of this case, the client was protected by the rule as I interpret it.
Whether it ought to be more demanding for the benefit of different clients in different cases, I haven't given any thought to, really. I don't think, if I were a rule drafter in New York, I guess, in a sense I am, because I'm on the committee on standards of attorney conduct, that, you know, proposes rules to the state bar, that then proposes them to the courts, I don't think I would run out and say, let's replace our version of 1.5(e) with the Massachusetts version, as I construe the Massachusetts version.
THE SPECIAL MASTER: But your view of the Massachusetts rule is that, to comply with Rule 1.5(e), putting aside the writing requirement, that to comply with 1.5(e), all the client has to be told is that there will be a division of fee, correct?
THE WITNESS: That's what the rule

Page 176

says.
THE SPECIAL MASTER: No further information needs to be given about who's going to get the fee, who's going to get how much, the purposes for which the fee can be given or anything else. Just that there is going to be just the bare statement, that there will be a division of a fee.
So my question to you is, construing it that way, do you think the rule provides adequate protection to the client?
MS. LUKEY: Objection.
THE WITNESS: Bearing in mind that if the client asks, you have to answer the questions, and bearing in mind the limited purpose for which Massachusetts has its rule, and given -- well, you know, I guess, you know, it's hard to put myself in the shoes of a Massachusetts rule maker.
I think it would be fair to draft a more demanding rule or to interpret the

Page 177

current rule in a more demanding way. In general, there's no harm done if more information is provided.
So if I were the rule drafter, I would probably require more, with the caveat that I wouldn't run around disciplining lawyers who didn't perfectly comply with the more demanding rule.
THE SPECIAL MASTER: Should there be a separate rule where the client is going to be a class representative and may well represent a class with more diverse interests that may not be totally aligned, should there be a more demanding rule requiring more information to be given to that client?
THE WITNESS: To me, that is a question about Rule 23 and the case law, what do classes or their representatives need to know.
It's not -- I would say the answer is you shouldn't put it in Rule 1.5(e) because that develops -- first of all, the rule drafters don't have that much

expertise.
Second of all, they don't draft rules at that level of particularity.
And third of all, you have judicial supervision of class actions. So the place to do it would be in either the Rules of Civil Procedure or in courts' local rules, or however else courts in class actions express their requirements about what lawyers for classes are supposed to tell their clients. And more than that, I don't have a view on, because I'm not a class action specialist.
THE SPECIAL MASTER: But not by reading more information, a requirement of more information to the client into Rule 1.5(e)?
THE WITNESS: 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.
MS. LUKEY: Your Honor, it's a

little after 12:30.
THE SPECIAL MASTER: It is 12:32.
Do you have anything else, Bill?
MR. SINNOTT: Nothing further.
Joan, do you have anything?
MS. LUKEY: In light of the time, no.
MR. SINNOTT: Richard?
MR. HEIMANN: No questions.
MR. SINNOTT: Brian?
MR. KELLY: No questions. Thank you.
MR. SINNOTT: David, on behalf of Keller Rohrback?
MR. COPLEY: No questions. Thank you.
MR. SINNOTT: Okay. Hearing no questions, this examination is concluded. Thank you, Professor.
MS. LUKEY: Thank you both for finishing in the time allowed.
(Time noted: 12:34 p.m.)

A C K N O W L E D G M E N T

STATE OF)
:ss
COUNTY OF)

I, BRUCE GREEN, hereby certify that I have read the transcript of my testimony taken under oath in my deposition; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____
BRUCE GREEN

Signed and subscribed to before me this _____ day of _____, 2018.

_____
Notary Public, State of _____

C E R T I F I C A T E

STATE OF NEW YORK)
:ss
COUNTY OF RICHMOND)

I, MELISSA GILMORE, a Notary Public within and for the State of New York, do hereby certify:
That BRUCE GREEN, 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 such witness.
I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of April, 2018.

MELISSA GILMORE

B

C

D

G

H

I

J

K

S

EX. 231

Massachusetts Statutes Annotated - 2011

Massachusetts Rules of Professional Conduct (Mass.R.Prof.C.), Rule 7.2
Massachusetts General Laws Annotated Currentness
Rules of the Supreme Judicial Court (Refs & Annos)
Chapter Three. Ethical Requirements and Rules Concerning the Practice of Law
Rule 3:07. Massachusetts Rules of Professional Conduct and Comments (Refs & Annos)
Information About Legal Services

Rule 7.2. Advertising

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory including an electronic or computer-accessed directory, newspaper or other periodical, outdoor advertising, radio or television, or through written, electronic, computer-accessed or similar types of communication not involving solicitation prohibited in Rule 7.3.

(b) A copy or recording of an advertisement or written communication of services offered for a fee shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization;

(3) pay for a law practice in accordance with Rule 1.17;

(4) pay referral fees permitted by Rule 1.5(e); and

(5) share a statutory fee award or court-approved settlement in lieu thereof with a qualified legal assistance organization in accordance with Rule 5.4(a)(4).

(d) Any communication made pursuant to this rule shall include the name of the lawyer, group of lawyers, or firm responsible for its content.

CREDIT(S)

Adopted June 9, 1997, effective January 1, 1998. Amended December 8, 1997, effective January 1, 1998; amended August 31, 1999, effective October 1, 1999.

COMMENT

2006 Main Volume

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising.
[2] [Reserved]
[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Television and other electronic media, including computer-accessed communications, are now among the most powerful media for getting information to the public. Prohibiting such advertising, therefore, would impede the flow of information about

legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

[3A] The advertising and solicitation rules can generally be applied to computer-accessed or other similar types of communications by analogizing the communication to its hard-copy form. Thus, because it is not a communication directed to a specific recipient, a web site or home page would generally be considered advertising subject to this rule, rather than solicitation subject to Rule 7.3. For example, when a targeted e-mail solicitation of a person known to be in need of legal services contains a hot-link to a home page, the e-mail message is subject to Rule 7.3 but the home page itself need not be because the recipient must make an affirmative decision to go to the sender's home page. Depending upon the circumstances, posting of comments to a newsgroup, bulletin board or chat group may constitute targeted or direct contact with prospective clients known to be in need of legal services and may therefore be subject to Rule 7.3. Depending upon the topic or purpose of the newsgroup, bulletin board, or chat group, the posting might also constitute an association of the lawyer or law firm's name with a particular service, field, or area of law amounting to a claim of specialization under Rule 7.4 and would therefore be subject to the restrictions of that rule. In addition, if the lawyer or law firm uses an interactive forum such as a chat group to solicit for a fee professional employment that the prospective client has not requested, this conduct may constitute prohibited personal solicitation under Rule 7.3(d).

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

[6] A lawyer is allowed to pay for advertising permitted by this Rule and for the purchase of a law practice in accordance with the provisions of Rule 1.17, but otherwise is not permitted to pay another person for channeling professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule. Paragraph (c) also excepts from its prohibition the referral fees permitted by Rule 1.5(e).

Corresponding ABA Model Rule. Substantially similar to Model Rule 7.2, except minor differences in (a) and (b), subclauses (4) and (5) were added to paragraph (c), and paragraph (d) was modified.

Corresponding Former Massachusetts Rule. DR 2-101 (B); see DR 2-103.

LIBRARY REFERENCES

2006 Main Volume

Attorney and Client 32(2), 32(9).
Westlaw Topic No. 45.
C.J.S. Attorney and Client §§ 42 to 43, 45 to 46, 87.

Current with amendments received through 3/15/11.

End of Document

EX. 232

ETHICAL REPORT FOR SPECIAL MASTER GERALD E. ROSEN

Professor Stephen Gillers
Elihu Root Professor of Law
New York University School of Law
February 23, 2018

TABLE OF CONTENTS

Page

Page

Page

Page

I. INTRODUCTION TO OPINION

Special Master Gerald Rosen has retained me to answer certain questions regarding the professional conduct of lawyers in the captioned case. I briefly state my qualifications to offer my opinions. A current resume is attached to this Report. [EX. 49]. I agreed to an hourly rate of $900 for my work in this matter.

I am Elihu Root Professor of Law at New York University School of Law, where I have taught since 1978. My major area of research and teaching are the ethical rules and laws governing American lawyers. I am the author of *Regulation of Lawyers: Problems of Law and Ethics,* a widely used law school casebook first published by Little, Brown (now Aspen) in 1985 with an 11th edition in 2018. With Roy Simon (and Andrew Perlman as of 2008), I have edited *Regulation of Lawyers: Statutes and Standards*, published annually by Little, Brown, then Aspen, since 1989. From 2000-2002, I was a member of the ABA's Multijurisdictional Practice Commission, which proposed rule changes (all of them accepted by the ABA House) to recognize the cross-border nature of legal practice. I was a member of the ABA 20/20 Commission (2010-2013), which studied the effects of technology and globalization on the regulation of lawyers and recommended Model Rules amendments, all of which were accepted by the ABA House. In 2011, I received the Michael Franck Award from the ABA's Center for Professional Responsibility. I received The American Bar Foundation's Outstanding Scholar Award in 2015.

In the last four years, I have testified at a deposition in *Ruby v. Allen Matkins*, a JAMS arbitration in Los Angeles. I was retained by counsel for Ruby, Dale Kinsella of Kinsella Weitzman (Santa Monica, CA).

I assume familiarity with the following statement of facts, which was prepared by counsel for the Special Master and which I assume is true for purposes of my opinion.

II. FACTUAL BACKGROUND

A. THE *STATE STREET* LITIGATION

i. ORIGINS

This case had its genesis in a California *qui tam* action filed under seal on April 14, 2008 by "Associates Against FX Insider Trading" -- relators represented by the Thornton Law Firm ("TLF") and Lieff Cabraser Heimann & Bernstein, LLP ("Lieff") -- on behalf of California public pension funds. *See* 9/15/16 Declaration of Lawrence Sucharow of Labaton Sucharow LLP in Support of Motion for Final Approval of Class Settlement, MAD No. 11-cv-10230, Dkt. No. 104, ¶ 24; *see also* Thornton 6/19/17 Dep., pp. 35:22 – 36:14. The *qui tam* lawsuit was unsealed and became public on October 20, 2009, when the California Attorney General filed a Complaint-in-Intervention charging State Street with misappropriating more than $56 million from California's two largest public pension funds: the California Public Employees' Retirement System ("CalPERS") and the California State Teachers' Retirement System ("CalSTRS"). *See People of the State of California, ex rel. Edmund G. Brown, Jr. v. State Street Corporation, et al.,* Cal. Super. Ct. No. 34-2008-00008457-CU-MC-GDS; *see also* Sucharow Decl., ¶ 25; Thornton 6/19/17 Dep., p. 40:1-9. The Complaint-in-Intervention was the first public indication of State Street's allegedly unfair and deceptive practices concerning indirect FX and the first largescale action concerning FX practices. Sucharow Decl., ¶ 25; Thornton 6/19/17 Dep., p. 41:11-17.

ii. FILING OF THE ATRS "CUSTOMER CLASS" COMPLAINT

After the allegations against State Street became public, George Hopkins, Executive Director of the Arkansas Teacher Retirement System ("ATRS"), became interested in the issue

since State Street was ATRS's custodial bank. Hopkins 6/14/17 Dep., pp. 37:11 – 38:15. ATRS then retained Labaton Sucharow LLP ("Labaton"), which was serving as one of its "monitoring counsel,"[1] to investigate potential class and individual claims that could be brought against State Street on behalf of ATRS and its members. This was Labaton's first foray into FX litigation. Therefore, with ATRS's approval, Labaton teamed with TLF and Lieff, as those firms had gained knowledge of the area from their representation of the relators in the California *qui tam* action, and began an investigation. *Id*. *See also* George Hopkins Declaration, Dkt. No. 104-1, ¶ 8; Thornton 6/19/17 Dep., pp. 43:13 – 44:4.

After investigating and researching the matter, on February 10, 2011, a class action complaint was filed on behalf of ATRS (superseded by an Amended Complaint on April 15, 2011) alleging violations of the Massachusetts Consumer Protections Act and several common law claims. *See Arkansas Teacher Retirement System v. State Street Corp., et al.*, MAD No. 11-cv-10230, Dkt. Nos. 1, 10 [EX. 1].[2] As Lead Plaintiff in the action, ATRS purported to represent a class encompassing

> all institutional investors in foreign securities, including but not limited to public and private pension funds, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on a "standing-instruction" or "non-negotiated" basis between January 2, 1998 and December 31, 2009, inclusive (the "Class Period"), and which suffered damages as a result of the deceptive acts and practices and other misconduct alleged herein.

Customer Class Amended Compl., Dkt. No. 10, ¶ 22. [3]

[1] "Monitoring counsel" refers to lawyers who review the performance of institutional investors to ensure the investments are handled appropriately and are not the subject of fraud or other illegal activity. *See* Eisenberg, Jonathan, *Litigating Securities Class Actions,* § 1.02(1)(d), "Portfolio Monitoring" (Lexis/Nexis 2017).

[2] The complaints also originally named State Street Corporation ("SSC"), State Street's parent corporation, and the separate subsidiary State Street Global Markets LLC ("SSGM LLC") as party-defendants. On May 8, 2012, the Court entered an Order dismissing all claims asserted against SSC and SSGM LLC.

[3] The ATRS complaint is referred to by the parties in this action as the "Customer Class Complaint."

Thereafter, on January 12, 2012, Labaton was appointed "Interim Lead Counsel" for the proposed Customer Class; the Thornton Law Firm was designated as liaison counsel, and Lieff Cabraser was designated as additional counsel for the proposed class. *See* Dkt. Nos. 7-8; 28.[4] In making this tri-partite appointment, the Court reasoned that "[e]ach of the firms, including Labaton Sucharow, have extensive experience with complex commercial litigation and class action lawsuits involving financial and securities fraud," and "are knowledgeable [in] the applicable areas of law." 1/12/12 Memorandum and Order, p. 4, Dkt. No. 28. [5]

iii. THE ERISA COMPLAINTS

On the heels of the filing of the Customer Class Complaint, two separate complaints alleging ERISA violations were filed.[6] The two sets of plaintiffs in these actions represented

---

[4] "Plaintiff's Assented to Motion for the Appointment of Interim Lead Counsel for the Proposed Class" and supporting brief were filed on April 7, 2011 [Dkt. Nos. 7 and 8] but not ruled upon by the Court until January 12, 2012 [Dkt. No. 28].

[5] No similar appointment was made with respect to ERISA Counsel. However, Labaton, Lieff and Thornton also viewed the ERISA plaintiffs as their clients and Labaton as lead counsel for all class members, including ERISA class members. *See* Chiplock 9/8/17 Dep. pp. 93:24 – 94:2 ("We had a responsibility as class counsel to the class. And that included ERISA plans."); 97:3- 10 ("I felt that customer class counsel had a responsibility to the entire customer class with no distinctions. We didn't discriminate in our class definition. We didn't see the need to when we filed our case.") Goldsmith 9/20/17 Dep., pp. 42:11-14 ("[W] did not assert an ERISA claim in our complaint, but we did allege a class which was broad enough to encompass ERISA governed assets."); 61:11-14 (How much of the settlement would go to ERISA clients "was something that [DOL] were focused on. Of course, we were focused on it as well because they were our clients.") *See also* colloquy at 11/15/12 Lobby Conference:

> MICHAEL THORNTON: I just want to clarify one thing of Mr. Rudman's [State Street's attorney's] excellent summary that we might differ on. There are two clear ERISA cases, Henriquez and Andover, and in the third case, Arkansas, um, the ERISA claims are included in the class definition. So we also have a claim.
> ***
> ROBERT LIEFF: . . . There is an overlap, that's all we're trying to say. We represent the same people.
>
> THE COURT: You do represent the same people?
>
> MR. LIEFF: Yes.

[11/15/12 Lobby Conf. Tr., Dkt. No. 87, pp. 16-17]

[6] "ERISA" refers to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq*.

institutional private ERISA plans whose accounts were invested by State Street (the "ERISA Class").[7] *See Henriquez, et al. v. State Street Bank and Trust Co.*, MAD No. 11-12049, Dkt. Nos. 1, 24 (the "*Henriquez* complaint") [EX. 2],[8] and *The Andover Companies Savings and Profit Sharing Plan, et al. v. State Street Bank and Trust Co.,* MAD No. 12-11698, Dkt. Nos. 1, 9 (the "*Andover* complaint") [EX. 3].

The named plaintiffs in the *Henriquez* complaint were Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland, all participants in different ERISA plans: Henriquez was a participant in the Waste Management Retirement Savings Plan; Cohn was a participant in the Citigroup 401(k) Plan; Taylor and Sutherland were participants in the Johnson & Johnson Pension Plan (Sutherland also was a participant in the J&J 401(k) plan). All of these individually named plaintiffs purported to "bring[] this action pursuant to ERISA on behalf of [their respective retirement plans] and [their] participants and beneficiaries...as a class action on behalf of a class of similarly-situated ERISA retirement plans (collectively, the "Plans") and their participants and beneficiaries...." [Henriquez Amended Compl., ¶ 1] [EX. 2]. Two plaintiffs are named in the *Andover* Complaint -- one an institutional plaintiff, The Andover Companies Savings and Profit Sharing Plan, and the other an individual, James Pehoushek-Stangeland. The complaint alleges that as "a participant in The Boeing Company Voluntary

[7] The ERISA Class was represented by Keller Rohrback L.L.P., Zuckerman Spaeder LLP, McTigue Law LLP, and Beins Axelrod LLP (collectively, "ERISA Counsel"). However, none of these firms was ever appointed "lead counsel" or other official capacity by the Court. (Although, later, Brian McTigue of McTigue Law, attempted, albeit unsuccessfully, to secure appointment as lead counsel for the ERISA class members. *See* TLF-SST-052975 – 052980 [EX. 4]; TLF-SST-054020 – 54022 [EX. 5]; Sarko 9/8/17 Dep., p. 97:12-21; Sucharow 9/1/17 Dep., p. 93:17-23.)

[8] The *Henriquez* complaint was originally filed in the United States District Court for the District of Maryland, *see Henriquez v. State Street Bank and Trust Co., et. al.*, MDD No. 11-cv-02920, Dkt. No. 1. The Maryland complaint, however, was voluntarily dismissed shortly after it was filed, *see id*., Dkt. Nos. 7-8; it was later re-filed in the U.S. District Court for the District of Massachusetts as a "related case" to the ATRS case.

Investment Plan ("the Boeing Plan") ..., Plaintiff Pehoushek-Stangeland has standing to bring suit on behalf of the Boeing Plan for losses to the Plan due to breaches of fiduciary duty pursuant to ERISA sections 409 and 502(a)(2)." [Andover Amended Compl., ¶ 22] [EX. 3].

Like the Customer Class Complaint, each ERISA complaint alleged that State Street, as the custodian to individual institutional investors and pension fund accounts, engaged in unfair and deceptive practices in conducting "indirect" or "standing instruction" foreign currency exchange ("FX") transactions on behalf of its clients, without disclosure to its clients that these trades generated mark-ups that inured to the benefit of State Street. *See* Customer Class Amended Compl., ¶¶ 8, 62-63 [EX. 1]; *Henriquez* Amended Compl., ¶¶ 80-82 [EX. 2]; *Andover* Amended Compl., ¶¶ 10, 63-64 [EX. 3].

iv. THE BONY MELLON MDL

While the State Street action proceeded in the District Court for the District of Massachusetts, a multi-district FX case brought against another custodian bank, the Bank of New York Mellon, was being litigated in the Southern District of New York. *In re The Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, SDNY No. 12-MD-2335 ("*BONY Mellon*").[9] Lieff Cabraser was co-lead counsel for the nation-wide consumer class in the case. Chiplock 6/16/17 Dep., pp. 23:25 – 24:4; 25:12-22. TLF, as well as McTigue Law and Keller Rohrback, ERISA counsel here, also were involved in the case. Thornton 6/19/17 Dep., 85:18-21; McTigue 7/7/17 Dep., 9:23 – 10:11; 12:22 – 13:4.

BONY Mellon was vigorously litigated for three years, during which intense discovery took place: more than 120 depositions were taken and more than 20 million documents were

[9] The first of the various underlying complaints comprising the *BONY Mellon* MDL was filed in 2011, shortly after the *ATRS* complaint was filed.

produced and reviewed. Chiplock 6/16/17 Dep., pp. 29:23 – 30:15. To assist in the document review, Lieff Cabraser enlisted the help of the firm's staff attorneys ("SAs"),[10] thirteen of whom later worked on the *State Street* case. The case finally settled for $335 million in recovery to the class of custodial clients in September 2015. *See* 9/24/15 Order and Final Judgment, SDNY No. 12-MD-2335, Dkt. No. 638; Chiplock 6/16/17 Dep., pp. 29:23 – 30:15.[11] The attorneys' experience in *BONY Mellon* allowed counsel to develop a baseline of familiarity and expertise that they brought to the *State Street* case. Chiplock 6/16/17 Dep., p. 27:11-17. BONY Mellon also provided Lieff's SAs hands-on experience in reviewing and analyzing complex, FX-related documents. *See* Lieff Cabraser's Responses to First Set of Interrogatories Due on June 1, 2017, Response No. 3.

v. CONSOLIDATION OF THE STATE STREET CASES

During most of 2011-2012, the *State Street* action principally involved motion practice, and, in particular, briefing and argument of Rule 12(b)(1) and Rule 12(b)(6) motions to dismiss filed by State Street in the *ATRS* and the *Henriquez* cases. State Street's motion to dismiss the *ATRS* complaint was fully briefed by both parties and the Court heard arguments on the motion on May 8, 2012. At the conclusion of the May 8 hearing, the Court entered an Order dismissing ATRS's claims against State Street Corporation ("SSC"), the parent corporation, and the separate State Street subsidiary, State Street Global Market, LLC ("SSGM LLC"), but denied Defendant's motion in all other respects. *See* 5/8/12 Order, Dkt. No. 33. The Court further

[10] "Staff attorneys" here were licensed attorneys with relevant experience hired specifically to perform large-scale document review.

[11] Of the $335 million settlement, the attorneys in *BONY Mellon* were awarded $83,750,000 in fees and $2,901,734.19 in total expenses. SDNY No. 12-MD-2335, Dkt. No. 638.

directed counsel to meet to discuss the possibility of settlement and whether they wished to pursue mediation, either privately or before a magistrate judge. *Id.*

In the meantime, on August 8, 2012, State Street also moved to dismiss the *Henriquez* Amended Class Action Complaint. However, no substantive decision was ever rendered on that motion. Instead, on November 15, 2012, shortly after the *Andover* complaint was filed, at the request of counsel, the Court conducted a Lobby Conference to discuss further proceedings. *See* 11/15/12 Lobby Conference Tr., Dkt. No. 64. Counsel proposed, and the Court agreed, that the three cases -- *ATRS, Henriquez* and *Andover* -- proceed in tandem in a "hybrid" mediation during which the parties and counsel could continue to pursue a mediated global settlement, while at the same time delaying a decision on pending motions and engaging in a simultaneous track of "informal" document discovery. 11/15/12 Lobby Conference Tr., pp. 10:15-18; 15:6-7, 19-25, 22:2-10. The Court granted the parties' joint motion to stay the case and ordered that the three actions be consolidated for pre-trial purposes.[12] *Id.*, Tr. at pp. 10, 22, 24; Order to Stay, Dkt. No. 62; Electronic Order Consolidating Cases, Dkt. No. 63.

vi. HYBRID MEDIATION-DISCOVERY PROCESS

Prior to the Court's endorsement of the hybrid mediation, the parties had selected a mediator, Jonathan Marks, and participated in a few preliminary mediation sessions, developing the framework for exchanging discovery. Sucharow Decl., ¶¶ 89-92; Marks Decl., ¶ 14; 11/15/12 Lobby Conference Tr., Dkt. No. 87, p. 22. In the approximately eighteen months following the November 12, 2012 Lobby Conference, between January 2013 and June 2015, the parties participated in 14 additional in-person mediation sessions with Mediator Marks in Boston, New

[12] The Court set an initial deadline of December 1, 2013, at which time the parties would update the Court on the status of the mediation. *See* Dkt. No. 62. At the request of the parties, the Court extended this deadline on several occasions. *See* Dkt. Nos. 66, 71, 75.

York City, and Washington, D.C., each of which involved extensive exchanges of legal theories and damages calculations by both sides. Sucharow Decl., ¶ 94; *see also* Marks Decl., ¶¶ 23-24.

The mediation sessions were informed by substantial discovery exchanged by the parties. Notably, State Street produced more than nine million pages of documents at the request of the ERISA and Customer classes. Sucharow Decl., ¶ 96. All parties agree that document review was essential to the mediation process. Chiplock 6/16/17 Dep., pp. 116:15 – 117:6; Goldsmith 7/17/17 Dep., pp. 84:15-23, 85:24 – 86:5; Rogers 6/16/17 Dep., pp. 80:4-7, 82:7-13.

vii. ERISA FEE ALLOCATION

While the hybrid mediation-discovery process was ongoing, in mid-2013, Customer Class Counsel and ERISA Counsel negotiated amongst themselves an agreement for the allocation of attorneys' fees. Sarko 7/6/17 Dep. p. 57:18-23. That agreement -- to allocate 9% of the total fee awarded (if successful) to ERISA Counsel -- was based largely on ERISA Counsel's understanding that the total ERISA case volume comprised five to nine percent of the total FX trading volume. Sarko 7/6/17 Dep., pp. 26:15-16; 59:14-22; Kravitz 7/6/17 Dep., p. 50:10-16.

As the case progressed -- and particularly toward the end of the case -- ERISA Counsel did not view 9% as commensurate with the ERISA trading volume, which was later learned to actually be about 12-15% of the total trading volume, or the value they added to the *State Street* case. Sarko 7/6/17 Dep., p. 64:3-11; Kravitz 7/6/17 Dep., p. 54:7-11. Nonetheless, rather than create friction with Customer Class Counsel over fees,[13] Lynn Sarko, principal counsel for the

[13] From the beginning of the mediation, there was already fair degree of tension between and among Customer Class Counsel and ERISA Counsel. As ERISA Counsel Carl Kravitz testified, "There was definitely a faction on the consumer side that said 'we represent these people, what are you doing in the case?'" Kravitz 7/6/17 Dep., pp. 28:21-24. Kravitz explained, "Consumer people did not want us coming in and taking a chunk of their case." *See id*., pp. 32:16-17; 45:6-17. "Every extra dollar that went to ERISA came out of the Consumer side." *Id*., at p. 51:18-20. The tension between the Customer Class and the ERISA Class further was manifested during the discovery process: ERISA Counsel were not provided with access to documents State Street had provided to the

ERISA Class, advocated for, and all other ERISA Counsel ultimately agreed to make, a "practical decision" to accept 9% of the fee total. *See* Sarko 7/6/17 Dep., p. 59:18-25. The decision was made, in part, to promote cooperation between counsel, "make the pie bigger" for the class members, and ensure that counsel worked together on the same "team." Sarko 7/6/17 Dep., p. 59:18-25; *see also* Kravitz 7/6/17 Dep., p. 61:18-24.

From August to December 2013, Customer Class and ERISA Counsel exchanged drafts in an attempt to memorialize their agreement to respectively share the fee award 91/9 percent. *See* KR00000006 – 09 (8/30/13 Sarko email to Lieff (proposing draft agreement to capture the 91/9% split)) [EX. 6]; KR00000010 – 18 (9/11/13 Chiplock email to Sarko and Gerber (circulating redlined edits to proposed agreement)) [EX. 7]. While there were several iterations of the agreement, each draft described the ATRS complaint filed by Customer Class Counsel as brought on behalf of "all institutional investors in foreign securities, including public and private pension funds, *ERISA-qualified plans*, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank" (emphasis added). *See* KR00000003 – 05 (8/29/13 Draft, *Agreement Between Counsel for Consumer and ERISA Plaintiffs Regarding Division of Attorneys' Fees* (the "Fee Allocation Agreement") [EX. 8]. Early drafts of the fee allocation agreement included a provision nullifying the 91/9 allocation if either the *ATRS*, *Andover* or *Henriquez* cases resulted in no recovery; that provision was later struck. *See* KR00000024 – 28 (8/30/13 Draft, Fee Allocation Agreement). [EX. 9]. Also removed was a proposed provision that counsels' division of fees was "consistent with the relative volume of FX trading by ERISA and non-ERISA plans as reflected in the data produced

Customer Class. Sarko 7/6/17 Dep., p. 44:2-25. Nor were ERISA Counsel allowed access to the Customer Class's database. *Id*., at 45:1-23. Compounding the tension was the fact that there was never an order appointing leadership in the ERISA cases. *Id*., p. 42:24 – 43:3.

by State Street and the prospects of recovery on the various claims alleged, and is therefore reasonable and appropriate." *Id*.

On December 11, 2013, Counsel finally memorialized this agreement in writing. Sarko 7/6/17 Dep., p. 60:4-14; s*ee also* KR00000045 – 50 (Final Fee Allocation Agreement) [EX. 10], Settlement Agreement, Dkt. No. 89, ¶ 21; McTigue, 7/7/17 Dep., pp. 44:23 – 46:18; Thornton 6/19/17 Dep., p. 57:12-16. As part of that written agreement, ERISA and Customer Class Counsel represented that they had "disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein." *See* Fee Allocation Agreement at ¶ 5 [EX. 10].

The percentage allocated to ERISA Counsel later was increased to 10%, at the suggestion of Customer Class Counsel. Thornton 6/19/17 Dep., pp. 57:17 – 58:1; Sarko 7/6/17 Dep., p. 60:15-17, 60:24-61:12; Kravitz 7/6/17 Dep., p. 59:17-19. While counsel did not amend the original agreement, the 10% increase was memorialized in an email circulated by Nicole Zeiss, Settlement Counsel for Labaton, itemizing the allocation of fees and expenses to the ERISA and Customer Class attorneys. *See* ZS000027 – 28 (11/23/16 Sarko email to Kravitz ("I spoke with Labaton folks yesterday. They didn't want to put it in the formal letter but agreed to send us an email putting the numbers in and confirming the 10 percent.")). [EX. 11]. ERISA Counsel welcomed the increase in percentage. *See* ZS000029 – 30 (11/23/16 Kravitz email to McTigue). [EX. 12].

viii. STAFF ATTORNEY COST-SHARING AGREEMENT

Staff attorney-based document review performed throughout the course of the hybrid mediation-discovery process ramped up significantly in January 2015. Chiplock 6/16/17 Dep., pp. 87:22 – 88:24. While the *BONY Mellon* case was being actively litigated in 2013-2014, Lieff

assigned at most five SAs to review documents produced by State Street. Chiplock 6/16/17 Dep., pp. 107:15 – 108:12. During that time, Labaton also allocated no more than five SAs to review and analyze documents for the *State Street* case. Rogers 6/16/17 Dep., p. 57:7-10. [14] As the hybrid mediation progressed, State Street produced discovery related to the *Hill* case,[15] a significant production consisting of approximately 10 million pages. Rogers 6/16/17 Dep., pp. 68:25 – 69:11; Chiplock 6/16/17 Dep., p. 88:2-21. The *Hill* production added considerably to the total volume of unreviewed documents.

By January 2015, the Customer Class began to view discovery with greater urgency, informed in part by the favorable resolution in the *BONY Mellon* case and also by the fact that the parties had been mediating for over two years without reaching an agreement to resolve the case. Chiplock 6/16/17 Dep., p. 111:8-13; Dugar 6/16/17 Dep., p. 85:9-16. As a result, Labaton and Lieff, which had recently freed up thirteen SAs as fact discovery in the *BONY Mellon* case came to a close, expanded their respective document review teams by adding additional SAs to review and analyze the database of unreviewed material accumulated during the *State Street* case. *See* Chiplock 6/16/17 Dep., pp. 109:16 – 110:2; Rogers 6/16/17 Dep., pp. 69:8-14; 74:11-13. Between January and March 2015, Labaton bolstered their document review team, maintaining more than fifteen to twenty different SAs on the *State Street* case at any given time. Lieff did the same, assigning fifteen SAs (thirteen of whom transitioned directly from the *BONY Mellon* review) and two "contract" attorneys to complete the review.[16] Kussin 6/5/17 Dep., p.

[14] Michael Rogers recalls that, in 2013, Labaton assigned Todd Kussin, the SA "team leader" in the *State Street* case, and four SAs to perform document review during 2013 and 2014. Rogers 6/16/17 Dep., p. 57:7-10.

[15] *Hill v. State Street Corp., et. al.*, MAD No.1:09-cv-12146-GAO.

[16] In March 2015, Lieff Cabraser hired two additional attorneys, employed by an outside staffing agency rather than the firm. *See* Lieff Cabraser Response to Interrogatory No. 19.

17:6-13, 70:8-9; Dugar 6/16/17 Dep., p. 87:16 – 88:11, 23-24; Lieff Cabraser Response to June 1 Interrogatories, No.19.

All SAs reviewing documents in the *State Street* case received a binder of documents providing an overview of the case; the binder contained the complaint and related pleadings, an outline of the case theory, and a list of key terms, search criteria, topics and categories to guide the SA review. Goldsmith 7/17/17 Dep., pp.77:23 – 78:8; Rogers 6/16/17 Dep., p. 63:3-7; Lesser 6/19/17 Dep., p. 40:12-13. Michael Lesser also drafted emails outlining important information for the SAs to consider during their review. Lesser 6/19/17 Dep., pp. 40:10 – 41:4.

The Labaton and Lieff SAs were well-qualified and equipped to analyze the documents, which related to complex FX trading patterns and other financial issues raised in the case. *See* Rogers 6/16/17 Dep, pp. 58:12 – 59:7 (SAs hired by Labaton had experience in "complex litigation, [the] financial industry, . . . banking, mutual funds, certainly currency trading, or experience legally on what I would call a financial industry case.") Several of the Lieff SAs had, in the words of Dan Chiplock of Lieff Cabraser, "been through war in *Bank of New York Mellon*, and [] [we]re extremely well-versed in the issues." Chiplock 6/16/17 Dep., pp. 109:20-25; 117:16-25. These SAs not only performed sophisticated document review; they also prepared substantive subject matter memoranda and deposition notebooks. Chiplock 6/16/17 Dep. p. 32:12-20; Zaul 6/6/17 Dep., pp. 24:4 – 25:5; Alper 6/5/17 Dep., p. 17:14-16; Oh 6/6/17 Dep., p. 21:20-25; *see also* TLF-SST-005245 – 5270 (Memorandum authored by SA Maritza Bolano) [EX. 13].

Because TLF did not have SAs, or non-permanent attorneys, of its own, or the facilities to hire and house new attorneys solely to work on the *State Street* document review, Labaton, Lieff and TLF entered into an agreement to "allocate" certain SAs employed by and working at

Labaton and Lieff's offices to TLF. At times, this was referred to as the "10/10/10 agreement[17] -- designating an equal number of SAs to each firm. The purpose of the cost-sharing agreement was to share the cost and risk burdens of the litigation among the three Customer Class law firms. Chiplock 6/16/17 Dep., pp. 127:23 – 128:5; 131:23 – 133:15; Belfi 6/14/17 Dep, pp. 51:8 – 53:12. [18] While the exact number of SAs fluctuated over the course of the agreement, TLF, in essence, agreed to pay Labaton and Lieff each for five SAs. G. Bradley 6/19/17 Dep., p. 43:10-13. TLF did not meet, interview, select, house or supervise the SAs allocated by Labaton or Lieff. *See* Hoffman 6/6/17 Dep., pp. 62:21, 63:7-17, 64:6-9, 65:3-6; *see also* Chiplock 6/16/17 Dep., pp. 134:17 – 135:19. And, it did not matter to TLF which SAs it paid for. *See* G. Bradley 6/19/17 Dep., p. 43:10-13. Pursuant to this cost-sharing arrangement, Labaton and Lieff designated certain SAs as "TLF," and then billed TLF periodically for the actual costs of the SAs and, in Lieff's case, for the contract attorneys "allocated" to TLF. *Id.*; *see also* Hoffman 6/6/17 Dep., p. 63:2-7.

TLF's collection of SA hours was conducted piecemeal and largely through administrative staff rather than directly between the attorneys privy to the SA cost-sharing agreement. Evan Hoffman, the most junior member of TLF's litigation team, was tasked with collecting the names and hours of the Lieff SAs allocated to TLF. Hoffman 6/5/17 Dep., p. 57:

[17] The concept of the "10/10/10 agreement" was introduced at the beginning of the Special Master's discovery, and while not all Class Counsel were familiar with that exact terminology, they affirmed that the purpose of the cost-sharing agreements between Labaton and TLF, and between Lieff and TLF, was to allocate costs and risks equally among all firms by Labaton and Lieff each assigning approximately five SAs to TLF, so that each firm ending up bearing the cost of ten SAs. *See* G. Bradley 6/19/17 Dep., p. 42:5-13; Chiplock 6/16/17 Dep., p. 133:12-15.

[18] Allocating the SAs was not only a means of equalizing the costs and burdens, but also as Garrett Bradley of TLF admitted, it was "the best way to jack up the load star [sic]…the best way for us [TLF] to increase our load star [sic] and make it comparable to the other two firms…. I was absolutely concerned about Thornton's load star [sic] vis-a-vis the other two firms." G. Bradley 6/19/17 Dep. p. 67:4-13; TLF-011124 – 11126 (2/6/15 G. Bradley Email to Thornton cc'd Lesser) [EX. 14].

11–18. The staffing agency employing the agency attorneys working at Lieff invoiced TLF directly for the hours performed by those individuals. Hoffman 6/5/17 Dep., p. 62: 6-9. Michael Bradley, the brother of TLF partner Garrett Bradley, neither worked for a firm or a staffing agency, and reported his hours to Hoffman by email on a weekly or biweekly basis. Hoffman 6/5/17 Dep., pp. 107: 24-108:7.

For those SAs employed by Lieff, Lieff's accounting department prepared and forwarded invoices to Hoffman on a regular basis. LCHB Response to Interrogatory No. 38; Hoffman 6/5/17 Dep., pp. 61: 21-62:5. Similarly, Labaton's accounting office prepared and forwarded invoices reporting the hours performed by Labaton SAs to Garrett Bradley's attention, copying TLF administrators, on a monthly basis. Labaton Response to Interrogatory No. 37; *see* LBS – 003775-3776 (4/9/15 Ng Email to G. Bradley attaching April 2015 Invoice) [EX. 15].

At the time Labaton and Lieff agreed to this arrangement, both firms were concerned primarily with spreading the risks -- and costs -- of the litigation; neither firm focused on what information would be reported in a potential fee petition. Belfi 6/14/17 Dep., p. 53:10-12. TLF later claimed all of the SAs allocated to TLF on its lodestar fee petition, accounting for 71.5% of all TLF hours reported. *See* Dkt. No. 104-16.[19] In its fee petition, TLF billed all SA time at an hourly rate of $425 (a rate approved by the Court for Lieff SAs in *BONY Mellon*). Except for

[19] TLF also claimed 406.4 hours of SA time for Michael Bradley, a Massachusetts-licensed attorney and the brother of TLF Managing Partner, Garrett Bradley, who was not affiliated with the firm but performed document review on a contingent basis during the *State Street* case. M. Bradley 6/19/17 Dep., pp. 28:20-23; 70:13-15. Bradley worked from his own office and did his document review in his free time; he was not supervised by Labaton or Lieff lawyers. M. Bradley 6/19/17 Dep., pp. 49:7-16; 52:3-18, 54:15 – 55:3. Unlike the Labaton and Lieff SAs, Bradley did not prepare any memoranda or deposition notebooks. *Id*, at p. 46:21-23. And, the record reveals no written work product created by Michael Bradley.

Bradley worked on a contingent basis; he would only be paid if the class recovered a settlement entitling counsel to fees. M. Bradley 6/19/17 Dep., p. 70:13-15. After the Court approved the request for attorneys' fees, Bradley received a payment of $203,200, equal to the numbers reported at $500 per hour. *Id.*, p. 70:18-23.

three SAs, the $425 per hour rate charged by TLF was greater than the rates requested by Lieff or Labaton for the same individuals in their lodestar petitions.[20] Hoffman 6/6/17 Dep., p. 59:5-12. No explicit or implicit agreement to allow TLF to claim the Labaton and Lieff SAs on TLF's lodestar has been disclosed during the Special Master's investigation.

ix. SETTLEMENT AND NOTICE TO CLASS MEMBERS

a. Involvement of Government Agencies

The hybrid mediation spanned a period of two and a half years. During this time, while discovery continued, settlement discussions were ongoing. In addition to State Street and plaintiffs' counsel, three government agencies -- the Department of Labor ("DOL"), the Securities and Exchange Commission ("SEC"), and the Department of Justice ("DOJ") -- were involved in the negotiations. Each agency independently investigated State Street's alleged misconduct, and each agency reached its own settlement with State Street in furtherance of their respective enforcement goals. *See* Dkt. No. 104, ¶¶ 8, 38; *see also* Sarko 7/6/17 Dep., p. 41:9-14; Kravitz 7/6/17 Dep., pp. 56:25 – 57:4. The DOL -- charged with overseeing administration of the ERISA statute -- paid particular attention to the settlement of the claims of the ERISA plan participants, ensuring that the settlement recovery amount was adequate and commensurate with the agency's own evaluation of the case. Sarko 7/6/17 Dep., p. 79:6-15. Keller Rohrback's Lynn Sarko was the lawyer principally responsible for negotiating with the DOL. State Street, in turn, made it clear that a global settlement with all private class members and all government

[20] Rachael Wintterle, a contract attorney housed at Lieff's office, was billed by Lieff at $515 per hour. *See* Dkt. No. 104-17, Exhibit A. David Alper and Dorothy Hong were billed by Labaton at the same rate as TLF, $425 per hour. *See* Dkt. No. 104-15, Exhibit A. Alper had a background in FX training and was a resource for SAs during the *State Street* case. Alper 6/5/17 Dep., pp. 20: 8-11; 22: 3-8.

agencies was a necessary condition to its willingness to reach a settlement. Sarko 7/6/17 Dep., pp. 36:24 – 37:11; *see also* 11/2/16 Hearing Tr., p. 17:8-23.

b. Preparation and Filing of Settlement Documents

After two and a half years of mediation and negotiation, on June 30, 2015, the parties reached an agreement-in-principle to settle the consolidated class actions for $300,000,000.00. Sucharow Decl., ¶ 101. The terms of a final Term Sheet were negotiated and signed on September 11, 2015. *Id.* at ¶ 104. *See also*, Zeiss 6/14/17 Dep., p. 13:10-22.

Over the ensuing 10 ½ months, Labaton, as Lead Settlement Counsel, undertook the preparation of the formal settlement documentation. Nicole Zeiss, Labaton's Settlement Counsel, had primary responsibility for drafting the settlement agreement and the exhibits for the settlement agreement, including the preliminary approval motion, brief and order, the plan of allocation, the judgment, the long-form Notice of Pendency of Class Actions and the Summary Notice ("Notice"). Zeiss 6/14/17 Dep., pp. 13:10-22; 15:5-6.[21] Draft versions of the Notice were circulating among, and reviewed by, Customer Class Counsel and ERISA Counsel.[22]

Zeiss also had the responsibility of preparing the Omnibus Declaration and Brief in support of Lead Counsel's motion for attorneys' fees and expenses, and for payment of service awards. Zeiss 6/14/17 Dep., p. 16:2-6. This included reviewing and assembling the exhibits to the brief which consisted of the individual firms' fee declarations and lodestar reports. *Id*., p.

[21] Rather than have a litigation team member handle settlement, Labaton has compartmentalized its practice, and in that compartmentalization, it created a separate "settlement counsel" position who negotiates and documents all settlements. Zeiss 6/14/17 Dep., pp. 10:24 – 11:12. With respect to the *State Street* case, this compartmentalization contributed to some of the problems giving rise to the Special Master's investigation, in particular, the failure to discover the "double-counting" of SAs allocated to TLF and the failure to disclose to the Court Labaton's fee arrangement with Texas attorney Damon Chargois. These matters are discussed *infra.*

[22] In March 2017, at the request of the Special Master, the Customer Class and ERISA firms each produced a complete record of time entries performed in the *State Street* matter. These time records indicate that Class Counsel reviewed the Notice and other settlement documents circulated by Zeiss.

16:10-14. Zeiss drafted the template for the individual fee declarations, circulated it to the other firms, and worked with them on completing their declarations and exhibits. *Id*., pp. 16:14-16, 20:18-19.

The Settlement and Fee Petition documents made clear that Labaton was representing both the Customer Class and the ERISA Class with respect to the settlement of the case. 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," which Labaton drafted, bears the case names and numbers of all three class actions, including the ERISA actions, and provides notice to members of the "Settlement Class" that a Class Settlement of $300,000,000 has been entered into "by and among (i) plaintiffs Arkansas Teacher Retirement System ("ARTRS"), Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan and James Pehoushek-Stangeland (collectively "Plaintiffs"), on behalf of themselves and each Settlement Class Member, by and through their counsel, and (ii) State Street Bank and Trust Company (the "Settling Defendant" or "SSBT")." *See* Notice of Pendency of Class Actions, MAD No. 11-cv-10230, Dkt. No. 95-3, filed on August 10, 2016. The Notice further defines the "Settlement Class" as

> All custody and trust customers of SSBT (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT's records as having a United States tax address at any time during the period from January 2, 1998 through December 31, 2009, inclusive, and that executed one or more Indirect FX Transactions with SSBT and/or its subcustodians during the period from January 2l 1998 through December 31, 2009, inclusive.

Id.

The Notice was widely circulated.

x. FEE PETITION REQUESTING ATTORNEYS' FEES

a. Fee Negotiations Among Customer Class Counsel

Around the time the parties reached an agreement-in-principle, Customer Class Counsel engaged in discussions about how to allocate the anticipated fee award among themselves. It is apparent from these discussions that with regard to balancing fees, Lieff and TLF considered their respective roles in the *BONY Mellon* litigation, a fact wholly unrelated to the value added in this case. Dan Chiplock conceded at deposition, as did Garrett Bradley, that the *State Street* and *BONY Mellon* fee discussions became intertwined. Chiplock 9/8/17 Dep., pp. 22:7 – 23:13; Garrett Bradley 9/14/17 Dep., pp. 114:23 – 125:16. Contemporaneous emails also reflect the intertwining of the fee negotiations in the two cases. *See* discussion, *infra*.

At the inception of the case, Customer Class Counsel had agreed to a fee sharing arrangement when Labaton teamed with Lieff and TLF, pursuant to which Labaton, Lieff and TLF understood each firm would be entitled to a minimum of 20% of the fee award, with the remaining 40% to be distributed at the end of the litigation, commensurate with each firm's respective contributions to the case. *See* TLF-SST-033911 – 33913 (5/4/11 letter agreement, p. 2) [EX. 16]; Keller 10/25/17 Dep., pp. 414:14 – 420:10. *See also*, TLF-SST-040631 (8/28/15 email exchange among Larry Sucharow, Dan Chiplock, Garrett Bradley, M. Thornton, and Bob Lieff regarding the 20-20-20/40 agreement) [EX. 17].

In August 2015, Dan Chiplock expressed an interest in determining the appropriate allocation of the remaining 40%. *Id.* Garrett Bradley of TLF resisted, opining that the final distribution should wait until the Court made a total fee award. *Id.* What became apparent to Chiplock was that TLF viewed any allocation of *State Street* fees as tied to the then yet

undecided *BONY Mellon* fee award. *Id.*[23] ("Not to be difficult but [this is a] very different situation, in other words, from BNYM, (which I know doesn't involve you Larry, but seems to be coloring this discussion.") *See also*TLF-SST-053087 (8/28/15 email from Sucharow to Chiplock ("I believe there are other cases and other agreements which are influencing people's desire to either reach agreement now or later.")) [EX. 18].

Garrett Bradley pressed for an agreement that Lieff share some portion of its allotment in *BONY Mellon* with TLF in recognition of the fact that Thornton had developed the initial FX concept, and refused to settle on an allocation in *State Street* until he saw that TLF was treated "fairly" in *BONY Mellon.* Chiplock 9/8/17 Dep. pp. 22:8 – 23:13; TLF-SST-031166 - 31173 (G. Bradley 8/28/15 email to Bob Lieff ("…I have not agreed that it would be equitable to split the balance of the forty percent the way you described below. What I have said is that may be a fair approach depending on the outcome of our fee in the Mellon matter. If we are treated fairly there, then we will do all we can to treat you fairly in the state street matter…) [EX. 19]; *see also* Bradley to Chiplock email of the same date, *id.* ("What I am pointing out is the inequities of our different positions…. In Mellon … we had created the fx case all we got was some work that resulted in $1.5 million in time. Now contrast that the State Street where you had no client and no concept…. Once we have an idea of what our Mellon numbers look like, we can discuss how to approach the balance of the 40% with Labaton.") [EX. 19].

Dan Chiplock, the lead attorney in *BONY Mellon*, took exception with the implication that Lieff was not treating TLF fairly in that case. He pushed back, reminding Bradley in an email two days later that Lieff's role in creating the result in *BONY Mellon* "doubled the value of State Street." *Id.* (8/30/15 email from Chiplock to Bradley). He further reminded Bradley, "I

[23] The settlement in BONY Mellon would be finalized the following month, September 2015.

also gave your firm more assignments than others at the outset in BNYM until it became clear that the work simply wasn't getting done." *Id.* Bradley asked what Chiplock meant when he said TLF did not "get the work done." *Id.* "That has never been specified and really should be to be deemed credible." *Id.* Chiplock agreed to provide Bradley with emails showing the assignments given to TLF. *Id.*

The discussion turned to lodestar reporting in *State Street* with Chiplock warning Bradley not to include unwarranted hours in TLF's fee petition:

> In the meantime, while we're on the subject of credibility, I want to point out that we need to be consistent and credible with our lodestar reporting in State Street. We are gathering final lodestar reports now, but I heard third-hand that Mike [Thornton]recently said on a call (that I wasn't on) that Thornton Law Firm was showing $14 million. That number does not comport with the hours Mike Lesser told me for Thornton as of June 29 (around 12,750), which makes more sense given what we know about the work that was done. I am hopeful that Mike T simply misspoke or was guessing when he said $14 million and that we are not going to suddenly see an additional 12,000 hours mysteriously appear on Thornton Law Firm's behalf…Also recognize that your [document] reviewers were all housed outside your firm ad their respective overhead and facilities expenses were paid for by others, which we were happy to do as a courtesy. Thanks.

Id.

b. Submission of the Fee Petition

Customer Class Counsel's discussions about fee sharing were put on hold as *State Street* settlement negotiations wrapped up, and in advance of the hearing on final approval of the settlement, Plaintiffs' Counsel submitted to the Court a joint Fee Petition in support of their request for attorneys' fees in the amount of $74,541,250.00. *See* Dkt. No. 104. The Fee Petition consisted of the Omnibus Declaration[24] signed by Lawrence Sucharow of Labaton, and nine

[24] "Declaration of Lawrence A. Sucharow In Support of (A) Plaintiffs' Assented-To Motion For Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion For An Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs." Dkt. No. 104.

individual declarations submitted by each law firm that had filed an appearance in the case. The individual declarations described the work performed by each firm and the basis for its fee request. Attached to each declaration was a chart ("Exhibit A") summarizing each firm's respective lodestar through August 30, 2016. *See* Exhibit A to Dkt. Nos. 104-15, 104-16, 104-17, 104-18, 104-19, 104-20, 104-21, 104-22, 104-23. The narrative descriptions and chart outlines were taken verbatim from the template provided by Labaton. *See* Zeiss 6/14/17 Dep., pp. 16:10-16; 21-24.

c. The Labaton Template and Inaccuracies in Declaration Language

The Labaton template included several paragraphs describing the source of the lodestar calculations and billing rates. In particular, it included a generic description of the basis for the hourly rates listed in the lodestar calculation. With the exception of three ERISA firms -- McTigue Law,[25] Zuckerman Spaeder,[26] and Beins Axelrod[27] -- the Customer Class Counsel and the other ERISA Class Counsel adopted the template language in its entirety. Specifically, Labaton provided counsel with the following language:

[25] The McTigue Law Firm's individual fee declaration states that "[t]he 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 otherwise charged for their services, which have been accepted in other complex class actions my firm has been involved in." Dkt. No. 104-18, ¶ 20.

[26] Zuckerman Spaeder's individual fee declaration states that "[t]he 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 and are charged to clients paying us currently by the hour." Dkt. No. 104-20, ¶ 4.

[27] Beins Axelrod's individual fee declaration states that "[t]he 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. Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in Washington, D.C. by attorneys of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements. The Firm has charged, and received, an hourly rate of $525.00 in litigation involving fiduciary breach 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 Union clients. To serve the public interest, the Firm has also charged reduced rates to individual employees with employment discrimination claims. Dkt. No. 104-22, ¶ 8.

- "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." (Dkt. Nos. 104-15, ¶ 6; 104-16, ¶ 3; 104-17, ¶ 4; 104-18, ¶ 3; 104-21, ¶ 3; 104-23, ¶ 3).

- 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 service, which have been accepted in other complex class actions." Dkt. Nos. 104-15, ¶ 7; 104-16, ¶ 4; 104-17, ¶ 5; 104-18, ¶ 4; 104-21, ¶ 4; 104-23, ¶ 4).

TLF adopted the preceding paragraphs verbatim in Garrett Bradley's Declaration, summarizing the basis for TLF's fee request. *See* Dkt. No.104-16. Several representations contained within these paragraphs are inaccurate:

- *Exhibit A is a summary of time spent by attorneys and professional support staff members "of my firm."* None of the SAs were employed by TLF. 3/7/17 Hearing Tr., p. 87:8-10; G. Bradley 6/19/17 Dep., pp. 82:12-21; 83:4-7.

- *The billing rates for the SAs are "based on my firm's current billing rates."* TLF did not maintain "current billing rates" for SAs listed on its lodestar calculation in Exhibit A. 3/7/17 Hearing Tr., p. 87:14-19; G. Bradley 6/19/17 Dep., pp. 48:24 – 49:4; *see also* Exhibit A to Dkt. No. 104-16.

- *For personnel "who are no longer employed," the lodestar is based on their rates for the "final year of employment."* Again, none of the SAs were employed by TLF. 3/7/17 Hearing Tr., p. 87:8-10.

- *The schedule was prepared from "contemporaneous daily time records regularly prepared and maintained by my firm.*" TLF did not prepare or maintain daily time records of the hours worked by the SAs listed on its lodestar. Hoffman 6/6/17 Dep., pp. 63:2-7; 69:19-25; 70:12-16; 79:19-23; Kussin 6/5/17 Dep., p. 69:4-17. Nor did TLF maintain contemporaneous time records for the other lawyers working on the *State Street* case. TLF-SST-011246 – 11249 (5/21/14 email from Hoffman to Lesser)("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/or MPT, GJB." [EX. 20].[28]

- *The hourly rates "are the same as my firm's regular rates charged for their services."* TLF did not maintain "regular rates" for the SAs listed on its lodestar report. 3/7/17 Hearing Tr., p. 88:2-5.

- *These rates "have been accepted in other complex class actions."* With the exception of 4 SAs, the $425 rate charged for the remaining SAs listed on the lodestar, including Michael Bradley, had not been accepted in other complex class actions. G. Bradley 6/19/17 Dep., p. 54:1-7.

Garrett Bradley acknowledged -- both in deposition and during the March 7, 2017 hearing before Judge Wolf -- that TLF's declaration was inaccurate and "should have been clearer." 3/7/17 Hearing Tr., p. 91:4-6; G. Bradley 6/19/17 Dep., p. 82:12-21. At the March 7 hearing, Bradley conceded that the language described above "should have been clarified by me at that time," but was not. 3/7/17 Hearing Tr., p. 88:18-19. There is ample evidence in the record that Garrett Bradley actually knew the Declaration contained inaccurate information but signed it anyway. *See, e.g.*, 3/7/17 Hearing Tr., p. 87:13-14; 88:2-9, 14-18; 91:5-7; 92:3-8.

d. Staff Attorney Time

Customer Class Counsel's individual fee petitions also included requests for fees for the SAs. On the lodestar summary charts (Exhibit A to the declarations), Labaton listed 25 SAs ("SAs"); Lieff listed 20 SAs; TLF listed 24 SAs. *See* Sucharow Decl., Dkt. No. 104-15, Ex. A; Chiplock Decl., Dkt. No. 104-17, Ex. A; G. Bradley Decl., Dkt. No. 104-16, Ex. A. In total, Customer Class Counsel reported 59,129.4 hours performed by SAs during the *State Street* case, accounting for nearly 70% of the Customer Class Counsel's total lodestar. *See* Labaton's, Lieff's and TLF's Lodestar Reports, Dkt. Nos. 104-15, Ex. A; 104-16, Ex. A; and 104-17, Ex. A;

[28] Garrett Bradley and Michael Thornton were asked for contemporaneous records, but never provided any. TLF provided a spreadsheet containing time entries recreated after the fact based on records received from other firms, mainly Lieff, working on the State Street case.

see also Master Chart of Lodestars & Expenses, Dkt. No. 104-24. As the chart below reflects, of TLF's total of 14,731 claimed hours, 10,537.9 hours (71.5%) were hours worked by "loaned" Labaton and Lieff SAs. Specifically, the Customer Class firms' lodestar Reports reflected the hours and lodestar of partners, associates and SAs in the following amounts:

FIRM	PARTNERS & ASSOCIATES	STAFF ATTORNEYS
LABATON	5,783.6 hours	31,526.4 hours
	$4,784,915.50	$11,684,111.00
LIEFF	2,025.1 hours	17,065.1 hours
	$1,391,346.50	$7,474,896.50
TLF	4,193.1 hours	10,537.9 hours
	$2,831,287.00	$4,508,837.00

xi. COURT APPROVAL OF THE SETTLEMENT AND FEE AWARD

a. Preliminary Approval

On August 8, 2016, the Court conducted a Preliminary Class Settlement Hearing, after which it granted preliminary approval of the class settlement,[29] provisionally certified the Settlement Class (as defined in the Notice of Pendency of Class Actions), approved the long-form Notice of Pendency of Class Action and Summary Notice, and appointed Labaton Sucharow LLP as Lead Counsel for the Settlement Class. *See* MAD No. 11-cv-10230, Dkt. No. 97.

[29] As explained by Goldsmith during the August 8 hearing, "the reason why [class certification is] preliminary and not final is because class members do have a constitutional right to object to class certification if they see fit to do so." 8/8/16 Hearing Tr., p. 6:11-15.

David Goldsmith of Labaton appeared on behalf of the Settlement Class at the hearing. 8/8/16 Hearing Tr., pp. 4-6. Michael Thornton of TLF and Dan Chiplock of Lieff Cabraser, as well as attorneys from the three ERISA firms, also attended the hearing. *Id*., pp. 2-4. On behalf of all counsel, Goldsmith addressed plaintiffs' request for preliminary class certification for settlement purposes, which involved meeting a two-prong test to show that class representatives and class counsel adequately represent the class members. 8/8/16 Hearing Tran., pp. 7:24-8:7. In response to the Court's inquiry whether Labaton could adequately represent both the ERISA and Customer classes, Goldsmith responded that Labaton was "adequate"; he argued that the Court had "no reason to depart" from its initial adequacy findings in the January 12, 2012 Memorandum and Order appointing Labaton as interim class counsel. *Id*., p. 8:18-22. The Court acknowledged, and Goldsmith agreed, that a class member may opt out of the settlement if he or she "feels that its [sic] interests justify a different path." *Id*., p. 11:6-13.

The Court further asked Goldsmith to explain why the $300 million private settlement was reasonable, and specifically addressed the role of the DOJ, SEC, and DOL in the settlement process. *Id.*, p. 13:2-7. The Court showed a genuine interest in ensuring that the global settlement was fair to all participants: "if what I'm being asked to approve is going to affect something you've negotiated at arm's length with the [DOJ] and something you've negotiated with the SEC and something you've negotiated with the [DOL], I think that goes into both the reasonableness of the settlement and the fairness of the settlement." *Id*., p. 18:13-22. Goldsmith affirmed that the reasonableness of the settlement is evidenced, in part, by the fact that DOL signed off on it. *Id*., p. 18:2-6.

b. Final Approval

On November 2, 2016, a hearing was held on Plaintiffs' Assented to Motion for Final Approval of Settlement and Lead Counsel's Motion for an Award of Attorneys' Fees and for Payment of Service Awards. Goldsmith, accompanied in the courtroom by Zeiss, again represented the "plaintiffs and settlement class." 11/2/16 Hearing Tr., pp. 3:7-9, 10-11. Dan Chiplock of Lieff Cabraser and Carl Kravitz of Zuckerman Spaeder also attended the hearing. *See id*., pp. 2-3.[30] During the hearing, the Court approved the settlement, explaining that its approval was based, in part, on its finding that counsel on both sides "vigorously represented their clients' interest." 11/2/16 Hearing Tr., p. 21:1-5. The Court also found the proposed Plan of Allocation to be fair. *See id.,* p. 22:16-21. The Court further noted the importance of the parties having reached a global settlement, including settlement with the federal regulators, in particular the DOL and SEC. *Id.* at pp. 17:8-23, 38:12-20.

In considering the reasonableness of the attorneys' fees requested, the Court inquired whether the plaintiffs' fee agreement was disclosed to the class members "at the outset" of the case, to which Goldsmith responded only that the fee agreement was "consistent with the fee [plaintiffs were] seeking here." *Id.* p. 26:12-13. In a colloquy with the Court, Goldsmith argued, "[W]e produced a $300 million settlement…. So I think … a fee of some substance would be in order, frankly." *Id.*, p. 28:16-20. The Court acknowledged that the $74 million in fees requested by counsel "is of some substance," *id*, p. 28:21-25, but noted that none of the class representatives had objected to that fee request. *Id*., p. 34-8-9.

[30] There is nothing in the record evidence indicating that any other attorneys from Labaton, Lieff, TLF, or any of the ERISA firms were in attendance at the final approval hearing.

At the conclusion of the hearing, stating that he was "relying heavily on the submissions and what's been said today," Judge Wolf approved a 25% award of attorneys' fees in the amount of $74,541,250.00, plus expenses in the amount of $1,257,699.94. *See id.* p. 35:4-8. The Court also approved service awards totaling $85,000 -- $25,000 for ATRS and $10,000 for each of the six ERISA plaintiffs. *Id*. at pp. 33:4-6, 35:9-12. Judgment was entered accordingly. *See* Order and Final Judgment, Dkt. No. 110. The Judgment became final on December 2, 2016.

xii. DISTRIBUTION OF SETTLEMENT AND ATTORNEYS' FEES

As provided in the Plan of Allocation approved by the Court at the Final Settlement Hearing, $60 million of the $300 million gross settlement was allocated to the ERISA class plaintiffs, providing ERISA plan participants with a recovery ratio of roughly $2 to every $1 of loss to the class. *See* Sucharow Decl., Dkt. No. 104, ¶ 134. The Plan of Allocation further provided that a maximum of $10.9 million of the approximately $75 million in total attorneys' fees could be paid out of the ERISA Class' recovery for attorneys' fees.[31] This allocation was negotiated and agreed to by Customer Class Counsel and ERISA Counsel after the parties reached the agreement-in-principle on the $300 million settlement, *See* Sucharow Decl., ¶ 139; *see also* Kravitz 7/6/17 Dep., pp. 54:25 – 55:1; 59:11-12; Sarko 7/6/17 Dep., p. 48:19; McTigue 7/7/17 Dep., p. 43:10-11. In accordance with the Plan of Allocation and the ERISA fee allocation previously agreed upon among the Customer Class Counsel and ERISA Counsel, ERISA Counsel collectively received 10% of the total fee award -- a sum of $7.5 million -- with

[31] The $10.9 million cap in attorneys' fees from the ERISA class recovery was negotiated by DOL. Sarko 9/8/17 Dep., p. 66:1-8; Kravitz 9/11/17 Dep., p. 66:8-23; *see also* TLF-SST-052694 – 52696 (8/21/15 email correspondence between Customer Class counsel and ERISA counsel related to negotiations with DOL regarding fees) [EX. 21]; TLF-SST-052697 – 52698 (8/26/15 email from Lynn Sarko to Customer Class counsel and ERISA counsel regarding negotiated deal with DOL) [EX. 22].

the remaining $3.4 million under the agreed-upon $10.9 million ERISA fee cap being paid back to Customer Class Counsel instead of to ERISA Counsel. *See* Sucharow Decl., ¶¶ 134-139.

a. Payment of Fees and Expenses

On September 2, 2016, State Street paid the gross settlement sum of $300 million into a Class Settlement Fund Escrow Account -- an escrow account maintained by Labaton, as Lead Settlement Counsel, with Citibank -- where the funds remained pending entry of Judgment. *See* Stipulation and Agreement of Settlement, Dkt. No. 89; Zeiss 9/14/17 Dep., pp. 122:15, 124:9-11, 130:21-23; *see also* LBS041692 (Citibank Escrow Account Statement). Under the terms of the Stipulation, Labaton agreed that, once Judgment became final it would "in good faith promptly distribute any award of attorneys' fees and/or payments of litigation expenses among *plaintiffs' counsel.*" Dkt. No. 89 ¶ 21 (emphasis added).

After the Court issued its Order awarding fees, the total sum of the fee award was transferred by Labaton into a Lead Counsel Escrow Fund, also held by Citibank. Zeiss 9/14/17 Dep., pp. 124:16-23; 125: 3-4. On December 8, 2016, after Judgment became final, Labaton instructed the bank to disburse the fees, expenses, and service awards approved by the Court. *Id*., p. 125:13-21. The fees and expenses were disbursed by the bank directly to Lieff, TLF, McTigue, Keller Rohrback and Zuckerman Spaeder. Zeiss 9/14/17 Dep., p. 125:13-21. Labaton also instructed the bank to transfer approximately $34 million to its firm's IOLA account, out of which Labaton paid the service awards, obligations to "of counsel" attorneys,[32] and

[32] "Of counsel" here refers to Goldman Scarlato & Penny. Goldman Scarlato & Penny performed work on the case, and is reflected in the lodestar report Labaton submitted to the Court. Zeiss 9/14/17 Dep., pp., 143:17-20; 144:6-7.

approximately $4.1 million to Texas attorney, Damon Chargois, that same date. *Id.*, pp. 140:21 – 141; 143:4-8.[33]

The $4.1 million payment to Chargois was the fourth largest payment made from the total fee award, and more money than was paid to any ERISA firm. *See* Master Chart of Lodestars, Litigation Expenses and Plaintiffs' Service awards, Dkt. No. 104-24. In coordinating the payment to Chargois, Zeiss instructed Labaton's accounting department to remit payment from the firm's IOLA if "it will be a rush" to pay Chargois. 12/7/16 Zeiss Email to Ng, LBS 032881 – 32883 [EX. 50]. Unlike payments from settlement escrow funds -- governed by escrow agreements -- payments made from Labaton's IOLA account did not require two additional signatures for disbursement. *See* Zeiss 9/14/17 Dep., p. 120:9-23. Chargois testified that it did not matter to him when, or from which account, the payment was made. Chargois 10/2/17 Dep. pp. 304:9-10; 305:3-10.

The $4.1 million payment to Chargois was uncovered during the course of the Special Master's investigation.[34] Chargois never filed an appearance in the *State Street* case, nor did he, or his firm, Chargois & Herron, submit any declaration or lodestar report as part of the *State Street* Fee Petition. *See* Dkt. Nos. 104, 104-15, 104-16, 104-17, 104-19.

All parties concede Chargois performed no work on the case.

---

[33] Labaton has not yet distributed money to the class members. Zeiss 9/14/17 Dep., p. 133: 2-5, 9-12. As of July 2017, the Class Settlement Account contained $224,978,733.34. *Id*., p. 132:6-10.

[34] This payment of fees to Chargois first came to light in a batch of emails produced by TLF on August 8, 2017 and gave rise to several additional months of depositions and written discovery. Neither Labaton nor Lieff produced any emails related to Chargois in response to the Special Master's initial requests for production of documents. *See*, *e.g.*, Special Master's First Set of Interrogatories to LCHB (Revised) Nos. 5, 10, 62, 74; Special Master's First Set of Interrogatories to LBS (Revised) Nos. 4, 9, 60, 72; Special Master's First Set of RFPs to LCHB (Revised) 3, 16, 40. After the Chargois relationship was disclosed by the TLF-produced emails in response to the Special Master's initial document requests, both Labaton and Lieff produced a significant number of emails and documents pertaining to the Chargois relationship and payment in response to subsequent document requests by the Special Master specifically related to Chargois.

The names Chargois and/or Chargois & Herron appear nowhere in the Fee Petition or any of its exhibits. *See id.* All parties concede that the Court was never informed about Chargois or the payment of $4.1 million to his firm. *See* Belfi 9/5/17 Dep., pp. 87:24-88:11; 89:1-17; 90:7-12; 122:23-123:5; Goldsmith 9/20/17 Dep., p. 112:10-14; G. Bradley 9/14/17 Dep., pp. 152:19-153:16.

B. INVOLVEMENT OF LABATON AND CHARGOIS IN THE STATE STREET CASE

i. LABATON'S INTRODUCTION TO ATRS

Labaton represented ATRS throughout the *State Street* case, serving as Lead Counsel throughout the litigation. ATRS was headed by Executive Director George Hopkins. Hopkins had succeeded Paul Doane, the previous Executive Director, on December 29, 2008. Hopkins 9/5/17 Dep. p. 14:10-22. [35]

Labaton's relationship with ATRS began in or about 2007. Around that time, Labaton was looking to expand its securities monitoring practice and form new relationships with potential pension fund clients. Keller 10/13/17 Dep., p. 21:1-22; Sucharow 9/1/17 Dep. pp. 15:3-16:19; Chargois 10/2/17 Dep., p. 32:3-22. In an effort to "mak[e] inroads" in the Arkansas community, Labaton sought the assistance of Damon Chargois, a lawyer admitted to practice law in Arkansas and Texas (and who in 2007 maintained law firms under the name Chargois & Herron in each state.)[36] Labaton had previously retained Chargois to serve as its local counsel in

[35] After Paul Doane resigned, for a brief period of time ("three or four months") ATRS was headed by an interim director, Gail Bolden, Doane's deputy director. Hopkins 9/5/17 Dep., p. 14:14-22. Hopkins succeeded Gail Bolden. *Id.*, p. 14:18-20.

[36] Chargois & Herron's Arkansas office was closed in late 2009 or early 2010. Chargois 10/2/17 Dep., p. 31:15-17.

HCC Holdings,[37] a securities fraud class action case filed in federal court in Houston.[38] In September 2007, Chargois introduced Labaton partners Eric Belfi and Christopher Keller to Paul Doane, Executive Director of ATRS, at that time. Chargois 10/2/17 Dep., pp. 33:24-35:22.

Chargois recalled Belfi asking him in 2007 to introduce him and his partner Chris Keller to institutional investors in Arkansas, as Labaton was interested in creating client relationships with institutional investors in that region. *Id*., p. 20:4-17. Chargois readily admitted that at the time he had no knowledge of any "institutional investors." *Id.* at p. 20:20. Chargois' then partner, Tim Herron, did not have any relationships with institutional investors, either. *Id.*, p. 27:16-19. However, Herron was friends with an Arkansas state senator, Steve Farris, and Farris suggested to Herron that they might want to try to contact Paul Doane who had then just recently taken over as Executive Director of the Arkansas Teacher Retirement System. *Id.*, p. 33:16-21. Herron told Chargois, and Chargois called Doane. *Id.*, p. 33:24-34:1.

Chargois explained to Doane that he was working with a New York law firm that specialized in institutional investors and asked if Doane would meet with him, Belfi and Keller, and Doane agreed. *Id.*, p. 34:1-35:3. Within a week or so, a meeting took place in Little Rock. Chargois 10/2/17 Dep., p. 35:8-16. At that initial meeting, "Eric Belfi presented all the services that Labaton has available and what their -- what they could do and presented as a courtesy that they could do this monitoring of the portfolio." Chargois 10/2/17 Dep., p. 36:13-16. Doane later came to New York for another meeting with Belfi and Keller at Labaton's offices; Chargois was not present. Belfi 9/5/17 Dep., p. 38:2-6. At this meeting, Labaton did a presentation for Doane

[37] *In re HCC Insurance Holdings, Inc. Securities Litig.*, SDTX No. 07-00801.

[38] In contrast to this case, in *HCC Holdings,* Chargois filed an Affidavit in support of the Application for an Award of Attorneys' Fees and Reimbursement of Expenses, which included a lodestar report of his firm, Chargois & Herron LLP. *See In re HCC Insurance Holdings, Inc.*, SDTX No. 07-00801, Dkt. No. 71-3.

as to what services the firm could provide. According to Belfi, "[O]nce we did the presentation, we were kind of put on their radar. So, at some point later when they did the RFQ [of prospective monitoring counsel], they sent an RFQ for us to respond to." Belfi 9/5/17 Dep., p. 37:17-22.

ii. THE CHARGOIS "ARRANGEMENT"

As consideration for Chargois' efforts, Belfi and Keller agreed to pay Chargois' firm, Chargois & Herron, a maximum 20% of any attorney's fees received by Labaton in any litigation involving an institutional investor for whom Chargois had facilitated the introduction, including ATRS (hereinafter "the Chargois Arrangement"). Chargois 10/2/17 Dep., pp. 50:18-25; 53:10-17; Keller 10/25/17 Dep., pp. 315:21-24, 316:11-14.[39] Both Chargois and Belfi understood that it was the mere introduction by Chargois to potential institutional investors or potential antitrust clients that was the basis of the agreement to pay Chargois 20% of any legal fee Labaton earned on any cases in which Labaton was lead counsel or co-lead counsel and the client was lead or co-lead plaintiff.[40] Chargois 10/2/17 Dep., p. 50:18-24; Belfi 9/5/17 Dep., pp. 19:6-21:21. Under

[39] Labaton had a similar 20% arrangement with TLF (and in particular, TLF partner, Garrett Bradley). As Christopher Keller of Labaton explained:

> [W]e had a very, sort of, good, productive relationship with the Thornton Law Firm and -- where, you know, we would -- we would jointly get retained by, you know, funds in the Northeast area, which was their sort of area of -- they had lots of relationships within the area. And we, you know, had an understanding they would get, sort of, let's say, up to 20 percent. And the understanding was that, it was going to be somewhat of a, I call it, a turnkey, but I'm using a -- what I mean is we didn't have to do any heavy lifting up in the -- up in the area, because there's a lot -- I mean, we're a national firm. Think about this, so we have over 200 pension fund clients, we may have one within driving distance of our office okay. So we maintain a national practice and -- but without offices all over the nation. So it's very important, any time that we can leverage others who -- who are ready and willing and able to do the heavy lifting locally, we're happy to sort of let that happen, and, of course, pension funds feel much more comfortable with people they know or people who are close by or were introduced through someone they know, so we made that a -- a -- this is how Labaton was going to build more business.

Keller 10/13/17 Dep., pp. 43:3-44:19

[40] While Chargois understood that he would receive 20%, as Keller testified, Labaton believed that it was only obligated to pay Chargois a percentage of fees proportional to ATRS's share of the contributory losses incurred by all lead plaintiffs. By way of example, if ATRS was named co-lead counsel with another plaintiff in a successful

this arrangement, Chargois was not expected to file an appearance or assume a substantive role in any of the resulting litigation, or even interface with the client. Chargois 10/2/17 Dep., pp. 56:19-24; 57:1-6; Keller 10/25/17 Dep., p. 323:2-4.

While Chargois and Keller attempted on numerous occasions over the years to reduce this agreement to writing, and exchanged several drafts to which they both agreed in large measure, no formal agreement was ever put together; it was wholly "an email relationship." Chargois 10/2/17 Dep., p. 59:8-10 ("Only e-mails. There's no four-corner document that -- in ceremony and signed or anything. It's just an e-mail relationship." *Id*.) Chargois was very clear that his understanding was that this was not a "referral fee" arrangement, nor was he "local counsel"; it was just an "agreement":

> THE SPECIAL MASTER: What is your understanding of the relationship? And if it evolved from something to something else --
>
> THE WITNESS [Mr. Chargois]: Right.
>
> THE SPECIAL MASTER: -- we'd be very interested in that.
>
> THE WITNESS: At the very beginning I thought I would be local counsel. I was not.
> . . . .
> When Eric informed me that [the joint RFQ] had been kicked back, I needed to withdraw, ever since then I've only referred to this as an agreement. I don't have a client so...
>
> THE SPECIAL MASTER: Just an agreement?
>
> THE WITNESS: Just an agreement.
>
> THE SPECIAL MASTER: Not a referral fee arrangement?
>
> THE WITNESS: No, sir.
>
> THE SPECIAL MASTER: Not a local counsel arrangement?

litigation, Chargois' payment would not be 20% of Labaton's fee, but would reflect ATRS's pro rata portion of the total loss amount, offsetting the full 20% figure

THE WITNESS: No, sir.

THE SPECIAL MASTER: Not a forwarding fee arrangement?

THE WITNESS: I'm not sure what forwarding fee means.

MR. SINNOTT: Neither are we.

THE SPECIAL MASTER: We weren't either. I was going to follow up on that and ask you if you've ever heard the term.

THE WITNESS: I have not.

THE SPECIAL MASTER: So just a fee arrangement or just an arrangement?

THE WITNESS: I've always referred to it as our agreement.

Chargois 10/2/17 Dep. pp. 62:10-64:5.

While Labaton's relationship with Chargois began with Chargois & Herron serving as "local counsel" in the *HCC Holdings* Texas class action, it is clear that the relationship evolved over time. *See* Chargois 10/2/17 Dep., pp. 17:19-21; 38:23-24, 39:1; Sucharow 9/1/17 Dep., p. 81:16-20. As a result, the terminology used to describe the Chargois Arrangement varies greatly between individuals. Counsel has labeled Chargois as "local counsel," or "the local," while on other occasions describing the Chargois Arrangement as based in "referral" or a "referral obligation." *See, e.g.,* LBS027776 (4/24/13 Bradley email to others) [EX. 23]; M. Thornton 9/1/17 Dep., p. 38:13-15; Chiplock 9/8/17 Dep., pp. 68:4-7, 102:3-8; Keller 10/13/17 Dep., pp. 45:11-16; 71:24-72: 4; 96:16-18; 212:5-12. In yet other instances, the Chargois Arrangement is characterized as a "forwarding obligation." Sucharow 9/1/17 Dep., pp. 59:13-19; 86:8-12. Finally, Sucharow testified that he considered Chargois a "joint venturer" working with Labaton to find pension clients. Sucharow. 9/1/17 Dep., p. 16:1-3. Regardless of the title used, it is undisputed that Chargois' sole contribution to -- and only role in -- the *State Street* case was

facilitating an introduction between Labaton and ATRS -- years before the *State Street* case was even contemplated. Sucharow 9/1/17 Dep., p. 82:7-10.

iii. THE ATRS REQUEST FOR QUALIFICATIONS (RFQ)

Chargois' efforts got Labaton the "foot in the door" it wanted and needed with ATRS. In mid-2008, ATRS issued a Request for Qualifications ("RFQ") to Labaton, among other firms. Chargois 10/2/17 Dep., p. 37:19-22. On July 30, 2008, Labaton responded by submitting a "joint proposal" on behalf of Labaton and Chargois & Herron. LBS017738 – 17755 **(**7/30/08 Joint Response by Labaton Sucharow LLP & Chargois & Herron, LLP) [EX. 24]; *see also* Belfi 9/5/17 Dep., p. 37:20-23. Labaton, through Belfi, received ATRS's response to the RFQ on October 13, 2008 by email from ATRS Chief Counsel, Christa Clark. *See* LBS 017455 - 17456 (10/13/08 email from C. Clark) [EX. 25]. Clark advised Belfi that Labaton had been selected as an additional monitoring counsel for ATRS, but that Chargois & Herron was *not* approved as part of the proposal. *Id.* Clark indicated that while there was no requirement to use Chargois & Herron, Labaton could use Chargois & Herron on a "case by case basis," if they were "a necessary and appropriate expense." *Id.* Specifically, Clark's email to Belfi stated in relevant part:

> I am pleased to inform you that subject to final approval of the Attorney General's ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system.
>
> I would like to speak to you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.
>
> If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm *may affiliate that firm or use them as independent contractors, if you deem is* [sic] *appropriate on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case.* I don't know

> how to best handle this point but the state procurement process is not conducive to a joint proposal.

See LBS 017456 (10/13/08 email from C. Clark) (emphasis added) [EX. 25].

Chargois understood that his firm was not accepted as part of the RFQ process. Chargois 10/2/17 Dep., pp. 48:15-49:1.

At no point after receiving Clark's email did Labaton inform Ms. Clark, Mr. Doane (or his successor, George Hopkins) of the pre-existing Chargois Arrangement generally, or that it was obligated to pay Chargois a portion of any fees that might be awarded in its representation of ATRS in the *State Street* matter. Belfi, 9/5/17 Dep. pp., 23:5-16; 115:17-21; 118:16-19; Keller 10/25/17 Dep., p. 297:14-16.

iv. ATRS' LACK OF KNOWLEDGE OF THE CHARGOIS ARRANGEMENT

Beginning in 2008, Labaton went on to serve as monitoring counsel for ATRS.[41] Belfi 9/5/17 Dep., p. 18:6-7. Shortly thereafter, George Hopkins replaced Paul Doane as Executive Director of ATRS. *Id*., at 27:16-18. Belfi explained that Hopkins was a much more direct person, who only wanted to deal with Belfi. Belfi 9/5/17 Dep., pp. 27:18-28:7, 56:22-57:10. Hence, the relationship between Chargois and ATRS shifted with Hopkins' appointment. Belfi 9/5/17 Dep., p. 57:11-24. Labaton no longer needed Chargois to facilitate communications with ATRS. Nevertheless, Labaton continued to remit payments to Chargois under their previous arrangement to avoid litigation by Chargois that would likely be filed in Chargois' home state, Texas. Belfi 9/5/17 Dep., 58:1-7, 10-15.

[41] Labaton continues to serve as one of five firms "on retainer" to ATRS, responsible for monitoring ATRS' investment portfolio and alerting ATRS to potential misappropriation or unexpected monetary loss. Hopkins 6/14/17 Dep., pp. 29:9-22; 30:3-5.

George Hopkins worked closely with Labaton in deciding to file the *State Street* lawsuit, and he remained very involved in the case, including in the mediation process, spending "hundreds of hours" working on the case during its five-year history. Hopkins 6/14/17, p. 102:35.

Labaton sought Hopkins' approval before partnering with Lieff and TLF in the class action litigation. However, Labaton did not seek Hopkins' approval to share information with or remit payment to Chargois. Hopkins, in fact, was never informed of the existence of Damon Chargois nor of any agreement between Labaton and Chargois, much less one that entitled Chargois to 20 percent of any attorney fee recovered by Labaton on behalf of ATRS. *See* Hopkins 9/5/17 Dep., pp. 21:5-10, 64:4-67:11; Belfi 9/5/17 Dep., pp. 18:9-20:17; 24:6-20. [42]

It is apparent from Labaton's email correspondence with George Hopkins that Labaton took pains at every turn not to reveal Damon Chargois, Chargois & Herron, or their 20% interest in ATRS cases to Hopkins. Rather than include Chargois as a co-addressee or cc him on email correspondence concerning ATRS cases in which Chargois & Herron had an interest, Eric Belfi

[42] Hopkins testified that he "had no idea" that Chargois had introduced Belfi and Keller to ATRS before his tenure. In fact, Hopkins had never even heard of Damon Chargois or Chargois & Herron prior to their disclosure during the Special Master's investigation in August 2017. Hopkins 9/5/17 Dep, pp. 20:22-21:10; 64:4-65:24.

Hopkins testified regarding his knowledge of Chargois:

Q. Were you aware that members of a law firm with a Little Rock office had introduced individuals that you would later come to know as Eric Belfi and Chris Keller to influential Arkansas officials in an effort to secure legal work with the state?
A. I had no idea.
Q. Are you familiar with the firm name Chargois & Herron?
A. As of about two weeks, ten days ago.
Q. But you never encountered them to the best of your recollection years ago?
A. I had never heard of that firm before.

Hopkins 9/5/17 Dep, pp. 20:22-21:10.

of Labaton either blind-copied Chargois or Herron, or separately forwarded the emails to them, the effect of both being the same -- to not reveal Chargois & Herron to Hopkins *See, e.g.,*

- LBS 018439 (Chargois and Herron bcc'd on 5/10/10 email from Belfi to Hopkins re: "Blue Ribbon" report for *Goldman Sachs* litigation) [EX. 26];
- LBS 017505 (Tim Herron bcc'd on 5/6/10 email from Belfi to Hopkins updating status of The Hartford securities litigation) [EX. 27];
- LBS 018437 – 18438 (5/15-16/10 email chain from Hopkins to Belfi re: potential joint filing of a case with Nix Patterson, forwarded by Belfi to Chargois) [EX. 28];
- LBS 020417 – 20418 (5/14/10 letter from Belfi to Hopkins re: *Colonial BancGroup* case, forwarded to Chargois on 5/17/10) [EX. 29];
- LBS 017822 (Chargois bcc'd on 5/2/13 email from Belfi to Hopkins re: motion to dismiss filed in the *Facebook* case) [EX. 30];
- LBS 017824 (10/23/13 email from Belfi to Hopkins re: *Facebook* securities litigation, w/attachments, forwarded to Chargois) [EX. 31];
- LBS 017825 – 17826 (Chargois bcc'd on 7/24/13 email from Belfi to Hopkins re: *Goldman Sachs* trial) [EX. 32].

See also Belfi 9/5/17 Dep., pp. 110:5 – 113:5; Keller 10/25/17 Dep., pp. 353:14-354:17; 358:1-24; 463:2-464:2.

Nor did the Retainer Agreement in *State Street* signed by Hopkins disclose the Chargois Arrangement. The Retainer Agreement provided, in relevant part, that ATRS agrees that Labaton "may divide fees with other attorneys for serving as local, as referral fees, or for other services performed in connection with the Litigation." LBS019948 – 19950 (9/24/10 Retainer Agreement, p. 2) [EX. 33]; *see also* LBS005362 – 5364 (2/8/11 Engagement Letter from Eric Belfi to George Hopkins).[43] [EX. 34]. It further provided that "[t]he division of attorneys' fees

[43] Specifically, the Retainer Agreement provides:

with other counsel may be determined upon a percentage basis or upon time spent in assisting with the prosecution of the Litigation." *Id*. The Retainer Agreement did not name any individual attorney nor specify which, if any, of these "services" it would seek as part of the litigation. *See id.* It contains only a vague reference to "referral fees," but it does not name Chargois, or Chargois & Herron, and makes no reference to the obligation to Chargois the ATRS lawsuit would trigger or how the payment would be made. Chargois acknowledged he played no role whatsoever in ATRS's *State Street* lawsuit, and only met George Hopkins once, when he happened to be in San Francisco visiting his sister and attended an unrelated court hearing. Chargois 10/2/17 Dep., pp. 54:18-23, 74:21-75:3.

a. Agreement Among Labaton, Lieff and Thornton to Share in the Payment of Labaton's Obligation to Chargois

Labaton's obligation to pay Chargois 20% of any fee it might be awarded in State Street was disclosed to Lieff and TLF in or about April 2013. The subject was first raised at a meeting during a Global Justice Network conference, an event organized by Bob Lieff and attended by Michael Thornton, Garrett Bradley, and Lynn Sarko.[44] Lieff 9/11/17 Dep., p. 63:10-22. In an April 26, 2013 email from Garrett Bradley to Robert Lieff, Michael Thornton, Eric Belfi, Christopher Keller and Dan Chiplock, and copied to Chargois (referred to by the parties as the

> Arkansas Teacher agrees that Labaton Sucharow *may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation.* The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent assisting with the prosecution of the Litigation. Any division of fees among counsel will be Labaton Sucharow's sole responsibility and will not increase the fees payable by Arkansas Teacher or the class upon a successful resolution of the Litigation.

LBS 011060 – 11062 (9/24/10 Retainer Agreement) (emphasis added). [EX. 35].

[44] Bob Lieff testified that he does not have a specific recollection of a conversation with Bradley and Michael Thornton regarding Chargois. Lieff 9/11/17 Dep., p. 66:2-5. Although Lynn Sarko attended the Global Justice Network meeting, there is no evidence that he was party to any discussion with Bob Lieff, Michael Thornton or Garrett Bradley concerning Chargois and Sarko testified that he did not learn about the Chargois arrangement until it was disclosed in the Special Master's investigation in August 2017.

"Dublin email"), Chargois was referred to as "the local counsel who assists Labaton in matters involving Arkansas Teachers Retirement System." LBS 025771. In that email, Garrett Bradley memorialized an agreement reached earlier among the three Customer Class law firms to share in the payment of Labaton's 20% obligation to Chargois.[45] In relevant part, Bradley's email stated as follows:

> Bob, as you, Mike and I 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. Labaton has an obligation to this counsel, Damon Chargois, copied on this e-mail, of 20 percent of the net fee to Labaton in the State Street FX cases before Judge Wolf. Currently this amount will be 4 percent because of the agreement between Labaton, Thornton and Lieff of a division of 20 percent guaranteed, each with the balance to be decided on at a later date. Obviously, this may go up should Labaton receive an amount higher than 20 percent. We have agreed that the amount due to the local, whatever it turns out to be, 4 or 5, will be paid off the top with the balance fee split between Lieff, Labaton, Thornton pursuant to our agreement. The local asks that I copy him on this e-mail so he will have confirmation of this agreement. When we spoke to him, he was agreeable to this as well. Garrett.

LBS 025771 (4/25/13 G.Bradley email to R. Lieff, M. Thornton, E. Belfi, C.Keller and D. Chiplock, copied to Chargois)). [EX. 37].

Discussions concerning the specific percentage to be paid Chargois were ongoing while the parties continued with their hybrid mediation in 2013 and 2014. Later, in late 2015, after the settlement had initially been agreed to by the parties, Customer Class Counsel all agreed to allocate 5.5% of their collective fee award to Chargois. Chiplock 9/8/17 Dep., pp. 106:18-107:1. Labaton, Lieff, and TLF contributed equally to satisfy this obligation. Labaton Sucharow's 8/11/16 Responses to Special Master's Supplemental Interrogatories, Response No. 1(b).

[45] During the *State Street* litigation, Garrett Bradley had substantial contact with Belfi and Keller of Labaton, and Chargois. Bradley attended annual marketing conferences hosted by Labaton and attended by Keller, Belfi, and Chargois. Then, effective January 1, 2015, through late 2016, Garrett Bradley held a dual role as partner at TLF and "of counsel" to Labaton. *See* LBS007086 – 7090 (Bradley's Of Counsel Agreement). [EX. 36]. In this role, Bradley agreed to "assist Labaton partners in identifying and seeking retention by clients for securities." *Id*.

v. LIEFF'S AND THORNTON'S LIMITED KNOWLEDGE OF THE CHARGOIS ARRANGEMENT

Lieff and TLF were not privy to the origins of the Chargois Arrangement or the details of Labaton's obligation to pay Chargois in all cases in which ATRS is a co-lead counsel. Lieff 9/11/17 Dep., p. 92:2-12; Thornton 9/1/17 Dep., pp. 19-21, 35:12-24.[46] The original cost-sharing agreement circulated -- but never executed -- among Customer Class Counsel in 2011 shortly after the *ATRS* complaint was filed, referenced only that the firms acknowledged that "[t]here is an 'off the top' obligation to referring counsel of 6% of the fees awarded," without any specifics. *See* TLF-SST-033911 – 33913 (5/4/11 letter agreement).[47] [EX. 16]. However, Garrett Bradley of TLF testified that he had never heard anyone other than Damon Chargois referred to as "referring counsel" by Labaton in connection with the *State Street* litigation, G. Bradley 9/14/17 Dep., p. 43:1-20, and his deposition testimony indicates that he was aware that Labaton had an obligation to pay Chargois a percentage of the fees as early as "around the time the complaint was filed or shortly." *Id*., p. 44:7-12.[48] Bradley testified, however, that he did not know that Chargois would not have to do any work for a share of the fees, nor did he know the details of the arrangement. ("I thought his role was similar to ours; that he did substantive work,

---

[46] Because TLF had received financial compensation from Labaton in connection with its role as non-substantive local counsel in other cases (*see supra,* n. 37), TLF, through Garrett Bradley, was familiar that Labaton had arrangements of this sort.

[47] Christopher Keller, who drafted the letter agreement, testified that the "off the top" percentage to referring counsel -- 6% -- reflected 20% of Labaton's 1/3 share of the fees: "20 percent of a third is 6 point something so we probably just went with 6 percent." Keller 10/25/17 Dep., p. 419:8-9.

[48] Bradley testified:

> I believe as early as -- just prior to or right around the time of filing in 2011, I raised with Chris [Keller] how are we going to deal with your obligation to Damon 'cause I was very concerned that he would try to apply for 20 percent of this entire case.
>
> And I asked them to deal with it.

G. Bradley 9/14/17 Dep. p. 44:7-13.

corresponded with the client, dealt with the client, got authority. That's what I thought his role was." *Id.*, at p. 45:10-13; *see also* p. 47:7-8).

As indicated *supra*, the arrangement was addressed amongst the three Customer Class firms in the April 24, 2013, "Dublin" email in which Garrett Bradley described a financial obligation owed to Chargois. Bradley characterized Chargois as "local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System." LBS 025771 [EX. 37]. The Labaton attorneys addressed on the email, Chris Keller and Eric Belfi, did not offer any additional explanation. Nor did either attorney inform their co-counsel that Chargois was not performing any work in the matter. Bob Lieff responded to the email on April 23, 2013, stating "I am in full agreement." LBS030997 – 30998, (4/24/13 Lieff Email to G. Bradley, et al.). [EX. 38]. Eric Belfi responded to the email on May 6, 2013, stating "[w]e are in full agreement." *Id*.

Attorneys from the firms exchanged emails related to the Arrangement again in 2015. On August 28, 2015, Dan Chiplock corresponded with Larry Sucharow, Garrett Bradley and Michael Thornton regarding memorialization of the fee allocation agreement amongst the firms; Chiplock referred to payments to ERISA counsel and "local Arkansas counsel" in relation to the distribution of Customer Class Counsel fees. TLF-SST-053117-53126 (8/28/15 Chiplock Email to Sucharow, G. Bradley, Thornton, and Lieff) [EX. 39]. Garrett Bradley, referencing the prior emails in 2013, replied that there was already "a written agreement between all the parties that the Arkansas component would come off the top" and stated that the "ERISA piece" should be handled the same way. *Id*. As Chris Keller and Eric Belfi were not included on this email exchange, and Larry Sucharow was at that point unaware that Chargois was not performing any work as the local Arkansas counsel, the 2013 characterization of the Chargois role remained uncorrected.

The Chargois Arrangement was again raised in email correspondence between the three firms on July 8, 2016. Garrett Bradley wrote to Mike Thornton, Larry Sucharow, Dan Chiplock, Chris Keller, Eric Belfi and Damon Chargois:

> 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 down to this number with a guarantee that it will be off the court awarded fee number. Please reply all if you agree. Given that it is off the total number their [sic] is no need to add the ERISA counsel to this email chain.

LBS039936 – 39937 (7/8/16 G. Bradley Email to Lieff, Thornton, Sucharow, Chiplock, Keller, Belfi, and Chargois). [EX. 40]. None of the Labaton attorneys followed up on this email in writing. Nor does the record contain any evidence that any of the Labaton attorneys informed their co-counsel, either before or after this email, that Chargois had played no role in the *State Street* case, nor did the Labaton attorneys attempt to explain what "important role" Chargois played. Bob Lieff and Mike Thornton replied to Bradley's July 8 email expressing their firms' respective agreement to these terms. *Id*.; LBS031152 – 31153 (7/8/16 Thornton Email to G. Bradley & 7/8/16 Lieff Email to G. Bradley, et al.) [EX. 41]. Separately, Chris Keller wrote to Garrett Bradley, "great work getting this done." LBS039936 [EX. 40].

Bob Lieff testified that he thought Chargois was local counsel for Labaton. *See* Lieff 9/11/17 Dep., p. 67:9-13 ("I thought he was local counsel for Labaton in this particular case I assumed dealing with the Arkansas fund because that's what local counsel will do. That was my understanding.") He further testified that had he known that Chargois had done no work on the case, he would not have agreed to the allocation of part of his firm's fee award to Chargois.

Lieff 9/11/17 Dep., p. 97:13-16. Michael Thornton, who was intricately involved in the preliminary discussions between ATRS and Customer Class Counsel encouraging ATRS to file suit, understood only that Chargois was involved in the *State Street* case on a "referral basis" as "local/referring counsel." Thornton 9/1/17 Dep., p. 20:12-17. While members of the Lieff and TLF firms were generally aware of Labaton's obligation -- to be shared by Customer Class Counsel -- to pay Chargois a percentage of Labaton's total fee in the *State Street* case, the exact percentage or details of that arrangement were not discussed until settlement discussions were well underway years into the litigation. Thornton 9/1/17 Dep., pp. 36:16-17, 22-24; 37:1-7.

Even among Labaton attorneys, full knowledge of the Chargois Arrangement was limited to Belfi and Keller. *See* Sucharow 9/1/17 Dep., p. 17:10-13 ("I'm not sure I ever knew in the sense that I didn't hear 'til later on that there was an obligation to [Chargois].") For example, Larry Sucharow, who described himself as the "lead negotiator and lead strategist" for plaintiffs in the *State Street* case, only learned of Labaton's financial obligation to Chargois in 2015. *Id.,* pp. 18:20-23; 87:1.[49] Similarly, David Goldsmith, the lead Labaton litigator who appeared on behalf of the purported Settlement Class in the Preliminary and Final Settlement approval hearings before Judge Wolf, did not learn of the Chargois Arrangement until November 21, 2016, several weeks after the Final Approval Hearing**.** Goldsmith 9/20/17 Dep., pp. 108:20-109:2.[50] Even those who were aware of the Arrangement, were unfamiliar with Chargois' full name. Sucharow 9/1/17 Dep., pp. 7-9; 35:17-24.

[49] Though he testified that he learned of his firm's obligation to Chargois in 2015, Sucharow signed the Omnibus Declaration, which was filed with the Court in September 2016; the Declaration did not disclose the Chargois Arrangement or reference the intended payment to Chargois.

[50] Sucharow and Goldsmith's ignorance of the Chargois is another result of Labaton's compartmentalization. *See* note 21, *supra.* Only the client relationship partner, Eric Belfi, and Christopher Keller knew the details of the Chargois Arrangement.

Outside of Labaton attorneys, the terms "forwarding fee" and "referral fee" have no significance in a class action context. 9/11/17 Lieff Dep., p. 79:20-22. Robert Lieff testified that the term local counsel is also not descriptive of Chargois' role, as it is a term of art used to describe an attorney who works for a client on a case-by-case basis and submits a fee petition for services performed in a particular case, an understanding shared by Chargois himself. Lieff 9/11/17 Dep., p. 80:9-17. Although they now seek to cast Chargois in the role of "referring" counsel, Labaton attorneys never used the phrase "referring counsel" in discussions with Chargois. Chargois 10/2/17 Dep., p. 64:15-19. And when asked, Chargois did not view his role as either a "referring counsel," "liaison counsel" or "local counsel" in the *State Street* case or any case involving ATRS. Chargois 10/2/17 Dep., pp. 55: 8-13, 20-24; 63:11 – 64:6**;** this was just "an agreement." *Id.*, p. 63:5-21.

vi. ERISA COUNSEL'S LACK KNOWLEDGE OF CHARGOIS ARRANGEMENT

Neither Labaton nor any other Customer Class Counsel ever informed ERISA Counsel of Labaton's obligation to Chargois, or Chargois' role in connection with this case. Sarko 9/8/17 Dep., pp. 56:18 – 57:9, 71:14-23; Kravtiz 9/11/17 Dep. p. 70:8-10; McTigue, 9/8/17 Dep., p. 17:14-21. Like Hopkins, ERISA Counsel only learned of the Chargois Arrangement as a result of the Special Master's investigation in or about August 2017. Sarko 9/8/17 Dep., 71:14-23; Kravitz 9/11/17 Dep. 70:8-10; McTigue 9/8/17 Dep., p. 17:14-21. One effect of the Customer Class Counsel's failure to disclose the Chargois Arrangement to ERISA Counsel was the non-disclosure to the ERISA class representatives and members themselves.

As with Hopkins, Labaton was at pains to keep ERISA Counsel from learning about Chargois or the Chargois Arrangement. *See e.g.,* Sucharow response to G. Bradley email regarding proposed Claw Back letter addressed only to Customer Class Counsel advising "no

reason for ERISA to see Damon's split." TLF-SST-012272 – 12274 (11/22/16 Sucharow Email to Goldsmith, G. Bradley, Keller, Belfi) [EX. 42]; LBS039936 – 39937 ("Given that it is off the total number their [sic] is no need to add the ERISA counsel to this email chain.") [EX. 40]; TLF-SST-053117-53126 [EX. 39].

ERISA Counsel testified that had they known of the Chargois Arrangement during the *State Street* case, they would have proceeded differently in several material respects. Lynn Sarko testified that had he known of the Chargois Arrangement, he "absolutely" would have felt an obligation to disclose [the Arrangement] to the ERISA class representatives and get their informed consent. Sarko 9/8/17 Dep., p. 91:4-15. Moreover, had he become aware that an attorney who did no work on the case would receive in excess of $4 million prior to signing the ERISA Fee Allocation in 2013, Sarko would not have agreed to the award of only 9% (which became 10%) of the total fee award to ERISA Counsel. *Id.* pp.75:2-22, 78:19-79:4. The other ERISA counsel, Brian McTigue and Carl Kravitz of Zuckerman Spaeder, testified that they would not have agreed to it, either. *See* McTigue 9/8/17 Dep. p. 21:15-24; Kravitz 9/11/17 Dep., pp. 83:3-84:22. In fact, the purported purpose of the Fee Allocation was to align interest "on the same team" and develop a level of trust between the ERISA lawyers and Customer Class lawyers. Sarko 9/8/17 Dep., p. 82:8-15.

Sarko testified further that he would not have agreed to file a joint fee petition with the Court had he known of the intended payment to Chargois, which, in his opinion, should have disclosed. Sarko 9 /8/17 Dep., pp. 75:2-7, 78:24-79:3. Nor would he have signed the Claw Back Agreement (*see* Section III, *infra*) agreeing to reimburse Labaton for any reduction in the fee award imposed by the Court as a result of the November 10, 2016 letter to the Court admitting

the overstatement of the *State Street* lodestar (discussed *infra*). Sarko 9/8/17 Dep., pp. 75:2-22, 78:19 – 79:4.

Sarko also was the chief liaison with the DOL during the mediation, and he testified he would have been obligated to tell the DOL about Chargois and his arrangement with Labaton for a cut of the fees. Sarko 9/8/17 Dep. p. 76:14-22. In Sarko's opinion, if the DOL had the information about Chargois, the Department would have had questions, and the settlement would have "blown up" because State Street was insisting on a global settlement which could not be achieved without the DOL's approval. *Id.*, p. 84:3-5.

vii. PAYMENTS TO CHARGOIS PURSUANT TO THE CHARGOIS ARRANGEMENT

Since the Chargois Arrangement began in 2008, Labaton has represented ATRS in at least nine cases for which it has paid Chargois a percentage of the Labaton's total fee award:

- *In re A10 Networks, Inc. Shareholder Litigation,* No. 2015-1-CV-276207 (Cal. Super. Ct. Jan 29, 2015)
- *Brado v. Vocera Communications, Inc.* No. 13-CV-3567 (N.D. Cal. Aug.1, 2013)
- *Perry v. Spectrum Pharmaceuticals, Inc.*, No. 13-CV- 0433 (D. Nev. Mar.14, 2013)
- *Hoppaugh v. K12 Inc.,* No. 12-CV-0103 (E.D. Va. Jan. 30, 2012)
- *In re Hewlett –Packard Company Securities Litigation,* No. 11-CV-1404 (C.D. Cal. Sept. 13, 2011)
- *Arkansas Teacher Retirement System v. State Street Corporation,* No. 11-CV-10230 (D. Mass. Feb 10, 2011)
- *In re Beckman Coulter, Inc. Securities Litigation,* No. 10-CV-1327 (C.D. Cal. Sept. 3, 2010)
- *In re Colonial BancGroup, Inc. Securities Litigation*, No. 09-CV-0104 (M.D. Ala. Feb. 9, 2009)

- [redacted]

Labaton Response to Special Master's Supplemental Interrogatory, 1(a); Chargois 10/2/17 Dep., pp. 54:2-3; 65:1-71:13.[52] In each of these cases, Labaton paid Chargois a percentage -- more often amounting to 10 - 15% than the originally agreed-upon 20% -- of Labaton's total fee award. Chargois 10/2/17 Dep., p. 60:17-20.[53] Neither Chargois nor any Chargois & Herron attorneys entered an appearance or did any work in any of these actions.

C. SCRUTINY OF THE STATE STREET SETTLEMENT AND SPECIAL MASTER'S APPOINTMENT

i. THE BOSTON GLOBE INQUIRY

By all accounts, the $300 million settlement reflected an excellent result for the class members and was the product of the highly professional and skilled work of the class's law firms. Sarko 7/6/17 Dep., p. 109:22-23; Kravtiz 7/6/17 Dep., pp. 105:23-106:7; Hopkins 6/14/17 Dep., p. 100:1-10**.** However, on November 8, 2016 -- less than a week after the Court had

[51] Chargois testified that *In re Capacitors* was not an ATRS case, and, hence, not covered by the agreement. *See* Chargois 10/2/17 Dep., p.65:4-7.

[52] While not identified in response to discovery, media reports also identify Labaton filing on behalf of ATRS, and being named co-lead counsel in a multi-trillion-dollar action alleging that many of the country's leading banks harmed both the United States government and private investors by rigging the management of 13 trillion dollars in securities sold by the U.S. Department of Treasury in *In Re: Treasury Securities Auction Antitrust Litigation,* (S.D.N.Y. 2017). Potentially, the Chargois Arrangement would cover this case, as well

[53] Chargois was not happy with the frequent reductions in the amounts Labaton paid his firm. He expressed his frustration in an October 18, 2014 email to Labaton:

> "…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 okay with the fee split in this instance. We are not changing our fee split agreement for all 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 that going forward."

LBS017593 - 17594 (10/18/14 Chargois email to Belfi) [EX. 43]; *see also* Chargois 10/2/17 Dep., pp. 253:2-255:4.

approved the Settlement and entered Judgment -- the *Boston Globe* contacted counsel for TLF to inquire about the apparent duplication of certain SA names listed on the individual firm lodestar reports of Customer Class Counsel submitted as part of the Joint Fee Petition. Garrett Bradley 6/19/17 Dep., pp. 85:23-86:11; David Goldsmith 7/17/17 Dep., p. 132:16-24. Following this inquiry, attorneys from Labaton, Lieff, and TLF immediately conducted internal reviews to determine what, if any, information in their fee petitions may have been incorrect. *See* Goldsmith 7/17/17 Dep., p. 137:11-19; G. Bradley 6/19/17 Dep., pp. 86:15 – 87:12**.**

After conducting their internal reviews, Labaton, Lieff and TLF unanimously conceded that the *State Street* Fee Petition overstated hours worked by Customer Class Counsel by 9,322.9 hours due to the double-counting of certain lawyers' hours, resulting in a lodestar overstatement of $4,058,654.50.[54] Specifically, the Fee Petition attributed hours of staff (and contract) attorneys allocated by Lieff and Labaton to TLF for purposes of cost-sharing not only to the lodestar petitions of Lieff and Labaton -- the SA host firms -- but also to TLF's lodestar. This dramatically inflated the lodestar of TLF. *See* 11/10/16 Letter from David J. Goldsmith to Hon. Mark L. Wolf, Dkt. No. 116. [EX. 44].

ii. NOVEMBER 10, 2016 LETTER TO THE COURT

After Labaton, TLF, and Lieff confirmed that the double-counting alleged by the *Globe* had, in fact, occurred, David Goldsmith of Labaton took the lead in writing a letter to the Court to explain what had happened. *See* 11/10/16 Letter from David J. Goldsmith ("Goldsmith Letter"), Dkt. No.116 [EX. 44]; G. Bradley 6/1917 Dep., p. 87:15-17; Goldsmith 7/17/17 Dep., pp. 143:25-144:5. Various iterations of the letter were circulated among Customer Class Counsel and ERISA Counsel, and ultimately approved by all, before the letter was filed with the Court.

[54] The ERISA Counsel's lodestar reports were unaffected by the double-counting.

Id., p. 144:5-9. The Goldsmith Letter explained that due to "inadvertent errors," Plaintiffs' Counsel's reported combined time and lodestar were incorrect. Of the reported 86,113.7 hours, 9,322.9 hours were overstated. Of the reported lodestar of $ 41,323,895.75, $ 4,058,654.5 was overstated. 11/10/16 Goldsmith Letter, p. 2. [EX. 44]. The internal review revealed that 17 SAs had been listed on both the TLF and Labaton lodestar reports, and for these SAs, the billing rates on the TLF report were in most instances higher. Goldsmith 7/17/17 Dep., p. 142:12-19. Lieff also confirmed that six SAs on TLF's lodestar report also appeared on Lieff's report. Chiplock 6/16/17 Dep., p. 164:9-17; *see also* Goldsmith 11/10/16 Letter to the Court, Dkt. No. 116. [EX. 44].

Shortly thereafter, the *Boston Globe* published a report detailing the "double-counting" issue addressed by the Goldsmith Letter and raising additional questions about the accuracy and reliability of the attorneys' fees, including questions concerning the billing rates charged for the SAs and contract attorneys, and for the work in the case done by the Garrett Bradley's brother, Michael Bradley -- who was not employed by TLF -- including the $500 per hour rate at which Michael Bradley's work was included in Thornton's lodestar.[55]

The Goldsmith Letter did not attempt to explain how or why the double-counting occurred. Nor did Labaton take this opportunity to disclose the Chargois Arrangement. (Of course, Goldsmith, himself, did not know about Chargois at the time he wrote the letter to the Court.)[56]

---

[55] *See* Andrea Estes, *Critics hit law firms' bills after class-action lawsuits*, BOSTON GLOBE, December 17, 2016, https://www.bostonglobe.com/metro/2016/12/17/lawyers-overstated-legal-costs-millions-state-street-case-opening-window-questionable-billing-practices/tmeeuAaEaa4Ki6VhBpQHQM/story html. [EX. 45].

[56] This is another instance of problems created at Labaton as a result of its compartmentalization of its practice. *See* notes 21 and 49, *supra*.

iii. THE "CLAW BACK" LETTER

After the November 10, 2016 letter was delivered, Plaintiffs' Counsel awaited a response from the Court. Recognizing that the Court might respond adversely and ultimately decide to reduce the fee award, on November 21, 2016, at the direction of Labaton's Chairman, Lawrence Sucharow, David Goldsmith drafted a letter which Sucharow then sent to all counsel -- including ERISA Counsel -- for their signature, asking all counsel to agree to refund to Labaton, for re-deposit into the State Street escrow account, their respective pro-rata share of any court-ordered reduction of fees, expenses and/or service awards ("Claw Back Letter"). *See* Goldsmith 7/17/17 Dep., pp. 152:17-155:13; *see also* TLF-SST-012264 – 12266 (11/21/16 Sucharow Draft Letter to Counsel) [EX. 46].

Bob Lieff and Sarko agreed, pending a breakdown of the fees to be paid out on December 8. The issue of whether to send a similar letter to Chargois was raised in an email addressed only to Customer Class Counsel by Garrett Bradley, to which Sucharow responded:

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

TLF-SST-012272 – 12274 (11/22/16 Sucharow Email to Goldsmith, G. Bradley, Keller, Belfi) (emphasis added). [EX. 42].

Larry Sucharow then also directed Goldsmith to send a separate claw-back letter to Damon Chargois for his signature, as well. Goldsmith 9/20/17 Dep., p. 171:14-23. Accordingly,

Goldsmith drafted a letter for Eric Belfi, the "ATRS relationship partner" with Labaton to send to Chargois. *Id*, p. 172:10-15. *See also* Belfi 9/5/17 Dep. p. 93:13-16.

iv. APPOINTMENT OF SPECIAL MASTER

With questions having been raised as to the accuracy and reliability of the lodestar reports which had been submitted by Plaintiffs' counsel and relied upon by the Court in awarding fees, the Court proposed the appointment of a Special Master to investigate these issues and prepare a Report and Recommendation concerning them. *See* 2/6/17 Memorandum and Order, Dkt. No. 117. [EX. 47]. The Court thereafter held a hearing on March 7, 2017 to discuss, among other issues, the appointment of Hon. Gerald E. Rosen (Ret.) as the Special Master.[57] The following day, on March 8, 2017, the Court appointed Hon. Gerald E. Rosen, ret., as Special Master to investigate and prepare a Report and Recommendation as to:

> (1) the accuracy and reliability of counsels' fee petitions; (2) the accuracy and reliability of representations made in David Goldsmith November 10, 2016 letter to the Court; (3) the accuracy and reliability of representations made by parties requesting service awards; (4) the reasonableness of attorneys' fees, expenses, service awards previously ordered and whether any of them should be reduced; and (5) whether any misconduct occurred in connection with the award of attorneys' fees, and if so, whether such misconduct should be sanctioned.

3/8/17 Memorandum and Order, Dkt. No. 173 (footnotes omitted). [EX. 48].

The Special Master retained William F. Sinnott, Esq. of the law firm Donoghue, Barrett & Singal, P.C. (now "Barrett & Singal, P.C.") to assist in the investigation. The Special Master also retained John Toothman as a technical adviser, and later, Professor Stephen Gillers as an expert on the ethical and professional conduct issues raised in this case.

[57] Prior to the hearing, all of the law firms agreed to the appointment of Judge Rosen, except McTigue Law. McTigue initially filed a written objection to the appointment of Judge Rosen, *see* McTigue Law's Response to 2/6/17 Order, Dkt. No. 138, but on the record at the hearing, withdrew that objection. *See* 3/7/17 Hearing Tr., Dkt. No. 176, p. 55:3-4.

III. QUESTIONS PRESENTED

The facts set forth above raise at least the following ethical issues:

I. Whose professional conduct rules governed the obligations of class counsel in the *State Street* matter?

   a. *Answer: The Massachusetts Rules of Professional Conduct. Federal law also informs the answers to several of the issues raised here.*

II. Was the arrangement with Chargois ("the Chargois Arrangement") a valid division of fee agreement under Massachusetts Rule 1.5(e)?

   a. *Answer: No. It was an improper payment for recommending a client.*

III. Did class counsel have a duty to inform the Court of the Chargois Arrangement, whether or not the Chargois Arrangement was a valid division of fee agreement?

   a. *Answer: Yes. Federal case law and the Massachusetts Rules of Professional Conduct both required class counsel to inform the Court of the Chargois Arrangement.*

IV. Did class counsel have a duty to inform the certified settlement class of the Chargois Arrangement whether or not it was a valid division of fee agreement?

   a. *Answer: Yes. Their fiduciary duty and the Massachusetts Rules of Professional Conduct required class counsel to inform the certified settlement class of the Chargois Arrangement.*

V. Did Garrett Bradley's lodestar declaration comply with the Massachusetts Rules of Professional Conduct and Fed. R. Civ. P. 11?

   a. *Answer: No. The Declaration violated Rule 3.3(a) because, as I have been asked to assume, Bradley knew that it contained false statements when he filed it. Separately, the Declaration violated Fed. R. Civ. P. 11 because Bradley filed it without conducting "an inquiry reasonable under the circumstances" to establish that there was "evidentiary support" for the facts in it.*

IV. OPINION

A. WHERE THE COURT IS CALLED ON TO APPLY A RULE OF PROFESSIONAL CONDUCT, IT SHOULD APPLY THE MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT RATHER THAN THE RULES OF ANOTHER JURISDICTION. FEDERAL COMMON LAW ALSO GOVERNS ISSUES BEFORE THE COURT

i. APPLICATION OF MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT

Counsel's duties in this case are governed by two bodies of authority: the rules of professional conduct *and* federal law. The determination of whose professional conduct rules govern counsel's conduct is straightforward. The United States District Court for the District of Massachusetts, the jurisdiction in which the State Street case was pending, expressly adopts the Massachusetts Rules of Professional Conduct. *See* L.R., D. Mass. 83.6.1 (incorporating rules promulgated by the Supreme Judicial Court). The Massachusetts Rules of Professional Conduct themselves -- in particular Rule 8.5(b)(1) -- reaffirm that Massachusetts ethical rules govern all conduct in matters pending before a "governmental tribunal [i.e. a court] …unless the rules of the tribunal provide otherwise." *See* Rule 8.5(b)(1); *see also* Rule 1.0(p). This includes applying Massachusetts' choice of law analytical framework in addition to Massachusetts substantive rules. Rule 8.5, cmt. [4].

Counsel's *pro hac vice* admission applications to the District Court in Massachusetts in the State Street case expressly acknowledged that the Massachusetts Rules of Professional Conduct would govern their behavior. To gain admission *pro hac vice* in this Court, each attorney was required to certify, under oath, that he or she "has read and agrees to comply with the Local Rules of the United States District Court for the District of Massachusetts." Local

Rule 83.5.1(b)(1)(C).[58] The Local Rules, in turn, incorporate the Massachusetts Rules of Professional Conduct.

Massachusetts Rule 8.5 cmt. [4] provides that a Court's "choice of law rule" might lead to application of another jurisdiction's rule. But that would not be so on the facts before the Special Master. The District Court addressed the choice of law issue in *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 188 F.Supp.2d 115 (D. Mass. 2002), where "a law professor" who was "putatively an expert on tobacco litigation," sought to enforce an oral fee-splitting arrangement with the law firm for whom he consulted. In weighing several different factors, the Court relied heavily on one factor in particular: place of performance, deeming bar admissions not dispositive of the inquiry. *See id*. at 119, 121, 122-123. Thus, the Massachusetts Rules of Professional Conduct governed the dispute between the expert -- admitted to practice only in New York -- and the defendant, a South Carolina law firm, where the expert had performed the bulk of his legal work in Massachusetts. *Id.* at 123. Application of Massachusetts law would not, however, prevent other states with an interest in the litigation from disciplining attorneys over whom it had authority. *Id.*

Applying the *Daynard* Court's analysis to the conduct of counsel in the State Street case, Massachusetts Rules of Professional Conduct should, again, apply. The ethical issues here predominantly arise out of counsel's conduct *before the Court* as well as written submissions to the Court and duties to disclose information to the class representatives and class members

[58] The previous version of this rule in effect in 2011, L.R., D. Mass 83.5.1(a)(1) (amended Jan. 1, 2015), required that attorneys seeking admission to the District Court "(ii) ha[ve] satisfied the examination requirements as defined by the District Committee on Admissions relating to familiarity with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, principles of federal jurisdiction and venue, and rules relating to professional responsibility; and (iii) ha[ve] filed a certificate …. attesting to familiarity with the local rules of this district."

whom counsel represented in the litigation. Unlike Daynard, himself, counsel here actually appeared before the Court on more than one occasion.

ii. ADDITIONAL REASONS TO APPLY THE MASSACHUSETTS PROFESSIONAL CONDUCT RULES IN THIS CASE

For three other reasons the Court should apply the Massachusetts professional conduct rules. First, applying to each lawyer the rules of the particular jurisdiction in which that lawyer is admitted could subject different lawyers to different rules and possibly different outcomes for their work in the same litigation. Second, among the rules relevant here are rules that describe duties to the Court itself. The Court has a strong interest in assuring that the behavior of lawyers practicing before it is governed by its own rules, not the rules elsewhere. Third, the relevant rules also describe duties to members of the certified class who reside in many jurisdictions and whose rules may vary. As in *Daynard,* other jurisdictions in which these questions may arise can apply their own rules.[59] *See id*. at 123.

iii. FEDERAL LAW GOVERNS OTHER ISSUES BEFORE THE COURT

As stated, federal law also governs the issues discussed herein and, in particular, the obligation of class counsel to disclose to the Court their intention to give Damon Chargois -- an unaffiliated lawyer who did not appear in, work on, or accept responsibility for the litigation -- millions of dollars from the fee that counsel requested from the Court. *See* Section C (ii), *infra.*

[59] Application of Massachusetts law will not, moreover, prevent courts or disciplinary authorities in other states from enforcing their respective rules of professional responsibility, if implicated by the conduct of any attorney in this matter. *Daynard*, 188 F. Supp. 2d at 123. Similarly, application of Massachusetts law will not prevent courts in other jurisdictions from analyzing and applying the relevant principles of contract enforcement or public policy considerations recognized in other states, if called upon to do so.

B. THE CHARGOIS ARRANGEMENT IS AN UNETHICAL PAYMENT FOR THE RECOMMENDATION OF A CLIENT, NOT A VALID DIVISION OF FEE AGREEMENT

i. RULE 7.2(b)

The Arrangement between Labaton and Chargois violates the prohibition in Rule 7.2(b), which forbids a lawyer to "give anything of value to a person for recommending the lawyer's services."[60] Mass. R. Prof. C. 7.2(b) (current through Feb. 1, 2018). This was the language of Rule 7.2(b) in February 2011, when ATRS retained Labaton in this case, and it still is. *See* Mass. R. Prof. C. 7.2(b) (amended March 26, 2015). As explained below, "person" includes Chargois, who was paid for recommending Labaton to ATRS. In 2011 and today, an exception in Rule 7.2(b) provides that a lawyer "may pay fees permitted by Rule 1.5(e)." Until March 2011, Rule 1.5(e) provided:

> 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 participation and the total fee is reasonable.
>
> Mass. R. Prof. C. 1.5(e) (amended Dec. 22, 2010, eff. March 15, 2011).

In 2007, the Supreme Judicial Court remedied three defects with Rule 1.5(e). *Saggese v. Kelley*, 445 Mass. 434, 442-443 (2007). The rule did not have a writing requirement, it did not say *who* should obtain client consent, and it did not say precisely *when* the client must be notified of the fee division. *Id*. The Court's opinion corrected these defects by declaring how the rule "will be construed" thereafter. *Id*. at 443.

> These problems are avoidable in fee-sharing situations if the referring lawyer, who usually is in the best position to secure compliance with rule 1.5(e), is required to disclose the fee-sharing agreement to the client before the referral is made and secures the client's consent *in writing.* The rule will be construed to require this in fee-sharing agreements that are formed after the issuance of the rescript in this decision. Although the primary responsibility for compliance will fall on referring lawyers, lawyers to whom

[60] Labaton and Chargois exchanged emails and two drafts but never finalized an agreement. *See pp. 10, 33, supra*.

> referrals are made are not absolved of all responsibility, and should confirm, before undertaking such representations, that there has been compliance with Rule 1.5(e).

Id. at 443 (emphasis in original). [61]

ii. LABATON DID NOT COMPLY WITH RULE 1.5(e). IT PAID CHARGOIS FOR RECOMMENDING A CLIENT IN VIOLATION OF RULE 7.2(b)

Labaton did not "confirm…compliance with Rule 1.5(e)" when ATRS retained it in this matter. It did not tell ATRS about Chargois and get its written (or any) consent. Labaton admits as much, but in partial mitigation cites an email from Christa Clark, ATRS's chief counsel, and language in its February 2011 retainer agreement with ATRS. Neither the 2008 Clark email, nor the language in the retainer agreement, satisfies the requirements of Rule 1.5(e) as construed in February 2011.

The Clark email, informing Labaton that the Chargois firm would *not* be "additional monitoring counsel," added this paragraph:

> If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or use them as independent contractors, if you deem is [sic] appropriate on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conducive to a joint proposal.

Labaton's retainer agreement with ATRS in this case provides:

> Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation. The division of attorneys' fees with other

[61] Effective March 15, 2011, the *Saggese* Court's writing requirement was added to Rule 1.5(e). Mass. R. Prof. C. 1.5(e) (current through Feb. 1, 2018). Rule 1.5(e) currently reads:

> 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. This limitation does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement. *Id.*

> counsel may be determined upon a percentage basis or upon time spent assisting with the prosecution of the Litigation. Any division of fees among counsel will be Labaton Sucharow's sole responsibility and will not increase the fees payable by Arkansas Teacher or the class upon a successful resolution of the Litigation.

For the following reasons, this generic language is inadequate to comply with Rule 1.5 as revised by the Supreme Judicial Court in *Saggese*: (a) ATRS was not notified "before the referral [was] made" that Labaton's fee would be divided with Chargois; and (b) ATRS never consented to the fee division "in writing." *See Saggese*, 445 Mass. at 442-443. Nor did the Clark email and the retainer agreement satisfy Rule 1.5(e) as it then read *even without regard to Saggese*. In February 2011, the rule permitted a fee division "only" after notice to the client "that a division of fees will be made" and the client consents, neither of which occurred here. Mass. R. Prof. C. 1.5(e) (amended Dec. 22, 2010, eff. March 15, 2011). Indeed, the facts reflect that Labaton attorneys took pains to ensure that George Hopkins, ATRS's Executive Director, would not become aware of the Chargois Arrangement. *See supra*, p. 38.

Labaton's failure denied ATRS the protection of Rule 1.5(e). If Hopkins had been told about Chargois, he could have asked for details of the financial arrangement. Labaton would have been required to tell him.[62] He could have asked what Chargois' contributions to the case were expected to be. He could have asked to know more about Chargois' qualifications and to

[62] The comment to the rule at the time expanded the disclosure obligation in the text of the rule itself. Whereas the black letter rule required notice to the client that "a division of fees will be made," the comment required that lawyers go further, if the client asks, and disclose "the *share* of each lawyer." (Emphasis added.) The difference is between saying "we are dividing the fee," which the black letter rule required, and saying if asked, "I am going to get 70 percent and he is going to get 30 percent." More specifically, the comment in February 2011 provided: "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." Mass. R. Prof. C. 1.5(e) cmt. [4A] (amended Dec. 22, 2010, eff. March 15, 2011.) Today, the same obligation to provide the greater detail on request appears in cmt. [7A] of Massachusetts Rule 1.5, which states: "Unlike ABA Model Rule 1.5(e), Paragraph (e) does not require that the division of fees be in proportion to the services performed by each lawyer or require the lawyer to assume joint responsibility for the representation in order to be entitled to a share of the fee. 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." Mass. R. Prof. Cond. 1.5, cmt. [7A].

meet him. He could have negotiated to have money slated for Chargois instead to go to the class. He could have consulted counsel on whether to "consen[t] to the joint participation."

Because the secret Chargois Arrangement did not satisfy the requirements of Rule 1.5(e) in February 2011, it does not fall within the exception to the prohibition against giving "anything of value to a person for recommending the lawyer's services," and therefore violates Rule 7.2(b). The *Daynard* Court recognized that non-compliance with the division of fee rule means that a payment will violate the rule against paying for client recommendations: "Daynard is nothing like the plaintiffs in many cases who are denied enforcement of their 'fee-splitting' contracts, which are in reality fee-referral contracts." *Daynard,* 188 F. Supp. 2d at 131, citing *Holstein v. Grossman*, 616 N.E.2d 1224, 1229 (1993) (holding that a "fee-sharing agreement which is primarily based on a client referral is unenforceable as a matter of public policy where the undisputed facts show that the referred client never consented in writing to the attorneys' arrangement").

iii. LABATON'S OWN CONDUCT, OBJECTIVELY VIEWED, IS INCONSISTENT WITH THE CLAIM THAT THE CHARGOIS ARRANGEMENT WAS A VALID DIVISION OF FEE AGREEMENT

Whether a division of fee agreement complies with a jurisdiction's rule is an objective inquiry. It asks: Were the rule's requirements satisfied?[63] Objectively viewed, Labaton's own conduct is, in the following ways, inconsistent with its current claim that it had a valid division of fee agreement with Chargois.

Although Labaton asked ATRS's permission to add Lieff and Thornton as counsel for ATRS, it did not inform Hopkins about Chargois. In fact, it did the opposite. It acted to conceal

[63] Both *Saggese* and *Daynard* determined whether the purported agreement satisfied the conditions in Rule 1.5(e), the fee division rule. *See Saggese*, 445 Mass. at 441; *Daynard*, 188 F. Supp. 2d at 123.

the existence of the Chargois Arrangement from ATRS. It did this by blind copying Chargois on emails that included George Hopkins and by forwarding to Chargois, alone, email exchanges with Hopkins.

Labaton also concealed the Chargois Arrangement from customer and ERISA class members even after being appointed "Lead Counsel for the Settlement Class" in August 2016. Its NOTICE OF PENDENCY OF CLASS ACTIONS did not disclose the Chargois Arrangement. The ERISA representatives and class members were its clients, as Labaton lawyers have indicated on numerous occasions. *See* Section D (i), *infra.*

Labaton did not disclose to the Thornton and Lieff Cabraser law firms, which were contributing to the payments to Chargois, the true nature of those payments when it became apparent that those firms may have misunderstood Chargois' role. In an April 26, 2013, email on which Keller and Belfi of Labaton were copied, Garrett Bradley referred to Chargois as "the local counsel who assists Labaton in matters involving" ATRS. In a July 8, 2016, email from Garrett Bradley, on which Keller, Belfi, and Sucharow were copied, Chargois is referred to as "the local attorney in this matter who has played an important role." Each characterization of Chargois is false or misleading. Chargois was getting paid for a client recommendation only. The Labaton lawyers who were recipients of the emails had knowledge of the Chargois Arrangement but did not correct Bradley's characterizations, as would have been expected if they believed that the Chargois Arrangement was a valid division of fee agreement. *See, e.g.*, pp. 42-44, *supra.*

Labaton never informed the Court of the Chargois Arrangement, despite a legal obligation to do so. *See* Section C, *infra*.

If Labaton considered the Chargois Arrangement a true division of fee agreement, one would have expected it to finalize the agreement and adjust it to comply with the division of fee

rules in each jurisdiction in which it represented ATRS. For example, both before and after it filed this action, Labaton represented ATRS in three matters in courts in California, whose rule is set out below.[64] Labaton did not comply with that rule's provisions, which, among other things, require the client's written consent after "a full disclosure has been made in writing that a division of fees will be made and the terms of such division." Cal. R. Prof. C. 2-200(A)(1) (current through Jan. 1, 2018).

By early 2009, after George Hopkins replaced Paul Doane as ATRS Executive Director, Labaton knew that it would not get the substantial help from Chargois that it had apparently anticipated. Chargois had no relationship with Hopkins. As a result of this "unexpected turn of events," Labaton "believed that the fee sharing agreement had been based upon a condition that was not being satisfied." (Response by Labaton Sucharow LLP to Special Master's September 7, 2017 Request for Supplemental Submission, at 2.) But Labaton continued to pay Chargois anyway, "fearing that [Chargois] would otherwise sue the Firm in state court in Texas, an event that could have an extremely adverse impact on a firm that works extensively with public pension and retirement plans." *Id*.[65] That motive may have served the firm's own interests at the

[64] California Rule of Professional Conduct 2-200 provides:

> (A) A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless:
>
> (1) The client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and
>
> (2) The total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200.
>
> (B) Except as permitted in paragraph (A) of this rule or rule 2-300, a member shall not compensate, give, or promise anything of value to any lawyer for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client….

[65] The Labaton Response further states at page 10: "Labaton Sucharow was justifiably concerned that litigation over a fee dispute would be harmful to its reputation and to its relationship with ATRS, and also concerned that, as Chargois threatened, a Texas state court would rule in Chargois & Herron's favor."

time, as it appears to have viewed them, but it is inconsistent with a claim that the Chargois Arrangement was a valid division of fee agreement in the various states in which the firm represented ATRS. Labaton's interests, furthermore, would be contrary to the interests of its clients because Chargois would get paid out of settlement funds the Court might award even though Labaton believed "a condition" of the agreement "was not being satisfied."

Labaton's explanation for concealing the Chargois Arrangement from the Court and the certified class is legally and factually wrong. Labaton contends that because the Chargois payment would be paid from customer counsel's award of counsel fees, no one other than ATRS, Thornton, and Lieff had any right to know about it. Yet, as Labaton itself recognized, counsel had *no fees* to *divide* with Chargois unless and until the Court awarded counsel fees to class counsel. The Court needed to know, and class counsel were required to inform it, about the Chargois Arrangement in deciding whether to award fees, to whom, and in what amount. *See* Section C, *infra.*

iv. COURT OPINIONS IN DISPUTES BETWEEN LAWYERS DO NOT RENDER THE CHARGOIS ARRANGEMENT A VALID DIVISION OF FEE AGREEMENT

On occasion, a lawyer will seek to deny another lawyer his or her promised fee, citing a failure to tell the client about the agreement or to put it in writing (or both), as a jurisdiction's rule required. On one hand, the agreement does not comply with the rule. On the other hand, refusing to enforce it would let one lawyer keep the entire fee even where he or she was equally culpable of the violation.

Saggese v. Kelley, supra, enforced an oral agreement between a referring and referred lawyers where the client, who was *not* a fiduciary, later ratified the agreement. 434 Mass at 442. The Court wrote that the referred lawyers could not rely on the failure to comply with the rule

"to absolve them of their contractual obligation." *Id*. at 441. But the Court "emphasize[d] that although failure to comply with the rule may not necessarily render a contract unenforceable *between lawyers*, it may subject both lawyers to disciplinary action upon division of a fee." *Id*. at 443 (emphasis added).

In a division of fee case in federal court in Massachusetts, a law firm of record refused to pay a lawyer for work it had allegedly retained him to do in exchange for an oral promise of five percent of any recovery. *Daynard*, 188 F. Supp. 2d at 117. The firm in that case argued noncompliance with the Rule 1.5(e) governing division of fees excused it from performing under the contract. *Id*. at 118. The court held that the oral promise was enforceable, citing the lawyer's "valuable" work across more than a decade, the fact that his work appeared "proportional to the alleged contract amount," and the fact that the lawyer's work on the matter was not concealed. *Id*. at 131. In other words, the agreement "was not a 'secret' fee-splitting agreement." *Id*. at 130.

These two cases respond to the equities between lawyers when a division of fee rule is violated and one of the lawyers wants to keep the entire fee. In *Saggese,* an individual client (not a class representative) ratified the agreement and was not harmed. *See* 434 Mass. at 444. In *Daynard,* the clients were states acting through their attorneys general, some of whom did know of Daynard's work and did not object. 188 F. Supp. 2d at 129. Furthermore, Daynard worked on the matters over the course of a decade. *Id*. at 131. There was no "taking advantage of uninformed clients." *Id*. at 131. The Court said that refusal to enforce the agreement would "smack of injustice." *Id*. at 132.

The equities here are different. The question here does not arise in a fee dispute between Chargois and Labaton. This is not a case where a referred lawyer, equally to blame, cites the rule in order to keep the entire fee for himself. This is not a case where a law firm, which benefitted

for a decade from the work of an unaffiliated lawyer, now seeks to renege on its promise. Labaton's duties were owed to ATRS, the class ATRS purported to represent, and the Court. It did not inform the ATRS Executive Director, the customer and ERISA class members, or the Court itself of the Chargois Arrangement. Unlike in *Daynard*, Chargois did no work at all and the Chargois Arrangement was "secret." *See id*. at 130.

v. CONCLUSION

Massachusetts forbids a lawyer to "give anything of value to a person for recommending the lawyer's services." Rule 7.2(b). A lawyer is a "person" within the meaning of the rule. There is an exception for fees permitted by Rule 1.5(e), which is the Massachusetts division of fee rule. In February 2011, for a fee to fall within Rule 1.5(e), the client must be informed of the fee division before the referral is made and consent in writing.

Because Labaton did not comply with the writing or notification requirements of Rule 1.5(e), the exception in Rule 7.2(b) is not available to Labaton.

The harm here is greater than it would be for an individual client. Hopkins was a fiduciary for ATRS and ATRS purported to represent a class. Uninformed, Hopkins could not seek legal advice on how best to protect the putative class.

C. EVEN IF THE CHARGOIS ARRANGEMENT COULD BE DEEMED A VALID DIVISION OF FEE AGREEMENT, AND NOT AN IMPROPER PAYMENT FOR RECOMMENDING A CLIENT, LABATON, THORNTON, AND LIEFF WERE OBLIGATED TO DISCLOSE THE CHARGOIS ARRANGEMENT TO THE COURT.

i. DISCLOSURE TO THE COURT IS REQUIRED UNDER THE MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT AND FEDERAL LAW

The obligation of customer counsel to have informed the Court of the Chargois Arrangement arises under federal case law as well as the Massachusetts Rules of Professional

Conduct. *See*, *e.g.*, *Rodriguez v. Disner*, 688 F.3d 645, 654 (9th Cir. 2012) ("Although the application of the common fund doctrine is a matter of federal courts' equitable powers, we have frequently looked to state law for guidance in determining when an ethical violation affects an attorney's entitlement to fees.") (citation omitted). Here, both federal and state sources apply. Labaton and its expert rely on Fed. R. Civ. P. 23(h)(1) and 54(d)(2) to support their contention that, unless the Court asked, there was no duty to inform the Court of the Chargois Arrangement. (Labaton Memo at 19-23; Sarrouf Decl. at 10.) Labaton attorney Chris Keller stated during the negotiations that, whatever the fee allocation amongst Customer Class Counsel might be, the court need not be informed. TLF-SST-052209 (8/28/15 email correspondence between Bradley and Keller, 'cc Sucharow) ("We should talk this through. The court absolutely need not understand what the allocation of fees is amongst counsel so that should not be included in any document to be filed with the court…") [EX. 51].

While there may not have been a duty under Rules 23 and 54 to disclose the division of fees among those lawyers *whom the Court knew about*, and so could inquire, the Court could not be expected to ask counsel about a division of fees with Chargois, a lawyer who had not appeared in the case and whom it did not know about. Labaton's construction of its obligation under Rule 54(d)(2), endorsed by its expert, would impose on the Court the affirmative responsibility to ask: "Is anyone else getting any portion of the attorney's fees you are asking me to award and whose existence you have not revealed?" As discussed below, the Court had no such responsibility.

The 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." 11/2/16 Hearing. Tr., p. 35:4-5. Nicole Zeiss of Labaton and Daniel

Chiplock of Lieff were in the courtroom when the Court made this statement. Both knew about the intention to pay Chargois. Neither spoke up. David Goldsmith of Labaton, who was also in the courtroom, learned of the Chargois Arrangement within weeks and did not disclose it although he had quickly disclosed to the Court the double-counting of SA time.

Earlier in the proceeding, the Court specifically asked to be reminded "of the terms of allocation." Mr. Goldsmith said, "I didn't want there to be something that was left that Your Honor wanted to hear." He then described the allocation to the class followed by a description of the basis for the fee request. *Id.* at 21 *et seq.* Chargois was not mentioned.

ii. FEDERAL CASE LAW CONTRADICTS LABATON'S NARROW VIEW OF ITS DISCLOSURE OBLIGATIONS TO THE COURT

Case law, including cases from the District of Massachusetts, amply supports recognition of the Court's fiduciary responsibility to protect the class and the Court's reliance on counsel to be forthcoming with the information the Court needs in order to do so. Private agreements among counsel do not bind the Court, which can ignore them if they reward those who did little or nothing to serve the class. Nor is the Court bound to honor the retainer agreement between counsel and the named class members. The cases that follow reflect the expansive language that District and Circuit Courts use to describe class counsel's duties to the Court and the Court's duties to the class.

In re Volkswagen and Audi Warranty Extension Litigation, 89 F.Supp.3d 155, 183 (D. Mass. 2015):

> While fee sharing agreements among counsel may be respected or treated as presumptively reasonable in a district court's allocation of attorneys' fees, persuasive authority convinces this Court that it is not bound blindly to follow such private arrangements. *See, e.g., In re FPI/Agretech Sec. Litig.,* 105 F.3d 469, 473 (9th Cir.1997) ("[A] court may reject a fee allocation agreement where it finds that the agreement rewards an attorney in disproportion to the benefits that attorney conferred upon the class—even if the allocation in fact has no impact on the class."); *In re "Agent*

Orange" Prod. Liab. Litig., 818 F.2d 216, 223 (2d Cir.1987) (rejecting authority that "allows counsel to divide the award among themselves in *any* manner they deem satisfactory under a private fee sharing agreement"). *Cf. In re Cendant Corp. Litig.,* 264 F.3d 201, 282–83 (3rd Cir.2001) (holding that although retainer agreements in class actions enjoy a presumption of reasonableness at the fee award stage, the presumption may "be abrogated entirely were the court to find that the assumptions underlying the original retainer agreement had been materially altered by" unforeseeable developments). More important than the terms of a private agreement are the actual contributions each firm made to the prosecution of this case and the interests of the plaintiff class.

In re Relafen Antitrust Litigation, 231 F.R.D. 52, 71 (D. Mass. 2005):

As this Court recently noted, "[b]oth the United States Supreme Court and the Courts of Appeals have repeatedly emphasized the important duties and responsibilities that devolve upon a district court pursuant to Rule 23(e) prior to final adjudication and settlement of a class action suit." *In re Relafen Antitrust Litig.,* 360 F.Supp.2d 166, 192 (D.Mass.2005) (citations omitted). Although settlement is often a more favorable result than litigation, "the court has a fiduciary duty to absent members of the class in light of the potential for conflicts of interest among class representatives and class counsel and the absent members." *In re Lupron*, 228 F.R.D. at 94 (citing *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods.,*55 F.3d 768, 805 (3d Cir.1995) ("Rule 23(e) imposes on the trial judge the duty of protecting absentees, which is executed by the court's assuring the settlement represents adequate compensation for the release of the class claims.")).… *Reynolds v. Beneficial Nat'l Bank,* 288 F.3d 277, 279–80 (7th Cir.2002) (Posner, J.) (noting the concern that a lawyer's self interest may trump the interests of the class members "requires district judges to exercise the highest degree of vigilance in scrutinizing proposed settlements of class actions. We and other courts have gone so far as to term the district judge in the settlement phase of a class action suit a fiduciary of the class, who is subject therefore to the high duty of care that the law requires of fiduciaries.")

In re "Agent Orange" Product Liability Litigation, 818 F.2d 216, 223 (2nd Cir. 1987):

There is authority for a court, under certain circumstances, to award a lump sum fee to class counsel in an equitable fund action under the lodestar approach and then to permit counsel to divide this lodestar-based fee among themselves under the terms of a private fee sharing agreement. … We *reject* this authority, however, to the extent it allows counsel to divide the award among themselves in *any* manner they deem satisfactory under a private fee sharing agreement. Such a division overlooks the district court's role as protector of class interests under Fed. R. Civ. P. 23(e) and its role of assuring reasonableness in the awarding of fees in equitable fund cases. … *cf. Jones v. Amalgamated Warbasse Houses, Inc.,* 721 F.2d 881, 884 (2d Cir.1983) ("if the court finds good reason to do so, it may reject an agreement as to attorneys' fees just as it may reject an agreement as to the substantive claims"), *cert. denied,* 466 U.S. 944, 104 S. Ct. 1929, 80 L.Ed.2d 474 (1984). In addition, this approach overlooks the class attorneys'

> "duty ... to be sure that the court, in passing on [the] fee application, has all the facts" as well as their "fiduciary duty to the ... class not to overreach." *Lewis v. Teleprompter Corp.,* 88 F.R.D. 11, 18 (S.D.N.Y.1980). [Emphasis added.]

In re FPI Agretech Securities Litigation, 105 F.3d 469, 474 (9th Cir. 1997):[66]

> We reject Chuck's [counsel's] proposed rule that a district court may decline to approve a fee allocation only if it is contrary to the interests of the class or in violation of rules of professional conduct. Instead, we hold that the relative efforts of, and benefits conferred upon the class by, co-counsel are proper bases for refusing to approve a fee allocation proposal….
>
> Chuck next argues that the district court should have treated the fee allocation proposal as an enforceable contract. However, the cases on which Chuck relies are inapposite. Neither case involved attorneys' fees in a class action, and such fees derive from principles of equity, not contract. More importantly, both cases involved formal fee agreements, whereas here the parties merely submitted orally a fee allocation proposal, arrived at, figuratively speaking, "on the courthouse steps," for the court's approval. We decline to curb the district courts' broad discretion in exercising their equitable power to award attorneys' fees in common fund class actions by requiring that fee allocation proposal be treated as enforceable contracts. [Internal citations omitted.]

Lewis v. Teleprompter Corp., 88 F.R.D. 11, 18 (S.D.N.Y. 1980):

> Wolf Popper has argued that it should be a matter of indifference to the court how the pie is sliced, if the fee requested is on its face a reasonable one, and if the results accomplished warrant its award. It suggests that it is routine for the court simply to fix the amount of the fee, and then to leave it to the various plaintiffs' attorneys involved to decide for themselves how the fee is to be allocated that, in fact, it is a service to the court not to burden it with the nuts and bolts of determining distribution. While I appreciate Wolf Popper's solicitude, I reject its argument. Wolf Popper has overlooked two important obligations which are part and parcel of its role as plaintiffs' counsel: the duty of its members and associates as officers of the court to be sure that the court, in passing on its fee application, has all the facts; and its fiduciary duty to the shareholder class not to overreach.

Federal case law also recognizes the special danger of conflicts between a lawyer and her client at the fee-determination stage in common fund cases. The economic interests of the two are then directly adverse because the greater the fee to the lawyer, the less will be the recovery to the class. *See, e.g., In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 307 (3rd Cir. 2005):

[66] Lieff was co-lead counsel in this case and participated in the dispute over allocation of legal fees.

> The determination of attorneys' fees in class action settlements is fraught with the potential for a conflict of interest between the class and class counsel. *See* [*In re Cendant Corp. Litig.*, 264 F.3d 201, 254-255 (3rd Cir. 2001] (explaining that because clients seek to maximize recovery and lawyers seek to maximize fees, "there is often a conflict between the economic interests of clients and their lawyers, and this fact creates reason to fear that class counsel will be highly imperfect agents for the class"); [*In re Cendant PRIDE*, 243 F.3d 722, 730 (3d Cir. 2001) (discussing "the danger inherent in the relationship among the class, class counsel, and defendants" and recognizing "an especially acute need for close judicial scrutiny of fee arrangements in class action settlements") (internal quotations omitted); Fed. R. Civ. P. 23(h), 2003 Advisory Committee Notes ("Active judicial involvement in measuring fee awards is singularly important to the proper operation of the class-action process.").

iii. THE MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT ALSO REJECT LABATON'S VIEW THAT IT HAD NO DUTY TO DISCLOSE THE CHARGOIS ARRANGEMENT TO THE COURT UNLESS THE COURT ASKED

Apart from federal law, the omission of the Chargois payment from the fee application violated Rules 3.3(a) and Rule 8.4(c) even if the balance of the application was literally true. Rule 3.3(a)(1) provides: "A lawyer shall not knowingly 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." Mass. R. Prof. C. 3.3(a)(1) (current through February 1, 2018). Rule 3.3(a)(3) provides in part that a lawyer "shall not knowingly offer evidence that the lawyer knows to be false." Rule 8.4(c) provides: "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Mass. R. Prof. C. 8.4(c) (current through February 1, 2018).

A true statement can violate these rules through omission. Rule 3.3, cmt. [3] ("There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."); *In re O'Toole*, 2015 WL 9309021, at *5 (Mass. St. Bar. Disp. Bd. 2015) ("'[H]alf-truths may be as actionable as whole lies.'… Statements that are 'technically accurate' or 'literally true,' but that nevertheless are 'clearly intended to mislead' or 'beg[ ] [a] false

inference' amount, in appropriate cases, to false statements within the meaning of" Rules 3.3(a)(1) and 4.1(a)); *In the Matter of An Attorney*, 2007 WL 4284758, at *4 (Mass. St. Bar Disp. Bd. 2007) ("It is not a defense to these charges that the individual statements made in the letter could be read as literally true. Literal truth may be a defense to a criminal charge of perjury.") Compare *Bronston v. United States*, 409 U.S. 353 (1973) with *United States v. DeZarn*, 157 F.3d 1042 (6th Cir. 1998). But Rule 8.4(c) 'prohibits more than outright perjury. Attorneys may not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation....'").

In-courtroom statements and submissions to the Court, class counsel offered information about the fees they would request and the identities of the law firms who would share in those fees. They also identified $1.257 million in expenses and $85,000 in service awards. The Court could assume that the lawyers who were going to participate in the fee it was asked to award were the lawyers who appeared before it because no other lawyer was identified. But here, that assumption would be wrong. In order for class counsel's statements and submissions to the Court *not* to mislead the Court through omission, Rule 3.3 required them to disclose to the Court the Chargois Arrangement and their intention to pay Chargois more than $4 million from the class recovery.

iv. LABATON'S CLAIM THAT IT HAD NO DUTY TO DISCLOSE THE CHARGOIS ARRANGEMENT TO THE COURT OR TO CLASS MEMBERS BECAUSE IT WAS PAYING CHARGOIS FROM ITS OWN FEE AWARD IS INCORRECT AS A MATTER OF FACT AND LAW

It is *not* true, as Labaton claims, that the Court, the named plaintiffs, and the members of the certified settlement class, had no interest in the Chargois payment on the theory that Customer Class Counsel were paying it out of their own fee award. This argument is both legally and factually wrong. Labaton's fee did not, and would not, exist unless and until the Court

awarded it. Labaton itself recognized as much in the Notice of Pendency of Class Actions (discussed further below) among other places. The Notice states: "Lead Counsel…will apply to the Court for an order awarding attorneys' fees…." (Page 4.) *See also* page 9, stating the question in the conditional tense ("*If* the Court awards fees" at a particular rate…) (emphasis added).

In deciding the amount of fee to award to class counsel, and to whom to award it, the Court, as a fiduciary for the class including unnamed class members, needed *first* to know – and class counsel had a duty to tell it – who would be participating in any fee the Court in its discretion might award from the class recovery and the basis for the claim. Labaton's contrary argument would keep the Court in the dark and deny it the very information it needed in order to decide how much of the undifferentiated settlement funds should go to counsel, and which counsel, and how much should go to the class. Quite simply, until the Court made that decision, *there was no fee to divide.* The Court was empowered, for example, as an exercise of its equitable power and fiduciary duty to the class, to deny any part of the recovery to Chargois, who never appeared and who did no work, and instead to direct that the money intended for him should instead go to the class.[67]

v. A LAWYER'S MISCONDUCT MAY AFFECT A COURT'S DETERMINATION OF THE AMOUNT OF FEES TO AWARD

In the First Circuit and elsewhere, lawyer misconduct may influence fee decisions. *Travers v. Flight Services & Systems, Inc*., 808 F.3d 525, 542 (1st Cir. 2015):

> "'It is well settled in this circuit that the district court has the duty and responsibility to supervise the conduct of attorneys who appear before it, and that ... [d]enial of attorneys' fees may be a proper sanction' for attorney misconduct. *Culebras Enters. Corp. v. Rivera–Rios*, 846 F.2d 94, 97 (1st Cir. 1988); *see also Wong v. Luu*, 472 Mass. 208, 218 (2015) (holding that '[t]he inherent powers necessary to preserve the court's authority to

[67] As stated, the *Daynard* Court cited Daynard's "valuable" contribution to the success of the litigation in upholding his claim. *Daynard,* 188 F. Supp. 2d. at 131.

> accomplish justice include the power to sanction an attorney' for misconduct by assessing fees")."

Rodriguez v. Disner, *supra*, applied this doctrine in a class action. Analyzed objectively (and nearly all conflicts issues are analyzed objectively), Labaton may have wished to conceal the Chargois payments because anyone who learned of them could claim – successfully in my view -- that they were unethical payments for the recommendation of a client and seek appropriate remedies. Such a finding could be harmful not only in this case, but also in the other ATRS cases in which the firm concealed the Arrangement or did not comply with a jurisdiction's division of fee rule. We would then have a conflict between the firm's disclosure duties to the Court and its clients and its own interest in concealing the existence of the Chargois Arrangement.

Both that conflict and the separate failure of class counsel to disclose the Chargois Arrangement to the Court -- and to class members (who are discussed *infra*) -- as required by federal law and the Massachusetts Rules of Professional Conduct, could properly influence the Court's determination of the amount of fees to award and to whom.

vi. CONCLUSION

Their duty to the Court required Labaton, Thornton, and Lieff to disclose the Chargois Arrangement (and intended payment) to the Court before it awarded fees from which Chargois would be (and was) paid. This is true whether or not the Chargois Arrangement complies with Rule 1.5(e).

D. LABATON, THORNTON, AND LIEFF CABRASER EACH HAD A DUTY TO DISCLOSE THE CHARGOIS PAYMENTS IN THE "NOTICE OF PENDENCY" SENT TO MEMBERS OF THE CUSTOMER AND ERISA CLASS

The unnamed members of the certified class were entitled to know about the Chargois Arrangement before they were called upon to decide, with legal advice if desired, whether to opt out, or object, to the settlement, and later, the fee request made by Customer Class Counsel. Both decisions would precede the Court's decision on any fee award and, thus, called upon the class members to make an informed decision before there was a fee award to share with Chargois.

On August 8, 2016, David Goldsmith of Labaton appeared before Judge Wolf for the "plaintiffs and the settlement class." Michael Thornton of Thornton and Daniel Chiplock of Lieff Cabraser appeared for the same clients. "We are here," the Court said, "with regard to the motion for preliminary certification of class action and preliminary approval of the proposed class settlement." 8/8/16 Hearing Tr., p. 4. The Court concluded that it was "appropriate to certify a class for settlement purposes." It then certified "the proposed class for settlement purposes only." *Id.* at 4, 11. Previously, in January 2012, the Court had appointed Labaton as "interim lead counsel to act on behalf of all plaintiffs and the proposed class." It had appointed Thornton as "liaison counsel for plaintiff and the proposed class" and Lieff Cabraser to "serve as additional attorney for the plaintiff and the proposed class." *See* 1/12/12 Memorandum and Order, p. 5, Dkt. No. 28. When the Court certified the settlement class in August 2016, the firms continued to hold these positions.

i. *CLASS COUNSEL HAD A FIDUCIARY AND ETHICAL DUTY TO DISCLOSE THE CHARGOIS ARRANGEMENT TO THE CLASS MEMBERS AND DID NOT*

At least as of August 8, 2016, Labaton, Lieff, and Thornton had attorney-client relationships with the certified settlement class and its members. In that role, they had

responsibility for the "Notice of Pendency of Class Actions" (the "Notice of Pendency") dated August 22, 2016, which Labaton prepared, which Nicole Zeiss circulated to Lieff and Thornton, and which was then sent to the customer and ERISA class members. The Notice of Pendency's caption identifies ATRS, Henriquez, and the Andover Companies as named plaintiffs. It refers to the "class action lawsuits (collectively, the 'Class Actions')." It defines the "Settlement Class" as follows:

> All custody and trust customers of SSBT (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT's records as having a United States tax address at any time during the period from January 2, 1998 through December 31, 2009, inclusive, and that executed one or more Indirect FX Transactions with SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive. *Id*. at 3.

Labaton Sucharow and Lawrence Sucharow are identified as "Lead Counsel." *Id.* at 2, 14. No other law firm or lawyer is identified. Recipients were told "Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, will apply to the Court for an order awarding attorneys' fees in an amount not to exceed $74,541,250.00." *Id*. at 4, 13. Recipients are also told that attorneys' fees for ERISA counsel will not exceed $10,900,000.00 and they are told how fees for the other counsel will be computed "if the Court awards the total amount of fees that Lead Counsel intend to request." *Id*. at 9. Labaton's phone number, website, and email address are given as a source of "[a]dditional information." *Id*. at 2. Recipients are told their right to opt out and to object and how to do so. *Id*. at 2.

Recipients of the Notice were *not* told about the Chargois Arrangement although this information – that a lawyer who did no work to produce the class recovery and who accepted no legal responsibility for the work of others stood to receive more than $4 million from the class recovery – was relevant to "The Allocation of Settlement Proceeds," including the completeness of the "attorneys' fees" disclosures in the Notice. That information could reasonably have

influenced members of the class in deciding whether to exercise the right to object to the disclosure regarding attorneys' fees. As important, it may have affected the advice that ERISA counsel would have given their clients.[68] At the August 8, 2016 hearing, the Court specifically recognized that class members could object to the requested fee. It said: "As I understand it, counsel will seek up to 25 percent, roughly $76 million, of the common fund. The class members will have an opportunity to be heard on the propriety of that." 8/8/16 Hrg. Tr., pp. 22:23 – 23:1.

At least as of August 8, Labaton, Thornton, and Lieff also had fiduciary duties to the unnamed members of the certified settlement class. *Piambino v. Bailey*, 757 F.2d 1112, 1139 (11th Cir. 1985)("The lawyers who bring these [Rule 23] cases have a heavy fiduciary responsibility to their clients -- especially those who are absent and those in the minority whose interests are at odds with the named plaintiffs and their group -- to the trial judge and to the people, who provide the forums and governmental resources for these suits."); *Singer v. AT&T Corp*, 185 F.R.D. 681, 690 (S.D. Fla. 1998)("The class attorney has a fiduciary duty to the court as well as to each member of the class.").[69]

As fiduciaries and lawyers for the unnamed certified class members -- and lawyers are fiduciaries for their clients as a matter of law[70] -- Labaton, Thornton, and Lieff had a duty to give

[68] ERISA counsel Lynn Sarko testified that it would have affected his advice. *See infra*. Beyond this, the fact that the ERISA lawyers received only approximately $7.5 million of the $10.9 million allocated for fee awards out of the ERISA class's share of the funds, with the $3.4 million balance going back to the Customer Class Counsel, would (they testified) have informed the ERISA lawyers' conduct of the case and agreement to accept only a $7.5 million share of the fees; several of the ERISA lawyers testified to this. *See, e.g.*, Sarko 9/8/2017 Dep., pp. 28:10-49:18; 74:23-82:24; 90:13-92:18; McTigue 9/8/17 Dep., pp. 21:15-30:9; Kravitz 9/11/17 Dep., 68:20-71:22; 82:6-85:17; 101:16-102:23; 113:22-115:3

[69] Courts have held that attorneys for *putative* classes – pre-certification -- have fiduciary and ethical obligations to unnamed class members after the complaint is filed. *In re General Motors Corporation Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 801 (3rd Cir. 1995)("Beyond their ethical obligations to their clients, class attorneys, purporting to represent a class, also owe the entire class a fiduciary duty once the class complaint is filed.").

[70] *Washington Legal Foundation v. Massachusetts Bar Foundation*, 993 F.2d 962, 974 (1st Cir. 1993)("The relationship between lawyer and client in Massachusetts is fiduciary as a matter of law.").

their clients information relevant to decisions that belonged to the client. One decision that belongs to a client is whether or not to settle. Mass. R. Prof. C. 1.2(a), 1.4(a)(current through February 1, 2018)[71]; *Moores v. Greenberg*, 834 F.2d 1105 (1st Cir. 1987)("As part and parcel of [the duty to a client], a lawyer must keep his client seasonably apprised of relevant developments, including opportunities for settlement.").[72] This is the very decision the Notice of Pendency presented to the recipients in the Notice -- i.e., whether to settle on the terms in the Notice or to object.

ii. CONCLUSION

As fiduciaries and lawyers, Labaton, Thornton, and Lieff 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.

[71] Rule 1.2(a) provides in part: "A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter." Rule 1.4(a)(1) provides: "A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f) is required by these Rules." Rule 1.4(b) provides: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Rule 1.0(f) provides: "'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." *See also* Restatement (Third) of Law Governing Lawyers (2000), §§ 20(3) and 22(1).

[72] A lawyer is an agent and the law of agency separately creates a duty to inform. *Gagnon v. Coombs*, 39 Mass. App. Ct. 144, 156 (1995) ("An agent's duty to make full disclosure to the principal of all material facts relevant to the agency is a necessary corollary to the fundamental agency obligations of undivided loyalty and utmost good faith.")

E. GARRETT BRADLEY'S DECLARATION CONTAINS FALSE STATEMENTS OF FACT AND FALSE "EVIDENCE," IN VIOLATION OF RULES 3.3(a)(1) AND 3.3(a)(3) BECAUSE THE FALSE STATEMENTS WERE MADE KNOWINGLY. THE DECLARATION ALSO VIOLATED RULE 8.4(c)'S PROHIBITION OF MISREPRESENTATIONS AND DECEIT. SEPARATELY, GARRETT BRADLEY'S DECLARATION VIOLATED FED. R. CIV. P. 11 BECAUSE BRADLEY FAILED TO CONDUCT "AN INQUIRY REASONABLE UNDER THE CIRCUMSTANCES" TO ESTABLISH THAT HIS FACTUAL CONTENTIONS HAVE "EVIDENTIARY SUPPORT"

i. FILING OF THE FEE PETITION

The Court's task when class counsel requests attorney fees is to identify what the market would have recognized as a reasonable rate for counsel's service to the class. To aid the court in fulfilling its fiduciary duty to the class, counsel will provide information to persuade the Court that the requested fee is reasonable. When lawyers seek attorneys' fees, their interests and the interests of the client they represent are economically adverse, which heightens the need for the Court to be especially vigilant. *In re Rite Aid Corp. Securities Litigation*, 396 F. 3d at 307. As discussed, *supra,* in Section C (ii), the Court is not bound by a fee agreement between counsel and class representatives or among themselves.

Naturally, a court may first look to the evidence counsel submits in support of a fee request, which was the purpose of the Bradley Declaration. But courts must also independently evaluate the requested fee against reasonable market rates for the particular lawyer. "While fee sharing agreements among counsel may be respected or treated as presumptively reasonable in a district court's allocation of attorneys' fees, persuasive authority convinces this Court that it is not bound blindly to follow such private arrangements." *In re Volkswagen and Audi Warranty Extension Litigation,* 89 F. Supp. at 183. In *In re Citigroup Inc. Securities Litigation,* 965 F.Supp.2d 369, 393-394 (S.D.N.Y. 2013), the Court awarded $200 hourly for contract lawyers, writing that:

> The lodestar figure should be based on market rates in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. The Court must determine the rate a paying client would be willing to pay.… In other words, if the class were a reasonable, paying client free to choose its counsel and negotiate rates, what hourly rate would it accept for the attorneys and other professional staff employed here? (internal quotations and citations omitted)

Labaton submitted the Bradley Declaration dated September 14, 2016, as part of the materials in support of the fee applications of the several law firms. It is evidence upon which the Court was invited to base its fee award.[73]

The Bradley Declaration states under oath in paragraphs 3 and 4:

> 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 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 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 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 complex class actions.

Paragraphs 5 and 6 implicitly incorporate some of these statements.[74]

These paragraphs were taken verbatim from a template prepared by Labaton and shared with Thornton and Lieff.

---

[73] I understand that a separate issue addressed by the Special Master is that SAs on Exhibit A of the Bradley Declaration were also identified by Labaton or Lieff in their request for fees – i.e. some were double- counted.

[74] These paragraphs state:

> 5. The total number of hours expended on this litigation by my firm during the Time Period is 15,302.5 hours. The total lodestar for my firm for those hours is $7,460,139.
>
> 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 bill separately and such charges are not duplicated in my firm's billing rates.

ii. GARRETT BRADLEY VIOLATED RULE 3.3(a) BECAUSE HE KNEW THAT HIS DECLARATION CONTAINED FALSE STATEMENTS

Exhibit A to the Garrett Bradley Declaration uses the designation "SA" to identify 24 "staff attorneys." Total compensation requested for the SAs is $4,508,837 at an hourly rate of $425 for each, except that one "SA," Michael Bradley, is billed at $500. Additional compensation requested for four Thornton partners and one associate totals $2,831,287. The Declaration contains numerous false statements. I am asked to assume that Garrett Bradley knew these statements were false when he submitted his Declaration. *See*, *e.g.*, pp. 23-24.

- The Declaration states: *Exhibit A contains professional support staff members "of my firm."* None of the SAs are support staff members of the Thornton law firm.

- The Declaration states: *The billing rates for the SAs are "based on my firm's current billing rates."* The firm did not have "current billing rates" for these lawyers.

- The Declaration states: *For personnel "who are no longer employed," the lodestar is based on their rates for the "final year of employment."* None of the SAs were ever "employed" at Thornton.

- The Declaration states: *The schedule was prepared from "contemporaneous daily time records regularly prepared and maintained by my firm.*" The SAs worked at Labaton or Lieff, which prepared their time records and is where those records were maintained. Or they were prepared and maintained by an agency. Other TLF attorneys also did not keep contemporaneous time records.[75]

- The Declaration states: *The hourly rates "are the same as my firm's regular rates charged for their services."* Thornton had no "regular rates" for the SAs.

- The Declaration states: *These rates "have been accepted in other complex class actions."* This is true for four of the SAs but it is not true for the other 20, including Michael Bradley.

[75] *See supra*, n. 28.

Although Goldsmith of Labaton informed the Court in the November 10, 2016 letter that SA time was double-counted in the lodestars of Customer Class Counsel, and although attorneys listed in the Thornton lodestar were among those who were double- counted (except Michael Bradley), Thornton did not inform the Court of the false statements in its lodestar.

The characterization of Michael Bradley, Garrett Bradley's brother, is especially serious. Contrary to the Garrett Bradley Declaration, Michael Bradley's $500 hourly rate had never been accepted by a Court in a complex class action. Michael Bradley had not been a staff member of the Thornton law firm. The Thornton law firm did not have a current billing rate for him or prepare and maintain his time records. It did not supervise him. There appears to be no physical evidence of the work for which he was paid $203,200. I am asked to assume that "[u]nlike the Labaton and Lieff SAs, Michael Bradley did not prepare any memoranda or deposition notebooks. And, the record reveals no written work product created by Michael Bradley."

iii. APPLICATION OF RULE 3.3 AND FEDERAL JURISPRUDENCE TO THE BRADLEY DECLARATION

To exercise its fiduciary duty to protect the class when responding to a law firm's fee request, the Court required accurate and complete information about the contributions of the firm seeking counsel fees. That information would inform the hourly rate the Court would approve for SAs and contract (or agency) attorneys. For example, the Court could consider not merely the fact that a law firm assumed financial responsibility for the expense of a staff lawyer, but also whether it assigned legal work to those lawyers, supervised their work, and provided them with a place to work and research support. The Court might also consider as relevant to its decision the fact that the rate requested for these lawyers was nearly nine times their cost to the law firm. The question is not what the Court would or would not do based on such information but the relevance of the information to the Court's exercise of its judgment as a fiduciary for the class.

While the Court was informed of the hourly rate *claimed* for the SAs, other statements in the Bradley Declaration, which could reasonably affect the Court's decision whether to approve that rate, are false.

Analysis of the Bradley Declaration is rooted in the rule governing a lawyer's duty of candor to the Court and federal case law. As noted in Section C (iii), *supra,* Rule 3.3(a)(1) provides: "(a) A lawyer shall not knowingly (1) 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." A lawyer who unknowingly offers false "evidence" to a tribunal and comes to know of its falsity must take reasonable remedial measures if the evidence is material. Rule 3.3(a)(3). Here, that would have required correction of the falsity. Rule 1.0(g) defines "knowingly." "'Knowingly,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Rule 8.4(c) forbids "conduct involving dishonesty, fraud, deceit or misrepresentation."

The Court was not bound by how the several law firms chose to allocate fees or SA time among themselves. "More important than the terms of a private agreement are the actual contributions each firm made to the prosecution of this case and the interests of the plaintiff class." *In re Volkswagen,* 89 F. Supp. 3d at 183; *In re FPI/Agretech Sec. Litig.,* 105 F.3d 469, 473 (9th Cir.1997) ("[A] court may reject a fee allocation agreement where it finds that the agreement rewards an attorney in disproportion to the benefits that attorney conferred upon the class—even if the allocation in fact has no impact on the class"); *In re "Agent Orange" Prod. Liab. Liti*g., 818 F.2d at 223 (rejecting authority that "allows counsel to divide the award among themselves in *any* manner they deem satisfactory under a private fee sharing agreement"). In

making a fee award, the Court would of course be cognizant of the fact that the money paid to the law firms would necessarily come from the class recovery.

iv. APPLICATION OF FED. R. CIV. P. 11 TO THE BRADLEY DECLARATION

Federal Rule of Civil Procedure 11(b)(3) required Bradley to conduct "an inquiry reasonable under the circumstances" to ascertain that the facts he was asserting in his Declaration had "evidentiary support," which Bradley did not do because, as I am asked to assume, he knew that statements in the Declaration were false.[76]

v. CONCLUSION

Garrett Bradley prepared the "evidence" -- in his sworn Declaration -- from a template Labaton circulated. This is "evidence" in the sense that it is information declared to be true and upon which the Court was invited to issue a ruling. He is governed by Rules 3.3 and 8.4. Rule 3.3 prohibits knowing false statements to a tribunal. Rule 8.4(c) forbids "conduct involving dishonesty [and] deceit." Bradley knew the statements in his Declaration were false. Federal law separately required reasonable care to ensure that the information provided to the Court for the exercise of its discretion be true. A reasonable inquiry would quickly have identified these statements as false if Bradley did not already know it.

[76] The cited provision of the Rule continues: "or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery."

Stephen Gillers

STEPHEN GILLERS

February 23, 2018

EX. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[illegible] TE [illegible] HE [illegible] ETI [illegible] EME [illegible] T [illegible] [illegible] TEM, [illegible] B h [illegible] It [illegible] d [illegible] th r [illegible] i [illegible] i r [illegible] it [illegible] t d, [illegible] i ti [illegible], [illegible] i [illegible] t [illegible] [illegible] T [illegible] TE [illegible] T [illegible] EET [illegible] [illegible] [illegible] TI [illegible], [illegible] T [illegible] TE [illegible] T [illegible] EET B [illegible] [illegible] T [illegible] T [illegible] M [illegible], [illegible] d [illegible] T [illegible] TE [illegible] T [illegible] EET [illegible] B [illegible] M [illegible] ET [illegible], [illegible], [illegible] d [illegible] t.	**CIVIL ACTION NO. _____** **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

[illegible] i ti [illegible] r [illegible] T [illegible] h r [illegible] tir [illegible] t [illegible] t [illegible] T [illegible], i di id [illegible] d [illegible] b h [illegible] th r p r [illegible] i i r [illegible] it [illegible] t d, b it [illegible] d r i [illegible] d tt r [illegible], [illegible] th [illegible] i [illegible] i [illegible] ti [illegible] i t [illegible] d t t t tr t [illegible] rp r ti [illegible], t t tr t B [illegible] d Tr t [illegible] p [illegible] t t tr t B r th B [illegible], d t t tr t [illegible] b M r t, [illegible] t t tr t [illegible] b [illegible] ti [illegible], t t tr t, r [illegible] d t b d p th i ti ti [illegible], x pt t th [illegible] ti p rt i i p i i t [illegible] i ti th t r b d p r [illegible] d.

I. INTRODUCTION

1. t t tr t B [illegible], thr h it h d rt r i B t [illegible], M h tt, r r th t di r 40 p b i p i d i th it d t t. t t tr t B i th r t h t di i th tr, d h d 4.4 tri i i p i [illegible] t d r t d b [illegible] M r h 31, 2010. t t tr t B [illegible] r th t di r p b i i t d d th r i t r. t di, t t tr t B i r p ib, *inter alia*, r d rt i thr h i i t h t t tr t b th r i r r

Exhibit "X" attached hereto is not authorized for distribution to the trade or consumers within the United States.

2. Plaintiff alleges, that the Defendants, have knowingly and willfully imported into the United States, and are distributing and selling in interstate commerce, counterfeit and infringing products bearing the Plaintiff's trademarks, which are substantially indistinguishable from the genuine products authorized by Plaintiff for distribution and sale in the United States. In addition, Defendants have deceptively marketed their counterfeit and infringing products to the general purchasing public as being genuine products made by Plaintiff, and have sold their counterfeit and infringing products to consumers throughout the United States, including within the Southern District of Florida, through various internet websites and e-commerce stores operating under the Defendant Internet Stores.

3. Plaintiff filed this action against Defendants, *inter alia*, for trademark infringement and counterfeiting in violation of the Lanham Act. Plaintiff has been damaged by Defendants' sale of counterfeit and infringing products bearing Plaintiff's trademarks within the Southern District of Florida during the relevant time period, which is the 12 or 24 hour period, and Defendants' offering to sell counterfeit and infringing products within the Southern District of Florida during the relevant time period. However, the Defendants that have not reported sales in the United States may be concealing their counterfeiting activities and the existence and volume of additional sales of counterfeit and infringing products within the Southern District of Florida.

4. Plaintiff filed this action against Defendants for using counterfeit and infringing versions of Plaintiff's trademarks in connection with the sale of at least 500 identical counterfeit and infringing products in violation of United States trademark laws. Defendants have registered, established or purchased, and maintained their Internet Stores. Upon information and belief, Defendants regularly create new Internet Stores and aliases on various Internet platforms.

5. To bring this action against Defendants without unduly burdening the Court with an unnecessarily large number of parties, Plaintiff has filed this action against Defendants in a collective manner, alleging that Defendants are jointly and severally liable for the infringing activities described herein, or in the alternative, that Defendants' infringing activities arise out of the same transaction, occurrence, or series of transactions or occurrences.

p□d□□□□ □□thi□□ti□□ th□□□□□□□□, i□ □rd□r t□ r□□□□r th□pr□□□d□□□□□□□□□□ bt i□d thr□□h □t t□□tr□t□□X □ti□iti□, □d □r i□□□□□ti□□r i□□.

II. JURISDICTION AND VENUE

6. Thi□□□rt h□□□ri□di□ti□□ □□r th□□□i□ p□r□□□t t□th□□□rt□□di□r it□ □ri□di□ti□□. 28 □.□.□. □1332□□, □d 28 □.□.□. □1331 b□□□□□□□□□t Thr□□ri□□□□d□r □d□r□□□□.

7. Thi□□□rt □□□h□□□ri□di□ti□□p□r□□□t t□th□□□□□□□□ti□□ □ir□□□□t □2005 □□□□□□□, 28 □.□.□. □1332□d□2□□□□d □□□. □ith r□p□t t□□□□□, i□th□□□□t i□ □□tr□□r□□ x□□d th□□ri□di□ti□□□□□□ t, ii□th□□□□□□□□i t□□h□dr□d, □d p□rh□p□ th□□□□d, □□i□□r□d p□rti□, □d iii□□□□ □□ □□b□r□□th□□□□□□r□iti□□□□□t t□□th□r th□□th□□□□□□□□d t□.

8. □□□□i□thi□□di□i□□i□tri□t i□pr□p□r □d□r 28 □.□.□. □1391 b□1□□d □2□ □b□t□ti□p□rt □th□□□□t□r □□i□i□□□i□□ri□□t th□□□i□□□□rr□d □ithi□thi□□i□tri□t. □□□d□t□r□id□i□□d tr□□□t b□i□□□i□thi□□i□tri□t. □□□d□t□r□iti□□□□th□ □□□□□□□th □M□□□h□tt□□d □r□h□d□□rt□r□d i□thi□□i□tri□t.

III. PARTIES

9. □i□□2001, □d □t □ti□□r□□□t h□r□t, □□□d□t□□d th□ir □b□idi□ri□, h□□□r□d □th□d□□ti□□d i□t□r□ti□□□□t di□b□□□r th□□T□□p□□i□□□d.[1] □i□□t □□t □□□1, 2001, □□□d□t, □□□t di□□□r th□□T□□p□□i□□□d, h□□b□□□ r□p□□ib□□□r x□□ti□□th□p□r h□□, □□□d pri□i□□□X □tr□t□□r th□□□□□t□□ □□T□□.

[1] □t□□tr□t B□□□d Tr□t □□□r□□□th□□□riti□□di□□□t □r th□□d.

10. The Trust is one of the principal products offered by the Company that is the subject of this lawsuit. The Trust is sponsored by the Company and is managed by the Trustee. The Trust's principal business, principal business activities, or other similar information is set forth in the Trust's Prospectus.

11. As of December 30, 2009, the Trust had 343 participations outstanding for the 115,000 number. In 2001, the Trust had total contributions of $2,436,510,000.

12. As of December 30, 2009, the Trust had total assets of $8,802,987,225. During the last year, the Trust's net asset value decreased by 75.7% and, over the last five years, has decreased by 45.4 %.

13. As of December 30, 2009, the Trust's investment in Bear Stearns Asset Management's subprime fund was 30% of the Trust's assets. During the year, the Trust's investment in Bear Stearns Asset Management's subprime fund decreased by 28.9%, resulting in a total loss of $2,542,601,000. The Trust's investment in Bear Stearns Asset Management's subprime fund was the largest investment for the Trust.

14. The Trust paid approximately $851,413 for its investment advisory services in 2009. The investment advisory fee was based on the Trust's assets under management.

15. The Trust's investment advisory agreement was approved by the Trust's Board of Trustees, including a majority of the Trust's Independent Trustees, at an in-person meeting held on November 15, 2009 at the Trust's offices at 200 Clarendon Street, Boston, MA 02111. The Trust's Trustees reviewed the proposed investment advisory fee before the meeting through the Trust's Governance Committee, the Trust's Investment Review Committee, and their respective chairpersons. The Trust's investment advisory fee was discussed in Boston, MA at the Trust's Board of Trustees meeting. The Trust's investment advisory fee was

it [illegible] it [illegible] b idi ri [illegible] th [illegible]. 1 [illegible] r i r [illegible]. [illegible] p [illegible] i [illegible] p [illegible], [illegible] d [illegible] M r h 31, 2010, h d 4.4 tri i [illegible] i p [illegible] i [illegible] [illegible] t [illegible] d r [illegible] t d [illegible] b [illegible].

16. [illegible] d t t t tr t B [illegible] i h d [illegible] rt r d i B t [illegible], M [illegible] h [illegible] tt [illegible] d h [illegible] i [illegible] i [illegible] ri [illegible] th r t t t. t t tr t B [illegible] r t [illegible] pr id [illegible] r h pr id d [illegible] t di b [illegible] i [illegible] r i [illegible] d X r i [illegible] t [illegible] T [illegible] d th pr p [illegible] d [illegible]. t t tr t B [illegible] i h [illegible] d b idi r [illegible] t t tr t rp r ti .

17. [illegible] d t t t tr t [illegible] b M r t, r r [illegible] t t tr t pit M r t, i h d [illegible] rt r d i B t [illegible], M [illegible] h [illegible] tt [illegible] d h [illegible] i [illegible] i [illegible] ri [illegible] th r t t t. t t tr t [illegible] b M r t [illegible] r t pr id [illegible] r h pr id d [illegible] t di b [illegible] i [illegible] r i [illegible] d X r i [illegible] t [illegible] T [illegible] d th pr p [illegible] d [illegible]. I p rti [illegible] r, t t tr t [illegible] b M r t pr id p i i d i [illegible] t t r [illegible] r h d tr di i [illegible] r i [illegible] x h [illegible], [illegible] iti , ix d i [illegible] d ri ti [illegible] r t t tr t [illegible] t di [illegible] t r. t t tr t [illegible] b M r t i [illegible] h [illegible] d b idi r [illegible] t t tr t rp r ti .

18. t [illegible] r [illegible] t ti , h th [illegible] d t [illegible] d i th [illegible] t, p [illegible], p [illegible] r, i t t r r, r pr [illegible] t ti , t r [illegible], b idi r d r p rt r [illegible] r r th th r [illegible] d t, d , i p r r i th t [illegible] p i d h r i, ti i ithi th [illegible] p [illegible] h [illegible], p [illegible] t, i t t r, r p rt r hip th rit, d r i i [illegible] th r r p [illegible] ib [illegible] r th t [illegible] r r th th r [illegible] d t.

IV. CLASS ACTION ALLEGATIONS

19. Thi ti i br ht d pr p r b i t i d [illegible] ti p r t t [illegible] 23 [illegible] 1 [illegible] 4, d 23 b 2 d 3 th d r [illegible] i r d r d M . . 93 , 11. Thi ti ti i th pr d r r ir t t rth b 23 d . 93 , 11.

20. This Court is vested with exclusive jurisdiction over all controversies involving disputed questions pertaining to the operation of any Qualified Settlement Fund established by, or in connection with, any Settlement Agreement approved by any court of competent jurisdiction in the United States. Section 1.468B-1(c)(1) of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a Qualified Settlement Fund must be established pursuant to an order of, or be administered subject to the continuing jurisdiction of, a governmental authority. It is brought pursuant to Section 1.468B-1(c)(1) of the Treasury Regulations and Section 7476(b)(3) of the Code.

21. Defendant is the Settlement Trustee of the Settlement Trust, and is citizen of the State of Florida. The Settlement Trustee, or her predecessor, is responsible, in her capacity as Settlement Trustee, for preparing and filing the Settlement Trust's tax returns.

22. The amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

23. This Court has personal jurisdiction over Defendant because Defendant:

(a) did conduct business in this District by soliciting and advising Plaintiffs regarding the Settlement Trust with Dow Corning and by directing communications to the Plaintiffs in this District with the expectation that they would be received and acted upon by the Plaintiffs in this District;

(b) did conduct business with the Plaintiffs through their Settlement Trust Counsel in connection with Dow Corning Bankruptcy, and purposefully availed herself of the benefits and protections of the laws of this District in connection with the Settlement Trust; and

(c) did provide advice to the Plaintiffs in this District regarding the Dow Corning Bankruptcy and the Settlement Trust;

[illegible] id th[illegible] d t[illegible] ti[illegible] ith r[illegible] p[illegible] t th[illegible] i[illegible] t th[illegible] M[illegible] h[illegible] tt[illegible] r r t[illegible] ti[illegible] t, M[illegible]. [illegible]. 93[illegible], [illegible] M[illegible] h[illegible] tt[illegible] [illegible]

[illegible] id [illegible] i ti[illegible] d [illegible] b r[illegible] r [illegible] t r d[illegible] r[illegible] t [illegible] th[illegible] d t[illegible] ti[illegible] d i[illegible], h t i th pr p r [illegible] r[illegible] th[illegible] d[illegible]

[illegible] I th[illegible] tit d t i[illegible] ti r i[illegible]

24. [illegible] i ti[illegible] i r t pi[illegible] th[illegible] i[illegible] th[illegible] b r[illegible] th[illegible] d th[illegible] d[illegible] i ti[illegible] i[illegible] b r [illegible] th[illegible] d[illegible] rib d h r i.

25. Th[illegible] d [illegible] i ti[illegible] i i[illegible] d pr p r d t[illegible] r[illegible] th[illegible] rt [illegible] d th pr p[illegible] d [illegible] i r pr[illegible] t ti[illegible] p it[illegible] ith [illegible] th[illegible] b i ti[illegible] d d ti[illegible] t ri[illegible] th r t. [illegible] i ti[illegible] i[illegible] ir[illegible] d d[illegible] t[illegible] pr t[illegible] t th i t r t[illegible] th[illegible] d h[illegible] i t r t[illegible] d r[illegible] t[illegible] r hi h dir t[illegible] d irr[illegible] b[illegible] i t ith th i t r t[illegible] th r [illegible] b r[illegible] th[illegible].

26. Th i t r t[illegible] th[illegible] d [illegible] i ti[illegible] r[illegible] xt[illegible] i[illegible] ith, [illegible] d [illegible] t [illegible] t[illegible] i ti t, th[illegible] th[illegible] b[illegible] t [illegible] b r. Th[illegible] d [illegible] i ti[illegible] i[illegible] d rt[illegible] t r pr[illegible] t [illegible] d pr t t th i t r t[illegible] b[illegible] t [illegible] b r.

27. Th[illegible] d [illegible] i ti[illegible] h[illegible] d th[illegible] r i[illegible] th[illegible] d r i[illegible] d [illegible]. Th[illegible] [illegible] r[illegible] xp ri[illegible] d i[illegible] p x [illegible] ti[illegible] iti ti[illegible], i[illegible] d[illegible] t[illegible] pr[illegible] t thi[illegible] ti[illegible], [illegible] d i[illegible] rt [illegible] d pr t t th ri ht[illegible], [illegible] d th r i[illegible] r pr[illegible] t, th[illegible] d [illegible] i ti[illegible] d b[illegible] t [illegible] b r.

28. Th[illegible] ti[illegible] [illegible] d [illegible] t [illegible] t th[illegible], [illegible] ri d i[illegible] 23 b[illegible], pr d[illegible] i t[illegible] r [illegible] ti[illegible] [illegible] ti[illegible] i di id[illegible] b r, i[illegible] ti[illegible] ti[illegible] [illegible] 23 b 3, [illegible] d [illegible] h [illegible] h [illegible] [illegible] ti[illegible] r t[illegible] [illegible] rti i ti[illegible] d r [illegible] 23[illegible] 4.

Case 1:11-cv-10230-MLW Document 401-23 Filed 07/23/18 Page 8 of 19

29. □ □□□□□□ti□□i□□□p□ri□r t□ □th□r □□□i□□b□□ □ □th□d□ □□r th□ □d□di□□ti□□ □□thi□ □□□tr□□□r□□. I□di□id□□i□□d □iti□□ti□□ i□ □r□□□□□th□d□□□□ □□d □xp□□□□t□ □□ p□rti□□ □□d th□ □□□rt □□□t□□ □i□□□th□ □□□p□x□□□□□□□d □□□t□□□i□□□□□th□ □□□□, □□d □di□i□□d t□r□i□□ti□□ □□th□ □□□ □ □□ □□□□□□□d □□□t□□□i□□□□□ □□□□□ti□□t□thi□□□□□□ □□□d b□□□r □ □r□□ir, □□□i□i□t □□d □□□□□□i□□□□□ □□□□□□□ti□□ □ □i□□t□i□□d i□thi□□□r□□ th□□i□□pi□□□□ □□□i□di□id□□□ d□t□r□i□□ti□□□.

30. □□i□ti□□□□□□ □□□□□di□i□□□t□th□t □i□b□ □□□□□□t□r□d i□th□ □ □□□□□□□ □□t □□thi□ □iti□□ti□□th□t □□□□d pr□□□□d□it□□ □i□t□□□□□□ □□□□ □□□□□□ti□□. □□□p□r□d t□i□di□id□□i□□d □□ti□□, th□ □□□□□□ti□□d□i□□pr□□□□t□□r □□□□r □ □□□□□□□ □□t di□□i□□ti□□, □□d pr□□id□□th□ b□□□□it□□□□i□□□□d□di□□ti□□, □□□□□□ □ □□□□□□□, □□d □□□pr□h□□□i□□ □p□r□i□i□□b□ □ □i□□□□ □□□rt.

31. □ □□□d□□t□h□□□ □□t□d □r r□□□□d t□ □t □□ □r□□□d □□□□□r□□□ □□pi□□b□□t□th□ □□□□, th□r□b□ □ □□i□□□ □ppr□pri□t□ i□□□□□d i□□□□□ti□□r□i□□□ith r□□p□□t t□th□ □□□□.

32. I□th□ □□t□r□□ti□□, th□ b□□□□r□□r□□□□d □ □□□□□ □□b□□rti□i□d □□d□r □ □□□23□b□1□ b□□□□□□□

□□□ Th□pr□□□□□ti□□ □□□□p□r□t□ □□ti□□□b□th□i□di□id□□□ □□b□r□ □□th□ □□□□□ □□□d □r□t□□ri□□ □□i□□□□□i□t□□t □r □□r□i□□ □d□di□□ti□□ □ith r□□p□□t t□i□di□id□□□ □□□□□ □□□b□r□□ □□i□ □□hi□h □ □□□d □□t□b□i□h i□□□□ □p□tib□□ □t□d□rd□ □□□□□□d□□t □□r □ □□□□d□□t□□□□d

□b□ Th□pr□□□□□ti□□ □□□□p□r□t□ □□ti□□□b□i□di□id□□□ □□b□r□ □□th□ □□□□□ □□□d □r□t□□ri□□ □□□d□di□□ti□□□ □hi□h □ □□□d □□□pr□□ti□□□□ □tt□r, b□di□p□iti□□ □□th□ i□t□r□□t□ □□ th□r □ □□b□r□ □□th□ □□□□□ □h□ □r□ □□t p□rti□□t□th□ □d□di□□ti□□□, □r □hi□h □ □□□d □b□t□□ti□□□□i□p□ir □r i□p□d□th□ □bi□it□ □□□th□r □ □□□□□ □□b□r□t□pr□t□□t th□ir i□t□r□□t□.

Case 1:11-cv-11020 Document 1 Filed 07/23/11 Page 9 of 19

V. DEFENDANTS’ FX PRICING PRACTICES

A. Background On Defendants’ Relationship With Custodial Customers

33. □t□t□ □tr□□t h□d □it□□□□□t □□it□□□b□it□□□th□□□□. 1 □□r□i□□r □□□.□. p□□□i□□ p□□□□□□d th□ □□□di□□ □□□t□di□□ □□r□d□id□. I□ it□ □□□□□□ □p□rt □□□□r□ 10□□ □□r □i□□□□ □□□r □□d □□□□□b□r 31, 2007, □t□t□ □tr□□t r□p□rt□d th□t it h□d □15.3 tri□i□□i□ □□□□t□□□d□r □□□t□d□ □□d □1.98 tri□i□□i□ □□□□t□ □□d□r □□□□□□□ □□t □□□□□□□□b□r 31, 2007. □□□□t□□□d□r □□□t□d□ □r□□ □t □□□□p□□□d □□□□□□r□t□□□13□ b□t□□□□2004 □□d 2007, □□□□rdi□□t□th□2007 10□□. I□th□2007 □□□□□□□p□rt t□ □h□r□h□d□r□, □□□□□d □□□□□, □t□t□ □tr□□t□□□hi□□Ex□□□ti□□ □□i□□r, □t□t□d th□t □t□t□ □tr□□t h□d □hi□□□d 30 □□□□□□ti□□ □□□□r□□□□r□□th i□ □p□r□ti□□ □□r□i□□□p□r □h□r□.

34. □□r 2008, □□t□ith□t□□di□□th□tr□□b□d □□□□□□i□ □i□ □t□, □t□t□ □tr□□t □□□□ti□□□d t□r□p□rt p□□iti□□ □r□□th i□ □p□r□ti□□ □□r□i□□□p□r □h□r□.

35. □□□□rdi□□t□ □t□t□ □tr□□t□□2007 □□r□ 10□□, □□□□r□□□□□□r□□ □tr□di□□ □□r□i□□□, □□hi□h i□□□□d□□□X r□□□□□□, □r□□ □r□□ □862 □i□i□□i□2006 t□ □1.152 bi□i□□i□2007, □□i□r□□□□□34□. □t□t□ □tr□□t □□rth□r r□p□rt□d i□it□□□□□□□□p□rt□□i□□d □ith th□□.E.□., □□r□i□□ □x□h□□□□tr□di□□r□□□□□□i□r□□□□d □r□□ □468 □i□i□□i□2005 t□ □611 □i□i□□i□2006, t□ □802 □i□i□□t□2007, □□d t□ □1.08 bi□i□□i□2008, □r □□ □□□□□□i□r□□□□ □31□ i□2006 □□d 2007 □□d 35□ i□2007 □□d 2008. □□□r th□p□□t t□□ □□□r□ □t□t□ □tr□□t h□□ r□p□rt□d □□r□i□□ □x□h□□□□tr□di□□r□□□□□□□□□□ □r□th□□ □4 bi□i□□. □ppr□xi□ □t□□ □□□□h□□□□th□□□r□□□□□□ □□r□d□ri□□d □r□□ th□□X pri□i□□pr□□ti□□□□□□□d h□r□i□.

36. □t□t□ □tr□□t r□p□rt□d □□it□□□b□it□□□□□□□□r□31, 2008 th□t it □□□rr□□t□□ □□r□i□□□ □□r□th□□40 p□r□□□t □□th□p□bi□ □□□d b□i□□□□i□th□□□it□d □t□t□□thr□□□h it□□d□di□□t□d p□b□i□ □□□d t□□□, □ith □□□t□□ □r□i□33 □t□t□□□□d th□□i□tri□t □□□□□□□bi□, □□□rt□ □i□□□□d th□□.□. □ir□i□I□□□□d.□□

37. Either Party for the limited purpose of enforcing the Final Judgment as to the other Party hereto may apply to the Court for a writ of execution or similar process and may move the Court for contempt sanctions against the other Party hereto in the event that such Party violates the provisions of the Final Judgment. Prior to the filing of, or contemporaneously with, making any such application, the Party intending to file such application shall provide written notice to the Party against whom such application is intended to be made, unless prior notice is not feasible under the circumstances. In the event that such application is made orally without notice to the Party against whom it is made, the Party making such application shall provide written notice of the application and of any order entered thereon promptly after the entry thereof. The Parties may also agree in writing to other means of providing notice of any such application.

38. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of the Final Judgment shall not be deemed a waiver of any of the provisions of the Final Judgment.

39. Upon application as provided by this Stipulation, the Court may enforce the Final Judgment and this Stipulation. For the purpose of any application to the Court for enforcement of the Final Judgment, a proposed Amended Final Judgment reflecting any such requested change to the Final Judgment shall be attached to the moving papers. Any proposed Amended Final Judgment must clearly disclose the requested changes, and must be dated and signed by the Party making the request.

40. Nothing contained in this Stipulation shall be construed as a waiver by any Party hereto of any right that may be available to such Party under the Final Judgment or this Stipulation, including without limitation, the right to seek from the Court any modification of the Final Judgment or this Stipulation.

41. Nothing contained in the Final Judgment or this Stipulation, nor any modification thereof, shall be deemed to constitute a waiver by any Party hereto of any right such Party may have under the Securities Act, the Exchange Act, or the rules and regulations promulgated thereunder by the Commission, or any other provision of law.

42. Because title to the disputed XRP and the proceeds from the sale thereof is in dispute, Bittrex has deposited the proceeds from the sale of the disputed XRP into an interest bearing account pending resolution of the dispute between the parties.

43. Because Bittrex is in privity with the defendants and is holding the disputed XRP proceeds for the benefit of the defendants, and not for its own benefit, Bittrex is not a necessary party to this action.

44. Bittrex has reported that the disputed XRP proceeds have been held in an interest bearing account since the date of the sale of the disputed XRP. Bittrex has indicated that it will continue to hold the disputed XRP proceeds in this account pending resolution of the dispute between the parties.

45. Bittrex has agreed to hold the disputed XRP proceeds in an interest bearing account, to be distributed by Bittrex pursuant to the Court's order, and to pay the interest earned on the disputed XRP proceeds to the prevailing party. The prevailing party will be the party to whom the Court orders the disputed XRP proceeds be distributed. The Magistrate Judge's Report and Recommendations will not be binding on the Court.

46. Upon the transfer of the disputed XRP proceeds, Bittrex will have no further interest in the disputed XRP proceeds, except for its fees, and the XRP will be the property of the prevailing party. The transfer will be effected by Bittrex sending the disputed XRP proceeds to the wallet address designated by the prevailing party. If the prevailing party did not have a wallet address, Bittrex will assist the prevailing party in establishing a wallet address, and the wallet address will be provided to the Court.

47. [illegible] to the [illegible] through [illegible] or [illegible], [illegible] a [illegible][2], which [illegible] it. At that point, the [illegible] to [illegible] or [illegible], and [illegible] to the [illegible]. That is, [illegible] the [illegible] would [illegible] the [illegible] to [illegible] or [illegible] [illegible] to [illegible] the [illegible] to [illegible].

48. The [illegible] paid by the [illegible] to [illegible] by the [illegible] is [illegible] through [illegible] or [illegible], [illegible] to [illegible] the [illegible] [illegible] through the [illegible].

49. By [illegible] the [illegible] to [illegible] in the [illegible], the [illegible] obtained the [illegible] to [illegible] the [illegible]. This [illegible] the [illegible] to [illegible] [illegible], [illegible] [illegible] to [illegible] the [illegible].

51. The [illegible] to [illegible] to [illegible] the [illegible] to [illegible] or [illegible]. For [illegible], if [illegible] to [illegible] 10 [illegible] Euros and the [illegible] is 1.5355 at 10:00 [illegible]., but the [illegible] at 1.5475 at 3:30 p.m., [illegible] of .0120, the [illegible] would [illegible] $120,000 (.0120 x 10,000,000 = $120,000).

52. [illegible] trading [illegible], it [illegible] did not [illegible] to [illegible] or [illegible]. Through the [illegible] to [illegible], [illegible] [illegible] to [illegible] their [illegible].

[2] [illegible] trading [illegible], [illegible] to [illegible] the [illegible] [illegible] [illegible]. That [illegible] [illegible] IBI [illegible] IB.

53. □□□□□□t□th□□□i□ti□□□d th□pr□p□□d □□□□, h□□□□r, □□□d b□□□□□r□t□r th□□th□□□□□t □dd□d t□□r □btr□□t□d □r□□ th□i□t□rb□□□tr□d□, b□□□□□b□p□i□□th□hi□h□r r□t□, pr□p□□d □□□□□□□b□r□□□□d h□□□□□t th□□pp□rt□□it□□□r th□□□□□i□□t□□ppr□i□t□. □□r □t□□□r □□□□□□□□r p□ri□d, d□□t□□□□p□□□di□□□□d □□t i□□□t□□□t □pp□rt□□iti□□, □ □h□r□□□1□ □□th□□□□t□□□th□□□i□ti□□□d pr□p□□d □□□□□□□□d □r□□ t□d□□□□□□□ □ppr□xi□□t□□3□. I□□th□r □□rd□, □h□t□□r th□□i□□□th□□□r□h□r□□□r □□d□r□h□r□□□r □ p□rti□□□r b□□□r □□□tr□□□□ti□□, th□□i□□□th□d□□□□□□□□d i□□r□□□□b□thr□□□□d □□□r 10 t□ 11 □□□r□.

B. All Trades Executed by the Defendants Are Equally Affected

54. Th□□□□d□□t d□□rib□d h□r□i□□□□□t□th□□□i□ti□□□d pr□p□□d □□□□□□□h ti□□ □□□□d□□t□□x□□□t□d □□X tr□d□□□r th□□□i□ti□□□r pr□p□□d □□□□. □□th□□□h □□□□d□□t□□□□ □□t □x□□□t□□□□□th□□□i□ti□□□□d th□pr□p□□d □□□□□□X tr□d□□, th□□□□th□□d□□x□□□t□, □t□□□□□□□□□i□dir□t, □□□□t□d□, □□□□□□□□□ti□t□d□□r □t□di□□i□tr□ti□□□tr□d□□, □□□□□ □□□□r th□□□□□d□□t□pri□i□□pr□□ti□□□, □□d□□rib□d h□r□i□.

55. □□□□d□□t□, □□th□□□□t□di□□b□□□□r th□□□i□ti□□□d pr□p□□d □□□□, tr□□□□t□d th□□□□□i□□□X tr□d□□□r th□□□i□ti□□□d pr□p□□d □□□□□i□□□□□r□p□tri□ti□□tr□d□□di□id□d p□□□□□t □□d r□p□tri□ti□□tr□d□□□□□r□i□□□□r□□t tr□d□□p□rt□□i□□□□d □□r□i□□□□□t□b□□d □X tr□d□□□□□th□r □□□□□□□□ti□t□d □□d□r □t□di□□i□tr□ti□□tr□d□□, i□□□di□□□p□t, □□r□□rd, □□d □□□p tr□d□□.

56. □ h□□th□□□□□d□□t□□x□□□t□d th□□□X tr□d□□□r □□□i□ti□□□d th□pr□p□□d □□□□, th□□□□□ir□□□□d d□□□pti□□□pri□□d th□□tr□d□□t□th□ir b□□□□it □□d t□th□d□tri□□□t □□ th□□□i□ti□□□d th□pr□p□□d □□□□. Thi□□□□d□□t □□□p□□ib□□b□□□□□□□□i□ti□□□d pr□p□□d □□□□b□i□□□d th□t th□□□□□d□□t□□□i□t□i□□d □d□t□□ith r□□p□□t t□th□□ □□d b□□□□□th□

□□□□d□□t□□□□r i□□r□□d th□□□i□ti□□□d pr□p□□d □□□□□th□ir pr□□ti□□□□□h□r□i□□hi□h□r □r □□□□r □X r□t□□□□ □X tr□d□□□x□□□t□d b□th□□□□□d□□t□.

58. □□□□d□□t□□□□ir pr□□ti□□□□□t□d □□□t□t□□tr□t □□□t□di□□□i□t□□h□□□X tr□d□□□r□□x□□□t□d b□□t□t□□tr□t. □t□t□□tr□t tr□□t□d □□□□□t□di□□□X □i□t□□□□□□h□□ □□□r□pri□i□□□r □□d□r□pri□i□th□□X □□□th□□p□id. □ith□□t □□□r□□rd t□th□ir r□p□□ti□□ □□□t□di□□□□tr□□t□, □t□t□□tr□t tr□□t□d □□□□□t□di□□□i□□t □X tr□d□□□x□□t□□th□□□□□, □□r □□□h □□rr□□□□, □□r □□□h tr□d□.

C. **<u>The California Attorney General Action</u>**

67. □□i□ti□i□□□r□□□t □□□t □□□□□□i□□□□□r□□□t□□□□ti□□□□i□□t □□□□d□□t□ □ri□i□□□□t □□□i□i□r □□□d□□t □□□□□d i□thi□□□□p□i□t. Th□□□i□r□i□□□tt□r□□□□□□□r□□, □□ b□h□□□□th□p□□p□□□th□□t□t□□□□□i□r□i□, i□□d □□□□p□i□t i□I□t□r□□□ti□□□□r □i□□ti□□□□ th□□□i□r□i□□□□□□□□i□□□□t, □□. □□□. □□d□, □12651, □□□i□□t □t□t□□tr□t □□d □t□t□□tr□t □□i□r□i□, I□□. □h□r□i□□th□d□□□d□□t□□ith □i□ppr□pri□ti□□□□□r □56 □i□i□□□r□□ th□ □□□□□t□□□□□i□r□i□□t□□□r□□t p□□i□□p□□□□th□□□i□r□i□□□b□i□E□p□□□□□ □tir□□□□t □□□t□□ □□□□E□□□, □□d th□□□i□r□i□□t□t□T□□h□r□□□□tir□□□□t □□□t□□ □□□□T□□□□□□□□r □□□□ti□□□r p□ri□d i□□□□□□ti□□□ith th□□□□□□X pr□□ti□□□p□d i□thi□ □□□p□i□t. □t□t□□tr□t □□t□d □□□□□t□di□□□r □□□E□□□□d □□□T□□d□ri□□th□t ti□□.

68. Th□□□i□r□i□□tt□r□□□□□□r□□□□□□th□t □t□t□□tr□t i□□□t□d □X r□t□□□h□□ b□i□□□r□i□□□□□riti□□□r □□□E□□□□d □□□T□□, d□□□t□d □X r□t□□□h□□□□□i□□□r□i□□ □□□riti□□, □□d p□□□□t□d th□di□□r□□□. Th□□tt□r□□□□□□r□□□rth□r □□□□□□th□t □t□t□□tr□t hid it□□r□□□□□□□d□□t b□□t□ri□□i□□rr□□t □X □x□h□□□□r□t□i□t□□t□t□□tr□t□□□X tr□di□□ □□□p□t□r pr□□r□□□, □□d pr□□idi□□ □□□□r□□rd□t□□□□E□□□□d □□□T□□.

69. The Director's attempts to collect the Debt from Plaintiff are false, misleading, and deceptive.

FIRST CLAIM FOR RELIEF

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

70. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

71. At all relevant times, the Director has been engaged in trade or commerce.

72. The Director's attempts to collect the Debt, as described in this Complaint, constitute unfair and deceptive acts or practices in violation of the Massachusetts Consumer Protection Act, M.G.L. ch. 93A, §§ 2, 11, including, without limitation:

(a) The Director's attempts to collect the Debt from Plaintiff are unfair because they are prohibited by the Fair Debt Collection Practices Act;

(b) The Director's attempts to collect the Debt from Plaintiff are unfair because they are false, misleading, and deceptive;

(c) The Director's attempts to collect the Debt provide Plaintiff with the false impression that the Debt is owed to the Director rather than the true creditor;

(d) The Director's attempts to collect the Debt are unfair because the Director knows that the Debt is not owed to the Director, but rather to the Trust, as described in the Declaration of Trust;

(e) The Director's actions violate 940 CMR 3.16(1)(2).

73. The Director's practices and conduct violate sections 2 and 11 of the Massachusetts Consumer Protection Act, M.G.L. ch. 93A.

74. As a result of the Director's attempts to collect the Debt, Plaintiff has suffered damages, including but not limited to loss of time, aggravation, and emotional distress caused by the Director's

SECOND CLAIM FOR RELIEF

<u>Breach of Agent's Duty of Loyalty</u>

76. □□i□ti□□r□p□□t□□□d r□□□□□□, □□i□□□□□ □t □rth h□r□i□ □t □□□□th, □□□h □□d □□□r□ □□□□□□ti□□ □□□t□i□□d i□th□ □b□□□p□r□□r□ph□.

77. □□i□ti□□□□d th□ □□□□r□□□□□t□d □□□□d□□t□t□ □□t □□th□ir b□h□□t□ □x□□□t□th□ □X tr□□□□ti□□□□□□□□r□t□ □□i□it□t□th□ir p□r□h□□□□□d □□□□□□□□r□i□□ □□□□riti□□.

78. □□□□d□□t□ □□t□r□d i□t□ □□ □□□□□□ r□□ti□□hip □ith □□i□ti□□ □□d □□□h □□th□ □□□□□ □□b□r□.

79. □□□□d□□t□, b□ □irt□□ □□th□ir □□p□□it□ □□□□□□t□ □□r □□i□ti□□ □□d th□ □□□□, □□d □□□□d□□t□□ □□p□ri□r □□□□ □d□□ □□d p□□iti□□ □□ □□□tr□□ □□ □□□□ □□th□ □□□□id□□□□ □□d tr□□t p□□□□d i□th□□ b□ □□i□ti□□□□d th□ □□□□, □□□d th□d□t□ □□ □□□□□t□ t□ □□i□ti□□ □hi□□ □x□□□ti□□ □X tr□□□□ti□□□.

80. □□□□d□□t□ br□□□h□d th□ir d□t□ □□ □□□□□t□ t□ □□i□ti□□ □□d □□□h □□th□ □□□□□ □□b□r□b□□□□□□□□r □r □□d□r □t□ti□□ □X r□t□□ □□ □□t□ □xi□i□□pr□□it□t□ □□□□d□□t□ □t th□ □xp□□□□ □□th□ir □□□t□di□□□□□t□□ □r□□b□□h□r□i□□th□ir □□□t□di□□□□□t□□ □r□i□□□rr□□t □X r□t□□, □□d p□□□□ti□□ th□ di□□r□□□□ b□t□□□□ th□ □□t□□□ □□d i□□□rr□□t r□t□□□ □□□pr□□id□d □□□□□□t □t□t□□ □□□t□ t□ th□ir □□□t□di□□ □□□□t□□ □r□ th□t r□p□rt□d i□□□rr□□t □X r□t□□□ □□d □d□ □□i□□□ t□ □□□□□r□ th□ir □X □□r□i□□□t□ □□□□d□□t□□r□pr□□□□□t□ti□□□□□d□r d□□□ripti□□□□□th□ir □□r□i□□□.

81. □□ □r□□□□t □□ □□□□d□□t□□br□□□h, □□i□ti□□ □□d th□ □□□□□ □□□t□i□□d d□□□□□□, i□□□□di□□, b□t □□t □i□it□d t□, th□d□□ □□□□d□t□i□□d □b□□□. □□□□rdi□□□, □□i□ti□□□□d th□ □□□□□ □r□ □□tit□d t□ □□ □□ □rd □□□ □□□t□r□d□□ □□□□i□ □□ □□ □□□t t□b□d□t□r□i□□d □t tri□□.

THIRD CLAIM FOR RELIEF

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

82. □□i□ti□□r□p□□t□□□d r□□□□□□, □□i□□□□□ □t □rth h□r□i□ □t □□□th, □□□h □□d □□□r□ □□□□□ti□□ □□□□t□i□□d i□th□ □b□□□p□r□r□ph□.

83. □□□t □rth □b□□□, □□i□ti□□□□t□d□th□t □□□□d□□t□□□□□□□d i□ □□□ir □□d d□□□pti□□ □X tr□di□□ □□ti□iti□□, □h□r□□□□□□□□d□□t□□ □i□t□i□th□ir □□□d□□t i□ □□□□□□ti□□ □ith □X tr□di□□i□□□d h□□b□□□pr□p□r.

84. □□□□h, □□ □□t□□□□□□tr□□□r□□ □xi□t□b□t□□□□ □□i□ti□□□d th□□□□□□□□d □□□□d□□t□□□□□□□r□i□□th□p□rti□□□ri□ht□□□d d□ti□□□ith r□□p□□t t□ □□□□d□□t□□□X tr□di□□ □□ti□iti□□.

85. Th□p□rti□□r□□□ir□thi□□□□rt□□d□□□r□ti□□ □□t□th□ir r□□p□□ti□□ri□ht□, d□ti□□□□d □□□ □th□r r□□□□□t □□□□r□□□ti□□□, □h□th□r □r □□t th□p□rti□□□□□d □□□□ □r □r□□th□r□i□□ □tit□d t□ □□rth□r r□i□□.

PRAYER FOR RELIEF

□HE□E□□ □E □□i□ti□□d□□ □□d□□d□□ □□t □□r it□□□□□d □th□r □ □□b□r□□□th□pr□p□□□d □□□□□ □□□□□□□ □□

1□ □ith r□□□rd t□th□□ir□t □□i□ □r □□i□, th□t th□ □□□rt □□rti□□ thi□ □□ti□□ □□□ □□□□□□ti□□ □□d □□t□r □d□□ □□t □□□i□t □□□□d□□t□i□ □□ □□ □□□t □□□□□t□thr□□ti□ □□th□ □□ □□□t □□d□□ □□□□th□t □□i□ti□□□d th□ □□□□h□□□ □□□t□i□□d □□□r□□□t □□□ □□□□d□□t□□□□ti□□□

2□ □ith r□□□rd t□th□ □□□□□d □□i□ □r □□i□, th□t th□ □□□rt □□rti□□ thi□□□ti□□ □□□ □□□□□□ti□□ □□d □i□d th□ □□□□d□□t□br□□□h□d th□ir d□ti□□□□□□□□t□t□ □□i□ti□□□□d th□ □□□□, □□d □□□rd d□□ □□□□□□ppr□pri□t□t□ □□□p□□□□t□ □□i□ti□□□□d th□ □□□□□

3. Pursuant to the Third Amendment, the Court retains jurisdiction over this action for the purpose of implementing and enforcing the Settlement and all orders and judgments entered in connection therewith, including jurisdiction to administer the distribution of the Settlement Fund to Authorized Claimants and other persons entitled to receive the proceeds of the Settlement Fund.

4. The Settlement and the fact of the Stipulation and the Settlement contained therein, except for those papers or proceedings necessary to carry out or enforce the terms of this Stipulation, shall not be offered or received in evidence in any action or proceeding in any court, administrative agency or other tribunal for any purpose whatsoever.

5. The Settlement and the Stipulation and the Settlement contained therein, and any matter arising in connection with the Settlement, shall not be offered or received in evidence as an admission or concession to any person of any fault, wrongdoing or liability whatsoever.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: December 10, 2011

Respectfully submitted,

THORNTON & NAUMES LLP

By: /s/ Garrett J. Bradley

Michael T. Thornton
Garrett J. Bradley
100 Summer Street, 30th Fl.
Boston, MA 02110
Telephone: 617-720-1333
Facsimile: 617-720-2445

LABATON SUCHAROW, LLP
Lawrence H. Brattesani
Eric Belfi
Christopher J. Keller
140 Broadway
New York, NY 10005
Telephone: 212-907-0839
Facsimile: 212-883-7039

.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
□t□□□□E. □i□□□ □□
□□i□□□. □hip□□□□
250 H□d□□□ □tr□□t, 8th □□□r
□□□ □□r□, □□ 10013□1413
T□□ph□□□□ □212□355□9500
□□□i□i□□ □212□355□9592

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
□i□h□rd M. H□i□ □□□
□□xi □. H□□□□
275 B□tt□r□ □tr□□t, 29th □□□r
□□□ □r□□i□□, □□ 94111□3339
T□□. □415□956□1000
□□x. □415□956□1008

Attorneys for Plaintiff

753081 □2
□2□7□2011 18□23□

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[illegible] TES [illegible] HE [illegible] ETI [illegible] EME [illegible] T [illegible] [illegible] TEM, [illegible] b h [illegible] it [illegible] d [illegible] th r [illegible] i i r [illegible] it [illegible] t d, [illegible] i ti [illegible], [illegible] i t [illegible] [illegible] T TE [illegible] T EET [illegible] TI [illegible], [illegible] T TE [illegible] T EET B [illegible] [illegible] T [illegible] T [illegible] M [illegible] [illegible] d [illegible] T TE [illegible] T EET [illegible] B [illegible] M [illegible] ET [illegible], [illegible], [illegible] d t.	[illegible]. 11 [illegible] 10230 M [illegible] **AMENDED CLASS ACTION COMPLAINT** [illegible] r Tri [illegible] [illegible] d

[illegible] i ti [illegible] r [illegible] T [illegible] h r [illegible] tir [illegible] t [illegible] t [illegible] [illegible] T [illegible], i di id [illegible] d [illegible] b h [illegible] th r i i r [illegible] it t d [illegible] titi [illegible], b it [illegible] d r i [illegible] d tt r [illegible], r it [illegible] d [illegible] [illegible] p i t [illegible] i t [illegible] d t [illegible] t t tr t [illegible] rp r ti [illegible], t t [illegible] tr t B [illegible] d Tr t [illegible] t t [illegible] tr t B [illegible], d t t [illegible] tr t [illegible] b M r t, [illegible] [illegible] ti [illegible], t t [illegible] tr t [illegible] r [illegible] d t [illegible], [illegible] th [illegible] i [illegible] p [illegible] p r [illegible] d [illegible] t it [illegible] d it [illegible] t, d p [illegible] i r ti [illegible] d b i t [illegible] th r tt r.

I. INTRODUCTION

1. t t tr t [illegible] th [illegible] t di b [illegible] r T [illegible] d th th r i titi ti [illegible] i t r th t [illegible] titi t th [illegible]. [illegible] t di b [illegible] i i titi ti th t h d [illegible] riti [illegible] b h [illegible] i t r. Th r p [illegible] ibiliti [illegible] tr t d t [illegible] t di i d th [illegible] rdi [illegible] d [illegible] pi [illegible] riti, d i ri r [illegible] pti tr d d [illegible] riti, d [illegible] ti pri ip, i t r t, d di id d p [illegible] t h d [illegible] riti. [illegible] t di [illegible] [illegible] p r r [illegible] i r r th ir i t. [illegible] t di [illegible] r t pi [illegible] d b i titi ti [illegible] t r h d t

□i□h t□ □□□□□□ □□□□riti□□□□ d□p□it □ith th□ir br□□□rd□□□□r□r i□□□t□ □□t □ □□□□□r. B□ □p□r□ti□□ th□□□d□ti□□, th□ □□□ □□□□□t□di□□□□ □t □□□t i□ th□□r□□ r□d□□□□ th□ri□□ □□r□d □r th□r □i□□□d□t. □□i□d□p□d□t □□□t□di□□ □□□□r□□ th□t th□i□□□t□r h□□□□□□□□ b□r□d □□□r□hip □□ th□ □□□□riti□□ th□r □□□□t□r□pr□□□□t t□h□□□p□r□h□□□d □□it□b□h□□.

2. □t t□□ tr□□t B□□□i□ th□□□ti□□□□□□□□d□□r□□□t □□□t□di□□b□□□, □ith □21.5 tri□i□□ i□□□□□t, i□□□di□□ □4.7 tri□i□□ i□p□□i□□ □□□□t, □□d□r □□□t□d□□d □d□i□i□tr□ti□□ □□□□ □□□□b□r 31, 2010. □t t□□ tr□□t h□r□d □□T□□□□d it□th□r □□□t□di□□□i□t□h□□dr□d□□□ □i□i□□□□□d□□□r□□□□r i□□□□□□r □□□t□di□□□r□i□□.

3. □□p□rt □it□□rr□□ □□□□□i□□r□□□t□di□□□r□i□□, t□t□□tr□□t □x□□□t□d □r□i□□ □□rr□□□□ □x□h□□□□□□X□□tr□□□□□ti□□□□□b□h□□□□it□□i□□t□i□□rd□r t□□□i□it□t□□i□t□□ p□r□h□□□□r □□□□□□□□□r□i□□ □□□□riti□□r th□r p□tri□ti□□ □□□□r□i□□ □□rr□□□□i□t□□.□. d□□□r. □□ri□□ th□p□t d□□d, p□□i□□ □□d□□d th□r i□titi□□□□i□□□t□r□h□□□i□r□i□□□□□□d t□□□□r□□□□□□p□i□□□d □□□riti□□□r□t□i□□rd□r t□di□r□i□th□ir h□di□□□□d □xi□i□□ i□□□t□□t r□t□r□□. Th□□□□□□it□□□r p□□i□□□□d, i□p□rti□□r, t□i□□□t i□□r□i□□ □□□riti□□ i□□rd□r t□pr□p□r□di□r□i□□d □□t th□ir □□di□□r□□ir□□t□i□□□□□□□t□d □ppr□i□t□d b□□□t□di□□□□h □□t□t□□tr□t, □p□□i□□□d□i□□t□□t □id□i□□r□ p□b□i□□d r□di□□□i□b□.

4. B□□□□□□□r□i□□i□□□t□□t□r b□□ht □d □d i□th□□r□i□□ □rr□□i□□□th□ □ti□□i□□hi□h th□□r□i□□d, □.□. b□□d i□□□t□r□□□□□□ri□□□t p□r□h□□□d □□□th□□□ □r□i□□ □rr□□i□□i□□rd□r t□□□p□t□th□tr□□□ti□□.

5. □□T□□ □d th□□□b□r□□th□□□□r p□□d □hi□h d□r□□□tr□t i□t□t□ tr□t. □□T□□ □d □□□□□□b□r□□th□ri□d t□t□□tr□t t□x□□t□□X tr□□□□ti□□□□d□r □□diti□□i□□hi□h t□t□□tr□t □□tr□□d □□□p□t□□□X tr□d□, i□□□di□□th□□□t. □□T□□

and conduct by brokers and dealers that control the execution of FX trades on behalf of their customers, but that are not reported to the FX rates that are used to calculate the prices at which their customers' FX trades are executed.

6. The Investment Management Agreement expressly provided that all FX trades would be executed by Citi as principal at prices that Citi determined in its sole discretion. The Investment Management Agreement did not require Citi to disclose additional information about its FX trading practices to the Plans. Indeed, while the Investment Management Agreement required Citi to comply with all applicable laws in connection with its FX trading, it did not require Citi to disclose additional information about its FX practices.

7. In addition, Citi's Investment Management Agreement with the Plans provided that Citi would execute all FX trades for the Plans "as principal," stating that the prices at which Citi executed FX trades would be ***"based on the market rates at the time the trade is executed."*** Thus, the agreement required that Citi execute FX trades at prices, including the spread, that were consistent with the prices charged by Citi to its other customers for comparable FX trades.

8. Despite the express provisions in the Investment Management Agreement that required Citi to execute all FX trades, including additional trades that Citi characterized as agency trades, at prices that were consistent with the prices charged to its other customers for comparable FX trades, Citi systematically executed FX trades for the Plans at prices that were inconsistent with the prices charged to its other customers for comparable FX trades. In fact, Citi systematically charged the Plans prices that were substantially higher than the prices charged to Citi's other customers for comparable FX trades. In short, Citi breached the express terms of the Investment Management Agreement.

initiation of X ray treatment to the correct body part that treatment was supposed to be provided in addition to X ray.

9. The other omissions described herein were material and the Relator believes that the Defendants knowingly concealed the true nature of the services provided to its patients in order to receive payment for unnecessary and improper X ray treatments.

10. The Relator brings this action for injunctive relief, penalties and damages for violations of the False Claims Act, 31 U.S.C. §§ 3729 et seq. (the "FCA"), as amended, and other causes of action. This action is not prohibited by the FCA because the Relator has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided this information to the United States before filing this action.

11. The Relator brings this action on behalf of himself and the United States of America to recover all damages, civil penalties and other monetary relief allowed by law. In addition, the Relator brings this action on behalf of the private plaintiff *qui tam* plaintiffs that have been damaged by the Defendants' fraudulent conduct described herein, including but not limited to the private plaintiffs that have paid for unnecessary and improper X ray treatments.

II. JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to the False Claims Act, 31 U.S.C. § 3732(a), which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. § 3729 et seq., and pursuant to 28 U.S.C. § 1331, a law of the United States. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), because the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs, and is between citizens of different states. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367(a).

13. This is a civil action of which this district court has original jurisdiction pursuant to 28 U.S.C. § 1391(b)(1) and (2). A substantial part of the events or omissions giving rise to the claims occurred within this district. Defendant Putnam Investments has its principal place of business in Massachusetts, and regularly conducts business within this district.

III. PARTIES

A. Plaintiff ARTRS

14. ARTRS, based in Amsterdam, Netherlands, is a pension fund that provides retirement benefits to participants who have worked in the Dutch pharmaceutical industry. ARTRS was established in 1947 as a foundation under the laws of the Netherlands. As of December 30, 2009, ARTRS invested in 343 participations on behalf of approximately 115,000 members, and had assets under management of approximately $8.8 billion.

15. In addition to its investments in securities, ARTRS, through its investment advisors, engages in foreign currency transactions to hedge against fluctuations in foreign currency exchange rates. ARTRS entered into foreign currency transactions with its custodian bank, State Street Bank and Trust Company ("State Street"). During the period from September 30, 2009, through December 30, 2009, ARTRS engaged in approximately 33 foreign currency transactions, totaling approximately $3.2 billion. The transactions were executed through the end of 2010.

16. ARTRS has been a State Street custody client since 1998. During the period from September 30, 2009, through December 30, 2009, ARTRS paid State Street $851,412.83 for custody services and received approximately $1,000,000 in dividends and interest payments from its investments. ARTRS did not instruct State Street to trade in the securities held in its custody account.

B. Defendants

17. □□□□d□□t □t□t□□tr□□t □□rp□r□ti□□i□□M□□□□h□□□tt□□□rp□r□ti□□h□□d□□□rt□r□d □t □t□t□□tr□□t □i□□□i□□□□□t□r, □□□□i□□□□□□tr□□t, B□□t□□, M□□□□h□□□tt□□02111.

18. □□ri□□th□□□□□□□□ri□d, □t□t□□tr□□t □□rp□r□ti□□pr□□id□d □□□t□di□□b□□□i□□□□d □X □□r□i□□□t□□□T□□□□d □th□r □□□b□r□□th□□□□□thr□□□h □t□t□□tr□□t B□□□□□d Tr□□t, □□d it□□□b□idi□ri□□, □□□□t□, □□p□□□□□□d □□□□□□pir□t□r□. □t □□r□□□□□t ti□□□, □t□t□□tr□□t□□□X tr□di□□d□□□□□□□□□□t□d i□B□□t□□.

19. □□□□d□□t □t□t□□tr□□t B□□□i□□□h□□□□□□□d □□b□idi□r□□□□□t□t□□tr□□t □□rp□r□ti□□□□d i□□i□i□i□r□h□□d□□□rt□r□d i□B□□t□□. □□ri□□th□□□□□□□□ri□d, □t□t□□tr□□t B□□□pr□□id□d □□□t□di□□b□□□i□□□□d □X □□r□i□□□t□□□T□□□□d □□□b□r□□□th□□□□□.

20. □□□□d□□t □t□t□□tr□□t □□b□□M□r□□t□, □□r□□r□□□□□□□□□□□t□t□□tr□□t □□pit□□ M□r□□t□, i□□□h□□□□□□□d □□b□idi□r□□□□□t□t□□tr□□t □□rp□r□ti□□□□d i□□i□i□i□r□h□□d□□□rt□r□d i□B□□t□□. □□ri□□th□□□□□□□□ri□d, □t□t□□tr□□t □□b□□M□r□□t□pr□□id□d □□□t□di□□b□□□i□□□□d □X □□r□i□□□t□□□T□□□□d □□□b□r□□□th□□□□□. I□p□rti□□□□r, □t□t□□tr□□t □□b□□M□r□□t□ pr□□id□□□p□i□i□□d i□□□□t□□□t r□□□□□r□h □□d tr□di□□i□□□r□i□□□x□h□□□□, □□□iti□□, □ix□d i□□□□□□, □□d d□ri□□ti□□□□□r □t□t□□tr□□t□□□□□t□di□□□□i□□t□.

IV. CLASS ACTION ALLEGATIONS

21. Thi□□□ti□□i□br□□□ht □□d □□□pr□p□r□□b□□□i□t□i□□d □□□□□□□□□ti□□p□r□□□t t□□□□□□23 □□□1 □□4 □□□d 23 □b□3 □□□th□□□d□r□□□□□□□□□□i□i□□r□□□d□r□□□d M□□□□h□□□tt□ □□□□r□□□□□□h. 93□, □□9 □□d 11. Thi□□□ti□□□□ti□□i□□th□pr□□□d□r□□r□□□ir□□□□t□□□t □rth b□□□□□23 □□d □h. 93□, □□9 □□d 11.

22. Thi□□□it i□□□□□□□□ti□□br□□□ht □□r □□□□□d□□□□□□□□b□h□□□□□□□□□□d□i□□d □□□□i□tit□ti□□□□i□□□□t□r□i□□□r□i□□□□□riti□□, i□□□di□□b□t □□t □i□it□d t□p□b□i□□□d pri□□t□ p□□□i□□□□□d□, □□t□□□□□d□, □□d□□□□□t □□□d□□□d i□□□□t□□□t □□□□□□r □□□d□, □r □hi□h □t□t□

□tr□t □r□d □□th□□□□t di□b□□□ □d □x□□t□d □X tr□d□□□ □□t di□□i□tr□ti□□□r
□□□□□□□□□ti□t□d□b□i□b□t□□□ □□□□r□2, 1998 □d □□□□b□r 31, 2009, i□□□□i□□th□□□□□□
□ri□d□, □d □hi□h □□□□r□d d□ □□□□□□□r□□□t □□th□d□□pti□□□t□□□d pr□ti□□□□d □th□r
□i□□□d□t □□□□□d h□r i□. Ex□□d□d □r□□ th□□□□□□r□□□t di□□i□t□□□t t□□tr□t th□t □r□
□□□r□d b□i□d□p□d□t *qui tam* □ti□□□th□t h□□□b□□ □□□□□□d □r th□t □r□□□□□□d d□ri□□th□
p□d□□□□ □□thi□□ti□□. □□□□ x□□□d□d □r□□ th□□□□□□r□□□t□d□t, □□□ □titi□i□hi□h
□□□□d□t h□□□□□□tr□i□□i t□r□t, □d th□□□i□r, dir□t□r, □ii□t□, □□□□r pr□□□t□ti□□,
h□ir, □□□□□□□r, □b□idi□ri□, □d□r □□i□□□□□□□□ h □titi.

23. Th□□ b□r□□□th□□□□□□r□□□ □□□th□t □i□d□r □□□□□ b□r□
i□di□id□□□□, i□ □□□ti□□ r th□r i□, i□ pr□ti□b□.

24. Th□r□r□□□□ti□□□□□□ □d □□t □□□ □□t th□□□□□, i□□di□□h th□r□

□□ □t□t□tr□t □□□□d i□□□ir □d d□pti□□t□d pr□ti□i□
□□□□ti□□ □ith □X tr□□□ti□□, □□ t□ □xi□it□□ pr□it□t th□xp□□□
□it□□□t di□□i□t□

□b □t□t□tr□t h□r□d □d r□p□rt□d t□it□□□t di□□□t□□ r□X
r□t□th□t did □t r□□□t th□□t□□□□t □th□X tr□□□ti□t□t□tr□t, □d
i□t□d i□□d□d hidd□ □d □□th□ri□d □r□p□r □r□d□□□□
□□ □t□t□tr□t p□□t□d th□di□r□□b□t□□th□□t□, □r□t□
b□d □X r□t□d th□□X r□t□r□p□rt□d □d h□r□d t□it□□t di□□i□t□
d □t□t□tr□t□□t□d □i□i□ith r□p□t t□ T□□d th□
□□□□i□td th□M□□□h□tt□□□□□r □r□t□ti□□t, M□. □. □□□h.
93□□

□ □t□t□□tr□t□□t□□d □□i□i□□□ith r□p□t t□□□T□□ □d th□

□□□□i□□t□d M□□□□h□□tt□□t□t□□d □□□ □ □□ □□□□d

□ □t□t□□tr□t□□t□□d □□i□i□□□□□d □□T□□ □d th□□□□t□

□□□r □ □□□□d□□ □□□□□d, i□□, th□pr□p□r □ □□□□r□□th□□□d□□ □□□.

25. □□i□ti□□□□i□ □□r□t□pi□□□□th□□□i□ □□□th□□ □□b□r□□th□□□□. □□i□ti□ i□□□ □□b□r □□th□□□□□d□□rib□d h□r□i□.

26. □□i□ti□□i□□i□i□□ □d pr□p□r□d t□ □r□□th□□□□rt □d th□pr□p□□d □□□□i□□ r□pr□□□t□ti□□□p□it□ □ith □□□□th□ □b□i□ti□□□□d d□ti□□□ □t□ri□th□r□t□. □□i□ti□□□i□□□ir□ □d □d□□□□t□□pr□t□t th□i□t□r□t□□□th□□□□□□d h□□□□i□t□r□t□□d□r□□t□□r □hi□h dir□□t□ □d irr□□□□□b□□ □□□□□i□t □ith th□i□t□r□t□□□th□r □ □□b□r□□th□□□□□.

27. Th□i□t□r□t□□□th□□□i□ti□□r□□□□xt□□□i□□ □ith, □d □□t □□t□□□□i□ti□t□, th□□□ □□th□□b□□t □□□□□ □□b□r□. □□i□ti□□□i□□□□d□rt□□□t□r□pr□□□t □d pr□t□□t th□i□t□r□t□□□ □b□□t □□□□□ □□b□r□.

28. Th□□d□r□i□□d □□□□□□□r □□i□ti□□□d th□□□□□r□□xp□ri□□□□d i□□□p□x □□□□□ti□□ □iti□ti□□, □i□□□d□□□□t□□pr□□□□□t□thi□□ti□□, □d □i□□□□rt □d pr□t□□t th□ri□ht□ □□□□d □th□r□i□□r□pr□□□t □□i□ti□□□□d □b□□t □□□□□ □□b□r□.

29. Th□□□□ti□□□□□□□ □d □□t □□□ □□□t□th□□□□□pr□d□□i□□t□□□r □□□ □□□ti□□□□□□ti□□ □□□□i□di□id□□□ □□b□r□□th□□□□□.

30. □ □□□□□ti□□i□□p□ri□r t□□th□r □□□i□b□□ □th□d□□r th□□d□di□ti□□□□thi□ □□□tr□□□r□. I□di□id□□□iti□ti□□b□ □□□□□□□ □□b□r□□ □d i□r□□□th□d□□□ □d □xp□□□□t□ th□p□rti□□□d th□□□□rt □i□□□th□□□□p□x □□□□□□d □□t□□□i□□□□□th□□□□, □d □di□i□□ d□t□r□i□□ti□□□□th□□□□ □ □□ □□□□□□d □□t□□□i□□□□□□□□ti□t□thi□□□□□ □□d b□□ □r□□ir,

[illegible]

31. [illegible]

V. SUBSTANTIVE ALLEGATIONS

A. The Nature of FX Trading

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

32. [illegible] 15 [illegible] 2003. [illegible] 2009, [illegible] 33 [illegible].

33. [illegible]

34. [illegible]

r□□i□d □d p□r h□□d□□r. □□□rdi□□, □X tr□□□□ti□□□r th□ □□□□□r □□□□rti□□.□. d□□r i t□ r i□ □rr□□□ d i□□r.

2. How FX Trading Works

35. □X tr□di□t□□□p□□□r□□d th□ r□d □□ □□□r 24 h□r □□□□, i□□□d□□ h□d□□□□□□. Th□□i□□X tr□di□□ □□□b□i□t 7:00 □.□. □□□ □□□□d ti□□□ M□d□, □ith □h □b□□□□t tr□di□d□□ di□□t 5:00 p.□. □□□ □r□it□ti□.

36. □r □h □rr□□□b□□ht □d □d d□ri□ th□□□r□□□th□X tr□di□d□, th□r□ i□□□□□□ri□b□hi□h tr□d□□d □□ tr□d, □ith □□th□r tr□d□□□i□□ □□h□r□i□ b□t□□□. Thi□i□r□ti□i□d□t□r□i□d thr□h tr□d□d□t□□□it□r□d □d tr□□d b□ pr□pri□t□r□□r□i□□□h □, b□t □t i□it□d t□, E□tr□i□Br□r□□□t□ □EB□□□d □□t□r.

37. Th□di□r□□b□t□□th□ tr□d□□d th□hi□h tr□di□□d th□r□□□□th□ d□. M□r□pr□i□, th□p□t r□□□□th□d□r□r□t□X r□t□□□□□p□i□□d pr□pt □tti□□t d□t, □□□□t□□b□i□d□□t□r th□tr□d□d□t. T□□r□□r□t□□□r th□ tr□d□□t □r □X tr□□□ti□th□t □tti□pri□r t□□r □t□r th□th□d□t□□r p□t tr□d, p□rti□ip□t□ i□th□X □r□t □□□□t□th□r□rd□d□t□d r□□□□th□d□. B□□□□□X tr□d□d□t □□□□tti□t□d□□□t□r th□tr□d, th□r□rd□d□t□d r□□□□th□d□i□□□r □□□r□ti□□d □□r t□□□r□□ t h th□t it t□□□i t□□□□t th□i t□r□t r t□ di□r□ti□th□t □xi t□t th□ti□ tr□d b t□□□th□tr□d□d□t□d □tti□t d□t□r th□ □d r□i□ □rr□□i□.

38. B□□□□□x□p□, □□□□100 □X tr□d□i□r□□□rd□□r□E□□□□ d□ri□ th□□□r□□□□tr□di□d□. I th□□□t r t□tr□d□□□rr□d t □1.25 t□b□□1.00, □d th□hi□h□t r t□tr□d□□□rr□d t □1.35 t□b□□1.00, th□r□□□□th□d□□□□d b□□1.25□1.35.

39. □□th□r □□□□□□□ □□□□r□i□th□d□i□□□□id□r□t□,□□hi□h i□□i□p□□th□□□□ □□th□ □r□□rd□d□□□t□d d□i□□hi□h □□d □□r□□rd□d□□□t□d d□i□□□□□, di□id□d b□t□□. Thi□□r□t□r□□□□t□ th□□□□□r□□□□□X r□t□i□□□i□□□□ □rr□□□□□ □□ □□i□□□d□□.

40. Th□d□i□□□id□r□t□i□□i□□i□i□□□t b□□□□□□ □□th□□b□□□□□ □p□b□i□□ □□□□□ib□□ d□t□□h□□i□□th□pr□□i□□ti□□□□□d□□□t □hi□h □X tr□d□□□□□□r □□□□xi□t□□ith □t□□□tr□di□□, □r □x□□p□□□□□d b□□□□□□□t□t□□tr□□t did □□t di□□□□□□□□h i□□□r□□ti□□□t□it□□□i□□t□. B□ □□□□i□□□t th□□□id□r□t□□□□r □□i□□i□i□□□t p□ri□d □□□ti□□, h□□□□□r, □□□□□□r□□□□□b□□ □□ti□□□t□th□□□□r□□□ □X tr□d□□□□t □□□□□□ □i□□□d□□. □□□r th□□□□r□□□□□□ □□th □r □□□r□, it i□r□□□□□□b□□t□□xp□□t □X tr□d□□t□r□□r□□□t□th□□id□r□t□. □□□□□□ □i□□□d□□, □□□□tr□d□□□i□ht □□tt□□□b□□□□r b□□□□ th□d□i□□□id□r□t□, b□t □□□□r i□r□□□i□□□□ □□□□th□p□ri□d□□□ti□□□, □□i□□i□i□□□t □□□□b□r □□□□X tr□d□□□□□b□□xp□□t□d t□□□□□□r □t □r □xtr□□ □□□ □□□□□t□th□□□id□r□t□.

3. Negotiated vs. Non-Negotiated FX Trades

41. □t□t□□tr□□t □□□□□□□T□□ □□d □th□r □□□t□di□□□□i□□t□□□h□i□□□ith r□□p□□t t□th□ □□□□□r i□□hi□h □X tr□d□□□□□□d b□□□□d□□t□d. I□□□□□□□□ti□t□d,□□r □□□ti□□,□□X tr□d□, □ □□□t□di□□□□i□□t □r it□□□t□id□i□□□□t□□□t □□□□□□r □□□□d p□r□□□□□□□□□□□ □□i□□t□th□tr□d□ i□□□r□□ti□□□t□□□t□t□□tr□□t □X tr□d□r. Th□□t□t□□tr□□t □X tr□d□r □□□□d th□□□□□□t□□r□t□, □hi□h □□□□d b□□□□□pt□d □r r□□□□t□d. I□□□□pt□d, □t□t□□tr□□t □□□□d □x□□□t□th□□X tr□d□□t th□ □r□□d□p□□pri□□, □hi□h □□□□d i□□□□d□□□□□d□□t □□r□□p.

42. □ □□□□□□□□□□ti□t□d□□r □□t□di□□i□□tr□□ti□□□□X tr□d□i□□□□□□□ti□□□th□□pp□□it□ □□□□□□□□ti□t□d tr□d□. Th□r□i□□□□r□□□□□□□th □□□□□ti□ti□□□□th□pri□□b□t□□□□th□p□rti□□t□th□ tr□□□□□ti□□. □ith □□□□□□□□□ti□t□d □r □t□□di□□i□□tr□□ti□□tr□d□□, □□□t□di□□□□i□□t□□□d th□ir □□□t□id□i□□□□t□□□t □□□□□□r□d□□□t □□□□□ti□t□r□t□□□ith □t□t□□tr□□t, □□d □t□t□□tr□□t d□□□□□t □□□t□r□t□□. I□□t□□d, □□th□□□□ □□□t□di□□i□□tr□□ti□□□□□□□□□t□, □□□t□di□□□□i□□t□i□p□□r□p□rt th□d□ir□d □□rr□□□□tr□□□□□ti□□□t□□t□t□□tr□□t, □□d tr□□t □□d r□□□□p□□□t□t□□tr□□t, □□i□□□b□□t

□x□□□ti□□□pr□□ti□□□, t□ □x□□□t□th□tr□d□□□th□□i□□t□□b□h□□. □□□□rdi□□t□it□I□□□□t□□□t M□□□□□r □□id□□, □t□t□□tr□□t r□□rr□d t□□t□di□□i□tr□ti□□ □X tr□□□□□ti□□□□□□I□dir□□t □□□□□ b□t□□□□2000 □□d M□□2008, □□d □I□□tit□ti□□□□I□□□□t□r□□X Tr□di□□□□b□t□□□□M□□2008 □□d □□□□□b□r 2009. □i□□□□□□□□b□r 2009, □t□t□□tr□□t h□□r□□rr□d t□□□□h tr□di□□□□□□□t□d□ □X.□

43. □t□t□□tr□□t□□□□t□di□□□i□□t□, i□□□di□□□□T□□□□d th□□□□□, r□□□□□b□□ □xp□□t□d th□t □t□di□□i□tr□ti□□ □X tr□d□□□□□d h□□□□□□ □r□□p□□r □□□. Thi□□□□i□□i□□ □□, □□ □□□ □th□r thi□□□, □□□th□h□t□ □□□□□□□□□□□□□t□di□□□i□□t□p□id □t□t□□tr□□t t□□□r□□□□ □□□t□di□□□□□r th□ir □□□□t□, □b□th□□□□t□di□□□□□tr□□t□□□d □□□□i□t□d □□□□h□d□□□th□t □□□□□□ i□di□□ti□□th□t □t□di□□i□tr□ti□□ □X tr□di□□□□□d i□□□r □xtr□□□□□r □□r□□p□, □□d did □□t □□th□ri□□□□□□□h □□□□□r □□r□□p□, □□d □□□□t□t□□tr□□t□□I□□□□t□□□t M□□□□□r □□id□□th□t □□□r□d □□□t□di□□□i□□t□□□d □□t□id□i□□□□t□□□t □□□□□□r□th□t th□pri□□□□□X tr□d□□□□□*"based on the market rates at the time the trade is executed."*

44. I□□tit□ti□□□□i□□□□t□r□t□pi□□□□r□□□□□t□d th□t □t□t□□tr□□t □□d □th□r □□□t□di□□□ h□□d□th□□□□□□r □X tr□□□□□ti□□□, □□□t□th□r□p□tri□ti□□□□di□id□□d □□d i□t□r□□t p□□□□□t□, thr□□□h □t□di□□i□tr□ti□□□b□□□□□th□□□□□□t □□□□□h tr□d□r□r□□ □□ti□i□d th□ti□□□□d □□□rt r□□□ir□d □□r □□□□□ti□t□d tr□d□.

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

45. □i□□□□t □□□□t □□pt□□b□r 15, 1998, □t□t□□tr□□t, □□□□□T□□□□□□□t□di□□b□□□, □x□□□t□d th□□□□□rit□□□□□□T□□□□□X tr□□□□□ti□□□□□r it□□□□□□□t□, i□□□□di□□p□r□h□□□□□d □□□□□□□□.□. □□d □□r□i□□□□rr□□□□□□□□□□□□r□p□tri□ti□□□□di□id□□d□□□d i□t□r□□t p□□□□□t□ i□t□□.□. d□□□□r□.

46. [illegible], in other words, rapid which does not trust its trust in trust to [illegible] disadvantage in FX transactions. In addition to the transparency, trust provided prior position to [illegible] FX trade, including the timing of the FX trade, and important terms, the price at which the trade was executed.

47. [illegible] did provide trust customers with [illegible] to [illegible] FX trades, but [illegible] were not [illegible] to report the FX rates used to price the trades in standardized formats with their [illegible] disadvantage, [illegible] hedge funds, and did not in part to, the Investment Manager Guidelines.

48. Additionally, as reported by [illegible] disadvantage [illegible] Investment Manager Guidelines, [illegible], in order to avoid disadvantage [illegible], hedge funds [illegible] expectation that the FX rates that customers [illegible] for executed [illegible] FX trades [illegible] reflect the [illegible] FX trades. The price [illegible] disadvantage [illegible] expectation [illegible] which it [illegible] bottom [illegible] price [illegible] disadvantage [illegible] to hedge funds [illegible] with [illegible] FX trades [illegible] other than the [illegible] FX trades.

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

49. [illegible] initial [illegible] disadvantage [illegible] with [illegible] customers [illegible] dated September 15, 1998. The parties [illegible] provided that [illegible] January 1, 2001 with [illegible] disadvantage [illegible] customers [illegible] price [illegible] provided by [illegible]. The [illegible] customers [illegible] provided by [illegible] disadvantage [illegible] dated [illegible] 29, 2004, [illegible] price [illegible]. That third [illegible] customers [illegible] provided by [illegible] disadvantage [illegible] dated [illegible] 30, 2009, [illegible] price [illegible].

50. Each of the Settlement Trusts provided that it shall be entitled to compensation for its reasonable expenses incurred in the administration of the Trust. The Pre-Petition Settlement Trust Agreements shall be attached hereto as Exhibit 1.

51. The Settlement Trust Agreements required the Settlement Trustees to make certain payments to the Plaintiffs in the following amounts:

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

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

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

(d) Effective July 1, 2007 through June 30, 2009 (referred to as the "Initial Payment Period");

(e) Effective April 1, 2008 through June 30, 2009 (referred to as the "Initial Payment Period");

(f) Effective October 1, 2008 through June 30, 2009 (the "Initial Payment Period");

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

52. The Settlement Agreement required the Settlement Trustees to pay to the Plaintiffs a total of $233,534. The Settlement Trustees were required to make payments to the Plaintiffs in the following amounts:

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

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

(c) $400,000 per quarter from July 1, 2007 through June 30, 2009, with a balloon payment of $320,000 from April 1, 2008 through June 30, 2009 (the "Initial Payment Period");

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

53. The [illegible] had [illegible] not [illegible]rth [illegible]rti[illegible] t[illegible]ri[illegible]i[illegible]r [illegible]r[illegible] which [illegible]t t[illegible]tr[illegible]t [illegible]p[illegible]r[illegible]itt[illegible]d t[illegible]h[illegible]r[illegible]. T[illegible] [illegible]dditi[illegible], i[illegible]di[illegible] ir[illegible], [illegible]p[illegible]rti[illegible] [illegible], [illegible]i[illegible]r[illegible] [illegible]b[illegible]t[illegible]d [illegible].

54. [illegible] th[illegible]p[illegible]rti[illegible]r [illegible]i[illegible]r[illegible]r[illegible]i[illegible]t[illegible]ri[illegible]r[illegible]t i[illegible] [illegible]t[illegible] X tr[illegible]di[illegible]. Th[illegible]t[illegible]di[illegible] [illegible]tr[illegible]t did [illegible]t [illegible]t th[illegible]t th[illegible] [illegible]i[illegible]r[illegible]r[illegible]t[illegible] X tr[illegible]di[illegible] r th[illegible]t [illegible]t[illegible]tr[illegible]t [illegible]d i[illegible]p[illegible] [illegible]i[illegible] ith [illegible]X tr[illegible]di[illegible].

55. [illegible]i[illegible] [illegible]t th[illegible]t[illegible]r [illegible]h[illegible]d[illegible], [illegible]hi[illegible]h [illegible]r[illegible]i[illegible]t [illegible]t[illegible] [illegible]d [illegible]h[illegible]r[illegible] [illegible]r X tr[illegible]di[illegible], th[illegible]pt[illegible]b[illegible]r 15, 1998 [illegible]h[illegible]d[illegible]p[illegible]i[illegible]i[illegible] [illegible]ti[illegible]d X tr[illegible]di[illegible], [illegible]ti[illegible] th[illegible]t ***"No Charge"*** [illegible]d b[illegible]d[illegible] [illegible]r [illegible]r[illegible]i[illegible] x[illegible]h[illegible] x[illegible]t[illegible]d thr[illegible]h [illegible]t[illegible]tr[illegible]t.

56. Th[illegible]1, 2009 [illegible]h[illegible]d[illegible] [illegible]ti[illegible] X tr[illegible]di[illegible] t[illegible]tr[illegible]t p[illegible]i[illegible] t[illegible]d th[illegible]t [illegible]tr[illegible]ti[illegible] [illegible]t[illegible]r [illegible]r[illegible]i[illegible] x[illegible]h[illegible] tr[illegible]d[illegible]tr[illegible] t[illegible]d thr[illegible]h [illegible]t[illegible]tr[illegible]t ***will be waived.***" [Emph[illegible]i[illegible] [illegible]dd[illegible]d.]

57. [illegible] h, [illegible]r [illegible]r th[illegible] [illegible]d[illegible]d, [illegible]T[illegible] t[illegible]di[illegible] [illegible]tr[illegible]t[illegible]ith [illegible]t[illegible]tr[illegible]t [illegible] xpr[illegible] pr[illegible]id[illegible]d th[illegible]t t[illegible]di[illegible] i[illegible]tr[illegible]ti[illegible] X tr[illegible]d[illegible] [illegible]d b[illegible] x[illegible]t[illegible]d r[illegible] [illegible]h[illegible]r[illegible]r b[illegible]did [illegible]t i[illegible]t X tr[illegible]ti[illegible] [illegible]th[illegible] r[illegible]i[illegible]r hi[illegible]h it [illegible]p[illegible]r[illegible]itt[illegible]d t[illegible]h[illegible]r[illegible] [illegible]dditi[illegible] [illegible]r [illegible]th[illegible]r [illegible]t b[illegible] th[illegible] [illegible]t.

58. [illegible]b[illegible]t[illegible]ti[illegible] i[illegible]r t[illegible]r[illegible]r[illegible]p[illegible]d i[illegible]th[illegible] t[illegible]di[illegible] [illegible]tr[illegible]t[illegible]r th[illegible]r [illegible]b[illegible]r[illegible] th[illegible] [illegible]d[illegible]ri[illegible] th[illegible] [illegible]ri[illegible]d.

59. [illegible]dditi[illegible], d[illegible]ri[illegible] th[illegible] [illegible]ri[illegible]d, [illegible]t[illegible]t[illegible]tr[illegible]t pr[illegible]id[illegible]d I[illegible]t[illegible] [illegible]t M[illegible]r [illegible]id[illegible]t [illegible] t[illegible]di[illegible] i[illegible]t[illegible]d [illegible]t id[illegible]i[illegible] t[illegible] [illegible]t [illegible]r th[illegible]t [illegible]ti[illegible]d [illegible]pr[illegible]h[illegible]i[illegible] i[illegible]r[illegible]ti[illegible] b[illegible]t [illegible]t[illegible]t[illegible]tr[illegible]t[illegible]t[illegible]d pr[illegible]ti[illegible]d [illegible]r i[illegible], i[illegible]di[illegible] pr[illegible]d[illegible]r[illegible] r[illegible]ir[illegible] [illegible]t, [illegible]t, [illegible]d [illegible]t[illegible]r[illegible]. Th[illegible] [illegible]r i[illegible] d[illegible]rib[illegible]d th[illegible]r i[illegible]i[illegible]d[illegible]d [illegible]t[illegible]t[illegible]tr[illegible]t [illegible]r i[illegible] Ex[illegible]h[illegible] Tr[illegible]ti[illegible].

60. [illegible] right, [illegible] trust indenture [illegible] the 15 distinct Investment Accounts [illegible] Master Trust Agreement, including the dates [illegible] 9, 2003 [illegible] 9, 2005 [illegible] September 26, 2006 [illegible] October 17, 2006 [illegible] November 20, 2006 [illegible] November 15, 2006 [illegible] 25, 2007 [illegible] October 30, 2007 [illegible] November 21, 2007 [illegible] November 19, 2007 [illegible] 28, 2008 [illegible] 1, 2008 [illegible] October 31, 2008 [illegible] November 30, 2008 [illegible] 23, 2009, the [illegible] directing [illegible] and [illegible] Investment Accounts [illegible] Master Trust Agreement.

61. [illegible] trust [illegible] Investment Accounts [illegible] Master Trust Agreement that [illegible] trust [illegible] Exchange Transactions . . . [illegible] ***priced based on the market rates at the time the trade is executed.*** (Emphasis added.)

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

62. [illegible] trust [illegible] FX practices [illegible] that the [illegible] and that the Investment Accounts [illegible] Master Trust Agreement. [illegible] pitch [illegible] that FX transactions [illegible] based [illegible] rates [illegible] State Street [illegible] and that State Street [illegible] FX rates [illegible] for FX transactions [illegible] ***outside of the range of the day.***

63. [illegible] the [illegible] State Street [illegible] FX rates [illegible] transactions [illegible] that did not [illegible] the [illegible] prices [illegible] the FX transactions [illegible] and [illegible] hidden [illegible] the [illegible] rate. [illegible] State [illegible] State Street [illegible] reported [illegible] State Street [illegible] or [illegible] the [illegible] rate that [illegible] either higher [illegible] the [illegible] purchased [illegible] or [illegible] the [illegible] sold, and pocketed the [illegible].

64. Th[illegible] [illegible]t di[illegible]i[illegible]t[illegible]r th[illegible]ir [illegible]t[illegible]r[illegible]t[illegible]d th[illegible]t [illegible]t[illegible]t[illegible]tr[illegible]t [illegible]x[illegible]t[illegible][illegible]X tr[illegible][illegible]ti[illegible], th[illegible]r[illegible]t [illegible][illegible]r[illegible]t[illegible]d [illegible]tr[illegible]i[illegible]m[illegible]i[illegible]t[illegible]t[illegible]tr[illegible]t[illegible]M[illegible]r[illegible]t [illegible]rd[illegible]r M[illegible][illegible][illegible][illegible]t [illegible][illegible]t[illegible] [illegible]M[illegible]M[illegible]t[illegible][illegible]r[illegible]p [illegible][illegible]ri[illegible]tr[illegible]d[illegible]r[illegible][illegible]r[illegible]i[illegible]t [illegible]t[illegible]t[illegible]tr[illegible]t[illegible][illegible]X tr[illegible]di[illegible]d[illegible][illegible]h[illegible]th[illegible] [illegible]x[illegible]t[illegible]d th[illegible]X tr[illegible]d[illegible]b[illegible]t[illegible]ri[illegible]tr[illegible]d[illegible]i[illegible]r[illegible]ti[illegible]th[illegible]t did [illegible]t r[illegible]m[illegible]t th[illegible]t[illegible]r[illegible]t[illegible]t[illegible] [illegible]tr[illegible]t p[illegible]id [illegible]r r[illegible]i[illegible]d.

65. T[illegible]i[illegible]tr[illegible]t th[illegible]d[illegible]pti[illegible], [illegible][illegible][illegible]i th[illegible]x[illegible]p[illegible][illegible]t [illegible]rth [illegible]b[illegible][illegible] 100 [illegible]r[illegible] [illegible]rd[illegible][illegible]r tr[illegible]d[illegible][illegible] [illegible]i[illegible]d[illegible] th[illegible]t r[illegible][illegible]d r[illegible] [illegible]1.25 t[illegible] 1.35 th[illegible]r[illegible][illegible][illegible] th[illegible]d[illegible][illegible]t[illegible] p[illegible]r h[illegible][illegible]1.00, [illegible]ith [illegible]d[illegible][illegible][illegible]id[illegible]r[illegible]t[illegible][illegible]1.30. [illegible][illegible], [illegible]d [illegible], t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] [illegible]r[illegible][illegible]r d[illegible][illegible]r tr[illegible]d[illegible][illegible] b[illegible] [illegible][illegible]it[illegible][illegible]t[illegible]di[illegible] [illegible]i[illegible]t, [illegible]t[illegible]t[illegible]tr[illegible]t [illegible][illegible]d h[illegible][illegible] p[illegible]id [illegible]r[illegible]t b[illegible]t[illegible][illegible] [illegible]1.25 [illegible]d [illegible]1.35 [illegible]r th[illegible][illegible]r[illegible], b[illegible]t r[illegible]p[illegible]rt[illegible]d t[illegible]it[illegible] [illegible]i[illegible]t th[illegible]t it p[illegible]id [illegible]r[illegible]. [illegible]t[illegible]t[illegible]tr[illegible]t [illegible]h[illegible]r[illegible]d it[illegible] [illegible]i[illegible]t th[illegible][illegible][illegible][illegible]hi[illegible]h r[illegible] [illegible][illegible]t [illegible]d [illegible]pt th[illegible]di[illegible]r[illegible][illegible].

66. Thi[illegible][illegible][illegible][illegible]i[illegible]i[illegible]pp[illegible]rt[illegible]d b[illegible][illegible]i[illegible]ti[illegible][illegible][illegible][illegible][illegible]i[illegible][illegible]t[illegible] [illegible]r[illegible][illegible]X tr[illegible][illegible]ti[illegible] [illegible]x[illegible]t[illegible]d b[illegible]t t[illegible]t[illegible]tr[illegible]t [illegible]b[illegible]h[illegible][illegible][illegible]d r[illegible]p[illegible]rt[illegible]d t[illegible] T[illegible]. B[illegible]t[illegible][illegible] [illegible]r 3, 2000 [illegible]d [illegible][illegible]b[illegible]r 31, 2010, [illegible]T[illegible]h[illegible]d [illegible]t t[illegible]10,784 [illegible]X tr[illegible][illegible]ti[illegible][illegible]ith r[illegible]i[illegible]b[illegible]d t[illegible]. [illegible][illegible][illegible]th[illegible] 10,784 tr[illegible][illegible]ti[illegible], 4,216, [illegible]r 39[illegible], [illegible]r[illegible][illegible][illegible][illegible]ti[illegible]t[illegible]d, t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible]tr[illegible]d[illegible]. Th[illegible] 4,216 [illegible]X tr[illegible]d[illegible]h[illegible]d [illegible][illegible]r[illegible]t[illegible]tr[illegible]di[illegible] [illegible][illegible][illegible][illegible]x[illegible]di[illegible] [illegible]1.2 bi[illegible]i[illegible].

67. I[illegible][illegible]d[illegible]ti[illegible]th[illegible][illegible][illegible][illegible]i, [illegible]T[illegible][illegible][illegible]X tr[illegible]d[illegible][illegible]r[illegible][illegible] p[illegible]r[illegible]d t[illegible] th[illegible]r [illegible]X tr[illegible]d[illegible] [illegible][illegible]d [illegible]d tr[illegible][illegible]d i[illegible] [illegible][illegible] pr[illegible]h[illegible][illegible]i[illegible]d t[illegible]b[illegible][illegible] [illegible][illegible]r th[illegible]2 [illegible]i[illegible]i[illegible]b[illegible][illegible]id[illegible] [illegible]rr[illegible][illegible] tr[illegible]d[illegible]. B[illegible][illegible] p[illegible]ri[illegible] [illegible]T[illegible][illegible] tr[illegible]d[illegible]i[illegible]rt[illegible]i[illegible]rr[illegible][illegible]i[illegible] ith th[illegible][illegible] [illegible]rr[illegible][illegible] p[illegible]ir tr[illegible]d[illegible]i th[illegible] d[illegible]t[illegible]b[illegible][illegible], [illegible][illegible][illegible][illegible]ti[illegible] t[illegible] th[illegible]tr[illegible]di[illegible] [illegible][illegible]t [illegible] T[illegible][illegible] t[illegible]t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] X tr[illegible]d[illegible]i r[illegible]ti[illegible] t[illegible]tr[illegible]d[illegible][illegible] [illegible]d[illegible][illegible]r[illegible]d[illegible]id. [illegible]r p[illegible]rp[illegible][illegible][illegible][illegible] thi[illegible][illegible][illegible][illegible]i, th[illegible]tr[illegible]di[illegible] [illegible]t i th[illegible] di[illegible]r[illegible] b[illegible]t[illegible] th[illegible]d[illegible][illegible]id[illegible]r[illegible]t[illegible] d th[illegible]r[illegible]t th[illegible]t t[illegible]t[illegible]tr[illegible]t h[illegible]r[illegible]d [illegible]r r[illegible]dit[illegible]d t[illegible] [illegible]T[illegible] [illegible]r t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] X tr[illegible]d[illegible].

Case 1:11-cv-10230-MLW Document 401-134 Filed 07/23/18 Page 130 of 302

68. □t□t□□tr□□t did □□t r□p□rt t□ □□T□□ □r □□□ □th□r □□□□□ □□b□r th□ □□t□□□ti□ □□□x□□□ti□□ □□□□□ □X tr□d□. Th□r□□□r□, □□□ p□ri□□ th□d□□□□□id□r□t□t□th□ □□t□di□□□ i□□tr□□ti□□ □X r□t□□□t□t□□tr□□t □h□r□□d □r □r□dit□d t□ □□T□□ i□ th□ □b□□t □ □th□d □□ d□t□r□i□i□□ □h□th□r □t□t□□tr□□t □h□r□□d □r □r□dit□d □□□T□□ □r□t□b□□d □□ th□ □□t□□□□ □r□□t r□t□□t th□ti□□ □□□x□□□ti□□, □□□t□t□□tr□□t r□pr□□□□t□d i□ it□ I□□□□t□□□t M□□□□□r □□id□□.

69. □t□t□□tr□□t d□ri□□d it□ □□□□□X r□t□□b□ □ddi□□ □□□p□r□h□□□□□r □btr□□ti□□ □□□ □□□□□ b□i□p□i□t□□□r □pip□□r□□ th□ □□t□□□□X r□t□. □ b□i□p□i□t, □r pip, i□□□□it □□□□□t□ 1□100th □□□ p□r□□□t□□□p□i□t. □□r □x□□p□, th□ □□ □□□□t □ □□□th□ □□r□d□□□r □□rr□□□□p□ir □□□□r□□□ □ □□□□i□1□100th □□□ p□□□□, □r □□□□b□i□p□i□t.

70. □□r th□p□ri□d □□□□□□□r □3, 2000 thr□□□h □ □□□□b□r 31, 2010, th□ □X r□t□□th□t □t□t□□tr□□t r□p□rt□d □□d □h□r□□d □r □r□dit□d t□ □□T□□ □□it□4,216 □□□□□□□ti□t□d □X tr□d□□ □□r□, □□ □□□r□□□, ***17.8 basis points*** □b□□□□r b□□□□ th□d□□□□□id□r□t□. I□ □th□r □□rd□, th□ □X r□t□□th□t □t□t□□tr□□t r□p□rt□d □□d □h□r□□d □r □r□dit□d t□ □□T□□ □r □t□di□□i□tr□□ti□□ □X tr□d□□, □□ □□□r□□□ □□d d□ri□□ thi□10 □□□□r p□ri□d, □r□□t□d □tr□di□□ □□□t 17.8 b□i□p□i□t□hi□h□r th□□ th□ □□□r□□□ □X r□t□□th□d□□□□□id□r□t□□.

71. B□ □ □□ □□□x□□p□, □□□□□ th□t th□r□t□□t□t□□tr□□t □□t□□□□p□id t□p□r□h□□□ □1.00 □□ □ i□□□□d□□ □ □□□1.31551. I□□t□t□□tr□□t □h□r□□d □ □T□□17.8 b□i□p□i□t□□ □r□th□□ it p□id, th□r□t□ □□□□d b□□1.31729 □□1.31729 □□1.31551 □0.00178□. □□r □p□r□h□□□□□□10 □i□i□□, th□ □□di□□□□□d pr□□it t□ □t□t□□tr□□t □□ th□t □i□□□□tr□d□□ □□d th□ □□□□□□it□□t □□□□□□□ □□□□b□ □□T□□□ □□□□d b□□17,800. □□□□rdi□□□□, th□di□□r□□□□i□t□t□tr□di□□ □□□t□b□t□□□□ th□ □□t□□□□□d □□□□r□t□□□□□b□ □r□ □r□□.

72. T□□i□□□□, □r th□ □□□ □10 □□□□r p□ri□d, th□ □X r□t□□th□t □t□t□□tr□□t r□p□rt□d □□d □h□r□□d □r □r□dit□d t□ □□T□□ □□it□□ □r□th□□6,500 ***negotiated*** □X tr□d□□dd□d, □□ □□□r□□□,

3.6 basis points i tr di t p r d t th d id r t. h, hi th X tr d x t d b t t tr t p r t t d b t x ti pr ti i rr d tr di t 17.8 b i p i t r , th X tr d ti ti d b t t tr t d T r it t id i t t r i rr d tr di t t 3.6 b i p i t r .

73. Th r i titi t r th X r t t t tr t r p rt d d h r d r r dit d t T i rth r d tr t d h i i T t di i tr ti X tr d i th t xt th r rd d t d r th d. T 4,216 t di i tr ti X tr d , ***2,217, or 53%, fell entirely outside the forward-adjusted range of the day.*** Th 2,217 X tr d , ith t t x di 200 i i , dd d tr di t r ***64.4 basis points*** r th d id r t hidd d th ri d r p. i th b x p p r h 10 i i , di d 64.4 b i p i t d r t i 64,400 pr it t t tr t th t i tr ti.

74. t i t t b r b th d i id r t d tr t th t t tr t t i i it d ti t di b h r i hidd r p, d th d tr t i ti th t r th t di tr t d th r pr t ti i th I t t M r id. B t h r th h t di i tr ti X tr d r p rti r t di i t ***outside*** th r rd d t d r th d, it b r th t th r p rt d X r t r t t , r t b d X r t , b t r i t d i titi d d i d t t th t di i t d, i t r, it b i i ri . I th p b i p i d, th b i i ri i d t h r, p i i r, ir i ht r d th r p b i r r.

75. Th r i r ti , h t b i r pr i X r t p rti ip t i t t tr t, r i d d X r t p rti ip t, t h r X r t t id th r rd d tr d r th d ith t di i it. Th d r d i th r t hi h pri r d i b d t di b tr t d i X d ri th t tr di d . Th i titi t r r t i d t id th r rd d tr d r th d i tr t, p rh p t t r , th ir d d pti t r t t tr t t di i tr ti X tr di pr ti . I h rt, th pr ti r d i d t ri h t t tr t hi d i i d ir d pri i i titi ti i t h T d th h d d d.

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

76. ith r T r b r r b d h di r d t t tr t d pti t d pr ti r i X tr di d ri th ri d. t t tr t x t d h dr d i t th d X tr d b h it t di i t r th. Th p ri di r p rt t t tr t T d th h d th r t th t t t tr t h r d r it X tr d . Th r p rt did t i d th r th d , th d i id r t, r i di ti th ti th d th t th tr d x t d ti t p . rdi , th r r T d th t r b d t r i , r p rt, th t t t tr t r t h r i r th it t p id r X r p i i it t th it t r i d r X.

77. It r b r T d th t pr th t th pri r d i th r p rt t t tr t pr id d t th r pr t r t r pr t ti th tr t th X tr d . ith r p rt t T p i i , th t di tr t xpr pr id d th t th t di h r d r t th i ti th r p rt i r i d r p id

b h th d. rdi , t t tr t h d ir ti b i ti t r p rt r t th t it p i r r i i r X.

78. rth r r , b d th I t t M r id r r th t X r t d b pri d b d th r t r t t th ti th tr d i x t d, ith r T r th h d r t t p t th t th r b i h r d r r dit d thi th r th r t th t t t tr t it h d p id r r i d th t di i tr ti X tr ti .

79. M r r, d b , t t tr t pi d p iti tr t d id ith r p t t it t di i t. Th i t d t, d did t, p t th t th t di i hi h th t tr t r id d, d pr it t r d di d d r th r i r hi h th p id h d . I d d, th t di i t d, d did, pr th t th t di b d d t i d t i t th ir b t i t r t.

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

80. t b r 20, 2009, th tt r r i ri i d p i t i I t r ti r i ti th i ri i t, . . d 12651, h r i t t tr t ith i ppr pri ti r th 56 i i r th t i ri i t r t p i p E d T r ti r p ri d i ti ith th ir d d pti X pr ti d h r i . *People of the State of Cal. ex rel. Brown v. State Street Corp.*, . 34 2008 00008457 M . p r. t. r t t. 20, 2009 .

81. Th i ri i tt r r th t t t tr t r p rt d i t d X r t h b i r i riti r E d T , r p rt d d t d X r t h i ri i riti r th , d p t d th di r b t th r p rt d d t r t . Th tt r r th r th t t t tr t hid it r d t b

□□t□ri□□i□□□rr□□t □X □x□h□□□□r□t□□i□t□□□t□t□□□tr□□t□□□□tr□□i□□X tr□di□□□□□□t□□□□□d pr□□idi□□□□□□□r□□□rd□t□□□□E□□□□d□□□T□□.

82. I□th□□□□th□th□t □□□□□□d, □t□t□□tr□□t dr□□□ti□□□□□h□□□□d it□□X tr□di□□ p□i□i□□□□d di□□□□□r□□□d □□i□□r□□d □□T□□□□d□th□r □□□□□□□b□r□. □□d□r th□□□□□ p□i□i□, □t□t□□tr□□t □d□itt□d □□r th□□ir□t ti□□th□t it h□d □□□t□□ti□□□□i□p□□□d □dditi□□□□ □h□r□□□□r □X tr□di□□. □□r □x□□p□, i□□□□x□□rpt □r□□ □□□pd□t□d I□□□□t□□t M□□□□□r □□id□ d□t□d □□□□□b□r 20, 2009, □t□t□□tr□□t □d□i□□d □□□t□di□□□i□□t□th□t it □□□□d p□□t □□it□□□b□it□, □□.□t□t□tr□□t.□□□, □□□rr□□t □□r□□p□□□d □□r□d□□□□□□d b□□t□t□□tr□□t □□b□□M□r□□t□□r □t□□di□□□i□□tr□□ti□□□□□r□i□□□x□h□□□□tr□□□□ti□□r□□□□□t.□

83. I□□□i□i□r □□□□□□□□□t t□□□□t□di□□□i□□t□, □t□t□□tr□□t □d□itt□d th□t ***“[s]ince December 2009***, □t□t□□tr□□t h□□pr□□id□d t□□□□□it□□□□t□d□□i□□t□□□d th□ir i□□□□t□□□t □□□□□r□□i□□□r d□di□□t□d □i□□t p□rt□□, □□.□t□t□tr□□t.□□□, □□□pr□h□□□i□□di□□□□□r□□□th□ pri□i□□□□d □x□□□ti□□□□th□d□□□□□i□□□di□□th□□□xi□□□□□r□□□p □r □□r□d□□□th□t □□□b□ □pp□i□d□□r □□□h □□it□I□dir□□t □t□□di□□□i□□tr□□ti□□□□X □□r□i□□□.□□E□ph□□i□□dd□d.□□□t□t□ □tr□□t □dd□d th□t □□□th□d□□□□t□r □tr□d□i□□x□□□t□d, □t□t□□tr□□t pr□□id□□□r □□□h □□rr□□□□ p□ir th□r□□r□□□□i□t□rb□□□r□t□□□□d th□ti□□□□t □hi□h th□□□r□□bt□i□□d, th□□□t□□□r□t□, th□ d□i□□hi□h□□□□ r□□□□□t th□ti□□□□□pri□i□□□□h□r□□pp□i□□b□□□□□d th□□□t□□□□□r□□□p □r □□r□□ d□□□th□t □□□□pp□i□d.□

84. □t□t□□tr□□t □t□r□d it□pr□□ti□□□t□□□□□□ □□□t□di□□□i□□t□□□r□□□□p□t□□□□□□□t□ □X tr□di□□d□t□□□□□ □t□r it□d□□□pti□□□□t□□□d pr□□ti□□□b□□□□t□b□r□□□□□d. □t□t□□tr□□t□ □t□di□□□□□r□th□t it □h□r□d □□r□□p□□□d □□r□d□□□□□□□t□di□□□i□□tr□□ti□□□X tr□d□□ □□□tr□di□t□it□pr□□i□□□r□p□t□d □□□□r□□□□□th□t □X r□t□□□□□□d b□b□□□d □□□□r□□t r□t□□□t th□ ti□□th□tr□d□i□□x□□□t□d.

85. [illegible] *qui tam* [illegible] ***63%.*** [illegible] 498,940 [illegible] 196,280 [illegible] 302,660 [illegible] 2000-2010, [illegible] [illegible] [illegible] 2000-2009.

FIRST CLAIM FOR RELIEF

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

86. [illegible]

87. [illegible]

88. [illegible]

[illegible]

[illegible]

[illegible]

□d th□ □□□□□r th□r th□□th□□t□□□r t□□□t □hi□h □t□t□□tr□t h□d □□□□t□d th□□□ tr□d□□□

□□□ □□□□□ti□□ th□di□□r□□□□b□t□□□□th□□t□□□□X r□t□□□t □hi□h □t□t□□tr□t □□□□t□d □□t□di□□□i□t□□t□di□□i□tr□ti□□ □X tr□d□□□d th□□□□□□ □d i□titi□□□r□t□□□t□t□□tr□t r□p□rt□d t□th□□□□□t□di□□□i□t□□

□d□ t□i□□ □di□□□□□d pr□it□□□ t□di□□i□tr□ti□□ □X tr□d□□r□□ □t□di□□□i□t□□□h □□□□T□□ □d th□□□□□□th□t □r□□□□□x□□d□d th□ □□t□□ r□pri□□□t □hi□h □i□i□r □r□i□□□□r□r□di□□bt□i□□b□i□□□ti□t□d □X tr□□□□ti□□□b□i□□□□□□□□□b□r□□□d

□□□ □i□□ti□□ □tt□r□□□ □□□r□□□□□□ti□□, i□□□di□□

940 □M□ □□3.16□1□2□.

89. Th□□□□t□□r pr□ti□□□i□□t□d □□ti□□□2 □d 11 □th□M□□□□h□□tt□□□□□□□r □r□t□□ti□□ □□t, M□□□. □□□. □□□□h. 93□.

90. □t□t□□tr□t□□□□ir □d d□□pti□□ □t□□r pr□ti□□□r□□t□d t□ □t□di□□i□tr□ti□□ □X tr□□□□ti□□□□□□rr□d pri□ ri□□ □d □b□t□□ti□□□i□M□□□□h□□tt□, □h□r□□t□t□□tr□t□□□X tr□di□□d□□□i□□□□t□d.

91. □□□r□□□t□□th□□□□ir □d d□□pti□□□□d□t □□t□t□□tr□t, □□T□□ □d th□ □□□□□□□t□i□d □□□□□□i□d□□ □□□□i□□□□t □□□□□th□□th□di□□r□□□b□t□□□□th□ □t□□□d□□□r □□ □□t□p□id □r r□□i□d b□□t□t□□tr□t □h□□ □□d□ti□□ t□di□□i□tr□ti□□ □X tr□d□□□r □□T□□ □d th□□□□□□□d b□th□□□□□□d i□titi□□d□□□r □□ □□t□h□r□d □r r□ditd b□□t□t□□tr□t t□□□T□□ □d th□□□□□□□r th□□□□ tr□d□.

92. □t□t□□tr□t i□i□ □□i□□p□iti□t□ th□x□t □□ □□t □d□□ □□□t□i□d b□□□T□□ □d th□□□□□□□r□□t □□t□t□□tr□t□□□□ir □d d□□pti□□□d□t,

b[illegible], *inter alia,* thr[illegible]h[illegible]t th[illegible]ri[illegible]d, [illegible]t[illegible]t[illegible]tr[illegible]t did [illegible]t pr[illegible]id[illegible]ti[illegible][illegible]t[illegible]p[illegible]t[illegible]it[illegible] [illegible]t[illegible]di[illegible]i[illegible]t[illegible]r it[illegible]t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible]X tr[illegible]d[illegible].

93. [illegible]t[illegible]t[illegible]tr[illegible]t[illegible][illegible]ir [illegible]d d[illegible]pti[illegible][illegible]d[illegible]t [illegible]d[illegible]rib[illegible]d h[illegible]r[illegible]i[illegible][illegible][illegible]i[illegible][illegible]d i[illegible]t[illegible]ti[illegible], [illegible]rdi[illegible]m[illegible]titi[illegible][illegible]i[illegible]ti[illegible]d th[illegible][illegible]t[illegible]p t[illegible]tr[illegible], b[illegible]t [illegible][illegible]th[illegible]d[illegible]b[illegible], d[illegible][illegible], p[illegible][illegible]t[illegible]i[illegible]di[illegible]ttr[illegible].

94. [illegible]pp[illegible]ti[illegible][illegible]M[illegible]. [illegible]. [illegible]h. 93[illegible]t[illegible][illegible]b[illegible]r[illegible]t[illegible]d thr[illegible]h[illegible]t th[illegible]it[illegible]d [illegible]t[illegible], r[illegible]rd[illegible]th[illegible]ir [illegible]t[illegible]r r[illegible]id[illegible], i[illegible]ppr[illegible]pri[illegible]t[illegible]b[illegible][illegible]d[illegible]t[illegible]r[illegible] [illegible]t[illegible]d [illegible]d [illegible]i[illegible]tr[illegible]d[illegible]r [illegible]r[illegible]i[illegible]M[illegible]h[illegible]tt[illegible]d [illegible]r th[illegible]b[illegible]t t[illegible]th[illegible]th[illegible] [illegible]th. [illegible]d[illegible]t[illegible]r[illegible]i[illegible]tr[illegible]d t[illegible]d[illegible]b[illegible]i[illegible]i[illegible]M[illegible]h[illegible]tt[illegible], [illegible]d th[illegible]ir pri[illegible]ip[illegible] p[illegible]b[illegible]i[illegible]i[illegible]t[illegible]d i[illegible]M[illegible]h[illegible]tt[illegible], r[illegible] [illegible]hi[illegible]h th[illegible]tr[illegible]d [illegible]d dir[illegible]t[illegible]d th[illegible] d[illegible]pti[illegible]d [illegible]ir pr[illegible]ti[illegible]d[illegible]rib[illegible]d h[illegible]r[illegible]i, i[illegible]di[illegible]i[illegible]d[illegible]ti[illegible]X tr[illegible]d[illegible][illegible]b h[illegible] [illegible]T[illegible]d th[illegible]. [illegible]rth[illegible]r, [illegible]i[illegible]r[illegible]ti[illegible]d b[illegible]i[illegible], [illegible]p[illegible]t[illegible]t[illegible]d[illegible]t dir[illegible]t[illegible] i[illegible]d i[illegible]th[illegible]ti[illegible]iti[illegible]p[illegible]i[illegible]d [illegible]h[illegible]r[illegible]r[illegible]b[illegible]d i[illegible]M[illegible]h[illegible]tt[illegible].

SECOND CLAIM FOR RELIEF

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

95. [illegible]i[illegible]ti[illegible]r[illegible]p[illegible]t[illegible]d r[illegible], [illegible]i[illegible], [illegible]t [illegible]rth h[illegible]r[illegible]i[illegible]t [illegible]th, [illegible]h[illegible]d [illegible]r[illegible] [illegible]ti[illegible][illegible]t[illegible]i[illegible]d i[illegible]th[illegible]b[illegible]p[illegible]r[illegible]r[illegible]ph, [illegible][illegible]th[illegible]i[illegible]pp[illegible]rt [illegible]th[illegible]th[illegible]r [illegible]i[illegible][illegible]r r[illegible]i[illegible]rt[illegible]d [illegible]b h[illegible]th[illegible], [illegible]d [illegible]rth[illegible]r [illegible].

96. Thi[illegible]i[illegible] [illegible]r r[illegible]i[illegible]i[illegible]p[illegible]d[illegible]d i[illegible]th[illegible]tr[illegible]ti[illegible]t th[illegible]ir[illegible]t [illegible]i[illegible] [illegible]r [illegible]i[illegible] b h[illegible]i[illegible]i[illegible]ti[illegible]d th[illegible]b[illegible]r[illegible]th[illegible], [illegible]t[illegible]r pr[illegible]it [illegible]titi[illegible]ti[illegible]i[illegible]t t[illegible] tr[illegible]t t[illegible]d[illegible]t [illegible]X tr[illegible]ti[illegible], [illegible]r[illegible]d i[illegible]th[illegible]rth[illegible]r[illegible]th[illegible]ir [illegible]r[illegible]i[illegible], [illegible]hi[illegible]h i[illegible]d[illegible]i[illegible]ti[illegible]d b[illegible]di[illegible]r[illegible]tir[illegible]t [illegible]d[illegible]r p[illegible]i[illegible]p[illegible].

97. Th[illegible] d i[illegible] tr[illegible] d[illegible] r [illegible] r[illegible], t[illegible] t[illegible] tr[illegible] t [illegible] d i[illegible] [illegible] ir [illegible] d d[illegible] pti[illegible] [illegible] t[illegible] d pr[illegible] ti[illegible], [illegible] d i[illegible] thi[illegible] p[illegible] i[illegible] t, i[illegible] i[illegible] ti[illegible] [illegible] th[illegible] M[illegible] h[illegible] tt[illegible] [illegible] r [illegible] r[illegible] t[illegible] ti[illegible] [illegible] t, M[illegible]. [illegible]. [illegible] h. 93[illegible], [illegible]2, 9, i[illegible] di[illegible], [illegible] ith[illegible] t i[illegible] it ti[illegible]

[illegible] [illegible] ir[illegible] [illegible] d d[illegible] pti[illegible] pri[illegible] t[illegible] di[illegible] i[illegible] tr[illegible] ti[illegible] [illegible] X tr[illegible] d[illegible] [illegible] r [illegible] t[illegible] di[illegible] i[illegible] t[illegible] h [illegible] T[illegible] [illegible] d th[illegible] [illegible] i[illegible] r d[illegible] i[illegible] d t[illegible] [illegible] xi[illegible] i[illegible] pr[illegible] it[illegible] t[illegible] [illegible] t[illegible] tr[illegible] t t th[illegible] dir[illegible] t [illegible] d [illegible] di[illegible] [illegible] d [illegible] xp[illegible] [illegible] th[illegible] [illegible] t di[illegible] [illegible] i[illegible] t[illegible]

[illegible] b[illegible] [illegible] [illegible] ir[illegible] [illegible] d d[illegible] pti[illegible] r p[illegible] rti[illegible] [illegible] [illegible] d i[illegible] titi[illegible] [illegible] X r[illegible] t[illegible] [illegible] r [illegible] t[illegible] di[illegible] i[illegible] tr[illegible] ti[illegible] [illegible] X tr[illegible] d[illegible] t[illegible] [illegible] t[illegible] t[illegible] tr[illegible] t[illegible] [illegible] t di[illegible] i[illegible] t[illegible] h [illegible] T[illegible] [illegible] d th[illegible] [illegible] r th[illegible] r th[illegible] th[illegible] [illegible] t[illegible] r t[illegible] t hi[illegible] h [illegible] t[illegible] tr[illegible] t h[illegible] d [illegible] t[illegible] d th[illegible] tr[illegible] d[illegible] r th[illegible] [illegible] t[illegible] r[illegible]

[illegible] [illegible] ti[illegible] th[illegible] di[illegible] r[illegible] b[illegible] t[illegible] th[illegible] t[illegible] X r[illegible] t[illegible] t hi[illegible] h [illegible] t[illegible] tr[illegible] t [illegible] t[illegible] d [illegible] t[illegible] di[illegible] i[illegible] t[illegible] t[illegible] di[illegible] i[illegible] tr[illegible] ti[illegible] [illegible] X tr[illegible] d[illegible] [illegible] d th[illegible] [illegible] d i[illegible] titi[illegible] r[illegible] t[illegible] t[illegible] [illegible] tr[illegible] t r[illegible] p[illegible] rt[illegible] d t[illegible] th[illegible] [illegible] t[illegible] di[illegible] i[illegible] t[illegible]

[illegible] d[illegible] t[illegible] i[illegible] [illegible] di[illegible] [illegible] d pr[illegible] it[illegible] [illegible] t[illegible] di[illegible] i[illegible] tr[illegible] ti[illegible] [illegible] X tr[illegible] d[illegible] [illegible] r[illegible] [illegible] t[illegible] di[illegible] i[illegible] t[illegible] h [illegible] T[illegible] [illegible] d th[illegible] [illegible] th[illegible] t r[illegible] [illegible] x[illegible] d[illegible] d th[illegible] [illegible] t[illegible] [illegible] r pri[illegible] t hi[illegible] h i[illegible] i[illegible] r [illegible] r i[illegible] [illegible] [illegible] r r[illegible] di[illegible] bt i[illegible] b[illegible] i[illegible] [illegible] ti t[illegible] d [illegible] X tr[illegible] [illegible] ti[illegible] b[illegible] i[illegible] [illegible] [illegible] b r[illegible] d

[illegible] [illegible] i[illegible] ti[illegible] [illegible] tt r[illegible] [illegible] [illegible] r[illegible] [illegible] [illegible] ti[illegible], i[illegible] di[illegible] 940 [illegible] M[illegible] [illegible] 3.16[illegible] 2[illegible].

98. Th[illegible] [illegible] t[illegible] r pr[illegible] ti[illegible] i[illegible] t[illegible] d [illegible] ti[illegible] 2 [illegible] d 9 [illegible] th[illegible] M[illegible] h[illegible] tt[illegible] [illegible] [illegible] r [illegible] r[illegible] t[illegible] ti[illegible] [illegible] t, M[illegible]. [illegible]. [illegible] h. 93[illegible].

Case 1:11-cv-10230-MLW Document 1 Filed 04/15/11 Page 27 of 39

99. □t□t□□tr□t□□□□ir □□d d□□pti□□□t□□r pr□ti□□□r□□t□d t□□t□di□□i□tr□ti□□ □X tr□□□□ti□□□□□□rr□d pri□□ri□□□□d □b□t□ti□□□i□M□□□□h□□tt□, □h□r□□t□t□□tr□t□□□X tr□di□□d□□□i□□□□t□d.

100. □□□r□□□t □th□□□□ir □□d d□□pti□□□□□d□t □□□t□t□□tr□t, □□i□ti□□□□T□□ □□d th□□□□□□t□i□d □□□□□i□d□□□□□i□□□□□□t □□□□th□th□di□□r□□□b□t□□□□□ th□□t□□□d□□□r □□□□□t□p□id □r r□□□i□□d b□□t□t□□tr□t □h□□□□□d□ti□□□t□di□□i□tr□ti□□ □X tr□d□□□r □□T□□ □□d th□□□□□□□d □b□th□□□□□□d □i□titi□□□d□□□r □□□□□t□h□r□d □r □r□dit□d b□□t□t□□tr□t t□□□T□□ □□d th□□□□□□r th□□□□□□tr□d□□.

101. □t□t□□tr□t i□i□□□i□□□p□iti□□t□□□□□ th□□x□t □□□□□t □□d□□□□□□ □□□t□i□□d b□□□T□□ □□d th□□□□□□□□r□□□t □□□t□t□□tr□t□□□□ir □□d d□□pti□□□□□d□t, b□□□□□, *inter alia,* thr□□□h□□t th□□□□□□□ri□d, □t□t□□tr□t did □□t pr□id□ti□ □□□t□□p□t□it□ □□□t□di□□□i□t□□r it□□t□di□□i□tr□ti□□ □X tr□d□□.

102. □□r□□□□t t□th□M□□. □□□. □□□□. □□□. □h. 93□, □9□3□, □□□br□r□16, 2011□ □□r□th□□thirt□□30□d□□□pri□r t□th□□i□i□□□□thi□□□□□d□d □□□□□□ti□□□□□p□i□t, □hi□h □□□□rt□, □r th□□ir□t ti□□, □□□i□ p□r□□□□t t□M□□. □□□□□□□□h. 93□, □9□ □□□i□ti□□□□i□d, □i□ □□rti□i□d □□i□, r□t□r□r□□ipt r□□□□□t□d, □□ritt□□d□□□d □□r r□i□□t□□t□t□□tr□t id□□ti□i□□th□ □□□i□□□t□□□d r□□□□□□b□d□□ribi□□th□□□□□ir □□t□□r pr□□ti□□□r□i□d □p□□□□d th□i□□ri□□ □□□□r□d. □t□t□□tr□t□□r□p□□□□□□M□r□h 18, 2011 □□□t□t□d □□i□ti□□□□□□□□ti□□□□□d r□□□□□d t□□□□□□r□□□□□b□□r □□□□□□□r □□r□i□□. Th□r□□□□□t□□r□t r□i□□□□□□d□i□b□d □ith □ith □□□□□d□□□r r□□□□□□t□□□□□ th□t th□□t□□th□□□□□d□t□□i□□t□d M□□. □□□. □□□□ □□□. □h. 93□, □2.

103. [illegible] ir [illegible] d [illegible] pti [illegible] d [illegible] t [illegible] d [illegible] rib d h r i [illegible] i [illegible] d i t [illegible] ti [illegible], [illegible] rdi [illegible] [illegible] titi [illegible] i ti [illegible] d th [illegible] t tr b d [illegible], p [illegible] t i [illegible] di [illegible] tt r [illegible].

104. [illegible] pp i ti [illegible] M [illegible]. [illegible]. [illegible] h. 93 [illegible] t [illegible] b r [illegible] t d thr h t th [illegible] it d t t, r [illegible] rd [illegible] th ir t t r r id [illegible], i [illegible] ppr pri t b [illegible] d t r [illegible] t d d [illegible] i tr d r [illegible] r i M [illegible] h tt [illegible] d r th [illegible] b t t th [illegible] th [illegible] th. [illegible] d t r r i t r d t d b i [illegible] i M [illegible] h tt, d th ir pri ip p [illegible] b i [illegible] i [illegible] t d i M [illegible] h tt, r [illegible] hi h th [illegible] tr d d dir t d th d [illegible] pti [illegible] d [illegible] ir pr ti [illegible] d rib d h r i, i [illegible] di [illegible] d ti [illegible] X tr d [illegible] b h [illegible] [illegible] T [illegible] d th [illegible]. rth r, i r ti [illegible] d b i, [illegible] p [illegible] d t dir t i [illegible] d i th ti iti [illegible] p i d h r i r b d i M [illegible] h tt.

THIRD CLAIM FOR RELIEF

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

105. i ti r p t d r [illegible], i [illegible] t rth h r i t th, h d r [illegible] ti [illegible] t i d i th b p r r ph, [illegible] th i pp rt th th r i r r i [illegible] rt d b h [illegible] th [illegible], d rth r [illegible]

106. i ti d th b r th p [illegible] d th ir tr t i [illegible] d t t x t t di i tr ti X tr ti [illegible] r t i it t th p r h d [illegible] r i [illegible] riti r th t i ti d th [illegible].

107. d t pi d p ri r p iti t i ti d th [illegible] h th t th tr d p t t di i tr ti X tr di, i di th ti i th X tr d d th pri t hi h th tr d r x t d d tt d. i ti d th [illegible] r tir

d□p□d□t □□ □□□□d□t□t□x□□t□th□□X tr□d□□□d □□□r□t□□r□p□rt th□pri□□t□hi□h □X tr□d□□□r□□tt□d.

108. □□□d□t□□d r□t□d th□t □□i□ti□□d th□□□b□r□□th□□□□□p□□d th□ir □□id□□□□d tr□t i□□□□d□t□t□r□p□rt □X tr□d□□□□r□t□□.

109. □□□d□t, b□irt□□□th□ir □p□ri□r □□□□d□□d p□iti□ □□□□tr□□□□□□th□□id□□□□d tr□t p□□d i□th□ b□□□i□ti□□d th□□□□, □□d □d□t□□□□□t□t□ □□i□ti□□d th□□□□i□□□□□ti□□ ith □rr□i□□ t□t di□□i□tr□ti□□ □X tr□□□□ti□□.

110. □□□d□t, b□irt□□□th□ir □p□it□□□□t di□□r □□i□ti□□d th□□□□, □d th□ir □p□ri□r □□□□d□□d p□iti□ □□□□tr□□□□□□th□□id□□□□d tr□t p□□d i□th□ b□□□i□ti□□d th□□□□, □□d □d□t□□di□□□r□i□□□□ti□□ ith □rr□i□□ t□t di□□i□tr□ti□□ □X tr□□□□ti□□.

111. □□□d□t□br□□h□d th□ir d□t□□□□□t□t□□□i□ti□□d □h th□□□□ □□b□r□b□□□□h□r□i□□□□i□ti□□d th□□□□hi□h□r □X r□t□th□□t□t□tr□t □t□□□p□id □h□b□i□□r□i□□rr□□□b□p□i□□□i□ti□□d th□□□□□r □X r□t□th□□t□t□tr□t □t□□□r□□i□d □h□□□i□□r□i□□rr□□□□□p□□ti□th□di□r□□b□t□□□t□t□ tr□t□□t□□□□t□d th□r□t□□h□r□d t□□i□ti□□d th□□□□d d□hidi□th□ir □□d□t b□pr□idi□□□□□t t□t□□t□t□th□□i□ti□□d th□□□th□t r□p□rt□d th□d□t□□ □hi□h t□di□□i□tr□ti□□ □X tr□d□□□r□x□□t□d, □d th□pri□h□r□d t□□i□ti□□d th□ □□□, □t □itti□□i□p□rt□t i□r□ti□□h □th□□t□□ti□th□tr□d□□□x□□t□d, □d th□ □t□□□□t □th□tr□d□t□□t□tr□t, th□t □□d h□□□□b□d □i□ti□□d th□□□t□r□i□ th□□r□p□i□i□x□□□□t□t□tr□t□□t□□□□t□r r□i□i□□□th□□t□tr□t□ □t□□pr□□d□

112. [illegible] to breach their duties in disseminating statements to the market for the benefit of Plaintiff and the Class and the marketplace that omitted the material facts necessary to make the statements not misleading as the truth was concealed.

113. [illegible] to breach their duties, misrepresented material facts, in violation of [illegible], but not limited to, the duties to truthfully and accurately disclose the [illegible] to the market and to refrain from misrepresenting the [illegible] to the market. [illegible], misrepresented the [illegible] to the market. [illegible] to the [illegible] to be determined at trial.

FOURTH CLAIM FOR RELIEF

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

114. [illegible] repeated and realleged, as if fully set forth herein, each and every allegation contained in the above paragraphs, as if fully set forth herein.

115. [illegible] to [illegible] in the course of their employment, in connection with the [illegible] to disseminate false and misleading statements and to omit material facts necessary to make the statements not misleading.

116. In [illegible] with, [illegible] to [illegible] with providing false and misleading information to the market, including the [illegible], regarding the [illegible] to make the statements not misleading as the truth was concealed. The [illegible] to [illegible] in their business [illegible].

117. The report and trust agreements provided to certificateholders in connection with each offering of Mortgage Pass-Through Certificates, including the Offering Documents, represented that the mortgage loans were being sold by the depositor, or transferred by the trustee, to the trust, and that each such mortgage loan was duly assigned to the trustee, or its nominee, for the benefit of all holders of the Mortgage Pass-Through Certificates. The trust agreements typically required that the trustee or another party, such as a custodian, maintain possession of certain documents relating to each mortgage loan, including the mortgage note endorsed to the trustee or in blank, and the mortgage assigned to the trustee or in blank, in trust for the benefit of all holders of the Mortgage Pass-Through Certificates.

118. Because the trust agreements typically required prompt execution and delivery of assignments of mortgage in recordable form, and because recordation is normally necessary to perfect the trust's interest against the claims of subsequent purchasers or mortgagees, the Offering Documents represented that the trustee would receive assignments of the mortgage loans in the trust shortly after the closing date. The trust agreements typically required that any mortgage loan as to which the required documents were not delivered or defects were not timely cured could be rejected by the trustee, and returned to the seller.

119. Certificateholders relied on these representations made by Defendants in deciding whether to purchase or retain Certificates.

120. Defendants failed to disclose to Plaintiffs that the mortgage loans were frequently not properly assigned to the trustee, or its nominee, for the benefit of all holders of the Mortgage Pass-Through Certificates.

121. Defendants failed to disclose that as a result of improper practices in the origination and securitization process, the mortgage loans frequently were not properly assigned to the trustee.

122. Moreover, Defendants failed to disclose that they routinely failed to obtain and maintain adequate documentation to establish the trust's ownership of the mortgage loans.

FIFTH CLAIM FOR RELIEF

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

123. [illegible] repeats and realleges each and every allegation set forth herein as if fully set forth herein.

124. [illegible] brings this claim for breach of contract [illegible] individually.

125. [illegible] entered into, by [illegible] contracts with State Street Bank, pursuant to which State Street Bank agreed, *inter alia*, provide [illegible] with [illegible].

126. The first such contract was dated September 15, 1998. It was terminated by [illegible] on January 1, 2001, [illegible]. It, too, was terminated by [illegible] on January 29, 2004, [illegible]. That contract was terminated by [illegible] on January 30, 2009 [illegible].

127. This [illegible] for breach of contract. Each contract provided that it shall be governed by and interpreted according to the laws of the Commonwealth of Massachusetts. [illegible].

128. [illegible] State Street Bank failed to provide [illegible]. These contracts impose [illegible], including [illegible].

i□tr□ti□□, □d □hi□h □ □□b□□t□di□□i□tr□ti□□□. . . □□r th□p□r□h□□□r □□□□□□r i□□ □x□h□□□□r □r i□□ □x□h□□□□□tr□t□□r th□□□□□t □th□□□d, i□□di□□tr□□□ti□□ □x□□t□d □ith □r thr□□h th□□□t□di□, it□□□□t□r it□□b□□t□di□□.□

129. Th□□□t□di□ □□tr□t□p□i□i□d th□t th□□ □□t b□□hi□h □t□t□tr□t B□□□ □□□titl□d t□b□□□p□□□t□d □r th□□r i□□it p□r□r□□r □□T□□p□r□□t t□th□□□tr□t□ □□d b□□t □rth i□□ritt□ □□□□h□d□□r□d t□b□th□p□rti□□Th□□t□di□□h□□b□ □titl□d t□□□p□□□ti□□ □r it□r i□□d □xp□□□□□□t□di□□t □rth i□□ritt□ □□□ □h□d□□b□t□□□th□p□rti□h□r t□□ti□di□□r□t □□p□□□ti□h□□b□i□riti□□ □r□d □p□b□t□□□th□□□t□ □□T□□□d th□□□t□di□.□

130. □□T□□ □d □t□t□tr□t B□□□ □r□d t□□d □x□□t□d th□□□□□i□ □□□ □h□d□□□□

□□□ E□□□ti□□ □pt□b□r 15, 1998 thr□□h □□□30, 2001□

□b□ E□□□ti□□ □□□1, 2001 thr□□h □□□30, 2004□

□□□ E□□□ti□□ □□□1, 2004 thr□□h □□□30, 2007□

□d□ E□□□ti□□ □□□1, 2007 thr□□h □□□30, 2009 □□r□i□d□

□□□ E□□□ti□□ □pri□1, 2008 thr□□h □□□30, 2009 □□r□i□d□

□□□ E□□□ti□□ □□□b□r 1, 2008 thr□□h □□□30, 2009□□d

□□□ E□□□ti□□ □□□1, 2009 thr□□h □□□30, 2014.

131. Th□□□□h□d□□□□h pr□id□d □r □□□□□□□□t □□t□b□p□id b□□T□□t□ □t□t□tr□t B□□□ □r it□□r i□□□□□t□di□, □d □t □rth □rti□□t□□ri□□□□r i□□, □h □□ □□ti□Tr□□□ti□□ □h□r□□□d □□b□Tr□□□ti□□ □h□r□, □r □hi□h □t□t□tr□t B□□□ □□ p□r□itt□d t□□h□r□□□T□□ □□ddi□□□□□.

132. The [illegible] had [illegible] dated [illegible] pt[illegible] ber 15, 1998 di[illegible] X tr[illegible]di[illegible], [illegible]ti[illegible] th[illegible]t ***No charge*** [illegible]i[illegible]b[illegible] [illegible] [illegible]d [illegible]r [illegible]h [illegible]ri[illegible] [illegible]x h[illegible] [illegible]x [illegible]t[illegible]d thr[illegible]h [illegible]third p[illegible]rt[illegible]. [illegible]ri[illegible] [illegible]x h[illegible] [illegible] thr[illegible]h [illegible]t[illegible]t[illegible]tr[illegible]t ***No Charge."*** [illegible]E[illegible]ph[illegible] [illegible]i[illegible]ri[illegible].[illegible]

133. The [illegible] had [illegible] dated [illegible] [illegible]1, 2001 [illegible] [illegible]1, 2004 [illegible] [illegible]1, 2007 [illegible]pri[illegible]1, 2008[illegible] [illegible]d [illegible] [illegible] ber 1, 2008 d[illegible]t [illegible]ti[illegible] X tr[illegible]di[illegible]r [illegible]t X tr[illegible]di[illegible] [illegible] [illegible] [illegible] th[illegible]ri[illegible] [illegible]r [illegible]hi[illegible]h [illegible]t[illegible]t[illegible]tr[illegible]t B[illegible] [illegible]i[illegible]p[illegible]r[illegible]itted t[illegible]h[illegible]r[illegible] [illegible]i[illegible]ti[illegible] [illegible]dditi[illegible] [illegible]. [illegible] [illegible]rdi[illegible], [illegible]h [illegible] th[illegible] [illegible] [illegible]h[illegible]d [illegible] [illegible]t[illegible]p[illegible]tted th[illegible]t [illegible]t[illegible]t[illegible]tr[illegible]t B[illegible] [illegible]h[illegible] [illegible]t b[illegible] [illegible]p[illegible] [illegible]t[illegible]d [illegible]r th[illegible] p[illegible]r[illegible]h[illegible] [illegible]r [illegible] [illegible]r[illegible]ri[illegible] [illegible]x h[illegible] [illegible] [illegible]r [illegible]d b[illegible] th[illegible] [illegible] [illegible] [illegible]t [illegible].

134. The [illegible] had [illegible] dated [illegible] [illegible]1, 2009 [illegible] [illegible] thi[illegible]r, [illegible]d [illegible]xpr[illegible] [illegible]t[illegible] th[illegible]t [illegible]tr[illegible] [illegible]ti[illegible] [illegible]t[illegible]r [illegible] [illegible]ri[illegible] [illegible]x h[illegible] [illegible]tr[illegible]d [illegible]tr[illegible] [illegible]t[illegible]d thr[illegible]h [illegible]t[illegible]t[illegible]tr[illegible]t [illegible]i[illegible]b[illegible] [illegible]i[illegible]d.[illegible] [illegible]rdi[illegible], [illegible]t[illegible]t[illegible]tr[illegible]t B[illegible] [illegible]i[illegible]t p[illegible]r[illegible]itted t[illegible]h[illegible]r[illegible] T[illegible] [illegible]r th[illegible] p[illegible]r[illegible]h[illegible] [illegible]r [illegible] [illegible]X b[illegible] th[illegible] [illegible] [illegible] [illegible]t [illegible] [illegible]d[illegible]r th[illegible]t [illegible]r[illegible] th[illegible] [illegible]t di[illegible] [illegible]tr[illegible]t.

135. I[illegible]th[illegible] [illegible]th[illegible]t[illegible]r th[illegible] [illegible]i[illegible]ri[illegible]tt[illegible]r [illegible] [illegible]r[illegible]i[illegible]d it[illegible] [illegible]p[illegible]i[illegible]t i[illegible] I[illegible]t[illegible]r[illegible]ti[illegible] [illegible]i[illegible]t [illegible]t[illegible]t[illegible]tr[illegible]t [illegible] [illegible]t[illegible]b[illegible]r 20, 2009, [illegible]t[illegible]t[illegible]tr[illegible]t B[illegible] [illegible]i[illegible]r[illegible]d [illegible]T[illegible] [illegible] [illegible]rr[illegible]t [illegible]r[illegible]p[illegible]d [illegible]r[illegible]d[illegible] [illegible] [illegible]d b[illegible] [illegible]t[illegible]t[illegible]tr[illegible]t [illegible]b[illegible]M[illegible]r[illegible]t[illegible]r [illegible]t[illegible]di[illegible] i[illegible]tr[illegible]ti[illegible] [illegible]ri[illegible] [illegible]x h[illegible] [illegible]tr[illegible] [illegible]ti[illegible]r[illegible]t. Th[illegible] [illegible]r[illegible]p[illegible]d [illegible]r[illegible]d[illegible] [illegible] [illegible]ti[illegible]t[illegible]br[illegible]h th[illegible]xpr[illegible]t[illegible]r[illegible] th[illegible] [illegible]29, 2009 [illegible]t di[illegible] [illegible]tr[illegible]t [illegible]d [illegible]i[illegible]t[illegible]d [illegible] [illegible]h[illegible]d [illegible] [illegible]ti[illegible] [illegible]1, 2009 thr[illegible]h [illegible]30, 2014, [illegible]hi[illegible]h [illegible]t[illegible]t th[illegible]t [illegible]t[illegible]r [illegible] [illegible]ti[illegible] [illegible]t[illegible]r [illegible]ri[illegible] [illegible]x h[illegible] [illegible]tr[illegible]d [illegible]tr[illegible] [illegible]t[illegible]d thr[illegible]h [illegible]t[illegible]t[illegible]tr[illegible]t [illegible]i[illegible]b[illegible] [illegible]i[illegible]d.[illegible]

136. [illegible]t[illegible]t[illegible]tr[illegible]t [illegible]pr[illegible]ti[illegible], d[illegible]ti[illegible]d h[illegible]ri[illegible], [illegible]h[illegible]ri[illegible] [illegible] T[illegible] i[illegible] [illegible]t[illegible]d X r[illegible]t[illegible] [illegible]h[illegible] b[illegible]i[illegible] [illegible]ri[illegible] [illegible]rr[illegible], [illegible]d d[illegible] [illegible]t[illegible]d X r[illegible]t[illegible] [illegible]h[illegible] [illegible] [illegible]i[illegible] [illegible]ri[illegible] [illegible]rr[illegible], [illegible] [illegible]tit[illegible] [illegible] hidd[illegible] [illegible]d [illegible] [illegible]th[illegible]ri[illegible]d [illegible]h[illegible]r[illegible]t [illegible] [illegible]T[illegible] [illegible]b[illegible] th[illegible] [illegible] [illegible] [illegible]t [illegible].

137. B□□h□r□i□□ □□T□□th□hidd□□ □□d □□□th□ri□d □□□d□□rib□d h□r□i□, □t□t□ □tr□t B□□□h□□br□□h□d th□□□□t di□□ □□□tr□□t, □d □□T□□h□□□□□□r□d □b□t□□ti□□□ □□□□ d□□ □□□□□□□□r□□□t □□th□t br□□h.

138. Th□□□□t di□□ □□□tr□t□□□rth□r pr□□id□d th□t □t h□□□□t di□□ h□□r□d□r t□th□ □□t□□ □□□T□□□□□□ th□□r□p□rt □□□□□□ □i□r□□i□d □r p□id □□b□h□□□□th□□□t□□ □d □□ it□□i□d □t□t□□ □t □th□□□□□riti□□□r □hi□h it i□□□□□□t□b□□□d□r thi□□□tr□t □□□th□□d □□□□h □□th, □□□□□□□□□i□t □□□□□□□□riti□□tr□□□□ti□□th□t r□□ i□□□□tt□d □t th□t ti□□.□

139. □t□t□□tr□t, h□□□□r, pr□□id□d □□T□□□ith □□th□□r□p□rt th□t h□□d □□□□ th□pri□□b□i□□ h□r□d t□th□□□□i□ti□□□r □t□di□□i□tr□ti□□ □X tr□d□□□d th□d□t□□□th□ tr□d□. □t□t□□tr□t □□itt□d i□p□rt□□t i□□□r□□ti□□, □□□h □th□ti□□□t□□p □□th□□□t□□□ti□□□□ th□tr□d□, □d th□□□t□□□pri□□□t □hi□h □t□t□□tr□t p□id □□r th□p□rh□□□r □□□□□□□r□i□□ □x h□□□□□□□□t□hid□th□□□□t th□t □□T□□ □□□b□i□□ h□r□d □□□□r□t pr□it □□th□tr□d□.

140. □t□t□□tr□t B□□□□□□□i□r□t□□□□p□□□ith th□□□□t di□□ □□□tr□t□□r□p□rti□□ r□□□ir□□ □□t □□□□tit□t□□□□ddditi□□□□br□□h □□th□□□□tr□t, □d □□T□□h□□□□□□r□d □b□t□□ti□□□ □□□t□r□d□□ □□□□□□□□r□□□t th□r□□□.

141. Th□r□i□□□ i□□it□ti□□□p□ri□d th□t □□□d □□t □□□b□r t□thi□□□i□ □□r □□i□□ p□r□□□t t□th□□□xi□ *nullum tempus occurrit regi* r□□□□□i□d □d□r □r□□□□□□□□□.

□□t□ith□t□di□□, □□T□□ □□□d □□t h□□□di□□□□r□d □t□t□□tr□t B□□□□□br□□h □□□□i□th□ □x□r□i□□□d□□di□□□□□□□□ti□th□□□r□i□□t, th□□□□□□□i□□□□th□□□□i□□r□i□□tt□r□□□□□r□□ □□□□p□□i□t □□□i□t □t□t□□tr□t b□□□□□□, *inter alia,* th□r□p□rt□□t□t□□tr□t pr□□id□d t□□□□T□□ h□□□d □□□□th□pri□□□h□r□d t□□□□i□ti□□□r □t□di□□i□tr□ti□□ □X tr□d□□□d th□d□t□□□th□ tr□d□. B□□□itti□□i□p□rt□□t i□□□r□□ti□□, □□□h □□□ti□□□t□□p □d th□□t□□□pri□□p□id □r

r□□i□d b□ t t□□tr□t, □□□□d□t□hid □r □ti□□□ □□□□□□d th□ir i□pr□p□r □□d□t.

□□□rdi□□□, □□□□i□□t t t□□□i□it□ti□□□□r□t□pp□, it □□t□□□d b□ t t□□tr□t□□□ti□□.

Prayer for Relief

□HE□E□□E, □□i□ti□d□□ □d□□d□□ t□r it□□□□d □□□th□r □□b□r□□th□ pr□p□□d □□□□□□□□□□□□

□. □ith r□□rd t□th□ir t□□i□ □r □i□, th□t th□□□rt □rti□thi□□ti□□ □□□ □□□□□□ti□□ □d □t□r □d□□ □t □□i□t □□□□d□t□i□□ □□ □□t □□□□t□p t□thr□b□t □□□□□□ th□t□□ti□ □th□□ □□t □d□□ □□□□□□i□ti□□d th□□□□□h□□□t□i□d □□r□□t □□ □□□d□t□□□ti□□, p□□□□t□i□□di□□ tt□r□□□□□□□□□

B. □ith r□□rd t□th□□□□□d □□i□ □r □i□, th□t th□□□rt □rti□thi□□ti□□ □□□ □□□□□□ti□□ □d □t□r □d□□ □t □□i□t □□□□d□t□i□□ □□ □□t □□□□t□thr□ti□ □th□□ □t □d□□ □□□□□□i□ti□□d th□□□□□h□□□t□i□d □□r□□t □□□□□□d□t□□□ti□□, p□□□□t□i□□di□□ tt□r□□□□□□□□□

□. □ith r□□rd t□th□Third □□i□ □r □i□, th□t th□□□rt □rti□thi□□ti□□ □□□ □□□□□□ti□□, i□d th□t □□□□□d□t□br□□h□d th□ir d□ti□□□tr□t t□ □□i□ti□□d th□□□□□, □d □□rd □ppr□pri□t□□□□p□□□t□r□d□□ □□□□t□ □□i□ti□□d th□□□□□i□□□□t t□b□ d□t□r□i□d □t tri□□

□. □ith r□□rd t□th□□□□rth □□i□ □r □i□, th□t th□□□rt □rti□thi□□ti□□ □□□ □□□□□□ti□□, i□d th□t □□□□□d□t□□□□i□□t□□i□r pr□□□t□d t□ □□i□ti□□d th□□□□□th□hidd□□ □□□□h□r□d i□ □□□□□□ti□□ □ith □X tr□di□□, □d □□rd □ppr□pri□t□□□□p□□□t□r□d□□ □□□□t□ □□i□ti□□d th□□□□□i□□□□t t□b□d□t□r□i□d □t tri□□

E. □ ith r□□rd t□th□ i th □□i□ □r □□i□, th t th□□□□rt i□d th t □□□□d□t □t t□ □tr□t B□□□br□□h□d □□h □it□□□t□di□ □□tr□t□ith □□i□ti□, □d □□rd □ppr□pri t□ □□□p□□□t r□d□ □□□t□ □□i□ti□i□ □□ □□t t□b□d t r□i□d t tri□□

□. Th t th□□□□rt □□rd □□i□ti□□d th□□□□□□□□□t□d xp□□□□□□thi□□ti□, i□□di□□r□□□□b□□tt r□□□□□d xp□rt□□□□□d

□. Th t th□□□□rt □□rd □□i□ti□□d th□□□□□□□h th□r r□i□□th□□□rt d□□□ □ t □d pr□p□r.

Demand for Jury Trial

□□i□ti□d□□ □d□□tri□b□□r□□□□i□□□□tri□b□.

□t□d□ □pri□15, 2011

TH□□□T□□ □ □□□ME□, □□□

B□□ */s/ Garrett J. Bradley*
Mi□h□□□. Th□r□t□□BB□ □497390□
□□rr□tt □. Br□d□□□BB□ □629240□
E□□□□. H□□□□□BB□ □678975□
100 □□□ □□r □tr□t, 30th □□□r
B□t□□, M□□□□h□□tt□ 02110
T□□ph□□□□ □617□720□1333
□□□i□i□□ □617□720□2445

Liaison Counsel for Plaintiff ARTRS and Proposed Interim Liaison Counsel for the Class

□□B□T□□ □□□H□□□□ □□□
□□□□H. B□r□□t□i□
□hri□t□ph□r □. □□□□r
Eri□□. B□□i
□□id □. □□d□□ith
□□□□□. □□r□□t□
Mi□h□□□H. □□□□r□
140 Br□□d□□□
□□□ □□r□, □□□ □□r□ 10005
T□□□ph□□□□ □212□907□0700
□□□i□i□□□ □212□818□0477

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

□IE□□ □□B□□□E□ HEIM□□□
□ BE□□□TEI□, □□□
□t□□□□E. □i□□□ □□
□□□i□□□. □hip□□□□
Mi□h□□□□. Mi□r□i
□□i□□□. □□□th□r□
250 H□d□□□ □tr□□t, 8th □□□□r
□□□ □□r□, □□□ □□r□ 10013
T□□□ph□□□□ □212□355□9500
□□□□i□i□□□ □212□355□9592

Attorneys for Plaintiff and the Class

.

UNITED STATES DISTRICT COURT
FOR THE STATE OF MASSACHUSETTS

□□□□□□□□TE□□HE□ □ETI□EME□T □□□TEM, □□b□h□□□□□it□□□□□d □□□□th□r□ i□i□□r□□ □it□□t□d, □□□i□ti□□□, □. □T□TE □T□EET □□□□□□□TI□□, □T□TE □T□EET B□□□□ □□□□ T□□□T □□M□□□□ □□d □T□TE □T□EET □□□B□□ M□□□□ET□, □□□□, □□□□□d□□t□.	□i□i□□□ti□□ □□. 11□□□□10230 □M□□ □

CERTIFICATE OF SERVICE

I h□r□b□ □□rti□□th□t th□□□r□i□□ □□□i□ti□□□□□□□d □□□□□□□ti□□ □□□p□i□t □□□i□□d thr□□□h th□E□□ □□□t□□ □□□pri□15, 2011 □d □□□□rdi□□□□ □i□b□□r□□d □□□□tr□□i□□□□□p□□ □□□r□□i□t□r□d p□rti□ip□□t□id□□ti□i□d □□th□□□ti□□□□E□□□tr□□i□ □i□i□□.

□□□□ □rr□tt □. Br□d□□□□□□□□□□□□□
□□rr□tt □. Br□d□□□ □BB□□629240□
TH□□□T□□ □ □□□ME□, □□□
100 □□□□ □□r □tr□□t, 30th □□□□r
B□□t□□, M□ 02110
□h. □617□720□1333
□□x □617□720□2445
□br□d□□□□ t□□□□□.□□□

□□t□d□□pri□15, 2011

EX. 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

□r□□d H□ri□□□□, □□b□h□□□□th□□ □t□	□	
M□□□□□□ □□t □tir□□ □□t □□□i□□□□□□□, □□d □□	□	
□th□r □i□i□r□□ □it□□t□d p□□□□,	□	
	□	
□□i□ti□□,	□	**C.A. No.:**
	□	
□.	□	
	□	
□t□t□□tr□□t B□□□ □□d Tr□□t □□□p□□□,	□	
□t□t□□tr□□t □□b□M□r□□t□, □□□	□	
□□d □□□□1□20	□	
	□	
□□□□□d□□t□.	□	

CLASS ACTION COMPLAINT

□□i□ti□□ □r□□d H□ri□□□□ □□□□□th□ □□□□i□□ □□ b□h□□□ □th□ □ □t□ M□□□□□□ □□t □tir□□ □□t □□□i□□□□ □□□ □□□□□□□□d it□p□rti□ip□□t□ □□d b□□□□i□i□ri□□ □□d □ □□□□□ □□□i□i□r□□ □it□□t□d E□I□□ r□tir□□ □□t p□□□□ □□□□□ti□□□, □□□□□□□ □□d th□ir p□rti□ip□□t□ □□d b□□□□i□i□ri□□ □□□i□□t □t□t□ □tr□□t B□□□ □□d Tr□□t □□□p□□□ □□□BT□□ □□d □t□t□ □tr□□t □□b□M□r□□t□, □□□ □□□□M□□ b□□d □□ th□ i□□□□ti□ti□□ □□□rt□ □□ pri□□t□ □hi□t□b□□□r □ir□□, th□ □t□t□ □□ □□i□r□i□, th□ □□□□riti□□ □□d Ex□h□□□□ □□□ □i□i□□ □□E□□, □□d □□i□□□□ti□ti□□ b□ □□□□□□, □hi□h i□□□□d□d r□□i□□i□□□I□t□r□□□□ □□□□□□ □□r□i□□ □□r□ □5500 □□□r□ 5500□□□i□d □ith th□ □□it□d □t□t□□ □□p□rt□□□t □□ □□b□r □□□□□□□□ □i□□□□ □ith th□ □□it□d □t□t□□ □□□□riti□□ □□d Ex□h□□□□ □□□ □i□i□□, i□□□□di□□ □□□□□□□□p□rt□ □□ □□r□ 10□□□□□d □th□r p□b□i□□□ □□□i□b□ d□□□□ □□t□r□□□t□d t□thi□□□ti□□.

I. NATURE OF THE ACTION

1. Thi□i□□□i□i□□□□r□□□ □□t □□ti□□br□□□ht p□r□□□□t t□th□E□p□□□□□ □tir□□ □□t I□□□□ □□□□□rit□ □□t □E□I□□□, 29 □.□.□. □□1001, □t □□□., □□d i□p□rti□□□r □□d□r E□I□□ □□ 502□□□2□□□d □□□3□, 29 □.□.□. □□1132□□□2□□□d □□□3□, t□r□□□□r □□□□□□□d □bt□i□□□□it□b□ r□i□□□□b□h□□□□th□□□□, □□d □□□th□r □i□i□r□□ □it□□t□d p□□□□.

2. □BT □d □□□M □□□□□□□ti□□□, □□ □□□□d □t □□□□□ r□r□□□ir□d t□ □□t pr□d□t□□ □d □□□□□□□ i□ th□ i□t□r□t □□ th□ □□□□□□□ p□rti□ip□t□ □d b□□□□i□i□ri□□ i□ th□ir □p□it□ □□ E□I□□ id□□i□ri□□. □□i□□r□ti□□ □d b□i□, r th□r th□ □□□□i□i□□ th□ir id□□i□r□d□ti□□ □d□r E□I□□ th□ hi□h□t □□□□□□ t□ th□ □□□□□□□[1], th□ □□□□□d□t□ h□r□d i□ pr□p□r, □di□□□□□□d □ r□p□□□ tr□□□□□ti□□□ i□ □r□i□□ □□rr□□□□□□□X tr□□□□□ti□□□□r □X tr□di□□□.

3. Th□ □□□□□ □d th□ i□i□r□□ it□□t□d □□□□□r□□t b□i□h□d □d p□□□□r□d b□ pri□t□ □□titi□□i□ □□□□rd□□□□□ith E□I□□.

4. □□i□ti□□ □□□□□□□ th□t □□□□□d□t□ i□□□t□d E□I□□ b□ □□□□i□□ th□ □□□□□□, □r □□□□□□ti□□ □□□d□ p□r□t□d b□ □□□□□d□t□ i□ □hi□h th□ □□□□□□ □□r□i□□□t□d, t□ □x□□□t□ □X tr□□□□□ti□□□ t □x□h□□□r□t□□ □□□□r b□□t□ □□□□□d□t□ □d r□p□rti□□ th□□□ tr□□□□□ti□□□ t □□□□ □□□r b□□r□t□□. Th□□□ tr□□□□□ti□□□ □r pr□hibit□d tr□□□□□ti□□□ □d□r E□I□□ □406, 29 □.□.□. □1106.

5. □□i□ti□□ □□□□ □□□□□□□ th□t □□□□□d□t□ □i□d t□ □t □□□□□□□ i□ th□ i□t□r□t □□ th□ p□rti□ip□t□ □d b□□□□i□i□ri□□ □□ th□ □□□□□□□d br□□□h□d th□ir id□□i□r□d□ti□□ □□pr□d□□□□d □□□□t□ □□ith r□p□□t t□ th□ □□□□□□□. □p□i□i□□□□, □□i□ti□□□□□□□□ th□t □□□□□d□t□, □□id□□i□ri□□□□ th□ □□□□□□□, i□□□t□d th□ir id□□i□r□d□ti□□ □d□r E□I□□ □404, 29 □.□.□. □1104 b□ □□□□i□□ th□ □□□□□□r th□ □□□□□□□□ti□□ □□d□ p□r□t□d b□ □□□□□d□t□ i□ □hi□h th□ □□□□□□□□r i□□□t□d t□ □□□□□□□ i□ tr□□□□□ti□□ th□t □□r□ □□t t□ th□ □x□□□i□□ b□□□it □□ th□ □□□□□□□ □r th□ir p□rti□ip□t□ □d b□□□□i□i□ri□□.

II. JURISDICTION AND VENUE

6. E□I□□ pr□id□□□r □x□□□i□□ □d□r □□□□ri□di□ti□□ □□□r th□□□ □□□i□□. Th□ □□□□i□ □□ □□□p□□□□□ b□□□it p□□□□ □ithi□ th□ □□□□i□□ □□E□I□□ □3□3, 29 □.□.□. □1002□3, □d Mr. H□ri□□□□i□□ p□rti□ip□t i□ th□ □□□□□ □ithi□ th□ □□□□i□□ □□E□I□□ □3□7, 29 □.□.□. □1002□7, □h□ i□ □th□ri□d p□r□□□t t□ E□I□□ □502□□2□□d □3, 29 □.□.□. □1132□□2□□d □3, t□

[1] *Donovan v. Bierwirth*, 680 □2d 263, 272 □8 □2d □ir. 1982□

bri□□ th□ pr□□□□t □ti□□ □□ b□h□□ □□th□ □□□□ □□d it□p□rti□ip□t□ □□d b□□□i□i□ri□□t□ □bt□i□ □ppr□pri□t□r□i□.

7. Thi□□□□rt h□□□b□□t □□tt□r □ri□di□ti□□ □□□r thi□□□ti□□ p□r□□□□t t□ 28 □.□.□. □ 1331 □□d□r□□□□□□ti□□□□□d E□I□□ □502□□□□1□, 29 □.□.□. □1132□□□□1□.

8. □□□□□ i□ pr□p□r i□ thi□ di□tri□t p□r□□□□t t□ 28 □.□.□. □1391 b□□□d E□I□□ □ 502□□□□2□, 29 □.□.□. □1132□□□□2□, b□□□□□□□□□□r □□□□□th□ id□i□r□br□□h□□□r □hi□h r□i□□ i□□□□□ht □□□□rr□d i□ thi□ di□tri□t □d th□ □□□□□□d□t□r□id□□d □□□b□□□□□d i□ thi□ di□tri□t.

III. PARTIES

A. Plaintiffs

9. **Plaintiff Arnold Henriquez**. □□i□ti□□□r□□d H□□ri□□□□i□□p□rti□ip□□t i□ th□ □ □t□M□□□□□□□t □□tir□□□t □□□i□□□□□□□, □□ E□I□□□□□□□r□d d□i□□d □□□trib□ti□□ p□□□. □t □□□□□t□ri□□ti□□□□r□□ th□ □□□□□d □□□rt□r □□2005 thr□□□h th□ □□□□□d □□□rt□r □□2009, Mr. H□□ri□□□□i□□□□t□d i□ th□ □I□t□r□□ti□□□□E□it□ □□□d□[2] p□□□□□r□d b□ □□BT □d □□□□r□d b□ th□ □□□□. Mr. H□□ri□□□□ □□□□i□□□□t□d i□ □th□r □□□d□p□□□□r□d b□ □□BT □d □□□□r□d b□ th□ □□□□ d□ri□□ th□ □□□□□□□□□ri□d, i□□□□di□□ th□ □□r□□□□p E□it□ □□□d, th□ □□□□□□□p E□it□ □□□d, th□ □□□□□r□□ti□□ □□□□t □□□□□□□ti□□ □□□d, th□ M□d□r□t□ □□□□t □□□□□□□ti□□ □□□d, th□ □□□r□□i□□ □□□□□□□ti□□ □□□d, th□B□□d M□r□□t □d th□ □□□□□ T□r□□t □□tir□□□t 2030 □□□d. Mr. H□□ri□□□□ r□id□□i□ □r□d□ri□, M□r□□□d. Mr. H□□ri□□□□ bri□□ thi□□□ti□□ □□□r pr□□□□t□ti□□ p□i□ti□□□□ b□h□□□□□□□□i□i□r□□□it□□t□d p□□□.

10. **Defendant State Street Bank and Trust Company ("SSBT").** □□□□d□t□t□ □tr□□t B□□□ □d Tr□□t □□□p□□□ i□ i□□□rp□r□t□d i□ M□□□□□h□□□tt□ □d i□ h□d□□□rt□r□d i□

[2] Th□ I□t□r□ti□□□□E□it□ □□□d i□ th□ □□□d □□□ □□□□d b□ □□BT □□ di□□□□□r□□t□p□rti□ip□□t□i□ th□ □□□□. Th□ I□t□r□ti□□□□E□it□ □□□d□□□□□, □□□rdi□□t□ th□ I□t□r□ti□□□□E□it□ □□□d□□□r□□5500 □r 2009 □d 2010, i□d b□ □□BT □ith □□□, i□ th□ □□□ti□□I□t□□t□□□□□ti□□ □□ □□ □□I □M8□□i□□. □r□□ 2006 thr□□□h 2008, th□ I□t□r□ti□□□□E□it□ □□□d□□□□□, □□□rdi□□t□ th□ I□t□r□ti□□□□E□it□ □□□d□□□r□□5500 i□d b□ □□BT □ith □□□ □□□ th□ I□t□r□ti□□□□□ph□ □□□□□t □□ □ri□□ □□□d □ i□□. Th□ □r□i□□ □□d □□□ □□□ r□□r t□ th□ I□t□r□ti□□□□E□it□ □□□d □t □p□rti□□□r p□i□t i□ti□□, □□ □□□□□□t□ □□□□ □r □r□ □□□□□□r□□□□□□□□□□i□t□r□t□ □□□rd i□ th□ I□t□r□ti□□□□E□it□ □□□d.

Boston, Massachusetts. Defendant State Street Bank and Trust Company provides directly, or indirectly through one or more subsidiaries, participant recordkeeping and administrative services to the Plan and maintains custody of the Plan's investments. SSBT is a subsidiary of State Street Corporation, a publicly traded financial holding company headquartered in Boston, Massachusetts.

11. **Defendant State Street Global Markets, LLC ("SSGM")**. Defendant State Street Global Markets, LLC is a subsidiary of State Street Corporation, is incorporated in Delaware and has its principal place of business in Boston, Massachusetts. SSGM describes itself on its website as a leading research and trading firm for institutional investors. It provides participants in institutional research and trading services, including execution, clearing, fixed income, and derivatives to EBI and its affiliates.

12. **Defendants Does 1-20**. Does 1-20 are individuals who the Secretary has not yet identified but who may be subject to relief because of their participation in the breaches described herein.

IV. FACTUAL BACKGROUND

A. The Plans.

13. **Waste Management Retirement Savings Plan**. The Plan is an employee pension benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2). Participants in ERISA, the principal investment alternatives for the Plan's assets.

14. **Other Similarly Situated Plans**. Defendants provide services to other employee benefit plans, either directly or indirectly, which hold investments in which the Plan invests.

B. Defendants' Fiduciary Status

15. Each person named as a defendant has authority to control the Plan's assets. By virtue of their

16. EI tr t id i ri t p r xp it d id i ri d r EI 402 1, b t th r p r h i t p r r id i r ti . EI 3 21 i, 29 . . . 1002 21 i t ti th t p r i id i r t th xt t . . . h x r i di r ti r th rit r di r ti r tr r p ti t h p r x r i th rit r tr r p ti t r di p iti it t. . . ph i dd d.

17. d t ti d id i ri t th b x r i i th rit d tr r r t.

18. BT r d t di r th t, i di b th d i d b it d d i d tri b ti p . t di , BT i id i r d r EI . BT i id i r th d id i r d ti t th d it p rti ip t d r EI .

19. M x r i d th rit d tr r p t i it r BT i r p ib r tti th x h r t X tr ti d x ti th tr ti . di d b , thi pr r t d th xi pr d b t th r d p t d x h r t r d t t di i t d th r d d x h r t d t pr r p tri ti d th r X tr ti .

C. Retirement Plan Investment Strategy

20. Th r r t t p r tir t p , d i d b it p d d i d tri b ti p . B th t p r tir t p , p i th t d d , h d it t b r d pr d t t xp d th ir i t t t i d xp r t r i r t. rdi , d i d b it p h xp d d i t r ti h di , d d i d tri b ti p r t i d t t, i t r , i t r ti i t t pti .

21. tir t p r r p r h d r i riti , r i di id d th t r p id i r i r r i , r p rti ip t i th r i t t t th t r ir th x h

[illegible] foreign currency into and from [illegible], that is, FX trading, either directly or through participation in commingled investment funds.

22. A "custodian" is an institution that holds securities on behalf of an investor. The responsibilities entrusted to a custodian include the recording and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities. Custodians also may perform additional services for their clients. Custodians are typically used by institutional investors who do not wish to keep securities on deposit with their broker/dealer or investment manager. The use of a custodian by an institution is intended to reduce the risk of misconduct by separating the custodial and asset management duties. An independent custodian ensures that the investor has unencumbered ownership of the securities (other assets or property that have been purchased on its behalf).

23. SSBT served as custodian for ERISA-covered defined benefit plans.

24. SSBT operated commingled investment funds invested in foreign securities in which ERISA-covered defined contribution plans invested during the Class Period. SSBT served as custodian for these commingled investment funds. Commingled investment funds that invest in foreign securities, such as the SSBT-sponsored International Equity funds offered in the plans, must engage in FX transactions in order to buy and sell securities, to repatriate dividends or interest payments, and to engage in other transactions.

25. [illegible] which [illegible] is [illegible]. [illegible] and the [illegible] depended upon [illegible] to both execute and report FX trades honestly and accurately.

26. SSBT described its [illegible] specialist in [illegible] the needs of institutional investors. In its Class Period filings with the SEC, the company repeatedly stated that its customer relationships were predicated upon our reputation as a fiduciary and service provider that adheres to the highest standards of ethics, service quality and regulatory compliance. Among the services provided by SSBT to its custodial clients was the execution of foreign exchange

tr□□□□ti□□, □hi□h □□□□□d □i□t□t□p□r□h□□□d □□□□□r□i□□ □□□□riti□□r □□□□□□i□ □rr□□□□ tr□d□.

D. SSBT's Scheme

27. □□ □t□b□r 20, 2009, th□ □□i□r□i□ □tt□r□□□ □□□□r□□□□□i□r□i□ □□□□i□d □ □□□p□i□t □□□□i□□ th□t □t□t□ □tr□t h□d □□□r□h□r□d t□ □□□□□i□r□i□□ □r□□t p□b□i□p□□i□□ □□d□b□t□□□ □□□i□i□□□ □□d□□□r□□r □r□i□□ □x□h□□□□ tr□d□□ □□□d□t□d □□□r □p□ri□d □□□t □□□t □i□ht □□□r□. Th□ □□i□r□i□ □□□□□ □ti□□ □□□□ b□□□d □□ □□ □xt□□i□□ □i□ht□□□□□□ □□th i□□□ti□□ti□□, □hi□h i□□□□d□d i□t□r□i□□i□□ □it□□□□□□□ □□d r□i□□i□□ h□□dr□d□ □□th□□□□□d□□□ i□t□r□□□□t□t□□ tr□t d□□□□ □□t□.

28. □□ i□□□r□□ti□□ □□d b□i□, □□d □□□□rdi□□ t□ th□ □□i□r□i□ □□, □□□□□d□t, t□rti□□ i□ 2001, □dd□d □□ □□di□□□□□□d □□d □b□t□□ti□□□□ r□□□p□t□ th□ □x□h□□□□r□t□it □□□d □h□□ □□□i□□ □□r□i□□ □x□h□□□□ tr□d□□□□r it□□i□□t□. Th□□□h□□ □□□□□i□p□□□□d □□t di□□□□□□d t□ th□ □□□□□. □□□□□d□□t□h□d □□r□□□ □□t□□ith th□ir □r□□□□□t di□□□i□□t th□t □b□i□□t□d □□□□□d□□t□ t□ □h□r□□ th□ir □i□□t□ th□ □□□□ □ □x□h□□□□r□t□□ □□ th□ □□□□ th□t □□□□□d□□t□ □□t□□□□□ □□d t□ □x□□t□ □□r□i□□ □x□h□□□□ tr□d□□r□□□□□t□d b□ th□ □i□□t. □□th□r th□□ d□i□□ □□, h□□□□□r, □□□M □□□d □x□□t□ th□ tr□d□ □t □□□ □x□h□□□□r□t□ □ith□□t i□□□r□i□□ it□ □i□□t, □□d th□□ □□□it□r □□□t□□ti□□□ i□ th□r□t□ thr□□h□□t th□ d□□. Th□□, b□□□r th□□□d □□ th□ d□□, □□□M □□□d pi□□ □ r□t□ th□t □□□□□r b□□□□i□i□□t □□□□□□d□□t, □□d t□□□it□□□i□□t th□t th□ tr□d□ h□d □□□□rr□d □t thi□ □th□r, □□□□□r□t□.

29. □□r i□t□□□□, i□ th□ tr□□□□□ti□□ □□□□ p□r□h□□□□□□r□i□□ □□□□□rit□, □□□M □□□d □h□r□□ th□ □i□□t □hi□h□r □□r□i□□ □x□h□□□□r□t□ th□t □□□□rr□d □t□r i□ th□ d□□, th□□ □□□□i□□ th□ □i□□t t□ p□□ □□r th□□ □h□t □□□M h□d □r□□d p□id. I□ th□ tr□□□□□ti□□ □□□□□□□□□□□r□i□□ □□□□rit□, □□□M □□□d □h□r□□ th□ □i□□t □□□□□r □r□i□□ □x□h□□□□, th□□ p□i□□ th□ □i□□t □□□□ th□□ □h□t □□□M □t□□□□□□□ r□□□i□□d. I□ □ith□r □□□□t, □□□□□d□t□ □□□d t□□□ □□r it□□□□ th□

[illegible] BT [illegible].

30. [illegible]

31. [illegible]

32. [illegible]

rt. Indeed, the district court ordered extraordinary injunctive relief which the parties had not requested, and did so without notice to the extraordinary harm that the injunction would cause to Broadcom. Broadcom was prejudiced by the court's ruling because it was not given the opportunity to present evidence and argument in opposition to the injunction, and the district court's failure to hear from Broadcom before issuing the injunction was an abuse of discretion.

33. Moreover, the injunction, which prohibited Broadcom from transferring its shares in the Singapore domiciled entity, was improper because it effectively prevented Broadcom from redomiciling to the United States.

34. However, this Court need not reach the merits of the injunction. The injunction should be vacated as moot because Broadcom has redomiciled to the United States. Broadcom's redomiciliation has eliminated the risk that Broadcom will engage in a transaction that would be prohibited by the injunction. Broadcom's redomiciliation has also eliminated the risk that Broadcom will engage in a transaction that would be subject to review by CFIUS, which was the basis for the district court's injunction. Moreover, because Broadcom has redomiciled to the United States, it is no longer subject to the jurisdiction of the Singapore courts.

35. Undeterred by the foregoing, the district court entered an order requiring Broadcom to file a declaration describing any transaction that Broadcom was considering, and to notify CFIUS of any transaction that CFIUS had requested Broadcom to notify. This requirement was unnecessary because Broadcom had already redomiciled to the United States. Moreover, the district court lacked jurisdiction to enforce the CFIUS process, which is governed by federal statutes and regulations.

36. The district court's "best estimate" requirement that Broadcom provide CFIUS with its estimate of the likelihood that Broadcom would redomicile to the United States was improper because it required Broadcom to provide CFIUS with information that Broadcom did not have. At the

□i i□□, th r□□□r, "b□t □x□□ti□□ t□d rd" r□□ir th t □□□d t□ x□□t tr d□□□t r□□ th t r□ □□ □□□□ □□□r b□□ th□□ th□□ □□□r d t□ □r□□t d p rti□i□ □□□p r b□□ r□□□□□th tr□□□ti□□.

37. □□i ti□□ d th□ □□□□r□□□□ b□□ xp t d, b□□□□□□ □□□d t□ r pr□□t d □d b□□□□□ E□I□□ □□ r□□ir□, th t th□□ r th□ □□□□□ti□□ i□□t□ □t □□d th□□ p rti ip t d i□ □□d b□□□r d t r□□□ "t□di□□ i□tr□ti□□" tr d□ th t □□r□□ □□□□□r b□□ th□□ th□□□ □□r d b□□□□d t t□ □r□t d p rti□i□□□ p r b□□ r□□□□th □X tr□□ti□□.

38. □X tr di□□ t□□□ p□□□ r□□d th□ □rd □□ □□r□ 24 h□r □□□□, i□□□d□ h□□d□□ □ □□□. Th□ □□i i□□ □X tr di□□ □□□ b□i□□ t 7□00 □.□., □□□ □□□□d ti□ □□ M□d□, □ith □□h □b□□□□t tr di□□d□□ di□□ t 5□00 p.□., □□ □r□□it ti□□.

39. □□ i□□r□ti□□ □d b□i□, □□□M□ □X tr d r□ □r□ i□□r□d □□ □□BT□ □r□t d t□di□□ i□tr□ti□ tr d r□□ir□ □t d ri□ th□ □r□ □□th□d. Th□ □X tr d r□ □i□, th t d□, tr d□ □□ th□ i t rb□□ □X □ r□t i□ rd r t□ □ti□□ □BT□ t□di□□ i□tr□ti□□ p□iti□□. Thi□ pr□□□□i□□□d "□□□tti□□" th□ tr d□.

40. □□i□□r□ti□□ □d b□i□, □p□r□ipt □th□r□□□t, □□□M□□r i□□ x h□□□ tr d r□ h□□□d th□ □x h□□□ r t, □t □pri□, □d x□□t d th□ tr□□□ti□□, □hi□h t pi□□□ □□rr d □r□i□ th□d□ b□□□□□ □□□M tr d r□□ r□ t th ir d□□□ b□ 7 □.□. E□t r□ t d rd Ti□ □. □□□ th□□ tr□□□ti□□ □r th□ □t r d b th tr d r i t□ □□p r t□ □t□ r□ t□□ □□d □ □□ tr t □□t□ □□□, □hi□h □□ ri i d th tr□□□ti□□ d h r d th□ t□ r p r h□□□□ r r□ itt d th p□□ □t □r □□□□dir t□ t□ □□□d t. Th□ □ r□□rd d ti□ □t□ p□□r th□t□□, r□□ti□ tr□□□ti□.

41. □□i□□r□ti□□ □d b□i□, th□h th tr□□□ti□ □□ □□ p□t d d th pri□ d i□, □□d t did □t i□r th i t. I□t d, □i□r□ti□□ d b□i□, □M □b□r d r t □t□ti□□ □ti□□ ti□ r d 3 p.□. i th□ t r d th i d □ith r □hi□h r x h□□□ r t□ r p r h□□□□ r □ r x h□□□ r t□ r □□□t th□ ri□

exchange transaction that occurred during that day. Applying that rate to the dollar amount of the EBT transaction it had conducted that day.

42. Plaintiffs and Class members, at the relevant time, this price, the price charged for EX transactions for both retail dispensing and EBT transactions, is unknown.

43. With each EX trade price in this manner, defendants did not incur the costs and the bid-ask spread profit available each trade, based upon the relevant EX rate at the price the trade was executed.

44. Because defendants knew the price the trade at the relevant time at or which they were able to profit without risk to BT.

45. Plaintiffs and Class members, by price trading in this manner at their retail dispensing transactions, suffered harm to the extent defendants profited at the expense of the retail dispensing transactions. That is, defendants profited principally at the trade prices charged to the Class members, or the bid-ask spread between the EX transaction.

46. Plaintiffs and Class members, defendants price trading in this manner had the effect of artificially depressing the EX price, which was relevant at the time of the transaction.

47. Plaintiffs and Class members, defendants knew that retail dispensing transactions, regardless, spot, forward, option, derivative, or similar, and related to the EX price.

48. Plaintiffs and Class members, defendants knew that EX price, which in relevant retail dispensing transactions, regardless, spot, forward, option, derivative, or similar, and related to the EX price.

Case 1:11-cv-12049-MLW Document 41-13 Filed 11/02/11 Page 12 of 19

49. [illegible]

E. SSBT Makes Exceptions for Certain Clients, Offering Them Special Pricing

50. [illegible]

51. [illegible]

52. [illegible]

53. [illegible]

V. CLASS ALLEGATIONS

54. **Class Definition**. Plaintiffs bring this action on behalf of a class pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all participants in or beneficiaries of the Fidelity ESOP who held and/or purchased shares of Fidelity Stock at any time during the Class Period, as defined below:

> All persons who held ESOP Fidelity Stock through participation in or beneficiaries of the Fidelity Stock Fund, which was invested in Fidelity Stock, at any time during the Class Period, including, but not limited to, any participants in or beneficiaries of the ESOP whose accounts were transferred to, or otherwise held, Fidelity Stock during the Class Period, from January 1, 2001 through October 19, 2009 (the "Class Period").

Excluded from the Class are Defendants and their immediate family members, any subsidiary or affiliate of Fidelity, and any person who is a fiduciary of the ESOP during the Class Period.

55. **Numerosity**. The exact number of the members of the Class is unknown to Plaintiffs at this time. However, the ESOP's Form 5500 filed with the Department of Labor for the Plan Year ended December 31, 2008 indicates that as of December 31, 2008, there were approximately 5.2 million participants in the ESOP. The Class is believed to be large and its members are expected to number in the thousands. The exact number of the Class will be determined through discovery of Fidelity's records. For example, the Plan's Form 5500 filed for Plan Year 2009 indicates that as of December 31, 2009, there were approximately 389 million shares of Fidelity Stock held in the Fidelity Stock Fund. Fidelity's Form 10-K filed with the SEC on February 26, 2010, indicates that as of December 31, 2009, Fidelity had approximately 5500, as of December 31, 2008.

56. **Commonality**. The questions of law and fact common to the Class predominate over any questions affecting only individual members, including, without limitation, whether Defendants engaged in the conduct alleged herein; whether Defendants breached their fiduciary duties to the Class by causing the Company to enter into the Exchange Transaction; whether Defendants breached their duties of loyalty and good faith; whether Defendants breached their duties of candor; whether the Class has been damaged, and if so, what is the proper measure of damages; and whether the Exchange Transaction should be enjoined, rescinded, or modified, including, but not limited to:

a. whether Defendants breached their fiduciary duties to the Class by causing the Company to enter into the Exchange Transaction for inadequate consideration, or by otherwise failing to maximize stockholder value in connection with the Exchange Transaction;

b. whether Defendants breached their duties of loyalty and good faith by entering into the prohibited Exchange Transaction for their own personal benefit;

c. whether Defendants breached their duties of candor by misrepresenting or omitting material information in connection with the Exchange Transaction;

d. whether Defendants breached their duties in connection with the Exchange Transaction.

57. **Typicality**. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff does not have any interests adverse to the Class. Plaintiff is a current shareholder of the Company and will fairly and adequately protect the interests of the Class. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

58. **Adequacy**. Plaintiff is an adequate representative of the Class because Plaintiff has retained counsel that is experienced and competent in the prosecution of class action and derivative litigation. Plaintiff has the ability and intends to vigorously prosecute this action on behalf of the Class. Plaintiff has no interests that are antagonistic to or in conflict with those of the Class.

59. **Rule 23(b)(1)(A) & (B) Requirements**. Class action status is warranted under Fed. R. Civ. P. 23(b)(1)(A) because prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class. Class action status is also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

[illegible]

60. **Rule 23(b)(2) Requirements**. [illegible]

61. **Rule 23(b)(3) Requirements**. [illegible]

VI. CLAIMS FOR RELIEF

COUNT I

Engaging in Self-Interested Prohibited Transactions
(Violation of § 406 of ERISA, 29 U.S.C. § 1106 by Defendants)

62. [illegible]

63. [illegible] ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), [illegible]

64. [illegible] FX [illegible]

65. [illegible] FX [illegible]

66. Through their PTE transactions and prior to them, Defendants dealt with assets of the Plan in their own interest or for their own account. This is a violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

67. As direct and proximate result of the prohibited transactions, the Plan, directly or indirectly, paid commissions and other compensation that were prohibited by ERISA and constituted commissions.

68. Pursuant to ERISA § 409, Defendants are liable to restore to the Plan the amounts paid for the PTE transactions, restitution of which should be ordered by the Court as to the prohibited transactions, and all profits realized by the fiduciaries as to the amounts paid by the Plan to Defendants.

COUNT II

Breach of Duties of Prudence and Loyalty
(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by Defendants)

69. All preceding paragraphs are re-alleged herein.

70. Defendants breached their ERISA fiduciary duties of prudence and loyalty, in that they:

a. Failed to act solely for the benefit of the Plan participants;

b. Charged the Plan for the commissions on which the Plan participants were charged for PTE transactions that were not necessary to the Plan and

c. Failed to disclose to the Plan participants, their fiduciaries, or participants to the PTE transactions, that the Plan was charged for PTE transactions, and that the fiduciaries were receiving compensation for the transactions.

71. The Plan suffered damages when the Plan was charged for commissions that were not necessary to the Plan and provided benefits to the Defendants under ERISA and Defendants did not act in their

fiduciary responsibility under the Plan. § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

72. Defendants breached their duties to prudently monitor the performance of Plan investments during the Class Period, including the Plan's investment in Plan Stock.

73. Defendants' failure to monitor their appointees, the breaches of fiduciary duties by their appointees, and their failure to remedy those breaches, as described above, were breaches of Defendants' own fiduciary responsibilities under ERISA.

74. Pursuant to ERISA § 409(a), Defendants are liable to restore to the Plan all losses caused by their breaches of fiduciary responsibilities, and subject to other equitable relief as appropriate.

COUNT III

Liability for Breach of Co-fiduciary
(Violation of § 405 of ERISA, 29 U.S.C. § 1105)

75. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

76. Each Defendant, 29 U.S.C. § 1105(a)(1), is liable for a breach of fiduciary duty by another fiduciary of BT with respect to the Plan. It did so through the following actions and omissions that participated in and enabled the breaches of fiduciary responsibility by the Committee Defendants with respect to the Plan and Plan Stock.

77. Each Defendant, 29 U.S.C. § 1105(a)(3), is liable because it knew that BT had breached its fiduciary duties in connection with Plan Stock, but failed to remedy those breaches and participated in the breaches.

78. By reason of the Management Defendants' participation in the breaches, each Defendant is liable for the breaches of its co-fiduciaries, BT.

79. Pursuant to ERISA § 409(a), the losses suffered by the Plan.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

80. [illegible] that the [illegible] limited to having illegal EIN [illegible] prohibited transactions provisions

81. [illegible] that the [illegible] breached their fiduciary duties under ERISA

82. Injunctive and other appropriate equitable relief to redress the prohibited transactions in which the [illegible]

83. Injunctive and other appropriate equitable relief to restore the [illegible]

84. Injunctive and other appropriate equitable relief to disgorge profits made through use of assets, including [illegible]

85. Such other and further relief as may be appropriate, including attorneys' fees and costs pursuant to [illegible]

86. And such other and further equitable relief as may be appropriate, including the appointment of an independent fiduciary to oversee the [illegible] with respect to the [illegible]

87. That this action be certified as a class action pursuant to [illegible] that the [illegible] be distributed to the [illegible] or distributed to the extent feasible to the [illegible]

88. Enjoining the [illegible], and each of their successors, from [illegible] their EIN fiduciary responsibilities, obligations, and duties

89. And such other relief as the Court deems proper pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), and/or the common fund doctrine

90. And such other and further relief as this Court deems just and proper.

□□t□d□ □□□□□b□r 18, 2011

□□p□t□□□□□ □□b□itt□d,
□r□□d H□ri□□□□,
B□hi□□tt□r□□□□,

□□□□□th□ri□□M. □□□pb□□□
□th□ri□□M. □□□pb□□□, E□□.
BB□ □549397
□□□□□□□□. B□h□□
□□□□□□. B□h□□, E□□.
BB□ □629444
Feinberg, Campbell & Zack, PC
177 Mi□□ □tr□□t, □□it□300
B□□t□□, M□ 02109□3408
T□□□□617□338□1976
□□x□617□338□7070
□□ □□ □□□□□□□.□□□

□. Bri□□M□Ti□□□
□□r□H□□□i□□t□b□i□□d□
b□ □ti□□□□□ □ □ti□□□□□□.□□□

Br□□□T. □i□
□□r□H□□□i□□t□b□i□□d□

□□□ □□□. M□□r□
□□r□H□□□i□□t□b□i□□d□

McTigue & Veis, LLP
4530 □ i□□□□□i□ □□□□□□, □□
□□it□300
□ □hi□□t□□, □□ 20016
T□□□□202□364□6900
□□x□202□364□9960

□□□□□□□□□r □□i□ti□□

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, AND THOSE SIMILARLY SITUATED, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS LLC AND DOES 1-20, Defendants.	CIVIL ACTION No. 11-cv-12049-MLW

AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Arnold Henriquez (bringing this action pursuant to ERISA on behalf of the Waste Management Retirement Savings Plan ("WM Plan") and its participants and beneficiaries), Michael Cohn (bringing this action pursuant to ERISA on behalf of the Citigroup 401(k) Plan ("Citi Plan") and its participants and beneficiaries), and William Taylor and Richard Sutherland (both bringing this action pursuant to ERISA on behalf of the Retirement Plan of Johnson and Johnson ("J&J Plan") and its participants and beneficiaries) (collectively, "Plaintiffs") bring this action as a class action on behalf of a class of similarly-situated ERISA retirement plans (collectively, the "Plans") and their participants and beneficiaries against State Street Bank and Trust Company ("SSBT") and State Street Global Markets, LLC ("SSGM") (collectively, "Defendants"). The allegations below are based on the investigative efforts of private whistleblower firms, the State of California, the Securities and Exchange Commission

("SEC"), and an investigation by counsel, which included reviewing: Internal Revenue Service Forms 5500 ("Forms 5500") filed with the United States Department of Labor ("DOL"); filings with the United States Securities and Exchange Commission, including Annual Reports on Forms 10-K; documents filed in other litigation; and other publicly available documents related to this action.

I. NATURE OF THE ACTION

2. This is a civil enforcement action brought pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*, and in particular under ERISA §§ 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), to recover losses and obtain equitable relief on behalf of the WM Plan, the Citi Plan, and the J&J Plan (the "Named Plaintiffs' Plans"), and pursuant to applicable law as a class action to obtain relief for all other similarly situated ERISA plans.

3. SSBT and SSGM were required to act prudently and solely in the interest of the Plans' participants and beneficiaries in their capacity as ERISA fiduciaries. On information and belief, rather than fulfilling their fiduciary duties under ERISA (the "highest known to the law"),[1] the Defendants charged, or allowed to be charged, improper, undisclosed markups on transactions in foreign currency ("FX transactions" or "FX trading") and engaged in prohibited transactions in connection with such FX transactions.

4. The Named Plaintiffs' Plans and the similarly situated Plans are established and sponsored by private entities in accordance with ERISA.

[1] *Donovan v.Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982).

5. Plaintiffs allege that Defendants violated ERISA by causing the Plans, or collective funds (the "Collective Investment Funds") operated by SSBT in which the Plans were invested, to purchase foreign securities through the use of FX transactions at rates favorable to Defendants. These transactions were prohibited transactions under ERISA § 406, 29 U.S.C. § 1106.

6. Plaintiffs also allege that Defendants failed to act solely in the interest of the participants and beneficiaries of the Plans and breached their fiduciary duties of prudence and loyalty with respect to the Plans. Specifically, Plaintiffs allege that Defendants, as fiduciaries of the Plans, violated their fiduciary duties under ERISA § 404, 29 U.S.C. § 1104, by causing the Plans or the Collective Investment Funds operated by Defendants in which the Plans were invested to engage in transactions that were not to the exclusive benefit of the Plans or their participants and beneficiaries.

II. JURISDICTION AND VENUE

7. ERISA provides for exclusive federal jurisdiction over these claims. The Plans are "employee benefit plans" within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and Plaintiffs are participants in the Named Plaintiffs' Plans within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), who are authorized pursuant to ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3), to bring the present action on behalf of those plans and their participants and beneficiaries to obtain appropriate relief.

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all of the fiduciary breaches for which relief is sought occurred in this district and the Defendants reside and may be found in this district.

III. PARTIES

A. Plaintiffs

10. **Plaintiff Arnold Henriquez** is a participant in the WM Plan, an ERISA-covered plan. At all material times from the second quarter of 2005 through the second quarter of 2009, Mr. Henriquez invested in the "International Equity Fund" [2] sponsored by SSBT and offered by the Plan. Mr. Henriquez also invested in other funds sponsored by SSBT and offered by the WM Plan during the Class Period, including the Large Cap Equity Fund, the Small Cap Equity Fund, the Conservative Asset Allocation Fund, the Moderate Asset Allocation Fund, the Aggressive Allocation Fund, the Bond Market, and the SSgA Target Retirement 2030 Fund. Mr. Henriquez resides in Frederick, Maryland.

11. **Plaintiff Michael T. Cohn** is a participant in the Citi Plan, an ERISA-covered plan. At all material times from his initial enrollment in the Citi Plan in January 2005 through

[2] The "International Equity Fund" is the fund name used by SSBT on disclosures to participants in the WM Plan. The International Equity Fund's name, according to the International Equity Fund's Forms 5500 for 2009 and 2010, filed by SSBT with DOL, is the "Active Intl Stock Selection SL SF CL I (CM8J [*sic*]." From 2006 through 2008, the International Equity Fund's name, according to the International Equity Fund's Forms 5500 filed by SSBT with DOL was the "International Alpha Select SL Series Fund – [*sic*]." From 1999 to 2005, the WM Plan offered the SSgA International Growth Opportunities Fund Series A Non-Lending as the "International Equity Fund." The foregoing fund names may refer to the International Equity Fund at a particular point in time, as well as to one or more of several classes of interests offered in the International Equity Fund.

August 2007 Mr. Cohn was invested in the "Aggressive Focus Fund" offered by the Citigroup 401(k) Plan. According to the Citigroup 401(k) Plan Aggressive Focus Fund Fact Sheet for the second quarter of 2004, this fund had the objective of "seek[ing] as high a total return over time as is consistent with a primary emphasis on equity securities and a secondary emphasis on fixed-income and money market securities." The Aggressive Focus Fund was a "fund of funds" managed by SSBT that included two funds focused on international equities: (a) the Daily EAFE Index Securities Lending Series – Class T; and (b) the Daily Emerging Markets Index Non Lending Series Fund. These two funds accounted for 24% of the Aggressive Focus Fund's total holdings in 2004. In September 2007, the Citigroup 401(k) Plan changed its investment options, and Mr. Cohn invested in the newly offered "Emerging Market Equity" collective investment fund. He is still invested in that fund as of the date of this complaint. This Emerging Market Equity fund has used SSBT as an investment manager since it was first offered to the Citigroup 401(k) Plan in 2007. Mr. Cohn resides in Highland Park, Illinois.

12. **Plaintiff William R. Taylor** is a participant in the Retirement Plan of Johnson and Johnson, an ERISA-covered plan. Mr. Taylor began working at Johnson and Johnson and accruing service towards his pension benefit on September 21, 1998. At all relevant times to this complaint, SSBT served as the trustee and custodian of both the J&J Plan and the Johnson and Johnson Pension and Savings Plan Master Trust in which the J&J Plan was wholly invested. Mr. Taylor resides in Aston, Pennsylvania. The J&J plan holds foreign investments in both international securities that cannot be purchased on a domestic exchange and foreign currency. Each of these types of holdings requires FX transactions.

13. **Plaintiff Richard A. Sutherland** is a participant in the Retirement Plan of Johnson and Johnson, an ERISA-covered plan. Mr. Taylor began working at Johnson and

Johnson and accruing service towards his pension benefit on January 1, 1999. At all relevant times to this complaint, SSBT served as the trustee and custodian of both the J&J Plan and Johnson and Johnson Pension and Savings Plan Master Trust in which the defined benefit plan was wholly invested. Mr. Sutherland resides in Albuquerque, New Mexico. The J&J plan holds foreign investments in both international securities that cannot be purchased on a domestic exchange and foreign currency. Each of these types of holdings requires FX transactions.

B. Defendants

14. **Defendant State Street Bank and Trust Company** ("SSBT") is incorporated in Massachusetts and is headquartered in Boston, Massachusetts. Defendant State Street Bank and Trust Company directly, or indirectly through one or more subsidiaries, operates as a custodial bank for ERISA-covered benefit plans and for the Collective Investment Funds offered by ERISA-covered plans. SSBT is a subsidiary of State Street Corporation, a financial holding company headquartered in Boston, Massachusetts. SSBT describes itself as a leading specialist in meeting the needs of institutional investors. In its Class Period filings with the SEC, State Street Corporation repeatedly stated that its customer relationships were predicated upon our reputation as a fiduciary and a service provider that adheres to the highest standards of ethics, service quality and regulatory compliance. One of the services provided by SSBT to its custodial clients was the execution of FX transactions, which allowed clients to purchase and sell foreign securities or to engage in foreign currency trades for other purposes. Another of the services provided by SSBT to its custodial clients is investment management of custodial client assets through the use of "collective investment funds," which are described more fully below.

15. **Defendant State Street Global Markets, LLC** ("SSGM"), a subsidiary of State Street Corporation, is incorporated in Delaware and is headquartered in Boston, Massachusetts. SSGM is a broker/dealer registered with the SEC, the Financial Industry Regulatory Authority, ten self-regulatory authorities, and fifty-three U. S. states and territories. SSGM is the only State Street Corporation subsidiary registered as a brokerage firm. SSGM is the corporate successor of State Street Brokerage Services, Inc. and State Street Capital Markets, LLC. On or about June 1, 1999, State Street Capital Markets, LLC assumed all of the assets and liabilities of State Street Brokerage Services. Inc. State Street Brokerage Services, Inc. was dissolved, but "State Street Brokerage Services," not followed by "Inc.," continued to exist as a division of State Street Capital Markets, LLC. On or about March 1, 2002, SSGM assumed all of the assets and liabilities of State Street Capital Markets, LLC. SSGM describes itself as "the investment research and trading arm of State Street Corporation." SSGM provides specialized investment research and trading in foreign exchange, equities, fixed income, and derivatives to ERISA covered benefit plans. Confusingly, in their answer to the complaint-in-intervention of the California Attorney General described below,[3] SSBT and SSGM assert that SSBT executed FX transactions for its clients through a division of SSBT called "State Street Global Markets," which was a separate entity from Defendant State Street Global Markets, LLC. In marketing documents for its "Foreign Exchange Global Strategy,"[4] State Street Corporation has described

[3] *People of the State of Calif. v. State Street Corp.*, Case No. 34-2008-00008457-CU-MC-GDS. (Cal. Super. Ct., Sacramento County, April 12, 2010.).

[4] State Street Corporation added further confusion through its marketing materials, which state that "[p]roducts and services outlined in this document are offered to professional investors through State Street Global Markets LLC, which is a member of FINRA and SIPC, and State Street Bank and Trust Company, State Street Global Markets International Limited and State Street Bank Europe Limited, all of which are authorized and regulated by the Financial Services Authority in the United Kingdom, and their affiliates." State Street Global Markets, *Foreign Exchange Global Strategy*, www.statestreetglobalmarkets.com, 09-SGM08041209 (2010).

"State Street Global Markets" as "the marketing name and a registered trademark of State Street Corporation, used for its financial markets business and that of its affiliates."[5] Any action taken by the "State Street Global Markets" division of SSBT was an action of SSBT.

16. State Street Corporation, SSBT, and SSGM are under common control within the meaning of 29 C.F.R. § 2510.3-21(e)(1)(i). Further, State Street Corporation, SSBT, and SSGM are "affiliates" within the meaning of (a) Prohibited Transaction Exemption 94-20, § IV.(d), (e), 59 Fed. Reg. 8022-02, 8026 (Feb. 17, 1994) and (b) Prohibited Transaction Exemption 98-54 §IV. (e), (l), 63 Fed. Reg. 63503, 63510, because they directly or indirectly, or through one or more intermediaries, control, are controlled by, or are under common control with each other.

17. **Defendants Does 1-20** are fiduciaries of the Plans relevant to this lawsuit whose exact identities will be ascertained through discovery.

IV. THE FOREIGN EXCHANGE SCHEME

A. SSBT's General FX Trading Practices for Non-ERISA Clients

18. According to its September 26, 2006 Investment Manager Guide, SSBT purported to offer two generic types of foreign exchange transactions to third party investment managers for SSBT's custody clients. It offered "direct deals" whereby investment managers "deal[t] foreign exchange directly with [SSBT] Treasury trading desks." SSBT also offered "indirect deals" whereby "requests to execute a foreign exchange transaction [could be] sent to the processing site with the related securities instruction or as a separate instruction." As set forth below, indirect deals were also sometimes described as "standing instruction" trades.

[5] *Id.*

19. According to a class action securities fraud complaint filed in this Court on July 29, 2010 (*Hill v. State Street Corp.*, Document No. 51, Master Docket No. 09-cv-12146-NG), for more than 75% of SSBT's large custodial clients, Defendants would conduct "indirect" or "standing instruction" foreign exchange trades, as described in SSBT's September 26, 2006 Investment Manager Guide. Under the terms of SSBT's custodial arrangements, SSBT was obligated to provide its clients the same exchange rate that Defendants actually used to make the trade. This arrangement was supposed to be beneficial to Defendants' clients because, among other things, they would not have to incur the expense and time of identifying and choosing the most competitive exchange rate.

20. On October 20, 2009, based upon an investigation undertaken after the sealed filing of a *qui tam* complaint by "Associates Against FX Insider Trading" on the personal knowledge of Associates' partners, the California Attorney General ("California AG") filed a complaint alleging that SSBT, SSGM, and a third entity, State Street California Inc., had systematically overcharged two of California's largest public pension funds by tens of millions of dollars for foreign exchange trades conducted over a period of at least eight years. *People of the State of Calif. v. State Street Corp.*, Case No. 34-2008-00008457-CU-MC-GDS. (Cal. Super. Ct., Sacramento County Oct. 20, 2009.).

21. The California AG's action was based on an extensive eighteen-month investigation, which included interviewing witnesses and reviewing hundreds of thousands of internal State Street documents.

22. On information and belief, and according to the *qui tam* relators and the California AG, Defendants herein, starting in 2001, added an undisclosed and substantial "mark-up" to the exchange rate they used when making foreign exchange trades for its clients.

23. The California AG's allegations of undisclosed "mark-ups" were based in part on the sworn testimony of a former SSBT employee who worked on the same trading floor as the SSBT or SSGM foreign exchange traders and who overheard how SSBT or SSGM foreign exchange traders were marking up FX trade prices. This trader, in sworn testimony, described the practices of SSBT's FX traders as a "totally unethical thing to do" and said that the FX Traders practices were not within the "industry standard." *People of the State of Calif. v. State Street*, Declaration of Kenny V. Nguyen, Case No. 34-2008-00008457-CU-MC-GDS (January 31, 2012).

24. The California AG went on to explain that Defendants had agreements with their large custodial clients that obligated Defendants to charge their clients the same exchange rate as the one that Defendants actually used to execute FX trades requested by the client. Rather than doing so, however, SSBT or SSGM would execute the trade at one exchange rate, and then monitor fluctuations in the rate throughout the day. Then, before the end of the day, SSBT or SSGM would pick a rate that was more beneficial to Defendants, and tell its clients that the trade had occurred at this other, false rate.

25. The California *qui tam* relators explained that, for instance, if the transaction was a purchase of a foreign security, SSGM or SSBT would execute the transaction, but would charge the client a higher foreign exchange rate that occurred later in the day, thus causing the client to pay more for the security in U.S. Dollars than the U.S. Dollar value at the time SSBT or SSGM executed the transaction. If the transaction was a sale of a foreign security, SSBT or SSGM would execute the transaction, but would credit the client at a lower foreign exchange rate, thus paying the client less in U.S. Dollars than the U.S. Dollar value of what SSBT or SSGM actually received at the time SSBT or SSGM executed the transaction. In either event, Defendants would

take for themselves the difference between the amount for which the trade was actually executed by SSBT or SSGM and the amount that SSBT or SSGM charged its custody clients for the transaction.

26. According to the California AG complaint-in-intervention and a subsequent amended class action complaint filed in the District of Massachusetts,[6] Defendants' clients did not discover the truth because the records, including statements of account and transaction records provided by SSBT in the ordinary course to their clients, showed only that the trade had been executed within the range of rates occurring during that day, notwithstanding that the rate reported was not the actual rate for the transaction. Defendants' clients were not informed of the actual rates at which FX transactions were made. Defendants' providing such incomplete statements and transaction records to their clients was a course of conduct designed to conceal evidence of their breaches of fiduciary duty and prohibited transactions set forth herein.

B. How SSBT's Foreign Exchange Trading Scheme Worked

27. As detailed by the California relators, clients or their investment managers would initiate a foreign exchange transaction by sending a request, often electronically, to the Securities Processing Unit of SSBT, which was located on the "custody side" of the Company. This request was then sent electronically to the State Street foreign exchange trading desk in SSGM, where it would appear on the Market Order Management System ("MOMS") software used by Defendants' traders.

28. According to the Arkansas State Teacher Retirement System amended class action complaint, SSBT or SSGM's FX traders were informed of SSBT's aggregated standing

[6] *Arkansas State Teacher Retirement System v. State Street Corp.*, No. 11-CV-10230 (MLW) (April 15, 2011).

instruction trade requirements during the course of the day. The FX traders would, that day, trade on the interbank FX market in order to satisfy SSBT's standing instruction positions.

29. According to a class action securities fraud complaint filed in this Court ("*Hill*"),[7] upon receipt of the request, SSBT or SSGM's foreign exchange traders checked the exchange rate, set a price, and executed the transaction, which typically occurred early in the day because SSBT or SSGM traders were at their desks by 7 a.m. Eastern Standard Time. All of those transactions were then entered by the trader into a separate software system called Wall Street Systems ("WSS"), which memorialized the transaction and charged the cost (for purchases) or remitted the payment (for sales) directly to Defendants. The WSS recorded time stamps for the actual, real time transaction.

30. According to the *Hill* class action securities fraud complaint, although the transaction was now completed and the price locked in, Defendants did not inform the client. Instead, on information and belief, SSBT or SSGM observed market fluctuations until sometime around 3 p.m. and then assigned either a higher exchange rate (for purchases) or a lower exchange rate (for sales) to the foreign exchange transactions that occurred during that day. SSGM then applied that rate to all of the "standing instruction" foreign exchange transactions it had conducted that day.

31. On information and belief, at all relevant times to this Complaint, this pricing scheme was used for FX transactions for both custodial clients, including custodial ERISA plan clients, and for transactions involving the Collective Investment Funds.

[7] *Hill v. State Street Corporation*, Document No. 51, Master Docket No. 09-cv-12146-NG. (July 29, 2010).

32. On information and belief, with each FX trade priced in this manner, Defendants did not simply profit; they made excessive profits on each trade, based upon the range-of-the-day's FX rates at the point the trade was priced for the Plan.

33. On information and belief, because Defendants' scheme always priced the trades at or near the very lowest or very highest rates of the day, Defendants were able to make a profit with minimal risk to SSBT.

34. According to the California AG complaint-in-intervention, Defendants' practice of pricing trades in this manner and taking the largest possible mark-up or mark-down was not disclosed to custodial clients over the period of time relevant to that Complaint.

35. On information and belief, Defendants' practice of pricing trades in this manner and taking an excessive mark-up or excessive mark-down was not disclosed to investors in the Collective Investment Funds over the period of time relevant to this Complaint.

C. SSBT Made Exceptions for Certain Clients, Offering Them Special Pricing

36. According to the class action securities fraud complaint filed in this Court on July 29, 2010 (*Hill v. State Street Corporation*, Document No. 51, Master Docket No. 09-cv-12146-NG), over time, SSBT developed a special class of custodial clients that did not receive the excessively high or excessively low range-of-the-day pricing suffered by other custodial clients, including ERISA plans. Those clients who conducted "direct trades" would be quoted an exchange rate by SSBT or SSGM before executing the transaction. These clients – often large hedge funds – typically had easy access to an alternate price source, such as Bloomberg or Reuters, to double-check the truthfulness of SSBT or SSGM's rate quotes. Accordingly,

Defendants could not overcharge these clients, and thus referred to them internally as "smart" clients or "smart money."

37. According to the class action securities fraud complaint, instead of including FX trades for these custodial clients with other clients' trades, and subject to the excessive range-of-the-day mark-ups and mark-downs, these clients were allowed to deal directly with Defendants and were given the chance to directly negotiate prices for their FX requirements for that day, despite their trades coming to SSBT as standing instruction trades.

38. As a result, according to the class action securities fraud complaint, the "smart money" custodial clients received better pricing than their fellow custodial clients who are still subject to SSBT's excessive pricing schemes.

V. FACTUAL BACKGROUND OF ERISA PLAN CLAIMS

A. The Plans.

39. **Waste Management Retirement Savings Plan.** The WM Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

40. **Citigroup 401(k) Plan.** The Citi Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

41. **Retirement Plan of Johnson and Johnson.** The J&J Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

42. **Other Similarly Situated ERISA Plans**. Defendants provide services similar to those provided to the Waste, Citi, and J&J Plans to other, similarly situated Plans, either directly as plan custodian or indirectly as custodian of funds in which the Plans invest.

B. *Retirement Plan Investments in Foreign Securities*

43. There are two types of ERISA-covered pension plans — defined benefit plans and defined contribution plans. Both types of retirement plans have, especially over the last decade, found it necessary and prudent to expand their investments to include exposure to foreign markets. Accordingly, defined benefit plans have expanded international holdings, and defined contribution plans frequently include at least one, if not several, international investment options.

44. ERISA-covered plans regularly purchase and sell foreign securities in order to increase diversification and take advantage of opportunities for higher returns. Retirement plans that invest in foreign securities receive principal, dividends, and interest that are paid in foreign currencies, or participate in other investments that require the exchange of foreign currency into and from US Dollars ("USD"), either directly or through participation in collective investment funds. As a result, the purchase and sale of currencies incidental to a foreign securities transaction is vital to a plan's participation in the international securities markets and to the acquisition, holding, and disposition of foreign securities.

45. SSBT served as trustee and custodian to the WM Plan. Beginning in 1999, the WM Plan offered participants the option to invest in certain Collective Investment Funds, the SSgA International Growth Opportunities Fund Series A Non-Lending. For purposes of communications with the WM Plan and its participants, this fund was named the "International Equity Fund." The International Equity Fund is described more fully below. Another example is the SSgA Target Retirement 2030 Fund offered to WM Plan participants. In 2008, the SSgA Target Retirement 2030 Fund invested in another SSBT Collective Investment Fund, the SSgA MSCI ACWI EX-US Index Fund, a collective investment fund that held foreign securities and

would have been, directly or indirectly, party to FX transactions executed by SSBT or its affiliate SSGM. Neither of these Collective Investment Funds could have been operated without FX transactions, whether or not those transactions were executed at the fund level or at the brokerage level. SSBT, as the operator and manager of these funds, was ultimately responsible for the funds' FX transactions.

46. SSBT served as trustee and custodian to the Citi Plan. Similarly, the Citi Plan in 2008 offered four international Collective Investment Funds (either directly or as part of an underlying investment of the fund) operated and managed by SSBT: the SSgA EAFE Fund; the SSgA International Small Cap Fund; the SSgA MSCI EAFE Fund; and the SSgA MSCI Emerging Markets Free [*sic*]. None of these funds could have been operated without FX transactions, whether those transactions were executed at the Collective Investment Fund level or brokerage level. SSBT, as the operator and manager of these funds, was ultimately responsible for those FX transactions.

47. SSBT served as trustee and custodian to the J&J Plan. The J&J Plan did not invest in the Collective Investment Funds. Rather, the J&J Plan directly held foreign assets, including currency, such as Euros, and foreign securities that could not have been purchased on a domestic exchange. An example of one such security is Elpida Memory Inc, a Japanese stock available only on a Japanese exchange. The J&J Plan could not have made use of foreign currencies or purchased foreign securities which are not traded on U.S. securities exchanges without FX transactions. On information and belief, SSBT, as trustee and custodian of the J&J Plan, executed some or all of the J&J Plan's foreign currency transactions in the relevant period.

C. Defendants' Fiduciary Status

48. Every plan governed by ERISA must have fiduciaries to administer and manage the plan. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA §402(a)(1), but also any other person who in fact performs fiduciary functions. ERISA §3(21)(A)(i), 29 U.S.C. §1002(21)(A)(i) (a person is a fiduciary "to the extent … he exercises any discretionary authority or discretionary control respecting management of such plan or ***exercises any authority or control respecting management or disposition of its assets***…") (emphasis added).

49. An ERISA fiduciary is required to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and … for the exclusive purpose of … providing benefits to participants and beneficiaries and … defraying the reasonable expenses of administering the plan …." ERISA § 404(a)(1)(A)(i), (ii), 29 U.S.C. § 1104(a)(1)(A)(i), (ii).

50. Moreover, ERISA prohibits certain transactions. Specifically, unless exempted pursuant to ERISA § 408, 29 U.S.C. 1108:

> A fiduciary with respect to a plan shall not--
>
> > **(1)** deal with the assets of the plan in his own interest or for his own account,
> >
> > **(2)** in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or
> >
> > **(3)** receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

ERISA §406(b), 29 U.S.C. 1106(b). As described below, Defendants functioned as fiduciaries to the Named Plans both by acting as trustee and custodian for the Plans and by exercising authority and control over Plan assets.

1. SSBT as Custodian

51. An ERISA-covered Plan's custodial bank is an ERISA fiduciary. A "custodian" is an institution that holds securities on behalf of investors. The responsibilities entrusted to a custodian include the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities. Custodians may also perform ancillary services for their clients. Custodians are typically used by institutional investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. The use of a custodial bank is intended to reduce the risk of misconduct by separating the custodial and asset management duties. An independent custodian ensures that the investor has unencumbered ownership of the securities other agents represent to have purchased on its behalf.

52. SSBT served as the custodian for many ERISA-covered pension plans. Specifically, SSBT served as custodian for the Named Plans' assets. As custodian, SSBT was a fiduciary under ERISA and owed fiduciary duties to the Named Plans. SSGM also exercised authority and control over the Plans' assets in its role as SSBT's affiliate responsible for setting the exchange rates on FX transactions and executing those transactions. As discussed above, this process created the excessive spread between the marked-up FX exchange rates charged to custodial ERISA plan clients and the marked-down FX exchange rates used to process repatriation of principal, dividends, and interest paid in foreign currencies, and other FX transactions.

2. SSBT as Investment Manager of Collective Investment Funds for ERISA Plans

53. SSBT sponsored and operated the Collective Investment Funds and offered them to the ERISA plans, including the Plans and the Similarly Situated ERISA Plans. SSBT served as custodian and trustee for the Collective Investment Funds. The Collective Investment Funds were under the exclusive management and control of SSBT.

54. On information and belief, all of the Collective Investment Funds which invested in foreign securities suffered from the same inaccurate FX pricing described in the California *qui tam* complaint, the California AG complaint-in-intervention, and the *Hill* securities fraud class action complaint. *See* ¶¶ 18-38, *supra*.

55. Investments in collective investment funds are equity interests in a separate legal entity, but are not publicly-offered securities or securities issued by an investment company registered under the Investment Company Act of 1940, *i.e.*, mutual funds. Under ERISA, unlike mutual funds and other publicly-offered securities, investments in collective investment funds are subject to a unique "look-through" rule, pursuant to which, the "plan assets" of an ERISA-covered plan include ***both*** its undivided "equity interest [in the entity] ***and*** an undivided interest in each of the underlying assets of the entity …". 29 C.F.R. § 2510.3-101(a)(2); *see also* ERISA § 3(42), 29 C.F.R. § 1002(42) (authority of Secretary of Labor to define term "plan assets" by regulation) (emphasis added). Specifically, when a Plan acquires or holds an interest in a common or collective trust fund, that is, a Collective Investment Fund, "its assets include its investment and an undivided interest ***in each of the underlying assets*** of the entity." *Id*. § 2510.3-101(h)(1) (emphasis added).

56. "[A]ny person who exercises authority or control respecting the management or disposition of such underlying assets, and any person who provides investment advice with

respect to such assets for a fee (direct or indirect) is a fiduciary of the investing plan." *Id*. § 2510.3-101(a).

57. As the sponsor and operator of the Collective Investment Funds, SSBT exercised authority or control with respect to the management or disposition of plan assets. Accordingly, SSBT was a fiduciary of each and every ERISA Plan which invested in the Collective Investment Funds, including the Named Plaintiffs' Plans and the Plans, with respect to the underlying assets of each and every SSBT Collective Investment Fund.

58. In addition, according to SSBT documents provided by the WM Plan in April 2002 to a participant in the WM Plan in response to the participant's request for plan documents pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), on or about January 1, 1999, the Investment Committee of the WM Plan appointed SSBT to act as Investment Manager of the WM Plan "as such term is defined in Section 3(38) of [ERISA]" with respect to designated assets of the WM Plan. The designated assets included five of the Collective Investment Funds, one of which was the "International Growth Opportunities Fund Series A," that is, the International Equity Fund. Accordingly, SSBT also had authority and control over plan assets in its capacity as Investment Manager, including assets invested in the Collective Investment Funds, and specifically including assets invested in the International Equity Fund. This arrangement continued throughout the WM Plan's association with SSBT, regardless of the specific international equity fund being offered to participants at any given time.

3. Foreign Exchange Transactions Under ERISA

59. Certain of the Collective Investment Funds SSBT operated and offered to ERISA-covered plans during the Class Period invested in foreign securities. SSBT served as custodian

and trustee for these Collective Investment Funds. Collective investment funds that invest in foreign securities, or a person acting on their behalf, must engage in FX transactions in order to buy and sell securities, to repatriate dividends or interest payments, and to engage in other transactions. As the trustee of the Collective Investment Funds, SSBT was authorized to convert any monies into any currency through foreign exchange transactions and responsible for ensuring that these transactions were within the bounds of SSBT's fiduciary responsibilities and the limitations of ERISA.

60. For example, according to SSBT documents provided by the WM Plan in April 2002 to a participant in the WM Plan in response to the participant's request for plan documents pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), the stated investment objective of the International Equity Fund in the Waste Management Plan was "to provide long-term capital appreciation through equity investments ***in markets outside the United States***." (Emphasis added).

61. The WM Plan's Investment Policy Statement noted that "[t]he goal of the International Equity Fund is to invest in a portfolio of common stocks that will provide a vehicle for investing in a broad cross section of non-U.S. equities." The International Equity Fund was also permitted to invest in equity-based derivatives of foreign securities and fixed income securities issued by governments and corporations located in those countries. The "investable universe" of the International Equity Fund was "the equities of all developed market countries, excluding the U.S., including American Depositary Receipts." The International Equity Fund's benchmark was the "MSCI-EAFE Index, an index of more than 1,100 stocks in 21 countries outside of North and South America …."

4. SSGM as a Functional Fiduciary of ERISA Plan Assets

62. As noted above, many of the securities purchased, held, or sold in the Collective Investment Funds were foreign securities that could not be purchased or sold except on foreign securities exchanges in transactions denominated in foreign currencies.

63. As described more fully below, as a practical matter, unless a Collective Investment Fund invested solely in American Depositary Receipts or derivatives issued in the jurisdiction of the United States, the Investment Manager of the Collective Investment Fund, *i.e.*, SSBT, or some person acting on its behalf, such as a broker, was required to engage in foreign currency transactions in order to acquire equity securities "in markets outside the United States." Any funds used to acquire such securities at any level within SSBT, or through any affiliate thereof, would constitute "plan assets" under 29 C.F.R. § 2510.3-101.

64. On information and belief, SSGM provided brokerage services, that is, the purchase and sale of foreign securities, to the Collective Investment Funds. To the extent that the Collective Investment Funds settled such purchases and sales in U.S. Dollars, the Collective Investment Funds did not engage directly in FX trading in connection with the purchase or sale of foreign securities. Rather, they engaged in FX trading indirectly through SSGM, in that SSGM would have executed a purchase or sale of a foreign security in foreign currency and then converted the transaction to a U.S. Dollar-denominated transaction for purposes of settlement with the Collective Investment Funds.

65. On information and belief, SSGM also served as the conduit for the repatriation of dividend, principal, and interest payments by issuers of foreign securities and for receipt of proceeds of sales of foreign securities, and engaged in FX transactions in order to remit such payments to the Collective Investment Funds in U.S. Dollars.

66. SSGM's conversion of foreign currency to U.S. dollars constituted the exercise of authority or control respecting the management or disposition of the underlying assets of the Collective Investment Funds and, therefore, of assets of the ERISA Plans, within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(1), and 29 C.F.R. § 2510.3-101(a). Accordingly, SSGM was a fiduciary of the ERISA Plans.

5. Defendants' Prohibited Transactions

67. According to its September 26, 2006 Investment Manager Guide, SSBT purported to comply with a special procedure when effecting foreign exchange transactions for ERISA trust and custody clients. Until at least September 26, 2006, the so-called "FX Procedure" purported to be "designed to satisfy the conditions of Prohibited Transaction Exemption 94-20 ("PTE 94-20"). A prohibited transaction exemption permit[ted] certain 'directed' FX transactions between [SSBT] and its ERISA clients." Under the ERISA "FX Procedure," SSBT "agree[d] to post to its website on a daily basis, a specific buy rate and sell rate for each currency. Each ERISA plan manager [could] direct [SSBT] to effect the plan's FX transactions, including income repatriation and buy/sell related transactions at the posted rates or at rates more favorable if market conditions warrant."

68. The September 26, 2006 Investment Manager Guide did not, however, address foreign exchange transactions conducted in connection with assets managed directly by SSBT, as in the Collective Investment Funds. Under the terms of PTE 94-20, FX transactions generated by SSBT as investment manager of the Collective Investment Funds and executed by SSBT or SSGM could not be conducted under this so-called "FX Procedure," because, among other things, SSBT as investment manager would be dealing with itself, regardless of whether the FX

transactions were conducted internally at SSBT or through its affiliate, SSGM, without the benefit of an independent fiduciary.

69. Nor was there any other applicable prohibited transaction exemption. As set forth above, the terms of FX transactions conducted on behalf of the Collective Investment Funds were conducted on terms less favorable than the terms generally available in comparable arm's length FX transactions between unrelated parties and on terms less favorable than the terms generally afforded by the bank in comparable arm's length FX transactions between unrelated parties. Accordingly, the Defendants could not engage in FX transactions in connection with plan assets in the Collective Investment Funds without engaging in a prohibited transaction.

VI. CLASS ALLEGATIONS

70. **Class Definition**. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Plan and its participants and beneficiaries and the following class of similarly-situated persons (the "Class"):

> All qualified ERISA Plans (including the participants and beneficiaries thereof) for which State Street Bank and Trust Company or State Street Global Markets, LLC served as investment manager (including serving as the manager of a collective trust in which such a Plan invested) or trustee or custodian of assets and for which State Street Bank and Trust Company or State Street Global Markets, LLC provided foreign currency exchange transactional services (including foreign currency transactional services provided to entities such as collective trusts that held such ERISA Plans' assets), at any time between January 1, 2001 and the present (the "Class Period").

Class treatment is appropriate in this case because it would promote judicial economy by adjudicating the Plaintiffs' ERISA fiduciary breach and prohibited transaction claims with respect to all of the Plans and participants and beneficiaries in the class.

71. **Numerosity**. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that hundreds of ERISA Plans throughout the country invested in the Collective Investment Funds during the Class Period, and sustained losses as a result of the Defendants' imprudent FX trading activities. Defendants have more than $5.2 trillion of pension assets under custody. These assets could all be exposed to Defendants' improper pricing scheme. Plaintiffs believe that hundreds of ERISA plans are also exposed to the Collective Investment Funds with investments in foreign securities.

72. **Commonality.** The claims of Plaintiffs and all Class members originate from the same misconduct, breaches of duties and violations of ERISA perpetrated by Defendants with regard to management of its FX trading program. The questions of law and fact common to the Class include, but are not limited to:

a. Whether Defendants breached their fiduciary duties to the Plans by using an FX trading scheme to overcharge the Plans, or the Collective Investment Funds in which the Plans invested, for FX trading;

b. Whether Defendants' self-interested FX transactions constituted transactions prohibited under ERISA's statutory restrictions;

c. Whether Defendants' fiduciary breaches caused losses to the Plans; and

d. Whether Defendants' prohibited transactions caused losses to the Plans.

73. **Typicality.** Plaintiffs' claims on behalf of their Plans are not only typical of, but the same as, claims that would be brought with respect to other Plans. If cases were brought and prosecuted individually, each of the members of the Class would be required to prove the same

claims based upon the same conduct of the Defendants, using the same legal arguments to prove Defendants' liability, and would be seeking the same relief.

74. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel that are competent and experienced in class action and ERISA litigation. Plaintiffs have no interests antagonistic to, or in conflict with those of the Class. Plaintiffs have undertaken to protect vigorously the interests of the absent members of the Class.

75. **Rule 23(b)(1)(A) & (B) Requirements.** Class action status is warranted under Fed. R. Civ. P. 23(b)(1)(A), because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is also warranted under Rule 23(b)(1)(B), because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

76. **Rule 23(b)(2) Requirements.** Certification under Rule 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other equitable relief with respect to the Class as a whole. No plan-by-plan inquiry would be required to determine whether Defendants' breached their fiduciary duties.

77. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to Class members predominate over any

questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

VII. CLAIMS FOR RELIEF

COUNT I

Engaging in Self-Interested Prohibited Transactions
(Violation of § 406 of ERISA, 29 U.S.C. § 1106 by Defendants)

78. All previous averments are incorporated herein.

79. At all relevant times, the Defendants acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), by exercising authority and control over ERISA plan assets.

80. The Defendants, by their actions throughout the Class Period, caused the Plans to engage in unfairly and unreasonably priced FX transactions.

81. During the Class Period, Defendants engaged in FX transactions using plan assets that were not for the exclusive benefit of the Plans' or their participants.

82. Through their FX transactions and pricing scheme, Defendants dealt with assets of the Plans for their own financial benefit and for their own account. This is a violation of ERISA § 406(b)(1) & (3), 29 U.S.C. 1106(b)(1) & (3).

83. As a direct and proximate result of these prohibited transaction violations, the Plans, directly or indirectly, paid millions of dollars in transaction fees that were prohibited by ERISA and suffered millions of dollars in losses.

84. Pursuant to ERISA, Defendants are liable to disgorge all fees paid them for the Plans' FX transactions, to restore all losses suffered by the Plans as a result of the prohibited transactions, and to disgorge all profits earned on the fees paid by the Plans to Defendants.

COUNT II

Breach of Duties of Prudence and Loyalty
(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by Defendants)

85. All previous averments are incorporated herein.

86. Defendants breached their ERISA fiduciary duties of prudence and loyalty by, *inter alia*:

a. Using plan assets for the own benefit, causing losses to the Plans and the participants;

b. Charging the Plans (or the Collective Investment Funds in which the Plans invested) fees for FX trading that were unreasonable and in excess of what Defendants had agreed to charge;

c. Failing to disclose to the Plans, their fiduciaries, or participants the amount of fees being charged for FX trading, that those fees were in excess of what Defendants had agreed to charge, and that other clients were charged less for the same services;

87. These actions during the Class Period were breaches of Defendants' fiduciary duties of loyalty and prudence to the Plans under ERISA, and Defendants did not execute their fiduciary responsibilities for the exclusive benefit of the Plans. § 404(a)(1)(A), (B), 29 U.S.C. §§ 1104(a)(1)(A), (B).

88. Defendants committed these breaches during each FX transaction involving assets of the Plans.

89. As a direct and proximate result of these breaches of duty, the Plans, and indirectly Plaintiffs and the Plans' other participants and beneficiaries, realized losses.

90. Pursuant to ERISA, the Defendants are liable to restore all losses suffered by the Plans caused by the Defendants' breaches of fiduciary duty.

COUNT III

Liability for Breach of Co-fiduciary (Violation of § 405 of ERISA, 29 U.S.C. § 1105)

91. All previous averments are incorporated herein.

92. SSGM violated ERISA, 29 U.S.C. §1105(a)(1), by knowingly undertaking to conceal SSBT's fiduciary breaches. It did so through the actions and omissions of its employees and agents by concealing and failing to provide complete and accurate information to the Plans regarding the cost of FX transactions.

93. SSGM violated ERISA, 29 U.S.C. §1105(a)(3), because it knew that SSBT had breached its fiduciary duties of prudence and loyalty, but failed to take reasonable steps under the circumstances to remedy the breach.

94. On account of SSGM's violations of these provisions, SSGM is liable for the breach of its co-fiduciary, SSBT.

95. As a result of SSGM's actions, the Plans suffered losses.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

a. Declare that the Defendants have violated ERISA's prohibited transactions provisions;

b. Declare that the Defendants breached their fiduciary duties under ERISA;

c. Issue an order compelling a proper accounting of the foreign exchange transactions in which the Plans have engaged;

d. Issue an order compelling Defendants to restore all losses caused to the Plans (or that will be caused to the Plans after the filing of this Complaint);

e. Issue an order compelling the Defendants to disgorge all fees paid and incurred to Defendants (or that will be paid or incurred by the Plans after the filing of this Complaint), including any profits thereon;

f. Order equitable restitution and other appropriate equitable monetary relief against the Defendants;

g. Award such other equitable or remedial relief as may be appropriate, including the permanent removal of the Defendants from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as custodian to the Plans;

h. That this action be certified as a class action and that each Class be designated to receive the amounts restored to the Plans by Defendants and a constructive trust be established for distribution to the extent required by law;

i. Enjoin Defendants collectively, and each of them individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

j. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

k. Award such other and further relief as the Court deems equitable and just.

Dated: February 24 , 2012

By: /s/ Bryan T. Veis

J. Brian McTigue (*pro hac vice*)
Bryan T. Veis (*pro hac vice*)
James A. Moore (*pro hac vice*)
McTigue & Veis, LLP
4530 Wisconsin Ave, NW
Suite 300
Washington, DC 20016
202-364-6900
Fax: 202-364-9960
Email: bveis@mctiguelaw.com
bmctigue@mctiguelaw.com
jmoore@mctiguelaw.com

Catherine M. Campbell
Renee J. Bushey
Feinberg, Campbell & Zack, P.C.
3rd Floor
177 Milk Street
Boston, MA 02109
617-338-1976
Fax: 617-338-7070
Email: cmc@fczlaw.com
rjb@fczlaw.com

Jonathan G. Axelrod (*pro hac vice*)
Beins, Axelrod, P.C.
1625 Mass. Ave. NW
Washington, DC 20036
202-328-7222
Email: jaxelrod@beinsaxelrod.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Bryan T. Veis, hereby certify that on February 24, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Bryan T. Veis

EX. 3

□□ITE□ □T□TE□ □I□T□I□T □□□□T
□I□T□I□T □□M□□□□H□□ETT□

Th□□□d□□□r □□□p□i□□E□p□□□□□□□i□□□
□□d □r□it □h□ri□□ □□□□ □□b□h□□□□it□□□□, □□d
□□□ □□□□h□□□h□□□□t□□□□□□□d, □□d □□□□th□r□
i□i□i□r□□ □it□□t□d,
□□□i□ti□□□,

□□.

□t□t□□tr□□t B□□□ □□d Tr□□t □□□p□□□, □□d □t□t□□
□tr□t □□□b□M□r□t□, □□□,
□□□□□d□□t□.

DEMAND FOR JURY TRIAL

PLAINTIFFS' CLASS ACTION COMPLAINT

Table of Contents

□□i□ti□□□ □□□ □ □b□r, □□Tr□□t□□ □□d □id□□i□r□ □□Th□ □ □d□□□r □□□p□i□□E□p□□□□□ □□i□□□□□d □r□it □h□ri□□ □□□□ □th□ □□ □d□□□r □□□□□, □□b□h□□□□□th□ □ □d□□□r □□□□, □□d □□i□ti□□□□ □□□□h□□h□□□□t□□□□□□d □□□p□rti□ip□□t □□d b□□□□i□i□r□ □□Th□B□□i□□ □□□p□□□ □ □□□□t□r□I□□□□t□ □□t □□□□ □B□□i□□ □□□□□□□d □□□th□r E□I□□ □□□□□□t□□□th□r, th□ □□□□□□□ th□t □□□□r□d □□□□□□□□□r□□□t □□□□t□t□ □tr□t□ □□r□i□□ □□rr□□□□ □x□h□□□□tr□di□□pr□□ti□□□□□ □□□□□d h□r□i□, b□ □□d thr□□□h it□□□d□r□i□□□d □tt□r□□□□, □□□□□th□ □□□□□i□□b□□□d □p□□ p□r□□□□□□□□ □□d□□ □□t□th□□ □□□□□□□d th□ir □□ □ □□t□, □□d □p□□i□□r□ □ti□□ □□d b□i□□□□□t□ □□□□th□r □ □tt□r□.

I. PRELIMINARY STATEMENT

1. Thi□□□□p□i□t □ri□□□□r□□ □ □□□□d□t□□t□t□□tr□□t B□□□ □□d Tr□□t □□□p□□□ □□□t□t□□tr□□t B□□□□, □□d □t□t□□tr□□t □ □b□□M□r□□t□, □□□□ □□□□□□M□□□□□□□□ti□□□□, □□t□t□ □tr□□t□□r □□ □□□□d□□t□□□□□□□d□□i□□ □□d i□pr□d□□t □ □□□□□□ □□t □□th□ □□□□□□□□□ □i□□□□d □□□d□□ □□□□□d b□ □t□t□□tr□□t i□ □i□□□ti□□ □□th□E□p□□□□□ □□tir□□ □□t I□□□□ □ □□□□rit□ □ □t □□ 1974, □□□□ □□d□d □E□I□□ □. Thi□i□□ □i□i□□□□□r□□□ □□t □□ti□□br□□□ht p□r□□□□t t□29 □.□.□. □□1001, *et seq.*, □□d □□d□r E□I□□ □□502□□□2□□□d □□□3□, 29 □.□.□. □□1132□□□2□□□d □□□3□, t□r□□□□□r □□□□□□□□d □bt□i□ □□□it□b□r□i□□□□b□h□□□□□th□ □□□□□□□d □□□th□r □i□i□r□ □it□□t□d □□□□. □t□t□□tr□□t B□□□ □□d □□□M □ □r□r□□□ir□d t□ □t pr□d□□t□□ □□d □□□□□i□th□i□t□r□□t □□ th□ □□□□□p□rti□ip□□t□□□d b□□□□i□i□ri□□i□th□ir □□p□□it□ □□E□I□□ □id□□i□ri□□. I□p□rti□□□□r, □t□t□□tr□□t br□□□h□d it□□id□□i□r□d□ti□□□□d□r E□I□□ b□p□r□h□i□□ □□d □□□□i□□ □□r□i□□ □□□□riti□□thr□□□h th□ □□□□ □□□□r□i□□ □□rr□□□□ □x□h□□□□tr□□□□□ti□□□□t r□t□□□□□□r□b□□t□ □ □□□□d□□t□. Th□□□tr□□□□□ti□□□□ □ □r□pr□hibit□d tr□□□□□ti□□□□□d□r E□I□□ □406, 29 □.□.□. □ 1106.

2. □□i□ti□□□□□ □□□□□th□t □ □□□□d□□t□□□i□□d t□ □□t □□□□□i□th□i□t□r□□t □□th□ p□rti□ip□□t□□□d b□□□□i□i□ri□□□□th□ □□□□□□□d br□□□h□d th□ir □id□□i□r□d□ti□□□□pr□d□□□□□□d □□□□□t□ □ith r□□p□□t t□th□ □□□□□. □p□□i□i□□□□, □□i□ti□□□□□□□□th□t □ □□□□d□□t□, □□□id□□i□ri□□□□ th□ □□□□□, □i□□□t□d th□ir □id□□i□r□d□ti□□□□d□r E□I□□ □404, 29 □.□.□. □1104, b□ □□□□i□□th□

□□□□□t □□□□□□□i□tr□□□□□ti□□□th□t □□r□□□t □□r th□□x□□□i□□b□□□□it □□th□□□□□□□r th□ir p□rti□ip□□t□□□d b□□□□i□i□ri□□.

3. □t□t□□tr□□t □□□th□tr□□t□□□□r th□□□i□d □□□trib□ti□□ □□□□□M□□t□r Tr□□t □□r□□□ □□t b□t□□□□M□rri□□□□M□t□□□□ir□I□□r□□□□□□p□□□□d □t□t□□tr□□t B□□□□d Tr□□t □□□p□□□d□t□d □□pt□□b□r 1, 2002, □□d i□□□□t□□□t □□□□□□r □□r th□□□d□□r □□□□□□□□□□□t□ i□□□□t□d i□□t□t□□tr□□t□□pr□pri□t□r□□□□i□□□d □□□d□□□th□□□□d□□□.

4. □t□t□□tr□□t □□□th□tr□□t□□□□r Th□B□i□□□□□p□□□E□p□□□□□□□□i□□□□□□□□ M□□t□r Tr□□t □B□i□□M□□t□r Tr□□t□□□□d □□□□□□d □□rt□i□□□□d□i□th□B□i□□M□□t□r Tr□□t. □□ □□□□□□□b□r 31, 2011, th□□□□□□t□□□Th□B□i□□□□□p□□□□□□□□t□r□I□□□t□□□t □□□□□th□ □B□i□□□□□□□□□□□pri□d 100 p□r□□□t □□th□B□i□□M□□t□r Tr□□t. Th□B□i□□M□□t□r Tr□□t h□d□th□B□i□□□□□□□□□□□□t□th□t □r□i□□□□t□d i□□t□t□□tr□□t□□□□□d.

5. □□i□□□t□□□t □□□□□□r □□r th□□□□□i□□□d □□□d□, □t□t□□tr□□t B□□□□□tr□□t□d □□b□h□□□□□th□□□□d□□□r □hi□h it □□r□d □□i□□□t□□□t □□□□□r □□r □□□t□di□□□□r□i□□□□r□□ it□ □□□i□i□t□d □t□t□□tr□□t □□titi□□□□□h □□□□□M. □t□t□□tr□□t □dditi□□□□□□□□□r□d □□□□□t□di□□b□□□ □r □rt□i□□□th□□□□□□□i□th□□□□□□□i□□□di□□th□B□i□□□□□□, □d thi□□□□□□□r□d □□□□□□t□di□□ b□□□□□r □□□th□□□r□i□□□□rr□□□□tr□□□□□□ti□□□□t i□□□□□□r □□rt□i□□□th□E□I□□□□□□□□r□d p□□□□.

6. □ □□□t□di□□b□□□i□□□i□□tit□□ti□□th□t h□d□□□□□□riti□□□□b□h□□□□□i□□□t□r□. Th□ r□□□□□□□□□t□di□□b□□□i□t□□□□□□□□rd □d r□□□rd □□□□□□□t□□□□□□t□, i□□□di□□h□di□□□□□t□ □d □□□□riti□□i□□□□□□□□□pi□□□ith □ppr□pri□t□□□□□□ti□□□, □rr□□□i□□□tt□□□□□t□□□□□p□r□h□□□□ □d □□□□□□□d d□i□□ri□□i□□d □□t□□th□□□□□□□t□, □d□i□i□t□ri□□□□rp□r□t□□□ti□□□□□r□□□□riti□□, □d □□i□t□i□i□□□d □□□□□i□□□□□□□□h tr□□□□□ti□□□□, i□□□di□□□□r□i□□□□rr□□□□tr□□□□□ti□□□. □□t□di□□□□r□t□pi□□□□□□d b□i□□□□t□r□□h□d□□□t□i□h t□□□□□□□□□□riti□□□□d□p□□it□ith th□ir br□□□r□d□□□□r□□r i□□□□t□□□t□□□t□□□□□□r. B□□□p□r□ti□□th□□□d□ti□□, th□□□□□□□□□t□di□□□□ □t□□□t i□th□□r□□ r□d□□□□th□ri□□□□□r□d□r□th□r□i□□□□d□□t. □□i□d□p□d□□t□□□t□di□□ □□□□r□□th□t th□i□□□□t□r h□□□□□□□□□b□r□d□□□□r□hip□□th□□□□□riti□□th□r□□□□t□r□pr□□□□t t□ h□□□p□r□h□□□d□□□it□b□h□□□.

7. In 2011, the trust had approximately 22.8 trillion in outstanding debt and debt instruments, which it owed to thousands of investors around the world.[1] The trust had no employees, instead relying on third-party service providers to administer its affairs.

8. Support for the trust's operations came from the trust's settlors. The trust was established by Mexico's federal government to help finance the construction of new highways. Mexico's federal government, in turn, relied on private companies to perform the construction work. Because the trust was established to help finance the construction of highways, it was important to the trust's settlors that the trust's assets be used to pay for the construction of highways.

9. Mr. Cabrera and Mr. Chapa Saldaña were employed by the Mexican government and were responsible for overseeing the trust. The trust's assets were held in accounts at Mexican banks. Cabrera and Chapa, on behalf of the trust, entered into agreements with Mexican banks pursuant to which the banks would hold the trust's assets in accounts and provide other services to the trust. Cabrera and Chapa also entered into agreements with Mexican banks pursuant to which the banks would provide loans to the trust. Because the trust's assets were held in accounts at Mexican banks, the trust's ability to borrow money from Mexican banks was limited by the amount of assets that the trust held in accounts at those banks.

10. Despite the trust's substantial borrowing, the trust had difficulty paying its debts in January 1998, when the Asian debt crisis caused the value of Mexican currency to decline sharply against the dollar. The trust's assets were denominated in Mexican currency, but the trust had substantial debts that it owed to investors around the world that were denominated in dollars. The trust's assets were worth significantly less in dollars than they had been worth before the Asian debt crisis began, but the trust still owed the same amount of money to its investors around the world.

[1] *See* http://www.treasury.gov/resource-center/data-chart-center/tic/Documents/mfh.txt (last visited September 12, 2012).

th ir b h , d d t d X r t h i r i r r th , d i b th
p t d th di r . I thi r rd, t t tr t h r d th d th i rr t d
t i titi X r t r t d t th r t b d r t t t tr t p i r
r i d h M x t d th X tr d .

11. Th d th r b r d t r b h d t t d t t
tr t d pti . r th d d th ir id i ri d p rti ip t, th tr ti
ti m d t d d r p rt d b t t i i t d t t tr t titi t t tr t B
d M d t r p rt d th d t h t r th r i r p rt d t p r,
Mr. b r, r t b i i ri , h Mr. h h t d. r it i i t,
thi i th X r t t t tr t t r p rt d i di t d th t th r t b i h r d
i d d hidd d th ri d r p r d .

12. t t tr t ir d d pti X tr di pr ti , p rp tr t d th
d th , r t d h dr d i i d r i pr it r t t tr t. Thi
t dir t r th p t th d b r r tir t .

13. Mr. b r d Mr. h h t d bri thi ti b h i i r t d E I i t t t tr t d ri th ri d d i d
b , i rd r t r r th pr d t t tr t r p d r b r thr h it
ir d d pti X tr di pr ti .

II. JURISDICTION AND VENUE

14. Thi rt h b t t tt r ri di ti p r t t 28 . . . 1331 d
E I 502 1 , 29 . . . 1132 1 . Th i d rt d h r i r br ht
ti d r 23 th d r i i r d r .

15. i pr p r i thi di tri t p r t t E I 502 2 , 29 . . .
1132 2 .

III. PARTIES

A. Plaintiff Alan Kober

16. Plaintiff Alan Kober is a beneficiary of the Irrevocable Trust Agreement of Theodore Kober dated December 10, 2003 (the "Theodore Kober 2003 Irrevocable Trust"). The Theodore Kober 2003 Irrevocable Trust was established on December 1, 1989. In this capacity, Mr. Kober is entitled to receive distributions from the Theodore Kober 2003 Irrevocable Trust, and has standing to bring claims against the Defendants pursuant to G.L. c. 203E, § 409 and § 502(a)(2).

17. Plaintiff Merrill Lynch Mortgage Investors Inc. is a beneficiary of the Irrevocable Trust Agreement of Theodore Kober dated December 10, 2003 (the "Theodore Kober 2003 Irrevocable Trust"). The Theodore Kober 2003 Irrevocable Trust is entitled to receive distributions from the Bank of America Mortgage Pass-Through Certificates, Series 2006-B (the "Bank of America Mortgage Pass-Through Certificates, Series 2006-B"), which, together with Merrill Lynch Mortgage Investors Inc., established the Theodore Kober 2003 Irrevocable Trust. The Theodore Kober 2003 Irrevocable Trust is an Eligible Certificateholder Institutional Investor which has the right to direct the Bank of America Mortgage Pass-Through Certificates, Series 2006-B.

18. As trustee of the Theodore Kober 2003 Irrevocable Trust, pursuant to Section 4.1 of the Master Trust Agreement, the Master Trust Agreement, dated as of December 1, 2006 between Bank of America Funding Corporation as depositor and the Trustee, as trustee, pursuant to which it has been appointed to exercise certain rights and powers as the Certificateholder of the Issuing Entity. The Issuing Entity holds certain Mortgage Loans. This Issuing Entity holds the property of the trust in which it has been granted a beneficial interest. The Master Trust Agreement further provides that this is the primary vehicle through which the Issuing Entity holds the Mortgage Loans, including the Mortgage Loans which are the subject of this prohibited transaction.

19. Pursuant to the Issuing Entity Agreement, Plaintiff Merrill Lynch Mortgage Investors Inc. established the Bank of America Mortgage Pass-Through Certificates, Series 2006-B on April 1, 2001, the Bank of America Mortgage Pass-Through Certificates, Series 2006-B

[illegible] pr[illegible] t t[illegible] ti[illegible] 3[illegible] E[illegible] [illegible] ith r[illegible] p[illegible] t t[illegible] [illegible] h, [illegible] riti[illegible], r th[illegible] pr[illegible] p[illegible] rt[illegible] d[illegible] i[illegible] t[illegible] d b[illegible] i[illegible] t.

20. [illegible] ri[illegible] th[illegible] r[illegible] t ti[illegible] p[illegible] ri[illegible] d, th[illegible] d[illegible] r [illegible] [illegible] r[illegible] d p[illegible] rti[illegible] p[illegible] t i[illegible] t[illegible] [illegible] t i[illegible] r[illegible] t t[illegible] tr[illegible] t B[illegible] p[illegible] r[illegible] d [illegible] i[illegible] d [illegible] d[illegible] p[illegible] rt [illegible] th[illegible] [illegible] r i[illegible] t[illegible] [illegible] t. I[illegible] t[illegible] r[illegible] ti[illegible] E[illegible] it[illegible] d[illegible] r[illegible] t[illegible] r[illegible] r i[illegible] t[illegible] [illegible] t[illegible] r th[illegible] d[illegible] r [illegible], [illegible] hi[illegible] h [illegible] i[illegible] d [illegible] t b[illegible] [illegible] d, ix[illegible] d I[illegible] [illegible] d, B[illegible] d [illegible] d[illegible] [illegible] ti E[illegible] it[illegible] d. [illegible] ri[illegible] th[illegible] p[illegible] ri[illegible] d, th[illegible] d[illegible] r [illegible] i[illegible] d th[illegible] i[illegible] pr[illegible] pri[illegible] t[illegible] r[illegible] i[illegible] d I[illegible] t[illegible] r[illegible] ti[illegible] E[illegible] it[illegible] d t[illegible] p[illegible] rti[illegible] p[illegible] t[illegible] r i[illegible] t[illegible] [illegible] t I[illegible] t[illegible] r[illegible] ti[illegible] [illegible] r[illegible] th [illegible] pp[illegible] rt[illegible] ti[illegible] [illegible] riti[illegible] di[illegible] [illegible] d, [illegible] d [illegible] i[illegible] I[illegible] t[illegible] r[illegible] ti[illegible] [illegible] ph[illegible] [illegible] t. [illegible] t t[illegible] tr[illegible] t B[illegible] [illegible] r[illegible] d [illegible] th[illegible] Tr[illegible] t[illegible] [illegible] r [illegible] d[illegible] r [illegible], [illegible] d [illegible] r[illegible] d [illegible] th[illegible] I[illegible] [illegible] t[illegible] [illegible] t M[illegible] [illegible] r [illegible] r [illegible] d[illegible] r [illegible] p[illegible] i[illegible] [illegible] [illegible] i[illegible] t[illegible] [illegible] t i[illegible] th[illegible] I[illegible] t[illegible] r[illegible] ti[illegible] E[illegible] it[illegible] d. Th[illegible] [illegible] d[illegible] r [illegible] p[illegible] i[illegible] [illegible] [illegible] r[illegible] d [illegible] [illegible] r[illegible] t [illegible] t t[illegible] tr[illegible] t[illegible] [illegible] ir [illegible] d d[illegible] pti[illegible] X tr[illegible] di[illegible] pr[illegible] ti[illegible] [illegible] b[illegible] h[illegible] [illegible] th[illegible] I[illegible] t[illegible] r[illegible] ti[illegible] E[illegible] it[illegible] d.

B. Plaintiff James Pehoushek-Stangeland

21. [illegible] i[illegible] ti[illegible] [illegible] h[illegible] h[illegible] t[illegible] [illegible] d i[illegible] r[illegible] id[illegible] t [illegible] [illegible] tt[illegible], [illegible] hi[illegible] t[illegible]. H[illegible] [illegible] r[illegible] r th[illegible] B[illegible] i[illegible] [illegible] p[illegible] [illegible] d i[illegible] p[illegible] rti[illegible] p[illegible] t i[illegible] th[illegible] B[illegible] i[illegible] [illegible], [illegible] E[illegible] I[illegible] [illegible] [illegible] i[illegible] d r[illegible] tir[illegible] [illegible] t p[illegible]. [illegible] rdi[illegible], [illegible] i[illegible] ti[illegible] h[illegible] h[illegible] t[illegible] [illegible] d h[illegible] t[illegible] di[illegible] t[illegible] bri[illegible] [illegible] it [illegible] b[illegible] h[illegible] [illegible] th[illegible] B[illegible] i[illegible] [illegible] r [illegible] t[illegible] th[illegible] [illegible] d[illegible] t[illegible] br[illegible] h[illegible] [illegible] id[illegible] i r[illegible] d t[illegible] p[illegible] r[illegible] t t[illegible] E[illegible] I[illegible] [illegible] 409, [illegible] d [illegible] 502[illegible] 2.

22. [illegible] ri[illegible] th[illegible] r[illegible] t ti[illegible] p[illegible] ri[illegible] d, th[illegible] B[illegible] i[illegible] [illegible] [illegible] r[illegible] d p[illegible] rti[illegible] p[illegible] t i[illegible] t[illegible] [illegible] t i[illegible] r[illegible] t t[illegible] tr[illegible] t B[illegible] p[illegible] r[illegible] d [illegible] i[illegible] d [illegible] d[illegible] p[illegible] rt [illegible] th[illegible] [illegible] r i[illegible] t[illegible] [illegible] t. Th[illegible] I[illegible] t[illegible] r[illegible] ti[illegible] I[illegible] d[illegible] x [illegible] d [illegible] [illegible] t[illegible] r[illegible] r i[illegible] t[illegible] [illegible] t[illegible] r th[illegible] B[illegible] i[illegible] [illegible], [illegible] hi[illegible] h [illegible] i[illegible] d[illegible] i[illegible] [illegible] d, t[illegible] b[illegible] [illegible] d, B[illegible] d [illegible] d, B[illegible] d [illegible] d, [illegible] d [illegible] ti[illegible] E[illegible] it[illegible] d. [illegible] ri[illegible] th[illegible] p[illegible] ri[illegible] d, th[illegible] B[illegible] i[illegible] [illegible] i[illegible] d th[illegible] i[illegible] pr[illegible] pri[illegible] t[illegible] r[illegible] t t[illegible] tr[illegible] t [illegible] d th[illegible] t t[illegible] tr[illegible] t B[illegible] [illegible] b[illegible] p E[illegible] it[illegible] x[illegible] I[illegible] d[illegible] x [illegible] riti[illegible] di[illegible] ri[illegible] d [illegible] I[illegible] t t[illegible] tr[illegible] t B[illegible] [illegible] b[illegible] di[illegible] d th[illegible] t t[illegible] tr[illegible] t B[illegible] [illegible] b[illegible] p E[illegible] it[illegible] x[illegible] I[illegible] d[illegible] x [illegible] di[illegible] ri[illegible] d [illegible] t t[illegible] tr[illegible] t B[illegible] [illegible] b[illegible]

□□di□□□□d□, □r p□rti□ip□t□t□i□□□t i□. □□□□□ □□□□b□r 31, 2010, th□B□i□□□□h□d □ppr□xi□□t□□□1.98 bi□i□□i□□□□□t□i□th□□t□t□□tr□t B□□□□b□□□□di□□□□d. □□□□ □□□□b□r 31, 2011, th□B□i□□□□h□d □ppr□xi□□t□□□1.863 bi□i□□i□th□□t□t□□tr□t B□□□ □□b□□□□□□□di□□□□d. □□□□□□□□b□r 31, 2010, □d □□□□b□r 31, 2011, th□□□ i□□□t□□t□□□□titit□d □ppr□xi□□t□□□6□ □□th□B□i□□M□tt□r, r□p□ti□□□.

23. □t□t□□tr□t □r□d □□th□Tr□t□□□r th□B□i□□M□tt□r Tr□t, □hi□h h□d□th□ □□□t□□□th□B□i□□□□□, □d □□th□i□□□t□□□t □□□□□r □r □rti□□□d□i□th□B□i□□M□tt□r Tr□t. Th□B□i□□□□□□□□r□d □□□□□□□□□r□□□t□□□t□□tr□t□□□□□ir □d d□□pti□□□X tr□di□□pr□ti□□□□□b□h□□□□□th□I□t□r□ti□□□I□d□x □□□d t□□□th□r □ith □□i□ti□□□□b□r□□ i□t□r□ti□□□□□□d□, □Th□I□t□r□ti□□□E□it□□□d□□□.

24. Th□□□i□ti□□□h□□□t□di□□t□bri□□thi□□ti□□, □d p□r□□□t t□□d□r□□□□□□□□ □i□i□□r□□d□r□23, t□bri□□□r□pr□□□t□ti□□□□ti□□□□b□h□□□□th□□□d□□□r □□□□□d th□ B□i□□□□□, □d th□□□□□□□□□□□□□hi□h i□□rr□d □□□□□□□□□r□□□t□□□t□□tr□t□□br□□h □□ it□id□i□r□d□ti□□□□th□I□□□t□□□t M□□□□□r □d □□t□di□□□□□X tr□d□□□□r th□□□□□□□ i□□□t□□□t□i□th□I□t□r□ti□□□E□it□□□d□□□□d□□r th□I□t□r□ti□□□I□d□x □□□d□□□.

C. Defendants

25. □□□□d□t □t□t□□tr□t B□□□i□th□tr□t□□□□th□□□□□. □□□□ □□□□th□t □□p□□□□□ □□trib□t□t□th□□□□□□i□h□d i□□tr□t □□□d, □d □t□t□□tr□t B□□□i□r□p□□ib□□□r □□□□□□□pi□□ □□th□□□□d. □t□t□□tr□t B□□□i□□□□th□i□□□t□□□t □□□□□r □r th□□□d□□□r □□□□, □d pr□id□□i□□□t□□□t □□□□□□□□t □d □□t□di□□□r i□□t□th□B□i□□□□□.

26. □□□□d□t □t□t□□tr□t B□□□i□□r□i□t□r□d i□□□□i□□h□di□□ □□□p□□□ith it□ pri□ip□□p□□□□□b□i□□□□i□B□t□□, M□□□□□h□□□tt□. □□ri□□th□□□□□□□□ri□d, □t□t□□tr□t B□□□ dir□t□□, □r i□dir□t□□thr□□h □□□□r □□r□□b□idi□ri□□pr□id□d □□t□di□b□□□i□□□d □X tr□di□□□r□i□□□t□E□I□□□□□□r□d b□□□it p□□□□□□d □□r th□□□□d□□□□□r□d b□E□I□□□□□□r□d □□□□□, □□□h □□th□□□□□□. □□□□□□th□□□r□i□□□pr□id□d b□□t□t□□tr□t B□□□t□it□□□□t□di□□□i□t□ □□□th□□x□□ti□□□□□X tr□□□□□ti□□, □hi□h □□□□d□i□t□t□p□r□h□□□□d □□□□□□r□i□□ □□□riti□□□r t□□□□□□i□□r□i□□□rr□□□□tr□d□□□□r th□r p□rp□□□.

27. [illegible]

IV. CLASS ACTION ALLEGATIONS

28. **Class Definition.** [illegible]

> [illegible]

29. **Numerosity.** [illegible]

30. **Commonality.** [illegible]

□r□□□di□□ □□□□□□i□p□rti□□□r□ □ppr□pri□t□h□r□b□□□□□th□I□t□r□□ti□□□□E□□it□ □□□d□□r□ pr□pri□t□r□ □□□ □i□□□d □□□d□th□t □r□h□d i□ □□□□ti□□tr□□t□□ □□□□d b□ □t□t□ □tr□□t B□□□, i□ □hi□h □□□□t□□□□□□r□p□□□th□t i□□□□t□i□th□I□t□r□□ti□□□□E□□it□ □□□d□□r□p□□□□d, □□d th□r□□□r□, □t□t□ □tr□□t□□d □□□pti□□ □□t□□□d pr□□ti□□□□d □i□□□d □t r□□□rdi□□it□ □X tr□di□□ pr□□ti□□□□□□□t□d □□p□□□□th□t i□□□□t□d i□th□I□t□r□□ti□□□□E□□it□ □□□d□i□th□ □□□ □□ □□□□r. □i□i□r□□, □r th□ □□□t□di□□□□i□t□, □t□t□ □tr□□t□d □□□pti□□ □□t□□□d pr□□ti□□□□□□□□r□i□□□ □X tr□di□□ □ □r□p□rp□tr□t□d □□□ □□□□□□□□id□b□i□.

31. Th□r□ □r□ □□□□□ti□□□□□□□□ □□d □□□t □□□ □ □□□t□th□ □□□□□, i□□□□di□□□:

□□□□ h□th□r □ □□□□d□□t□br□□□h□d th□ir □id□□i□r□ d□ti□□ □□d□r E□I□□ b□ □□□r□h□r□i□□ th□ □□□□□r □□□d□□t i□□□□i□ □hi□h th□ □□□□□i□□□□t□d, □□r th□ir □X tr□di□□ pr□□ti□□□□

□b□□ h□th□r □ □□□□d□□t□□□□□□□d i□ □□□□ir □□d d□□□pti□□ □□t□□□d pr□□ti□□□i□ □□□□□□ti□□ □ith □X tr□□□□□ti□□□, □□ □□t□ □ □xi□i□□th□ir □□ □pr□□it□□t th□ □xp□□□□ □□th□ □□□□□□

□□□□ h□th□r □ □□□□d□□t□□□□□□i□t□r□□t□d □X tr□□□□□ti□□□□ □□□tit□t□d pr□hibit□d tr□□□□□ti□□□□□□d□r E□I□□□

□d□□ h□th□r □ □□□□d□□t□p□□□□□t□d th□di□□□r□□□□b□t□ □□□th□ □□t□□□, □ □r□□t b□□□d □X r□t□□□□d th□ □□□□□ □X r□t□□r□p□rt□d □□d □h□r□□d t□th□ □□□□□□□d th□ I□t□r□□ti□□□□E□□it□ □□□d□□

□□□□ h□th□r □ □□□□d□□t □□□□M □□i□□d t□pr□□id□ □□□p□□t□ □□d □□□□r□t□ i□□□r□ □ti□□t□p□□□ p□□□□□r□, □id□□i□ri□□, □□d p□rti□ip□□t□ □h□ th□□ □□t□r□d i□t□ th□ □X tr□di□□tr□□□□□ti□□□□□b□h□□□□th□ □□□□□□□d th□I□t□r□□ti□□□□E□□it□ □□□d□□

□□□□ h□th□r □ □□□□d□□t□□□□t□pr□xi□ □t□□□ □□□□□d □□□□□□t□th□ □□□□□, □□d i□□□, th□ □ppr□pri□t□r□i□□t□ □hi□h □□i□ti□□□, □□b□h□□□□th□ □□□□□□d th□ □□□□□r□ □□tit□□d□

32. **Typicality.** □□□i□ti□□□□ r□ □i□i□□ □□d pr□p□r□d t□ □r□□th□ □□□rt □□d th□ pr□p□□□d □□□□□i□ □r pr□□□□t□ti□□□ □□p□it□ □ith □□□□ th□ □b□i□□ti□□□ □□d d□ti□□□ □t□ri□□ th□r□t□. □□□i□ti□□ □i□□□ir□□ □□d □d□□□□t□□pr□t□□t th□ i□t□r□□t□□□th□ □□□□□□d h□□□ □□i□t□r□□t□□d□r□□t□□r □hi□h dir□□t□□ □□d irr□□□□□b□□□□□□□i□t □ith th□ i□t□r□□t□□□□th□r □ □□b□r□□□th□ □□□□□.

33. [illegible]

34. [illegible]

35. [illegible]

36. **Adequacy.** [illegible]

37. [illegible]

38. **Rule 23(b)(1)(A) & (B) Requirements.** [illegible]

interest that the other members of the proposed Class have, or will be subject to, and prevent the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for the Defendants.

39. **Rule 23(b)(2) Requirements.** Certification is also appropriate under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

40. **Rule 23(b)(3) Requirements.** In the alternative, certification is also appropriate under Rule 23(b)(3) because questions of law or fact common to Class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Interbank Foreign Exchange Market is a decentralized, global over-the-counter financial market for the trading of currencies. Financial centers around the world function as anchors of trading between a wide range of different types of buyers and sellers around the clock, with the exception of weekends.

42. Interbank foreign exchange transactions are conducted principally electronically over two interdealer electronic communications networks (the "FX Interdealer Brokers") and through bilateral transactions over the telephone or electronic systems such as Bloomberg and Reuters. The FX Interdealer Brokers were founded by and are owned by a consortium of the largest dealer banks in the foreign exchange interbank market.

43. For example, Defendant A.G. is a member of both of the FX Interdealer Brokers and has access to the proprietary trading systems operated by the FX Interdealer Brokers. Furthermore, Defendant A.G. did not pay for the cost of the FX Interdealer Brokers. To participate in the FX Interdealer Brokers, Defendant A.G. was required to

r□□i□d □d p□r□h□□d□□□r. □□□rdi□□□, □X tr□□□□ti□□□r th□ □□□□□□r □□□□rti□□.□. d□□□r□i t□ □r□i□□ □rr□□□□ □d i□□□r.

2. How FX Trading Works

44. □X tr□di□□ t□□□□ p□□□□ r□□□d th□ □□r□d □□ □□□□r□ 24 h□□r □□□□, i□□□□d□□ h□□ d□□□□□□□. Th□□□i□i□□□X tr□di□□ □□□□ b□i□□□t 7□00 □.□. □□□ □□□□□d ti□□□□M□□d□, □ith □□h □b□□□□□t tr□di□□ d□□ □di□□ t 5□00 p.□. □□□ □□r□□it□ti□□.

45. □r □□h □rr□□□□b□□□ht □d □□d d□ri□□ th□□□□r□□□□ th□□X tr□di□□d□□, th□r□ i□□□□□□□□□ri□□b□□hi□h tr□d□□□d □□□□ tr□d□, □ith □□□th□r tr□d□□□□□i□□ □□□□ □□h□r i□ b□t□□□□. Thi□i□□r□□ti□□i□d□t□r□i□□d thr□□h tr□d□d□t□□□it□r□d □d tr□□□d b□ pr□pri□t□r□ □r□i□□□□□h □□, b□t □□t i□it□d t□, E□□tr□□i□Br□□□r□□□□t□□ □EB□□□□□d □□t□r□.

46. Th□di□□r□□□□b□t□□□□th□□□□ tr□d□□□d th□hi□h tr□d□i□□□□□d th□□r□□□□□□th□ d□□.□M□r□pr□□i□□□□, th□□□p□t r□□□□□□□th□d□□□r□□r□t□□X r□t□□□□□□□□p□□i□i□□d pr□□pt □tt□□□□□t d□t□, □□□□□□□t□□b□i□□□d□□□□t□r th□tr□d□d□t□. T□□□r□□□□r□t□□□□□r□th□ tr□d□□□□t □□r□X tr□□□□□ti□□□th□t □tt□□□pri□r t□□r □t□r th□□th□d□t□□□r □p□t tr□d□, p□rti□ip□t□ i□th□□X □□r□□t □□□□□□□□t□th□□□□r□□rd□d□□□t□d r□□□□□□th□d□□.□B□□□□□□□X tr□d□□d□□□t □□□□□□□tt□□t□□d□□□□□t□r th□tr□d□, th□□□r□□rd□d□□□t□d r□□□□□□th□d□□i□□□□r□ □□□□□r□□ti□□□d □□□□r□t□□□□□r□□□t □□h th□t it t□□□□i□t□□□□□□□t th□i□t□r□t□r□t□ di□□□r□□ti□□th□t □xi□t□□t th□ti□□□□tr□d□b□t□□□□th□tr□d□d□t□□□d □tt□□□□□t d□t□□□r th□ □d□r□i□□□□rr□□□i□.

47. B□□□□□□□x□□p□, □□□□□□□100 □X tr□d□□i□□r□□□□r□d□□□r□E□□□□□□□ d□ri□□th□□□□r□□□□□□□□tr□di□□d□□. I□th□□□□□t r□t□tr□d□□□□□rr□d □t □1.25 t□b□□□1.00, □d th□hi□h□t r□t□tr□d□□□□□rr□d □t □1.35 t□b□□□1.00, th□r□□□□□□th□d□□□□□□d b□□1.25□1.35.

48. □□□th□r □□□□□□□□□□□r□i□th□d□i□□□□id□r□t,□□hi□h i□□i□p□□th□□□□ □□th□ □r□□rd□d□□□t□d d□i□□hi□h □d □r□□rd□d□□□t□d d□i□□□□□, di□id□d b□t□□. Thi□r□t□r□□□□t□ th□□□□□r□□□□□X r□t□i□□□i□□□□rr□□□□□□□□i□□□d□□.

49. Th□d□i□□□□id□r□t□i□□i□□i□□□t b□□□□□□□□□th□b□□□□□□□□p□b□i□□□□□□□□ib□□ d□t□□h□□i□□th□pr□i□□□ti□□□□d□□□t□hi□h□X tr□d□□□□□□r□□□□xi□t□□ith□t□□□tr□di□□, □□r

□x□□p□□□□d b□□□□□□ □t□t□ □tr□□t did □□t di□□□□□□ □□h i□□□r□ □ti□□ t□ it□ □□i□□t□. B□ □□□□i□□ □t th□ □id□r□t□ □□□r □ □i□□i□i□□□t p□ri□d □□ti□□, h□□□□□r, □□□ □□□r□□□□□b□ □□ti□ □t th□ □□□r□□□ □X tr□d□ □□□t □□ □□□ □i□□□d□. □□□r th□ □□□r□ □□□□ □□th □r □□□r□, it i□ r□□□□□b□ □t□ □xp□□t □X tr□d□ □t□ r□ r□□□ t□ th□ □id□r□t□. □□ □□□ □i□□□d□, □□□ □tr□d□ □□i□ht □tt□ □ b□□□□ r b□□□□ th□ d□i□□ □id□r□t□, b□t □□□r i□□r□□i□□□□ □□□□th□ p□ri□d □□□ti□□, □□i□□i□i□□□t □□□b□r □□□X tr□d□□□□□ b□ □xp□□t□d t□ □□□r □t □r □xtr□□ □□□ □□□□t□ th□ □id□r□t□.

B. Negotiated vs. Non-Negotiated FX Trades: Trades for Custodial Clients

50. □□□□t □□rth i□ th□ *Arkansas State Teacher Retirement System v. State Street Corp.*, □□. 11□□□10230 □M□□ □□□pr. 15, 2011□□□□p□i□t, □t□t□ □tr□□t □□□□it□□□□t□di□□□□i□□t□ □□h□i□□□ith r□□p□□t t□ th□ □□ □□□□r i□ □hi□h □X tr□d□□□□□□d b□□□□d□□t□d. I□ □□□□□□□ti□t□d, □ □r □□□□ti□□, □□X tr□d□, □□□□t□di□□□□i□□t □r it□□□t□id□i□□□□t□ □□t □ □□□□□r □□□d p□r□□□□□ □□□ □ □□i□□t□ th□ tr□d□ i□□□r□ □ti□□ t□ □□□t□t□ □tr□□t □X tr□d□r. Th□ □t□t□ □tr□□t □X tr□d□r □□□d th□□ □□□t□ □r□t□, □hi□h □□□d b□□□□□pt□d □r r□□□□t□d. I□ □□□□pt□d, □t□t□ □tr□□t □□□d □x□□□t□ th□ □X tr□d□ □t th□ □□r□□d □p□□pri□□, □hi□h □□□d i□□□□d□ □□ □d□t □ □r□□□p.

51. □ □□□□□□□□□□ti□t□d □□r □□t□di□□i□□tr□□ti□□□□X tr□d□i□ □□□□□□ti□□□ th□ □pp□□it□ □□□ □□□□□ti□t□d tr□d□. Th□r□ i□ □□ □r□ □□□□□th □□□□ti□ti□□ □□th□ pri□□ b□t□ □□□th□ p□rti□□t□ th□ tr□□□□□ti□□. □ ith □□□□□□□□□ti□t□d □r □t□di□□i□□tr□□ti□□ tr□d□□, □□□t□di□□□□i□□t□□□d th□ir □□t□id□ i□□□□t□ □□t □ □□□□□r□d□ □□t □□□□ti□t□r□t□□□ith □t□t□ □tr□□t, □□d □t□t□ □tr□□t d□□□□□t □□□□t□ r□t□□. I□□t□□d, □□th□ □□□□ □□□t□di□□i□□tr□□ti□□□□□□□□□t□, □□□t□di□□□□i□□t□□i□ p□□r□p□rt th□ d□□ir□d □□rr□□□□ tr□□□□□ti□□□t□ □t□t□ □tr□□t, □□d tr□□t □□d r□□□ □p□□ □t□t□ □tr□□t, □□i□□ □b□□t □x□□□ti□□□ pr□□ti□□□, t□ □x□□□t□ th□ tr□d□ □□ th□ □□i□□t□□ b□h□□□. □ □□□rdi□□□t□ it□ I□□□□t□ □□t M□□□□□r □□id□□, □t□t□ □tr□□t r□□□rr□d t□ □t□di□□i□□tr□□ti□□ □X tr□□□□□ti□□□□□□ I□dir□□t □ □□□□□ b□t□ □□□2000 □□d M□□2008, □□d □I□□tit□ti□□□□ I□□□□t□r□□ □X Tr□di□□□b□t□ □□□M□□2008 □□d □ □□□□b□r 2009. □i□□□ □ □□□□b□r 2009, □t□t□ □tr□□t h□□r□□rr□d t□ □□□h tr□di□□ □□□□□□□t□d□ □X. □

52. □t□t□ □tr□□t□□□□□t□di□□□□i□□t□ r□□□□□□b□ □ □xp□□t□d th□t □t□di□□i□□tr□□ti□□ □X tr□d□□□□□d h□□□□□ □ □r□□p□□r □□□. Thi□□ □□i□ i□□ □□, □□ □□□ □th□r thi□□□, □□□th□ h□t□

[illegible] did not provide State Street with any basis to determine, by the [illegible] did not disclose that [illegible] in addition to [illegible] X trading [illegible] and did not authorize [illegible] to [illegible], and did State Street's Investment Manager [illegible] did not disclose to State Street that the prices [illegible] X trades were *"based on the market rates at the time the trade is executed."*

53. Institutional investors typically relied that State Street [illegible] had the [illegible] X transactions, [illegible] their reputation and integrity, to transact in securities [illegible] the best [illegible] reasonably available under the circumstances.

1. Custodial Clients Relied Upon State Street's Expertise and Loyalty

54. Since at least 1998, State Street [illegible] its [illegible] X transactions [illegible], including [illegible]. [illegible] [illegible] [illegible] [illegible].

55. State Street [illegible] that [illegible] State Street [illegible] X transactions. In addition to [illegible], State Street [illegible] its [illegible] X trades, including [illegible] the X trade, [illegible] the time of the trade, and [illegible], the price at which the trade [illegible].

56. State Street [illegible] State Street [illegible] X trades, but [illegible] to [illegible] [illegible] with their State Street [illegible], [illegible] and [illegible] [illegible].

57. Additionally, [illegible] State Street [illegible] Investment Manager [illegible], State Street [illegible] X rates that State Street [illegible] X trades [illegible] State Street [illegible] X trades. The [illegible] State Street [illegible] to which it [illegible] [illegible] [illegible] to [illegible]

□r□dit□it i□ □□□□□□ti□□ □ith □t□di□□i□tr□ti□□ □X tr□d□□t □□□r□t□□th□r th□□th□□□t□□□r□t□ □□r th□□X tr□d□.

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

58. □t□t□□tr□t□□□□r□ □□□t□di□□□□□tr□□t□pr□id□d th□t □t□t□□tr□t □h□□□b□□□tit□d t□ □□□p□□□□ti□□ □□r it□□□r i□□□□□d □xp□□□□□□□□□□t□di□□□p□r□□□□t t□ □□□□ritt□□ □□□□□□h□d□□□ b□t□□□□th□p□rti□□.□

59. □□t□di□□□i□t□□□d □t□t□□tr□t □□r□d t□□□d □x□□t□d □□□ri□□□□□□□□□h□d□□□□ □□□□ri□□th□ti□□p□ri□d □r□□ 1998 t□th□pr□□□□t.

60. Th□□□□□□h□d□□□□□ith□r pr□□id□d □ti□□t□d □□□□□□□□□□□r □□□□□□□□□t □□□□□□r □t□t□□tr□t□□□□r i□□□□□□□□□t□di□□.

61. Th□□□□□□h□d□□□□□□□□□□t □□rth □□rt i□□□t□□□ri□□□□□□i□□r□□□r i□□□□□r □hi□h □t□t□□tr□t □□□p□r□itt□d t□□h□r□□□dditi□□□□□□□□, i□□□di□□□ir□□□□□, □□p□rti□□□□□□, □□i□□r□□□□□□d □□b□□t□d□□□□□.

62. □□□□□□th□□□p□rti□□□□r □□□i□□□r□□□r i□□□□t□□□ri□□r□□□t□i□□□□□□t□□X tr□di□□. Th□□□□t□di□□□□□tr□□t□did □□t □t□t□th□t th□□□□□i□□□r□□□□□r□□□t□t□□X tr□di□□□r th□t □t□t□□tr□t □□□□d i□p□□□□□□□□□i□□□□□□□ti□□□ith □X tr□di□□.

63. □□r □□□□□□E□I□□ □i□□t, th□□r□□□□□□T□□□h□r □□tir□□□□t □□□t□□ □□□□T□□□□, □□r □□r□th□□□d□□□d□, it□□□□t□di□□□□□tr□□t□□ith □t□t□□tr□t □□□□xpr□□□□□pr□□id□d th□t □t□di□□i□tr□ti□□□X tr□d□□□□□□d b□□x□□t□d □r□□□□□h□r□□□□r b□did □□t i□t□X tr□□□□ti□□□□□□□□th□□□r□i□□□□r □hi□h it □□□p□r□itt□d t□□h□r□□□□dditi□□□□□□□□r □□□ th□r □□□t b□□□th□□□□□□□□□□t □□□.

64. □p□□i□□r□□ti□□□□d b□i□□, □b□t□□ti□□□□i□i□□r t□r□□□r□□□p□□□□d i□th□ □□□t□di□□□□□tr□□t□□□r th□r □□□b□r□□□th□E□I□□ □□□□□d□ri□□th□□□□□□□□ri□d.

65. □dditi□□□□□□, d□ri□□th□□□□□□□ri□d, □t□t□□tr□□t pr□id□d I□□□□t□□□t M□□□□□r □id□t□□□t□di□□□i□t□□□d □t□id□i□□□t□□□t □□□□□r th□t □□t□i□□d □□□pr□h□□i□□ i□□□r□□ti□□□b□□t □t□t□□tr□t□□□□□t□d□pr□□ti□□□□d □r□i□□, i□□□di□□pr□□d□r□□

r□□ir□□ □t, □□t, □d □□t r□□. Th□ □□□ □r i□□d□□rib□d th□ r i□ i□□□d□d □t t□ □tr□t □□r i□□ Ex□h□□□□ Tr□□□□ti□□.□

66. □□ri□□ th□ □□□□□□ri□d, □t t□ □tr□t i□□□d □□ □□□r th□ 15 di□ti□t I□□□t□ □t M□□□□r □□id□, i□□□di□□ th□□d□t□d □□□□ 9, 2003 □□ □□□□t 9, 2005 □□pt□b□r 26, 2006□ □t□b□r 17, 2006□□ □□□□b□r 20, 2006□□ □□□□b□r 15, 2006□□□□r□25, 2007□□t□b□r 30, 2007□□ □□□□b□r 21, 2007□□ □□□□b□r 19, 2007□□□□r□28, 2008□M□1, 2008□□t□b□r 31, 2008□□ □□□□b□r 30, 2008□□d □□□□r□23, 2009, t□ □□t□di□□i□t□□d □t id□i□□□t□ □t □□□□r.

67. □t t□ □tr□t r□pr□□t□d i□ □□h □th□□I□□□t□ □t M□□□□r □□id□th□t □t t□ □tr□t □□r i□□ Ex□h□□□□ Tr□□□□ti□□. . . r□***priced based on the market rates at the time the trade is executed.***" □E□ph□i□dd□d.□

3. State Street's Deceptive Scheme Overcharged Custodial Clients for Standing-Instruction FX Trades

68. □t t□ □tr□t□□X pr□ti□□di□r□d r□□ □h□t th□□□t di□□□□tr□t□□th□ri□d □d □h□t th□I□□□t□ □t M□□□□r □□id□r pr□□□t□d. □□pit□□□□r□□□□th□t □X tr□□□□ti□□□ □□d b□b□□d □□ □r□t r□t□, t□t□ □tr□t r□p□rt□d □d □h□r□d it□□□t di□□i□t□X r□t□□ □□ t□di□□i□tr□ti□□tr□d□□□r □b□□□□h□t □t t□ □tr□t □t□□□□p□id □r □r i□□ □rr□□□□ □r □r b□□□□ □h□t □t t□ □tr□t □t□□□□r□□i□d □r □□□□□□□□r i□□ □rr□□□□□ □t□ti□□, t r t□□ th□t □t□□□□□□□□***outside of the range of the day.***

69. □□□□h, □b□□□□□ □t t□it□□□t di□□i□t, □t t□ □tr□t r□p□rt□d □X r t□□□□ t□di□□i□tr□ti□□tr□d□□t□it□□i□t□th□t did □t r□□□t th□□t□□□□□t r pr□□□d□□□th□□X tr□□□□ti□□t□ □t t□ □tr□t, □d i□t□d i□□□d□d □hidd□□ □d □□□th□ri□d □r□□p. □t i□p□, □t t□ □tr□t i□□□t□d th□□X r t□□it r□p□rt□d □d □h□r□d □r r□dit□d t□it□□□t di□□i□t. □t t□ □tr□t p□id □r r□□i□d □□r t□□r □X, r□p□rt□d t□it□□□t di□□i□t□□□th□r r t□th□t □□□ □ith□r hi□h□r i□th□□□□□□□p□r h□□□r □□r i□th□□□□□□□□□□□, □d p□□t□d th□ di□□r□□□.

70. [illegible] disputed their transactions and argued that [illegible] X transactions, the parties entered into a Master Trading Agreement [illegible] MM Group [illegible] X trading [illegible] X trading [illegible] paid for [illegible] transactions.

71. This dispute [illegible] in the spring of 100 [illegible] trading [illegible] 1.25 to 1.35 [illegible] 1.00, with [illegible] 1.30. [illegible], [illegible] disputed transactions [illegible] trading [illegible] 1.25 and 1.35 [illegible], but reported to it that it paid [illegible]. [illegible] had [illegible] it [illegible] which [illegible] accept the discount.

72. This [illegible] supported by the [illegible] EI [illegible] disputed [illegible] The [illegible] X transactions [illegible] between [illegible] reported to [illegible]. But [illegible] 3, 2000 and [illegible] 31, 2010, [illegible] had [illegible] 10,784 X transactions with [illegible] 10,784 transactions, 4,216, or 39%, [illegible] disputed, the discount transactions. The 4,216 X trading had [illegible] 1.2 billion.

73. In addition [illegible], [illegible] that it X trading [illegible] to the X trading [illegible] 2 billion [illegible]. But principal [illegible] with the [illegible] paired trading [illegible], [illegible] the trading [illegible] X trading [illegible] reported. [illegible] this [illegible], the trading [illegible] the discount [illegible] and the [illegible] X trading.

74. [illegible] did [illegible] EI [illegible] disputed [illegible] X trading. Therefore, [illegible] the [illegible] X trading [illegible] the [illegible]

□□th□d of d□t□r□i□□□h□th□r State □tr□□t □h□r□d (□r □r□dit□d) AR TRS a□t□b□□d on th□ ac□ual ma□ke□ □t□□t th□ti□□ of e□ecu□ion, as State □tr□t□r pr□□□t□d it wou□d d□i□it□ Inve□tmen□ Manage□ Gu□des

75. Th□ analy□is b□ AR TRS □□d□ clea□ th□t State □tr□□t d□ri□□d it□ false □X ra□es b□ □ddi□□ (on pu□c□ases) □r □btr□□ti□□ (on sales) "□□i□p□i□t" □r "□ip" fr□□ th□ ac□ual □X r□t□. A b□i□p□i□t, □r pip, i□ a □□it equal t□ 1□100th of a pe□cen□age p□i□t. Fo□ e□ample, th□ smalle□t move th□ eu□o d□lla□ cu□rency p□ir gene□ally makes i□ 1□100th of a penny, □r one b□i□p□i□t.

76. Fo□ th□ p□ri□d of Janua□y 3, 2000 thr□□h Decem b□□ 31, 2010, th□ □X ra□es th□t State □tr□□t r□p□rt□d and □h□r□d (□r □r□dit□d) t□ AR TRS on it□ 4,216 non-nego□ia□d □X tr□d□□ we□e, on ave□age, ***17.8 basis points*** □bove □r below th□ day's □id r□t□. I□ th□r wo□ds, th□ □X ra□es th□t State □tr□□t r□p□rt□d and □h□r□d (□r □r□dit□d) t□ AR TRS fo□ t□□ di□□i□tr□□ti□□ □X tr□d□, on ave□age and d□ri□□ thi□ 10-yea□ p□ri□d, □r□t□d a tr□di□□ □□t 17.8 b□i□p□i□t□ hi□h□r th□□ th□ ave□age □X r□t□ □□ th□ day's □id r□t□)

77. B□ way of e□ample, assume th□t th□ r□t□ State □tr□□t ac□ually p□id t□ pu□c□ase €1.00 on a g□ven day was $ 1.31551. I□ State □tr□□t □h□r□d AR TRS 17.8 b□i□p□i□t□ mo□e th□□ it p□id, th□ r□t□ wou□d b□ $1.31729 ($1.31729 - $1.31551 = 0.00178) Fo□ a pu□c□ase of € 10 □i□i□□, th□ undisclos□d pr□fit t□ State □tr□□t on th□t □ingle tr□d□ – □□d th□ concom□tan□ unknown loss b□ AR TRS—wou□d b□ $17,800. Acco□dingly, th□ diffe□ence i□ to□al tr□di□□ co□ts be□ween th□ ac□ual and false ra□es can b□ ve□y la□ge

78. Tel□ingly, fo□ th□ same 10-yea□ p□ri□d, th□ □X ra□es th□t State □tr□□t r□p□rt□d and □h□r□d (□r □r□dit□d) t□ AR TRS on it□ mo□e th□□ 6,500 ***negotiated*** □X tr□d□ □dd□d, on ave□age, only ***3.6 basis points*** i□ tr□di□□ co□ts as □□□ p□r□d t□ th□ day's □id r□t□. As suc□, while th□ □X tr□d□ □x□□t□d b□ State □tr□□t pu□suan□ t□ so-call□d "□□t e□ecu□ion" pr□ti□□ i□□□rr□d tr□di□□ co□ts of 17.8 b□i□p□i□t□ on ave□age, th□ □X tr□d□ ac□ively nego□ia□d be□ween State □tr□□t and AR TRS □r it□□□t□id□ inve□tmen□ manage□s i□□□rr□d tr□di□□ co□ts of only 3.6 b□i□p□i□t□ on ave□age

79. The Plaintiff Securities Litigation Class Representatives and their respective damages experts have analyzed the Exchange Traded Products' trading data and have identified dark pool trades that occurred outside the forward-adjusted range of the day. The Class Representatives' analysis identified 4,216 dark pool trades in Exchange Traded Products, ***2,217, or 53%, fell entirely outside the forward-adjusted range of the day.*** The 2,217 Exchange Traded Products trades, with dark pool executions ranging from 200 basis points, added trading costs ***64.4 basis points*** higher than the day's volume weighted average price. For example, one purchase of 10 million shares, executed at 64.4 basis points higher than 64,400 prices at which shares traded on the day in question.

80. Dark pool investors benefit when they buy shares at prices lower than the day's volume weighted average price, and the dark pool operator benefits when it charges investors hidden fees for trades executed in the dark pool. Dark pool operators do not disclose the prices at which trades occur in dark pools. But when dark pool trades occur ***outside*** the forward-adjusted range of the day, it becomes apparent that the dark pool operator, rather than dark pool investors, is benefiting from the dark pool trades.

81. The Class Representatives, however, have sufficient information to identify Exchange Traded Products trades, or individual Exchange Traded Products trades, that occurred outside the forward-adjusted range of the day and to calculate the amount by which dark pool operators overcharged investors for those trades. The Class Representatives' analysis of dark pool trades outside the forward-adjusted range of the day, purchase transactions, and damages calculations for dark pool trades in Exchange Traded Products. In short, the analysis focuses on trades that occurred outside the forward-adjusted range of the day, which should not have occurred if dark pool operators were executing trades at prices that were fair and reasonable.

4. For its Custodial Clients, State Street's Deceptive Acts and Practices Could Not Reasonably Be Detected.

82. [illegible] that disclosure [illegible] by [illegible] transaction [illegible] and practices [illegible] FX trading [illegible]. [illegible] transaction [illegible] that [illegible] FX trades [illegible] by [illegible] the. The principal purpose [illegible] transaction [illegible] to [illegible] the [illegible] that [illegible] transaction [illegible] FX trade. The report did [illegible] the [illegible], the [illegible], or [illegible] that [illegible] the FX trades executed [illegible] transaction [illegible], the [illegible] that transaction [illegible] or the [illegible] paid for FX or [illegible] that [illegible] the [illegible] for FX.

83. It [illegible] that [illegible] that principal [illegible] in the report [illegible] transaction provided to the [illegible] that the FX trade. [illegible] that transaction [illegible] that [illegible] the [illegible] paid by [illegible] the [illegible] and [illegible] for FX or [illegible] that [illegible] for FX.

84. [illegible] Mr. [illegible] that FX rate [illegible] by [illegible] the transaction [illegible], [illegible] that transaction had [illegible] that [illegible] report [illegible] that the [illegible] that [illegible] transaction [illegible] FX trades.

85. Mr. [illegible], [illegible] that transaction [illegible] and [illegible] with report to [illegible] that transaction. The [illegible] that [illegible], and did [illegible] that the [illegible] that transaction [illegible] which [illegible] and profit to [illegible] that [illegible] for which the [illegible]. Indeed, the [illegible] that transaction [illegible], and did, prior [illegible] that the [illegible] that transaction [illegible] and [illegible] that their bottom [illegible].

C. Events After October 2009 Begin to Shed Light on State Street's Deceptive FX Trading Practices

86. [illegible] October 20, 2009, the [illegible] Investigation [illegible] Investigation [illegible] Act, [illegible]. [illegible] and 12651, [illegible]

□t□t□ □tr□□t □ith □i□□ppr□pri□ti□□ □□ □r□th□□ □56 □i□□i□□ □r□□ th□ □□□□□□□t□□□□□□i□□r□i□□□t□□ □□r□□t p□□i□i□□p□□□□ □□□□E□□ □□d □□□□T□□□ □□□r □□□ti□□□r p□ri□d i□ □□□□□□ti□□ □ith th□ □□□ □□□□□□ir □□d d□□□pti□□ □□X pr□□ti□□□□□□□□d h□r□i□. *People of the State of Cal. ex rel. Brown v. State Street Corp.*, □□. 34□2008□00008457 □□□M□□□□ □ □□□. □□p□r. □t. □□□r□□ □□t□ □□□□t□ □□t. 20, 2009□.

87. Th□ □□□i□□r□i□ □tt□r□□□ □ □□□r□□□□□□d th□t □t□t□ □tr□□t r□p□rt□d i□□□t□d □□X r□t□□ □h□□ b□i□□ □□r□i□□ □□□□riti□□ □□r □□□□E□□ □□d □□□□T□□, r□p□rt□d d□□□t□d □□X r□t□□ □h□□ □□□□i□□ □□r□i□□ □□□□riti□□ □□r th□□, □□d p□□□□t□d th□ di□□□r□□□□ b□t□□□□ th□ r□p□rt□d □□d □□t□□□r□t□□. Th□ □tt□r□□□ □ □□□r□□ □□rth□r □□□□□d th□t □t□t□ □tr□□t hid it□ □r□□□□□□□□d□□t b□ □□t□ri□□ i□□□rr□□t □□X □x□h□□□□ r□t□□ i□t□ □t□t□ □tr□□t□□ □□□□tr□□i□ □□X tr□di□□ □□□t□□ □□□□d pr□□idi□□ □□□□□r□□□rd□t□ □□□□E□□ □□d □□□□T□□.

88. Th□ □□□i□□r□i□ □tt□r□□□ □ □□□r□□ □□□□□□□ti□□□□□□ □di□□□□□d □□ □□r□□p□□ □□r□ b□□□d i□p□rt □□ th□ □□ □r□t□ti□ □□□ □□□□□□r□ □r □t□t□ □tr□□t B□□□ □□p□□□□□ □h□ □ □r□□d □□ th□ □□□ □tr□di□□ □□□□r □□ th□ □t□t□ □tr□□t B□□□ □□d □□□M □□r□i□□ □x□h□□□□ tr□d□r □□□d □h□ □□□rh□□rd h□□ □t□t□ □tr□□t B□□□ □r □□□M □□r□i□□ □x□h□□□□ tr□d□r □□ □r□ □□ □r□i□□ □p □□X tr□d□ pri□□□. Thi□ tr□d□r, i□ □□ □r□t□ti□ □□□, d□□□rib□d th□ pr□□ti□□ □□□□t□t□ □tr□□t B□□□□□□X tr□d□r□ □□□□t□t□□□ □□□thi□□thi□□□t□d□□□ □□d □□id th□t th□ □□X Tr□d□r□ □pr□□ti□□□ □□ □r□□□t □ithi□ th□ □i□d□□tr□ □t□□d□rd.□*People of the State of Cal. ex rel Brown v. State Street*, □□. 34□2008□ 00008457 □□□M□□□□ □ □□□. □□p□r. □t. □□□r□□ □□t□ □□□□t□ □□□. 31, 2012□□ □□□□r□ti□□ □□ □□□□□□ □. □□□□□□□.

89. I□ th□ □□□th□ th□t □□□□□□d, □t□t□ □tr□□t dr□□ □ti□□□□ □h□□□□d it□ □□X tr□di□□ p□□i□i□□□□□d di□□□□□r□□□□d □□i□□r□ □d it□ □□□t□di□□□□i□□t□. □□d□r th□□□□□ p□□i□i□□, □t□t□ □tr□□t □d□itt□d □□r th□ □ir□t ti□□ th□t it h□d □□□t□□ □ti□□□□ i□p□□□d □dditi□□□□□h□r□□□□ □□r □□X tr□di□□. □□r □x□□p□□, i□ □□ □x□□rpt □r□□ □□ □pd□t□d I□□□□t□ □□t M□□□□□r □ □id□d□t□d □ □□□□b□r 20, 2009, □t□t□ □tr□□t □d□i□□d □□□t□di□□□i□□t□ th□t it □□□□d p□□t □□□it□□ □b□it□, □ □.□t□t□tr□□t.□□□, □□□rr□□t □ □r□□p□□□d □ □r□d□□ □□□□□d b□ □t□t□ □tr□□t □ □b□□M□r□□t□□r □t□□di□□i□□tr□□ti□□□□□r□i□□ □x□h□□□□ tr□□□□□ti□□□r□□□□□t.□

90. In its initial complaint that it filed in March 2011, the Trustee admitted that *"[s]ince December 2009*, the Trustee has provided to Plaintiffs and its counsel documents and information regarding the principal and interest payments, the dates of the transfers, and the amounts of the withdrawals from the Plaintiffs' accounts that are the subject of this litigation." Emphasis added. The Trustee admitted that these documents and information showed the amount of principal and interest that was withdrawn from the Plaintiffs' accounts, the dates on which the withdrawals were made, and the amounts withdrawn.

91. The Trustee has alleged that State Street's FX trading desk executed FX transactions for the Plaintiffs' accounts at prices that were disadvantageous to the Plaintiffs. The Trustee has also alleged that State Street's FX trading desk executed FX transactions for the Plaintiffs' accounts at prices that were not the best prices available to the Plaintiffs' accounts.

92. The Trustee has asserted these claims on behalf of the Plaintiffs' accounts in this *qui tam* action. The Trustee has alleged that State Street's FX transactions, the prices of which were disadvantageous to the Plaintiffs' accounts, have resulted in losses of ***63%.*** The Trustee has alleged 498,940 FX spot and forward trades, 196,280 of which were transactions executed 302,660 times at prices that were disadvantageous to the Plaintiffs' accounts between 2000 2010, and has alleged that these losses were hidden from the Plaintiffs' accounts, in violation of the Trustee's duty to refrain from executing FX transactions for the Plaintiffs' accounts in 2010 and to refrain from drawing down the Plaintiffs' accounts to pay for these losses between 2000 2009.

D. FX Trading and State Street's Commingled ERISA Fund Clients

1. The Plaintiffs' Plans

93. The Department of Labor has defined the Plaintiffs' plans as plans within the meaning of ERISA 3(32), 29 U.S.C. 1002(32).

94. [illegible] provided [illegible] transactions [illegible] provided to the [illegible] owned by Bank [illegible] to their principals, either directly [illegible] partnerships [illegible], or trusts, or indirectly [illegible] to [illegible] which they [illegible].

95. The [illegible] Entities [illegible] paid [illegible] distributed by its [illegible] and [illegible] expected their [illegible] to [illegible] distributed [illegible], which [illegible] distributions [illegible], in turn, [illegible] to [illegible].

96. Each [illegible] paid [illegible] in connection with [illegible] securities [illegible] to its [illegible] and [illegible] to [illegible] that [illegible] the [illegible] that [illegible] investments [illegible], and participating [illegible] their [illegible] through [illegible], which [illegible] to [illegible]. The [illegible] that [illegible] securities [illegible] to [illegible] and [illegible] to [illegible].

97. [illegible] transactions [illegible] to [illegible] owned by [illegible]. Bank [illegible] in 2001, the [illegible] participated [illegible] in [illegible] Interactive Exchange, which [illegible] Interactive [illegible] and [illegible], and the [illegible] Interactive [illegible]. The Interactive Exchange [illegible] have been [illegible], and the [illegible] Exchange [illegible] by Morgan Stanley Interactive [illegible]. Neither the [illegible] have been [illegible] with [illegible], but the [illegible] the [illegible] to the [illegible]. [illegible], the [illegible] to [illegible] to [illegible] and [illegible] to [illegible].

98. [illegible]

2. Defendants' Fiduciary Status

99. [illegible] 402(a)(1), 29 U.S.C. § 1102(a)(1) [illegible] 29 U.S.C. § 1002(21)(A)(i). [illegible]

100. [illegible]

> (38) [illegible] 1102 [illegible]
>
> [illegible]
>
> [illegible]

(i) is registered or is required to be registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

(ii) is not registered or is required to be registered under section 203 of such Act (15 U.S.C. 80b-3), is registered or is required to be registered under the laws of the State in which it maintains its principal place of business and is in compliance with such State laws, and, at the time the investment adviser last filed any report with such State in which to maintain compliance with such laws, had assets under management of not less than $25,000,000, or

(iii) is a bank, and

(I) is acting in its capacity as an investment adviser described in subparagraph (A) or (B) of section 202(a)(11) of the Investment Advisers Act of 1940, and

(II) is not required to be registered as an investment adviser to render any advice described in subclause (I) to the customer,

(15 U.S.C. 78c(a)(38), 29 U.S.C. 1002(38)).

101. Here, Plaintiffs were required to be provided with the Investment Advisory Agreement, which was not provided, despite demand, and which, upon information and belief, has been destroyed by Defendants. In this regard, Plaintiffs are informed and believe that Defendants failed to maintain the Investment Advisory Agreement as required by the Investment Advisers Act and the regulations promulgated thereunder.

102. Plaintiffs expressly rejected and disaffirmed any alleged waiver of the Investment Advisory Agreement and the duties owed thereunder, including, without limitation, during the period between December 31, 2006 and June 30, 2007 when they were not represented by counsel.

103. Upon information and belief, Plaintiffs have suffered damages as a result of Defendants' failure to provide the Investment Advisory Agreement and other required disclosures under the Investment Advisers Act.

104. Upon information and belief, during the period in which Plaintiffs were damaged by the violations described in the preceding

t□□ □□□p□i□t, th□□□i□r i□□tt□r□□□ □□□r□□□□□p□i□t i□i□t□r□□□ti□, □d th□□□T□□ □□□p□i□t □r t□□di□□i□tr□ti□□ □X tr□d□.

105. □□d□r E□I□□, i□□□t□□t□i□□□□ □i□□□d □□d□r□□b□□t t□ □□□□□□thr□□h □r□□, p□r□□□t t□□hi□h, th□□p□□□ □□□t□□□□□E□I□□ □□□□r□d p□□□i□□□d□b□th it□□di□id□d □□□it□i□t□r□t i□th□□□tit□□□d □□□di□id□d i□t□r□t i□□□h □□th□□d□r□i□□ □□□t□□□th□ □tit□□ □ 29 □.□.□. □2510.3□101□□□2□*see also* E□I□□ □3□42□, 29 □.□.□. □1002□42□ □□th□rit□ □□□□□r□t□r□□□□b□r t□d□i□□t□r□ □p□□□ □□□t□□b□r□□□□ti□□□. □p□i□i□□□□, □h□□□ □□□□ □□□□ir□□r h□d□□□i□t□r□t i□□□□□ □i□□□d □□□d, it□□□□t□i□□□d it□i□□□t□ □□t □d □□ □di□id□d i□t□r□t i□□□h □□th□□d□r□i□□ □□□t□□□th□ □□tit□. *Id.* □2510.3□101□h□1□.

106. □□□ □□□p□r□□□ □h□ □x□r□i□□□□th□rit□ □r □□□tr□□r□p□ti□□th□□ □□□□□□□□t□r di□p□iti□□ □□□□□h □d□r□i□□ □□□□t, □d □□□p□r□□□ □h□pr□id□□i□□□t□ □□t □d□i□□□ith r□p□□t t□ □□□h □□□□t□□r □□□□dir□□t□r i□dir□□t□i□□id□i□r□□□th□i□□□ti□□p□□□. □*Id.* □2510.3□101□□□.

107. □□th□p□□□□r□d i□□□□t□□□t □□□□□□r □r th□□□□ □i□□□d □□□d□, □t□t□□tr□□t B□□□ □x□r□i□d □th□rit□□□d □□□tr□□□ith r□p□□t t□th□□ □□□□□□□□t□r di□p□iti□□ □□th□□□□□□ □□□t□. □□□□rdi□□□□, □t□t□□tr□□t B□□□ □□□□□id□i□r□□□□□h □□d □□□r□E□I□□ □□□□□hi□h i□□□□t□d i□th□□□□ □i□□□d □□□d□, i□□□di□□th□□□□i□ti□□□□□□□□□d th□□□□□□□□th□p□□ti□□ □□□□□□□□b□r□□ith r□p□□t t□th□□□d□r□i□□ □□□□t□□□□□□h □d □□□r□□t□t□□tr□□t B□□□□ □p□□□□r□d □□□ □i□□□d □□□d.

108. □□tr□□t□□□□r □rti□□th□□□□ □i□□□d □□□d□, □t□t□□tr□□t B□□□ □□□□□th□ri□d t□□□□□□rt □□□ □□□i□□i□t□□□rr□□□□thr□□h □r□i□□□x□h□□□□tr□□□□□ti□□□□d □□□r□p□□□ib□□ □r □□□□ri□□th□□t th□□□tr□□□□□ti□□□□□r□□□ithi□th□b□□□d□□□□t□□□tr□□t B□□□□□□id□i□r□ r□p□□□ibi□ti□□□□d th□i□□it□ti□□□□□E□I□□.

109. □t□t□□tr□□t B□□□ □d □□□M □□□□□□□□□ti□□d □□id□i□ri□□t□th□□□□□□□□d th□ □□□□□b□□□ti□□ □□tr□□t□□□□d i□□□□t□□□t □□t □□□□□□r □r th□□□d□□□r □□□□□□d th□B□i□□ □□□□, □d □r th□□□□ □i□□□d □□□d□, □d b□□x□r□i□i□□ □th□rit□□□d □□□tr□□□□r th□□□□□□□□□□□t□.

110. Upon information and belief, Mr. Madoff brought Ruth into the fold, that is, the purported investment advisory business. To the extent Ruth was aware that Madoff was not trading securities, she did not actively direct investments in X trading positions with the purported investment advisory business, but she did actively direct investments in X trading positions with Mr. Madoff's investment advisory business. Ruth directed her family members and friends to invest with Madoff.

111. Mr. Madoff provided Ruth and her corporate entities, principally, and their investment portfolios with fictitious account statements reflecting fictitious investment advisory trades. Ruth directed investments in X trading positions with the purported investment advisory business.

112. Mr. Madoff, in furtherance of his fraudulent investment advisory business, told Ruth he was trading in the stock market, and that is what Ruth believed. However, Ruth knew that Madoff was not trading securities, and instead, he was engaging in X trading. Ruth knew that Madoff was not trading securities, but did not have any knowledge of the details of Madoff's X trading. Ruth knew that Madoff's X trading was highly profitable, and that Madoff was using the profits from his X trading to pay the redemptions requested by Ruth and her corporate entities, principally, and their investment portfolios with fictitious account statements.

113. Mr. Madoff's investment advisory business was a fraud. Ruth directed investments in the purported investment advisory business with the knowledge that Madoff was not trading securities, therefore, Ruth knew that the investments with the purported investment advisory business were not eligible for the DRD under I.R.C. § 243(a)(1), 29 U.S.C. § 1002(21)(A)(i), and 29 C.F.R. § 2510.3-101(a). Accordingly, the Trustee and Madoff Recovery Initiatives have the right to recover the

E. State Street's FX trades were prohibited transactions under ERISA and corresponding federal regulations.

114. ERISA § 406(a), 29 U.S.C. § 1106(a), prohibits transactions between a plan and a party in interest unless the transaction is specifically exempted by statute or regulation. Fiduciaries to employee benefit plans are also prohibited from dealing with plan assets in their own interest or for their own account. Fiduciaries are also prohibited from receiving consideration for their own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan. Prohibited Transaction Exemption 94-20, 59 Fed. Reg. 8022-02 (February 17, 1994). Prohibited Transaction Exemption 94-20 ("PTE 94-20") required that each transaction be disclosed to an independent plan fiduciary, or the plan sponsor. PTE 98-54 modified this requirement to require that each transaction be disclosed prior to the purchase of securities, including foreign exchange transactions, by an independent plan fiduciary. Prohibited Transaction Exemption 98-54, 63 Fed. Reg. 63503-63510 (November 13, 1998). The requirement is that the trustee, bank, broker-dealer, or investment manager engaging in the transaction disclose to the independent plan fiduciary or plan sponsor in advance of the transaction, in writing, the circumstances under which the transaction may take place. Effective October 17, 2006.

115. State Street Bank and Trust Company is a fiduciary within the meaning of the Prohibited Transaction Exemption and the corresponding federal regulations, through direct or indirect control, through its own actions, or through the actions of its agents.

116. State Street did not disclose to its clients, in writing, the circumstances under which State Street did not comply with the requirements of the Prohibited Transaction Exemption, by failing to disclose to the independent plan fiduciary that State Street did not negotiate foreign exchange transactions executed as principal with plan assets in accordance with the parameters or limitations described in writing by the plan fiduciary, except as specifically authorized by the plan fiduciary's written guidelines or instructions.

i□□□□□d i□th□tr□□□□ti□□□. Th□□, □t□t□□tr□□t□□□X tr□d□□d□□□t □□□□□□d□r □TE 94□20 □r □□d□r □TE 98□54.

117. □□rth□r□□r, E□I□□ □406□b□, 29 □.□.□. □1106□b□, pr□hibit□tr□□□□ti□□□ b□t□□□□□p□□□□□d □id□□i□r□th□t □□□□□t t□□□□□d□□i□□.[2] □□□i□ti□□□□□□□th□t □t□t□□tr□□t□□ □X tr□di□□pr□□ti□□□□□□□□□t□d t□□□□□d□□i□□b□□□□□□□t□t□□tr□□t □□□□i□t□t□ □□□□□ti□t□d r□t□□, □r □h□r□□d r□t□□□□r th□□X tr□□□□ti□□□th□t □□r□□□□□r□b□□t□□t□t□□tr□□t, □□d □□□□□□r□b□□t□it□ □id□□i□r□□□i□□t□, □□d □t□t□□tr□□t th□□h□d □□□□□□i□t □□i□t□r□□t □ith r□□□rd t□it□□X tr□di□□ pr□□ti□□□□□r □□□i□ti□□□□□d □th□r □□□□□□□□□b□r□.

COUNT I

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by State Street Bank)

118. □□□i□ti□□□r□p□□t □□d r□□□□□□□□□h □□th□□□□□□ti□□□□□t □□rth i□th□□□r□□□i□□ p□r□□r□ph□.

119. □□□□□d□□t □t□t□□tr□□t B□□□i□□□ i□□□□t□□□t □□□□□□r□□ithi□th□□□□□□i□□□□ E□I□□ □□□ti□□3□38□, 29 □.□.□. □1002□38□, b□□□□□□it □i□h□□th□p□□□r t□□□□□□□, □□□□ir□, □r di□p□□□□□p□□□□□□□t□p□□□□d i□it□□□□t□d□□□ii□i□□b□□□□□ithi□th□□□□□□i□□□□th□I□□□□t□□□t □d□i□r□□□t □□1940□□□d □iii□h□□□□□□□□□d□d i□□riti□□th□t it i□□□id□□i□r□□ith r□□p□□t t□ th□□□□□□.

120. □□□□i□□□□t□□□t □□□□□□r, □t□t□□tr□□t B□□□i□□□id□□i□r□□□d□r E□I□□ □□d b□□□d b□th□d□ti□□□□pr□d□□□□□□d □□□□t□□□id □□t i□E□I□□ □□□ti□□404□□□□1□, 29 □.□.□. □ 1104□□□□1□. Th□□□d□ti□□□□□□□th□t □□□br□□□r □□r th□□□□i□ti□□□□□□□, □t□t□□tr□□t B□□□i□ b□□□d t□□□t i□th□□□□t□□□r□□i□t□r□□t □h□□tr□□□□ti□□□b□i□□□□□□r th□□□□□□□t, □□d th□□

[2] 29 □.□.□. □1106 □b□Tr□□□□□ti□□□b□t□□□□p□□□□□d □id□□i□r□
□ □id□□i□r□□ith r□□p□□t t□□p□□□h□□□□□t□
□1□d□□□□ith th□□□□□t□□□th□p□□i□hi□□□□i□t□r□□t □r □□r hi□□□□□□□□□□t,
□2□i□hi□i□di□id□□□□r i□□□□□th□r □p□□it□□□t i□□□□tr□□□□ti□□i□□□□□i□□th□p□□□□□b□h□□□□□p□rt□□□r r□pr□□□□t □p□rt□□□h□□□i□t□r□□t□□r□□d□r□□t□th□i□t□r□□t□□□th□p□□□□r th□i□t□r□□t□□□it□p□rti□ip□□t□□r b□□□□i□i□ri□□, □r
□3□r□□□i□□□□□□□□□id□r□ti□□□□r hi□□□□□p□r□□□□□□□□□□□□t □r□□ □□□□p□rt□d□□i□□□ □ith □□□h p□□□i□ □□□□□□□ti□□□ith □tr□□□□ti□□i□□□□□i□□th□□□□□t□□th□p□□□.

b[illegible]d, [illegible]r [illegible]x[illegible]p[illegible], t[illegible]di[illegible][illegible][illegible][illegible][illegible]t[illegible]th[illegible][illegible][illegible][illegible][illegible]th[illegible]d[illegible]t[illegible]i[illegible][illegible]th[illegible]r[illegible][illegible][illegible][illegible]t [illegible]X tr[illegible]di[illegible] tr[illegible][illegible][illegible][illegible]ti[illegible][illegible]it [illegible][illegible][illegible]d[illegible]rt[illegible]i[illegible][illegible]r th[illegible][illegible][illegible][illegible][illegible]t.

121. [illegible]t[illegible]t[illegible]tr[illegible]t B[illegible][illegible]h[illegible]br[illegible][illegible]h[illegible]d it[illegible]E[illegible]I[illegible] [illegible]id[illegible]i[illegible]r[illegible]d[illegible]ti[illegible][illegible][illegible]pr[illegible]d[illegible][illegible][illegible][illegible][illegible]d [illegible][illegible][illegible]t[illegible] b[illegible][illegible][illegible][illegible][illegible]it [illegible][illegible][illegible][illegible] [illegible]r [illegible]h[illegible][illegible]d h[illegible][illegible][illegible][illegible][illegible][illegible]th[illegible]t [illegible][illegible][illegible]M h[illegible]b[illegible][illegible][illegible]h[illegible]r i[illegible][illegible]th[illegible][illegible][illegible][illegible][illegible][illegible]r th[illegible] [illegible][illegible][illegible]i[illegible][illegible][illegible]d [illegible][illegible][illegible]d[illegible]i[illegible][illegible]hi[illegible]h th[illegible][illegible][illegible][illegible][illegible]i[illegible][illegible][illegible][illegible]t[illegible]d[illegible]r[illegible]t[illegible][illegible][illegible]r [illegible]X tr[illegible]di[illegible][illegible]th[illegible]t [illegible]r[illegible][illegible][illegible][illegible][illegible][illegible][illegible]r b[illegible][illegible]r [illegible]r[illegible][illegible][illegible][illegible][illegible][illegible]b[illegible][illegible], b[illegible]th[illegible][illegible] r[illegible]t r[illegible]t[illegible], [illegible]d[illegible]r i[illegible]x[illegible][illegible][illegible][illegible][illegible]h[illegible]t [illegible][illegible]M h[illegible]d [illegible]r[illegible]d t[illegible]h[illegible]r[illegible], b[illegible]t did [illegible]t [illegible][illegible]r, b[illegible][illegible][illegible][illegible][illegible]ti[illegible]ti[illegible][illegible]r [illegible]th[illegible]r[illegible]i[illegible], th[illegible]t [illegible][illegible]M[illegible]r[illegible]t[illegible][illegible][illegible]r[illegible]r[illegible][illegible][illegible][illegible][illegible]b[illegible][illegible], [illegible]t [illegible]r [illegible]b[illegible][illegible][illegible]th[illegible] [illegible]r[illegible]t r[illegible]t[illegible], [illegible]d[illegible]r [illegible]t i[illegible]x[illegible][illegible][illegible][illegible][illegible]h[illegible]t [illegible][illegible]M h[illegible]d [illegible]r[illegible]d t[illegible]h[illegible]r[illegible].

122. Th[illegible]br[illegible]h[illegible][illegible][illegible]id[illegible]i[illegible]r[illegible]d t[illegible]i[illegible][illegible][illegible][illegible]d [illegible][illegible]t[illegible][illegible]th[illegible][illegible][illegible][illegible][illegible][illegible]hi[illegible]h [illegible][illegible][illegible]r[illegible] [illegible][illegible]i[illegible]d b[illegible] t[illegible]t[illegible][illegible]tr[illegible]t B[illegible][illegible][illegible]r [illegible][illegible]M.

123. [illegible][illegible]ti[illegible]409[illegible][illegible][illegible]E[illegible]I[illegible], 29 [illegible].[illegible].[illegible]. [illegible]1109[illegible][illegible], i[illegible]p[illegible][illegible][illegible][illegible]i[illegible]bi it[illegible][illegible] t[illegible]t[illegible][illegible]tr[illegible]t B[illegible][illegible][illegible]r th[illegible][illegible]br[illegible]h[illegible][illegible][illegible]d r[illegible][illegible]ir[illegible][illegible]t[illegible]t[illegible][illegible]tr[illegible]t B[illegible][illegible]t[illegible] [illegible][illegible][illegible][illegible]d t[illegible]th[illegible][illegible][illegible][illegible][illegible]th[illegible][illegible][illegible][illegible][illegible] r[illegible][illegible]ti[illegible][illegible]r[illegible] it[illegible]br[illegible][illegible]h[illegible].

124. T[illegible][illegible][illegible]r[illegible]th[illegible]r[illegible]i[illegible][illegible][illegible][illegible]i[illegible]b[illegible][illegible][illegible]d[illegible]r [illegible][illegible]ti[illegible]409[illegible][illegible], 29 [illegible].[illegible].[illegible]. [illegible]1109[illegible][illegible], [illegible][illegible]i[illegible]ti[illegible][illegible][illegible][illegible][illegible]rt thi[illegible][illegible][illegible]i [illegible][illegible]i[illegible]t [illegible]t[illegible]t[illegible][illegible]tr[illegible]t B[illegible][illegible][illegible]d[illegible]r E[illegible]I[illegible] [illegible][illegible]ti[illegible]502[illegible][illegible]2[illegible], 29 [illegible].[illegible].[illegible]. [illegible]1132[illegible][illegible]2[illegible].

125. [illegible]rth[illegible]r, p[illegible]r[illegible][illegible]t t[illegible]E[illegible]I[illegible] [illegible][illegible]ti[illegible]502[illegible][illegible]3[illegible], 29 [illegible].[illegible].[illegible]. [illegible]1132[illegible][illegible]3[illegible], [illegible]t[illegible]t[illegible][illegible]tr[illegible]t B[illegible][illegible][illegible] [illegible]t pr[illegible]id[illegible][illegible]th[illegible]r [illegible]ppr[illegible]pri[illegible]t[illegible][illegible][illegible]it b[illegible]r[illegible]i[illegible][illegible]t[illegible]r[illegible]dr[illegible][illegible]it[illegible]br[illegible][illegible]h[illegible][illegible][illegible][illegible]d t[illegible][illegible]d [illegible][illegible][illegible]r[illegible] it[illegible]id[illegible]i[illegible]r[illegible]d[illegible]ti[illegible].

COUNT II

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by SSGM)

126. [illegible][illegible]i[illegible]ti[illegible][illegible]r[illegible]p[illegible]t [illegible]d r[illegible][illegible][illegible][illegible][illegible]h [illegible]th[illegible][illegible][illegible][illegible]ti[illegible][illegible][illegible][illegible]t [illegible]rth i[illegible]th[illegible][illegible]r[illegible][illegible][illegible]i[illegible] p[illegible]r[illegible]r[illegible]ph[illegible].

127. [illegible][illegible]M i[illegible][illegible]id[illegible]i[illegible]r[illegible] [illegible]d[illegible]r E[illegible]I[illegible] [illegible][illegible]ti[illegible]3[illegible]21[illegible][illegible], 29 [illegible].[illegible].[illegible]. [illegible]1002, [illegible]ith r[illegible]p[illegible]t t[illegible]th[illegible][illegible][illegible][illegible]b[illegible][illegible][illegible][illegible][illegible]it [illegible]x[illegible]r[illegible]i[illegible][illegible][illegible][illegible]th[illegible]rit[illegible] [illegible]r [illegible][illegible]tr[illegible]r[illegible]p[illegible]ti[illegible][illegible] [illegible][illegible][illegible][illegible][illegible][illegible][illegible]t [illegible]r di[illegible]p[illegible]iti[illegible][illegible] [illegible]th[illegible][illegible][illegible][illegible][illegible][illegible][illegible][illegible]t[illegible].

128. □□□id□i□r□, □□□M i□b□□□d b□th□d□ti□□□pr□d□□□□□d □□□□t□□id □t i□ E□I□□ □□ti□□404□□□1□, 29 □.□.□. □1104□□□1□.

129. □□□M h□□br□□h□d th□□□d□ti□□□r pr□d□□□□□d □□□□t□b□□h□r i□□th□□□□□ □r th□□□□ i□□□d □□□d□i□□hi□h th□□□□□□i□□□t□d□□□□□□r □X tr□di□□th□t □□r□□□□□□r b□□ □r □□r□□□□□b□□, □b□□□th□□□r□□t r□t□□, □d□□r i□x□□□□□□□h□t it h□d □□r□□d t□□h□r□□.

130. Th□□□br□□h□□□□id□i□r□d□t□i□□□□□d □□□t□□□th□□□□□□□□r □hi□h □□□M h□d □th□rit□□r □□□tr□.

131. □□□ti□□409□□□□□E□I□□, 29 □.□.□. □1109□□□, i□p□□□□i□bi□it□□□□□M □□r th□□□br□□h□□□□d r□□□ir□□□□□M t□□□□□□□d t□th□□□□□□th□□□□□□□r□□□ti□□□r□□ it□ br□□□h□□.

132. T□□□□□r□□th□r□i□□□□i□b□□□d□r □□ti□□409□□□, 29 □.□.□. □1109□□□, □□i□ti□□□□□□rt thi□□□i□ □□□i□t □□□M □d□r E□I□□ □□ti□□502□□□2□, 29 □.□.□. □1132□□□2□.

133. □□rth□r, p□r□□□t t□E□I□□ □□ti□□502□□□3□, 29 □.□.□. □1132□□□3□, □□□M □□t pr□id□□th□r □ppr□pri t□□□it□b□□r□i□□t□r□dr□□□it□br□□h□□□d□t□□d □□□r□□it□ □id□□i□r□d□ti□□.

COUNT III

Prohibited Transactions

(Violations of § 406(a)(1)(C)-(D) of ERISA, 29 U.S.C. § 1106(a)(1)(C)-(D) by State Street Bank and SSGM)

134. □□i□ti□□□r□p□t □d r□□□□□□□□h □□th□□□□□□ti□□□□t □□rth i□th□□□r□□□i□□ p□r□□r□ph□.

135. E□I□□ □□ti□□406□□□1□□□, 29 □.□.□. □1106□□□1□□□, pr□□id□□th□t □id□□i□r□ □h□□□□t □□□□□□p□□□t□□□□□□i□□tr□□□□ti□□i□th□□id□□i□r□□□□□□r □h□□d □□□□ th□t th□ tr□□□□ti□□ □□□□tit□t□□□dir□□t □r i□dir□□t □r□i□hi□□□□□□d, □r□i□□, □r □□i□iti□□b□t□□□□th□ p□□□□d □p□rt□i□i□t□r□t.

136. ERISA Section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), provides that a fiduciary shall not cause the plan to engage in a transaction if he knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of a party in interest, of plan assets.

137. As discussed above, Citibank is a fiduciary with respect to the Plans.

138. Mizuho is a party in interest with respect to the Plans within the meaning of ERISA Section 3(14), 29 U.S.C. § 1002(14), because it provided banking services to the Plans in connection with the Plans' investments in Mizuho Bank Stock, and it is a party in interest with respect to the Plans within the meaning of ERISA Section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B). Furthermore, because Mizuho owned more than 10% of the outstanding shares of Mizuho Bank Stock, Mizuho was a party in interest with respect to the Plans within the meaning of ERISA Section 406(a)(1)(E), 29 U.S.C. § 1106(a)(1)(E).

139. By causing the Plans to purchase Mizuho Bank Stock for the purpose of providing liquidity for Mizuho Bank's Tokyo Stock Exchange trading, which benefited Mizuho, Citibank caused the Plans to engage in transactions that it knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, which included Mizuho. Citibank caused the Plans to engage in transactions that it knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, which included Mizuho, in violation of ERISA Section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

140. Although ERISA Section 408(b)(2), 29 U.S.C. § 1108(b)(2), provides an exception for the prohibition of ERISA Section 406, 29 U.S.C. § 1106, for transactions between a plan and a party in interest, *inter alia*, for the provision of services to the plan, that exception is inapplicable to Citibank because Citibank knew or should have known that the transactions were prohibited by ERISA Section 406(a), 29 U.S.C. § 1106(a), and Citibank did not qualify for the exception.

141. Although there is also an exception for the prohibition of ERISA Section 406(a), 29 U.S.C. § 1106(a), for the provision of banking services by a bank supervised by a State or the United States, that exception is inapplicable because Citibank knew or should have known that the transactions were prohibited by ERISA Section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), and Citibank did not qualify for the exception.

142. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), and § 409, 29 U.S.C. § 1109, State Street Bank and SSGM are liable to restore to the Plan any losses caused by their breaches of fiduciary duties, and to provide other appropriate equitable relief.

COUNT IV

(Co-Fiduciary Liability, against SSGM and State Street Bank)

143. Plaintiffs repeat and reallege each of the allegations set forth in the preceding paragraphs.

144. As described above, SSGM and State Street Bank provided investment advice to ERISA Plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21). Thus, they were bound by the duties of loyalty and prudence.

145. ERISA § 405, 29 U.S.C. § 1105, provides that, in addition to any liability which a fiduciary may have under any other provision, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances: (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

146. State Street Bank and SSGM knew the breaches of the other parties' responsibilities, participated knowingly in, and undertook to conceal, their acts and omissions, and knew that SSGM was providing investment advice to the Plans.

147. Neither State Street Bank nor SSGM made reasonable efforts under the circumstances to remedy the breaches by the other fiduciaries, or to prevent the breaches.

148. State Street Bank and SSGM participated in the breaches of the other parties' responsibilities, enabled the breaches to occur, knowingly undertook to conceal their acts and omissions, and knew of the breaches by the other fiduciaries, and failed to remedy the breaches, as described above. Each is liable for the losses caused by the breaches, as described herein.

149. □t□t□ □tr□□t B□□□ □□d □□□M □□□b□d th□ □th□r p□rt□□□br□□□h b□□□□□ th□□ □□r□ □□□□□□ □□ □r□th□t □□□□di□□□□□r□h□d □□t b□□□ □ □d□t□th□ □□□□ □p□□□□r, □id□i□ri□□□r p□rti□ip□□t□ r□□□rdi□□th□r□t□□th□ir □□□d□□ □r□b□i□□ □h□r□d □□r □X tr□di□□ □□d th□ □□□t th□t th□□□r□t□ □□r□□□□□□□r□b□□□r □□r□□□□□□b□, □b□□□th□ □ □r□□t r□t□, □□d □r i□ □x□□□□□□□h□t it h□d □□r□d t□ □h□r□□.

150. □□r□□□□t t□E□I□□ □502□□□2□□□d □□□3□, 29 □.□.□. □1132□□□2□□ □□□3□, □□□□d□□t□ □r□ □i□b□□t□r□t□r□th□ □□□□□t□th□ □□□□ □□□□□d b□th□ir br□□□h □□□□□id□□i□r□d□ti□□ □□□□□d i□thi□□□□□t □□d t□pr□□id□□th□r □□□it□b□□r□i□□□□□ppr□pri□t□.

COUNT V

(Violations of § 406(a)(1)(C)-(D) of ERISA, 29 U.S.C. § 1106(a)(1)(C)-(D) by SSGM, alleged in the alternative)

151. □□i□ti□□□r□p□□t □□d r□□□□□□□□□h □□th□ □□□□□ti□□□□□t □□rth i□th□ □□r□□□i□□ p□r□□r□ph□.

152. □□□□□□□d □b□□□, □□□M □□□□□p□rt□i□i□t□r□□t □□d□r E□I□□.

153. □□□□□□□d □b□□□, □□□M □i□□□t□d E□I□□ □□□ti□□406□□□1□□□□□□□□, 29 □.□.□. □ 1106□□□□1□□□□□□□□.

154. E□□□i□□□□M □□r□□□t □□id□□i□r□, □□□M □□□□d □ti□□b□□i□b□□□□d□r E□I□□ □□□ti□□502□□□3□, 29 □.□.□. □1132□□□3□, t□pr□□id□□ppr□pri□t□ □□□it□b□□r□i□□d□□t□it□ □i□□ti□□□□□E□I□□ □□□ti□□406□□□1□□□□□□□□, 29 □.□.□. □1106□□□□1□□□□□□□□.

COUNT VI

(Knowing participation in a breach of fiduciary duty by SSGM, alleged in the alternative)

155. □□i□ti□□□r□p□□t □□d r□□□□□□□□□h □□th□ □□□□□ti□□□□□t □□rth i□th□ □□r□□□i□□ p□r□□r□ph□.

156. E□□□i□□□□M □□r□□□t □□id□□i□r□, □□□M □□□□i□□□□p□rti□ip□t□d i□ □t□t□ □tr□□t B□□□□br□□□h □□it□□id□□i□r□d□ti□□t□th□ □□□□, □□□□□□□□d i□ □□□□□t I.

157. [illegible] phi[illegible]t[illegible]d i[illegible]i[illegible]titi[illegible], [illegible]M [illegible]d[illegible]r t[illegible]d th[illegible]d[illegible]ti[illegible]th[illegible]t id[illegible]i[illegible]ri[illegible]h [illegible]t[illegible]t[illegible]tr[illegible]t B[illegible]h[illegible]d[illegible]r E[illegible]I[illegible].

158. [illegible]pit[illegible]thi[illegible]d[illegible]r[illegible]t[illegible]di[illegible], [illegible]M p[illegible]rti[illegible]p[illegible]t[illegible]d i[illegible] i[illegible]d[illegible]d, [illegible]th[illegible]*cause* [illegible]t[illegible]t[illegible]tr[illegible]t B[illegible]i[illegible]ti[illegible] [illegible]it[illegible]id[illegible]i[illegible]r[illegible]d[illegible]ti[illegible]i[illegible]d i[illegible]t I.

159. [illegible]d[illegible]r E[illegible]I[illegible] [illegible]ti[illegible]502[illegible]3, 29 [illegible].[illegible]. [illegible]1132[illegible]3, th[illegible]r[illegible]titl[illegible]d t[illegible] [illegible]it b[illegible]r[illegible]titi[illegible]r[illegible] [illegible]M ith r[illegible]p[illegible]t t th[illegible]x[illegible]t[illegible]p id t it b th[illegible], [illegible] [illegible]th[illegible]r [illegible]ppr[illegible]pri[illegible]t[illegible]it b[illegible]r[illegible].

VI. PRAYER FOR RELIEF

[illegible]HE[illegible]E[illegible]E, [illegible]i[illegible]ti[illegible]pr[illegible][illegible]r r[illegible]i[illegible][illegible]

1. [illegible]r th[illegible]t th[illegible][illegible]d[illegible]t[illegible]h[illegible]i[illegible]t[illegible]d E[illegible]I[illegible] pr[illegible]hibit[illegible]d tr[illegible]ti[illegible] pr[illegible]i[illegible]

2. [illegible]r th[illegible]t th[illegible][illegible]d[illegible]t[illegible]br[illegible]h[illegible]d th[illegible]ir id[illegible]i[illegible]r[illegible]d[illegible]ti[illegible]d[illegible]r E[illegible]I[illegible]

3. I[illegible][illegible]rd[illegible]r [illegible]p[illegible]i[illegible] pr[illegible]p[illegible]r [illegible]ti[illegible] th[illegible]ri[illegible]x[illegible]h[illegible] tr[illegible]ti[illegible]i[illegible]hi[illegible]h th[illegible][illegible]d th[illegible]d[illegible]h[illegible][illegible]

4. I[illegible][illegible]rd[illegible]r [illegible]p[illegible]i[illegible] [illegible]d[illegible]t[illegible]r[illegible]t[illegible]r[illegible][illegible]d t[illegible]th[illegible][illegible]r th[illegible]t [illegible]i[illegible]b[illegible]d t[illegible]th[illegible][illegible]t[illegible]r th[illegible]i[illegible] thi[illegible]p[illegible]i[illegible]t[illegible]

5. I[illegible][illegible]rd[illegible]r [illegible]p[illegible]i[illegible] th[illegible][illegible]d[illegible]t[illegible]di[illegible]r[illegible][illegible]p id [illegible]di[illegible]rr[illegible]d t[illegible] [illegible]d[illegible]t[illegible]r th[illegible]t [illegible]i[illegible]b[illegible]p id [illegible]ri[illegible]rr[illegible]d b th[illegible][illegible]t[illegible]r th[illegible]i[illegible] thi[illegible]p[illegible]i[illegible]t, i[illegible]di[illegible] pr[illegible]it th[illegible]r[illegible]

6. [illegible]rd[illegible]r [illegible]it b[illegible]r[illegible]titi[illegible]d [illegible]th[illegible]r [illegible]ppr[illegible]pri[illegible]t[illegible]it b[illegible] [illegible]t[illegible]r[illegible]ri[illegible]i[illegible]t th[illegible][illegible]d[illegible]t[illegible]

7. [illegible]rd[illegible]h [illegible]th[illegible]r [illegible]it b[illegible]r[illegible] di[illegible]r[illegible]i[illegible] b[illegible]ppr[illegible]pri[illegible]t, i[illegible]di[illegible] th[illegible]p[illegible]r[illegible]t r[illegible] [illegible]th[illegible][illegible]d[illegible]t[illegible]r[illegible] [illegible]p[illegible]iti[illegible]tr[illegible]t ith r[illegible]p[illegible]t t th[illegible] [illegible]d th[illegible]pp[illegible]i[illegible]t[illegible]t id[illegible]p[illegible]d[illegible]t id[illegible]i[illegible]t[illegible]r[illegible]t di[illegible]t th[illegible]

8. Th[illegible]t thi[illegible]ti[illegible]b[illegible]rti[illegible]d [illegible]ti[illegible]d th[illegible]t [illegible]h [illegible]b[illegible]d[illegible]t[illegible]d t[illegible] r[illegible]i[illegible]th[illegible] [illegible]t[illegible]r[illegible]t[illegible]r[illegible]d t[illegible]th[illegible]b[illegible]d[illegible]t[illegible]d [illegible]tr[illegible]ti[illegible]tr[illegible]t b[illegible]t b i h[illegible]d [illegible]r di[illegible]trib[illegible]ti[illegible]t th[illegible]xt[illegible]t r[illegible]ir[illegible]d b[illegible]

9. Each of the Defendants' actions, and each of their failures to act, as described herein, were in violation of their ERISA fiduciary responsibilities, breaches of trust, and prohibited transactions.

10. Accordingly, the Plaintiffs bring this action pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), and for the benefit of the Plan and all participants and beneficiaries.

11. Plaintiffs reserve the right to amend this Complaint as further information becomes available.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: September 12, 2012

HUTCHINGS, BARSAMIAN, MANDELCORN & ZEYTOONIAN, LLP

By: Theodore M. Hess-Mahan
Theodore M. Hess-Mahan, Esq. BBO #
110 Cedar Street, Suite 250
Wellesley Hills, MA 02481
Telephone: 781-431-2231
Facsimile: 781-431-8726
thess-mahan@hutchingsbarsamian.com

KELLER ROHRBACK, L.L.P.
Lynn Lincoln Sarko (*pro hac vice pending*)
Derek W. Loeser (*pro hac vice pending*)
Lynne C. Gerber (*pro hac vice pending*)
1201 3rd Avenue, Suite 3200
Seattle, WA 98101
Telephone: 206-623-1900
Facsimile: 206-623-8986
lsarko@kellerrohrback.com
dloeser@kellerrohrback.com
lgerber@kellerrohrback.com

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

The Andover Companies Employee Savings and Profit Sharing Plan on behalf of itself, and James Pehoushek-Stangeland, and all others similarly situated, Plaintiffs, vs. State Street Bank and Trust Company, Defendant.	)	No. 1: 12-cv-11698 MLW **DEMAND FOR JURY TRIAL**

PLAINTIFFS' AMENDED CLASS ACTION COMPLAINT

Table of Contents

This is a classic case of self-dealing. The ERISA-qualified retirement plans of Plaintiffs suffered losses because Defendant State Street Bank and Trust Company did not prudently safeguard their assets, instead permitting its currency traders to pilfer plan assets by improperly marking up and marking down foreign currency trades. This self-dealing occurred whenever State Street needed to exchange currency on behalf of the plans. Rather than seek the best price for the plans' foreign currency exchange transactions—or even the actual market rate—State Street used one of its divisions, State Street Global Markets, to execute the foreign currency exchange trades to benefit its own accounts. In executing these trades, Global Markets did not charge the plans what the transaction cost. Nor did Global Markets charge a rate based on the cost of the transaction. Instead, Global Markets systematically priced the trades based on the worst price of the trading day, and pocketed profits at the plans' expense. State Street manipulated the currency transactions to the plans' detriment despite its duty as a fiduciary under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA") to protect the plans' assets. Because this practice was widespread and uniform, it forms the basis for claims on behalf of a class of ERISA Plans ("the Plans"). This lawsuit seeks to recover the losses the Plans suffered as a result of State Street's self-dealing.

I. INTRODUCTION

1. Plaintiffs' allegations are based on personal knowledge as to themselves and their own acts, and on information and belief and the investigation of counsel as to all other matters.[1]

2. Plaintiffs are Alan Kober, a trustee and fiduciary for The Andover Companies Employees' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, a participant in The Boeing Company Voluntary Investment Plan. Plaintiffs trusted State Street Bank with their

[1] Counsel's investigation included review of: (i) plan documents, (ii) publicly available data and news articles, and (iii) review of the pleadings and documents on file in *Hill v. State St. Corp*., No. 09-12146 (D. Mass.); *Demory v. State St. Corp.*, No. 10-10064 (D. Mass.); *Richard v. State St. Corp.*, No. 10-10184 (D. Mass.); *Ark. Teacher Ret. Sys. v. State St. Corp.*, No. 11-10230 (D. Mass.);; *Henriquez v. State St. Bank & Trust Co.*, No. 11-12049 (D. Mass.); *State of Cal. v. State St. Corp.*, No. 08-08457 (Cal. Sup. Ct. Sacramento Cnty.); and *People of Cal. v. State St. Corp.*, No. 08-8457 (Cal. Sup. Ct. Sacramento Cnty.).

retirement savings and suffered losses as a result of State Street's self-dealing FX trading scheme.

3. Defendant State Street Bank and Trust Company's ("State Street Bank" or "State Street") undertook self-dealing and imprudent management of Plaintiffs' ERISA-covered funds in two ways. Some of the Plans offered their participants investment options that included State Street Bank-sponsored commingled funds—that is, pools of assets created and aggregated by State Street Bank for a number of different investors and plans—that required foreign currency ("FX") trades, while other defined benefit Plans hired State Street to serve as custodian to undertake FX trades of plan assets. In either circumstance, the self-dealing and imprudent management by State Street violates ERISA.

4. For both defined contribution and defined benefit Plans, State Street was an ERISA fiduciary. State Street was an ERISA fiduciary because it served as the trustee and investment manager to the Plans and commingled funds through its State Street Global Advisors ("SSgA") division, and as the investment manager it exercised discretionary control over Plan assets. One example of State Street's discretionary control is that as investment manager for the commingled funds SSgA negotiated or contracted with State Street Global Markets ("Global Markets") to execute FX transactions to facilitate purchases or sales of foreign securities for the funds, or to repatriate profits made abroad.

5. State Street was also an ERISA fiduciary in its provision of trustee and custodian services. In serving as trustee and custodian to the defined benefit and defined contribution Plans, State Street acted as more than a "plain vanilla" custodian of assets—that is, it did more than perform administrative and ministerial duties. Instead, Global Markets took control of Plan assets and exercised discretion when it entered into FX transactions on behalf of the Plans. Rather than simply executing FX transactions according to market rates at the time requests were received, Global Markets utilized its control over Plan assets and the FX process to impose unauthorized, undisclosed mark-ups or mark-downs on the rates for the FX transactions and pocketed the difference. In so doing, it was a functional ERISA fiduciary.

6. As a custodial bank, State Street Bank holds securities on behalf of investors. Clients hire custodians to do several things, including: safeguard and record movement of assets; arrange settlement of all purchases and sales; and maintain and manage all cash transactions, including FX transactions. Custodians are typically used by investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. By separating the duties of investment manager and custodian, an investor—at least in theory—reduces the risk of fraud or other misconduct.

7. As of September 2012, State Street held approximately $23.44 trillion in assets under custody and administration, making it one of the largest providers of custodial services in the world. In fact, as of December 31, 2011, State Street's SSgA division was the largest manager of institutional assets worldwide, the largest manager of assets for tax-exempt organizations (primarily pension and retirement plans) in the U.S., and the third largest investment manager in the world. State Street charged Plaintiffs and the Plans in the putative class hundreds of millions of dollars a year in fees for custodial and investment management services. A significant amount of State Street's revenue, however, was comprised of ill-gotten gains from self-dealing FX transactions.

8. Under ERISA, Plaintiffs may recover losses and obtain equitable relief on behalf of the Plans and all others similarly situated. ERISA demands that State Street act prudently and solely in the interest of those who, like Plaintiffs, have invested money in accounts covered by ERISA. This duty to act prudently and solely in the interest of Plaintiffs and others is a fiduciary duty, and fiduciary duties are among the strongest in the law.

9. ERISA also creates strict liability for certain types of prohibited transactions, such as State Street's self-dealing in charging unauthorized mark-ups and mark-downs to the Plans on the FX trades through its Global Market division, and then pocketing the difference. The undisclosed mark-ups and mark-downs were not for the exclusive benefit of the Plans or their participants and beneficiaries, but rather benefitted State Street Bank.

10. Despite its legal obligations to Plaintiffs, State Street has undertaken an unfair and deceptive practice from at least 1998-2009 (hereinafter, "Class Period"). Namely, State Street Bank has overseen and been responsible for the FX transaction practices described herein. These transactions were undertaken behind a veil of secrecy that allowed State Street to make exorbitant and undisclosed profits at the direct expense of the Plans. State Street charged the Plans marked-up FX rates when buying foreign currency on their behalf, and marked-down FX rates when selling foreign currency for the Plans, and in both cases pocketed the difference. State Street charged the Plans and the Proposed Class fictitious FX rates unrelated to the market-based rates State Street was actually paying.

11. The Plaintiffs, the Plans, and other Class members could not have detected State Street's deception. For the commingled funds, the transaction was conducted between two internal State Street divisions (SSgA and Global Markets) and was not reported on the fund fact sheets or otherwise reported to Plan sponsors. While State Street's custodial clients may have received a report of the rates that they were charged, without receiving a corollary report showing the range of actual trades for the currency pairs at issue, they could not detect that they were being charged hidden and unauthorized mark-ups (or mark-downs) on their FX trades.

12. State Street's unfair and deceptive FX trading practices generated hundreds of millions of dollars in profits annually for State Street—money that should have gone to Plaintiffs and the Proposed Class.

13. Plaintiffs bring this class action on behalf of all similarly affected ERISA clients of State Street during the Class Period, to recover the proceeds State Street reaped from Class members through its unfair and deceptive FX trading practices.

II. JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. section 1331 and 29 U.S.C. section 1132(e)(1). Plaintiffs' claims are brought as a class action under Rule 23 of the Federal Rules of Civil Procedure.

15. Venue is proper in this district pursuant to 29 U.S.C. section 1132(e)(2).

III. PARTIES

A. Plaintiff Alan Kober

16. Plaintiff Alan Kober is an Individual Trustee of The Andover Companies Employees' Savings and Profit Sharing Plan (the "Andover Plan"). In this capacity, Mr. Kober is a Plan fiduciary with standing to bring claims for breach of fiduciary duty on behalf of the Plan pursuant to ERISA sections 409 and 502(a)(2).

17. Merrimack Mutual Fire Insurance Company ("Merrimack Mutual") is the designated Plan Administrator for the Andover Plan. The Andover Plan is an ERISA-qualified defined contribution plan established for the benefit of the employees of Merrimack Mutual and its sister companies, Cambridge Mutual Fire Insurance Company, and Bay State Insurance Company, which, together with Merrimack Mutual, comprise the Andover Companies ("Andover Companies").

18. During the Class Period, the Andover Plan offered participants investments in several SSgA-sponsored commingled funds, including international equity funds such as State Street's International Growth Opportunities Securities Lending Class A Fund, and the SSgA Daily International Alpha Select fund.

19. By contract, State Street Bank served as both the Trustee for the Andover Plan and as an ERISA fiduciary and Investment Manager for the Andover Companies Plan investments from 2001 through approximately 2009.

20. As trustee for the Andover Plan, State Street Bank was required to exercise power and authority over the investment accounts for which it had express investment management discretion, or upon the direction of the Investment Manager. Pursuant to section 4.1(o) of the Master Trust Agreement, the investment power of the trustee included the power to "purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or its subcustodians."

21. By separate contract, State Street Bank served as investment manager for the Andover Plan's assets invested in State Street's proprietary commingled funds. Pursuant to

section 1 of the Investment Manager Agreement, State Street was both a discretionary investment manager and a designated ERISA fiduciary pursuant to section 3(38) of ERISA with respect to all cash, securities, or other property designated by the Andover Plan.

B. Plaintiff James Pehoushek-Stangeland

22. Plaintiff James Pehoushek-Stangeland is a resident of Seattle, Washington. He is an employee of the Boeing Company and is a participant in The Boeing Company Voluntary Investment Plan ("the Boeing Plan"). Accordingly, Plaintiff Pehoushek-Stangeland has standing to bring suit on behalf of the Boeing Plan for losses to the Plan due to breaches of fiduciary duty pursuant to ERISA sections 409 and 502(a)(2).

23. The Boeing Plan is an ERISA-qualified defined contribution plan established for the benefit of the employees of the Boeing Company, a multinational aerospace and defense corporation headquartered in Chicago, Illinois.

24. By contract, State Street Bank served as Trustee for The Boeing Company Employee Savings Plans Master Trust ("Boeing Master Trust").

25. During the Class Period, the Boeing Plan offered its participants investment options in several SSgA-sponsored commingled funds. Among the international equity funds offered were the SSgA Global All Cap Equity ex-US Index Non-Lending Series Fund Class A ("SSgA Global Non-Lending Fund"), which Boeing designated as the "International Index Fund."

26. As of December 31, 2010, the Boeing Plan held approximately $1.98 billion in Plan assets in the International Index Fund. As of December 31, 2011, the Boeing Plan held approximately $1.863 billion in the fund. These investments constituted approximately 6% of the Boeing Plan investments.

27. The International Index Fund invests in an index comprised of global developed and emerging country stocks from outside the U.S. Its international investments require exchange of participants' U.S. dollars into various foreign currencies, and SSgA utilizes Global Markets for the FX transactions.

28. Due to the "fund of funds" structure of many offerings in the Boeing Plan, the International Index Fund appears in multiple placed in the Boeing Plan portfolio: not only as a stand-alone investment option, but also as part of the Balanced Index Fund and each of the nine Lifecycle Funds, which are the target retirement options for Boeing Plan participants.

29. During the class period, Plaintiff Pehoushek-Stangeland invested in SSgA's International Index Fund, directly as well as indirectly through the Lifecycle 2040 Fund and the Balanced Index Fund.

30. Plaintiffs use the term "International Equity Funds" to collectively denote the SSgA-sponsored commingled international equity funds that required purchases and repatriation of foreign currency by Global Markets, and that were investment offerings in the Boeing and Andover Plans, as well as for other members of the Proposed Class.

C. Defendant State Street Bank and Trust Company

31. Defendant State Street Bank is a registered financial holding company with its principal place of business in Boston, Massachusetts.

32. State Street Bank's business activities are organized into three segments or divisions: investment management provided by SSgA, custodial services provided by Global Markets, and institutional services provided by State Street Investor Services.

33. SSgA is a division of Defendant State Street Bank responsible for investment management. The SSgA division of State Street Bank provides asset management, and is billed as the "Fiduciary Heritage of State Street Corporation."

34. Global Markets is also a division of Defendant State Street Bank. Global Markets provides custodial services to clients, including processing the FX transactions at issue herein. Global Markets processes these FX transactions at the direction of SSgA on behalf of the International Equity Funds and the Plans.

35. State Street Bank is also the Trustee for the State Street Bank and Trust Company Investment Funds for Tax Exempt Retirement Plans (also referred to as the "commingled funds"). This was the trust pursuant to which State Street created, offered, and maintained the

various commingled funds—the funds that were offered to the Andover Plan and the Boeing Plan for their retirement plans.

36. The terms of the relevant Amended and Restated Declaration of Trust establish that State Street Bank and Trust Company was the trustee for the commingled funds, and that the funds were under the exclusive management and control of State Street Bank. Pursuant to the Declaration of Trust, State Street Bank had the power to hold, manage, and control all property held in the trust, or power to delegate responsibility for management of the assets to ERISA-qualified investment managers. State Street Bank also had the power to convert any monies into any currency through foreign exchange transactions to the extent permitted under ERISA. Accordingly, investment management for the commingled ERISA funds was conducted through State Street Bank's SSgA division, and FX trading through the Global Markets division.

IV. SUBSTANTIVE ALLEGATIONS

A. Foreign Exchange Trading is Essential to Plaintiffs' Ability to Meet Their Retirement Plan Investment Needs

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

37. Investors such as the Plans have found it increasingly necessary to enter the overseas securities markets and expand the global scope of their investment portfolios. These investments may offer increased diversification and greater returns than domestic investments alone.

38. Institutional investors that buy and sell foreign securities, such as Global Markets on behalf of the Plans, must trade currency because purchases, sales, dividends, and interest payments are all transacted in the currency of the nation in which the relevant securities exchange sits. Just as you need euros, yuan, or yen to buy coffee in Berlin, Beijing, or Tokyo, you need those same currencies to buy securities in Germany, China or Japan.

39. A U.S. investor must use euros to buy shares that trade on a German securities exchange. To get those euros, you must sell U.S. dollars and purchase euros. Similarly, dividends

or interest earned in Germany will be paid in euros, and turning those gains into dollars requires exchanging euros for dollars.

40. For a U.S. investor to receive proceeds from the sale of foreign securities, the foreign currency received from the sale must be converted into the currency of one's own country. This process is called repatriation. The rate of exchange matters because it impacts the proceeds of any investment made in foreign currency.

2. How FX Trading Works

41. The values of different currencies "float" against each other. That is, they vary based on factors ranging from supply and demand to political and economic trends. While the price of coffee at a Berlin café might be € 2 all week long, it might cost $ 2.50 on Monday morning and $2.72 by Friday.

42. FX trading occurs on a nearly 24-hour cycle, five-and-a half days a week. The official FX trading day begins at 7:00 a.m. New Zealand time and ends at 5:00 p.m. New York City time.

43. For each currency bought and sold during the course of the FX trading day, there will necessarily be a high trade and a low trade. This information is tracked by proprietary services such as Electronic Brokerage System ("EBS") and Reuters.

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

45. If, during one trading day, the lowest trade was $1.25 to buy €1.00, and the highest rate trade was $1.35 to buy €1.00, the range of the day would be $1.25-$1.35.

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

47. The daily mid-rate is significant to this case because Plaintiffs cannot discover the precise time of day when FX trades occurred (in contrast to stock trading, for example). By looking at the daily mid-rate over a significant period of time, one can reasonably estimate the average FX trade cost on any given day. Over time, FX trades will regress to the mid-rate.

3. Negotiated vs. Non-Negotiated FX Trades

48. In a "negotiated," or "active," FX trade, an investor communicates directly with a FX trader. The FX trader quotes a rate for a proposed transaction, which is accepted, rejected or countered—in other words, actively negotiated. If a deal is reached, the trader executes the FX trade at the agreed-upon price. Negotiated trades can potentially achieve better rates for an investor, but the process requires greater resources.

49. In a "non-negotiated," "standing-instruction," or "indirect" trade there is no arm's-length negotiation of the price between the investor and the trader. Instead, clients simply report the desired currency transaction to the bank, trusting and relying on the bank to execute the trade on the client's behalf using "best execution" practices. Plaintiffs' allegations herein complain solely of State Street Bank's practices with regard to non-negotiated trades.

B. State Street's Provision of FX Trades to its Custodial Clients

50. Institutional investors, such as pension plans like the Arkansas Teacher Retirement System ("Arkansas Teachers"), typically requested that State Street handle the smaller FX transactions, mostly the repatriation of dividend and interest payments, through non-negotiated trades because the amount of each trade rarely justified the time and effort required for a negotiated trade.

51. State Street's clients reasonably expected that non-negotiated FX trades would have no mark-ups or mark-downs, for at least three reasons: (1) custodial clients already paid State Street hefty annual fees to serve as custodian over their assets; (2) the Custodian Contracts

and associated fee schedules indicated no extra fees or mark ups, and did not authorize any such fees or mark-ups; and (c) State Street's Investment Manager Guides assured custodial clients and investment managers that the price of FX trades was *"based on the market rates at the time the trade is executed."* (Emphasis added).

1. State Street's Clients Relied Upon State Street's Expertise and Loyalty

52. Custodial clients placed a high degree of trust in State Street to execute non-negotiated FX transactions. In conducting these transactions, State Street occupied a superior position to its custodial clients due to its control over all aspects of the FX trade, including the information that its traders had about the FX market, the timing of the trades, and most importantly, the prices at which the trades were executed.

53. Custodial clients depended on Global Markets not only to execute the FX trades, but also to accurately and honestly report the FX rate to them, and to carry out the trades in accordance with their custodial contracts, associated fee schedules, and guidelines as set forth in the Investment Manager Guides.

54. Consistent with the custodial contracts and Investment Manager Guides, State Street's clients also had a reasonable expectation that the FX rates that State Street charged (or credited) on non-negotiated FX trades would accurately reflect the true market-rates of those FX trades. And there is no reason a custodial client would expect its custodian bank—to which it was paying substantial annual fees for custodial services—to charge non-negotiated FX trades at something other than the actual rate for the FX trade.

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

55. For State Street's custodial clients, such as the Arkansas Teachers, the contracts provided that State Street "shall be entitled to compensation for its services and expenses as Custodian" pursuant to "a written Fee Schedule between the parties." Custodial clients and State Street agreed to and executed a series of fee schedules covering the class period.

56. The fee schedules either provided estimated annual fees or annual flat fees for State Street's services as a custodian.

57. State Street's custodial contracts (a) expressly provided that non-negotiated FX trades would be executed free of charge; or (b) did not list FX transactions among the services for which it was permitted to charge an additional fee or any other cost above the annual flat fee.

58. The fee schedules did set forth certain categories of ancillary services for which State Street was permitted to charge additional fees, including Wire Fees, Reporting Fees, Delivery Fees and Subcustody Fees. None of these ancillary service categories relate to FX trading for non-negotiated trades.

59. The Custodian Contracts did not state that State Street would impose any fees in connection with FX trading.

60. State Street consistently stated that "Foreign Exchange Transactions . . . are ***priced based on the market rates at the time the trade is executed."*** (Emphasis added). This promise was made in Investment Manager Guides for custodial clients and investment managers. These Guides contained comprehensive information about State Street's custody practices and services, including procedural requirements, costs, and information on "State Street Foreign Exchange Transactions."

61. During the Class Period, State Street issued at least 15 Investment Manager Guides, including those dated July 9, 2003; August 9, 2005; September 26, 2006; October 17, 2006; November 20, 2006; December 15, 2006; January 25, 2007; October 30, 2007; November 21, 2007; December 19, 2007; January 28, 2008; May 1, 2008; October 31, 2008; December 30, 2008; January 23, 2009, November 20, 2009 and December 1, 2009.

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

3. State Street's Deceptive Scheme Overcharged Clients for Non-Negotiated FX Trades

63. Despite State Street's representations that FX transactions were priced based on market rates at the time the trades were executed, State Street's FX practices diverged from what the Custodial Contracts authorized and what the Investment Manager Guides represented. Instead, State Street reported and charged its custodial clients FX rates on non-negotiated trades far above what State Street actually paid for foreign currency (or far below what State Street actually received for sales of foreign currency)—oftentimes, at rates that actually fell outside of the range of the day**.**

64. However, unbeknownst to its custodial clients, when State Street reported FX rates on non-negotiated trades to its clients, those statements did not reflect the actual cost or proceeds of the FX transactions, and instead reflected rates that Global Markets selected at its discretion. Put simply, State Street invented the FX rates it reported and charged (or credited) to its custodial clients. State Street paid or received one rate for FX during the trading day, yet reported to its custodial clients another rate that was either higher (in the case of a purchase) or a lower (in the case of a sale), and pocketed the difference.

65. For example, when custodial clients or their agents requested that State Street execute an FX transaction, the request was routed electronically via State Street's Market Order Management System (MOMS) to a group of "risk traders" working at Global Market's FX trading desk. A Global Markets FX trader would execute the transaction at whatever the current exchange rate was (the "actual rate") using the Wall Street System ("WSS"). The rate reported by Global Markets for the transaction, however, was not the rate State Street charged clients. The trader would instead charge the client a rate selected at his discretion at the end of the day, after seeing the day's range of FX transaction rates for the relevant currencies. This manipulation allowed Global Markets to mark up or mark down rates, charge rates that were most favorable to itself rather than in the best interest of the Plans, and pocket the difference between the actual

rate and the rate entered by its traders—which could amount to tens of thousands of dollars from a single FX transaction.[2]

66. To illustrate the breach of fiduciary duty and failure to disclose, assume again the example set forth above—trades on a given day that ranged from $1.25 to $1.35 (the "range of the day") to purchase €1.00, with a day's mid-rate of $1.30. On any, and all, non-negotiated euro-for-dollar trades on behalf of its custodian clients, State Street would have paid a rate between $1.25 and $1.35, but reported to its clients that it paid at least $1.35, and sometimes more than that. State Street also kept the difference.

67. This conclusion is supported by the analysis from non-ERISA custodial client Arkansas Teachers of ten years of FX transactions executed by State Street on behalf of and reported to Arkansas Teachers. The Teachers reviewed almost 11,000 foreign currency trades between 2000 and 2010. About 4,216, or 39%, were non-negotiated trades.

68. The Arkansas Teachers compared its FX trades to other FX trades for the same currency pairs in a comprehensive database of more than 2 million trades, which allowed it to estimate the trading cost of the Teachers' non-negotiated FX trades. The trading cost is the difference between the day's mid-rate and the rate that State Street charged (or credited) to the Arkansas Teachers for non-negotiated FX trades.

69. State Street did not report the actual time of execution of any FX trade, so using the day's mid-rate was the best method to see whether State Street charged (or credited) the actual market rate at the time of execution, as State Street had promised to do.

70. The Arkansas Teachers determined that State Street overcharged for FX trading. State Street charged fictitious FX rates by adding (on purchases) or subtracting (on sales) "basis

[2] For example, the *Wall Street Journal* examined one trade of 8.1 million euros for dollars made by Bank of New York Mellon on behalf of a large pension fund. There the trader reported to the pension fund that the trade was $1.3610. On that day, however, euro/dollar trades occurred between $1.3704 and $1.3604. Had the trade settled at the higher end of the range of the day, which was $1.3704, the pension fund would have gotten an extra $76,012. The *Wall Street Journal* analyzed over 9,400 trades processed over a decade and found that 58% of the currency trades were within the 10% of the day's range least favorable to the client. Carrick Mollenkamp & Tom McGinty, *Inside a Battle Over Forex*, Wall St. J., May 23, 2011.

points" or "pips" from the actual FX rate. (A basis point is 1/100th of a percentage point. For example, the smallest move the euro/dollar currency pair generally makes is 1/100th of a penny, or one basis point.) State Street would add or subtract as much as it could get away with, by selecting a rate close to either the high or low extreme of the range of the day. During periods of increased market volatility, when currency prices fluctuated more and the currency trading ranges of the day were wider, allowed State Street to skim more off the top of each non-negotiated FX trade.

71. From January 3, 2000, through December 31, 2010, the FX rates that State Street reported and charged (or credited) to the Arkansas Teachers on **non-negotiated FX trades** were, **on average, 17.8 basis points above or below the day's mid-rate**. In other words, every foreign exchange transaction cost the Arkansas Teachers 17.8 basis points higher than the average FX rate (or the day's mid-rate).

72. If State Street actually paid $1.31551 to purchase €1.00, it charged the Teachers $1.31729, or 17.8 basis points extra. For a purchase of €10 million, the undisclosed profit to State Street on that single trade—and the concomitant unknown loss to the Teachers—was $17,800. During the years the Arkansas Teachers examined, State Street executed over $1.2 billion in standing order FX trades, meaning that State Street kept about $2 million dollars of the Arkansas Teachers' money.

73. State Street routinely reported and charged (or credited) fictitious prices for its FX trades. For instance, 53% of the standing-order (non-negotiated) trades analyzed by the Arkansas Teachers actually fell entirely outside the forward-adjusted range of the day, *see supra* at ¶44. These trades alone, over $200 million worth, actually added trading costs of ***64.4 basis points*** over the day's mid-rate—an enormous hidden and unauthorized mark-up. For example, on a purchase of €10 million, an undisclosed fee of 64.4 basis points means a $64,400 profit to State Street.

74. Rates consistently above (or below) the daily mid-rate alone demonstrate that Global Markets was charging a hidden mark-up that diverted assets of its clients and the Plans to

State Street, thereby breaching its fiduciary duties.. These actions also violated the terms of the custodial contracts and the representations in the Investment Manager Guides. When more than half of non-negotiated trades fall outside the forward-adjusted range of the day, it is plausible that those reported FX rates were not actual, market-based FX rates, but were instead fictitious and designed solely to gouge State Street's clients and, in turn, their beneficiaries.

75. There is no rational, honest basis for a professional FX market participant like Global Markets to charge a rate outside the forward-adjusted range of the day without disclosing it. The basis for this practice was rather, self-interested profit for State Street, to the significant detriment of its clients. State Street Corporation's revenue from FX trading services grew dramatically during the Class Period, due in significant part to its manipulation of the FX rates charged to clients for non-negotiated FX trades.

State Street Corporation's FX Trading Revenue 2004-2008

Year-End	**FX Revenue**	**% increase from prior year**
2004	$420 million	N/A
2005	$468 million	11%
2006	$661 million	41%
2007	$802 million	21%
2008	$1.08 billion	34%

76. State Street Corporation publicly acknowledged how market conditions provided profit-making opportunities for its FX business when it stated the following during an earnings call[3] held on October 16, 2007:

> [W]hile market conditions in the third quarter presented challenges ... it also created more opportunities in foreign exchange and in securities finance than we usually expect in the third quarter.... Revenue from foreign exchange increased 98% from the year ago quarter, and 29% from the second quarter.

77. Tellingly, from 2000 to 2010, the FX rates that State Street reported and charged (or credited) to the Arkansas Teachers on more than 6,500 negotiated FX trades added, on

[3] Earnings calls are teleconferences in which public companies discusses the financial results of a reporting period.

average, only **3.6 basis points** to the day's mid-rate. In other words, State Street padded its profits, at Plaintiffs' expense, by about 14 basis points per trade for non-negotiated trades.

4. State Street's Deceptive Acts and Practices Could Not Reasonably Be Detected

78. Sophisticated custodial clients such as the Arkansas Teachers were not able to discover the manner in which State Street deceptively marked-up and marked-down FX transactions during the Class Period. The periodic reports State Street sent to clients showed only the rate that State Street charged for its FX trades. The reports did not include the range of the day, the daily mid-rate, or any indication of the time of the day that the trade was executed (known as "timestamps"). Accordingly, clients could not reasonably determine, or even suspect, that State Street was secretly charging more than it actually paid for FX or was paying clients less than it actually received for FX.

79. Custodial clients also reasonably presumed that State Street's reports accurately represented the true cost of the FX trades. Pursuant to the custodial contracts, State Street made monthly reports of monies received or paid on behalf of the client. Accordingly, State Street had an affirmative obligation to report accurately the amount it was paying or receiving for FX trades.

80. Furthermore, based on the Investment Manager Guides' assurance that FX rates would be "priced based on the market rates at the time the trade is executed," no custodial client had any reason to suspect that they were being charged (or credited) anything other the rate that State Street itself had paid or received on those standing-instruction FX transactions.

81. Because sophisticated custodial clients such as Arkansas Teachers could not uncover State Street's deceptive FX trading practices—even when they had directly negotiated FX trades as a reference—less sophisticated clients had no chance at all.

C. Events After October 2009 Begin to Shed Light on State Street's Deceptive FX Trading Practices

82. On October 20, 2009, the Attorney General of California intervened in a whistleblower lawsuit that was filed in California state court. The suit alleged State Street

misappropriated more than $56 million from California's two largest pension plans using the same unfair and deceptive FX practices alleged here. *People of the State of Cal. ex rel. Brown v. State St. Corp.*, No. 34-2008-00008457-CU-MC-GDS (Cal. Super. Ct. Sacramento Cnty. Oct. 20, 2009).

83. The California Attorney General alleged that State Street reported inflated FX rates when buying foreign securities, reported deflated FX rates when selling foreign securities, and pocketed the difference. The Attorney General further alleged that State Street hid its wrongful conduct by entering incorrect FX rates into State Street's electronic FX trading systems and providing false records to clients.

84. The California Attorney General has represented that its allegations of undisclosed "mark-ups" are supported in part by the sworn testimony of a former State Street Bank employee, William Strazzullo, who worked on the same trading floor as the State Street Bank and Global Markets FX traders. He overheard how State Street Bank or Global Markets FX traders were marking up FX trade prices. This trader described the practices of State Street Bank's FX traders as a "totally unethical thing to do" and said that the FX traders' practices were not within the "industry standard." Declaration of Kenny V. Nguyen in Support of Plaintiff's Memorandum and Points and Authorities in Response to Defendants' Motion for Protective Order, Exhibit U at 4 (Plaintiffs' Oct. 6, 2011 letter to Defendants), *People of Cal., v. State St. Corp.*, No. 08-8457 (Cal. Super. Ct. Sacramento Cnty. Jan. 24, 2012).

85. After the California Attorney General filed suit, State Street dramatically changed its FX trading policies and disclosures and so informed its clients. Under these new policies, State Street admitted for the first time that it had systematically imposed additional charges for FX trading. These policy differences are made clear by comparing State Street's Investment Manager Guides published in 2006 and 2009.

86. The 2006 Investment Manager Guide said little about FX transactions. What it did say would have misled clients into thinking that State Street was protecting, rather than pocketing, clients' assets. The 2006 Guide assures clients that State Street has taken steps "to

ensure compliance with certain ERISA requirements" by "effect[ing] foreign exchange transactions for its ERISA trust and custody clients under a special 'FX procedure.'" September 26, 2006 Investment Manager Guide at 37.

87. In contrast, in the 2009 Investment Manager Guide, State Street dramatically increased its disclosures, and admitted that it was adding undisclosed charges to every foreign exchange transaction. In contrast to earlier disclosures, the 2009 Investment Manager Guide clearly states that foreign exchange transactions are not included in custodial services: "all foreign exchange services . . . are separate and independent of any services provided to custody clients." November 20, 2009, Investment Manager Guide at 36. In divulging this practice for the first time, State Street told customers that the FX charges would be "adjusted from time to time" but posted each business day on a website. *Id*. 2009 Investment Manager Guide at 37.

88. These new revelations stood in sharp contrast to State Street's previous communications. The 2006 Investment Manager Guide stated that standing-order (non-negotiated) foreign exchange transactions were "provided as part of each account opening" for ERISA clients. September 26, 2006 Investment Manager Guide at 37. Rather than explaining the charges it was imposing, in 2006 State Street hid that information and posted only the "buy rate and sell rate for each currency." September 26, 2006 Investment Manager Guide at 37. Indeed, the 2006 Guide assured clients that foreign exchange transactions would be done at these posted rates "or rates more favorable if market conditions warrant." *Id.*

89. Contrary to its 2006 promise to improve on posted rates, State Street's 2009 Investment Manager Guide stated that the "pricing of any transaction . . . is not determined by reference to any actual cost." November 20, 2009 Investment Manager Guide at 35. That is, in 2009 State Street *admitted* that the prices it had disclosed to custodial clients and others were not market prices, or prices State Street paid, but "prices" that increased its profits by padding fees on FX transactions.

90. Also in 2009, State Street Bank disclosed that a non-negotiated FX request "*is unlikely, in most circumstances, to be completed at the same or as favorable an execution rate as*

it would be" if the trade were negotiated directly. 2009 Investment Manager Guide at 38. This simple disclosure, not made in previous Investment Manager Guides, finally discloses what State Street Bank had been hiding for years: FX trades contained hidden fees that disadvantaged Plaintiffs and the Proposed Class at State Street's benefit.

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

92. State Street thus altered its practices only after its deceptive acts and practices were publicly revealed. State Street's late disclosure that it charged mark-ups and mark-downs on non-negotiated FX trades contradicts its previous repeated assurances in contracts and the Investment Manager Guides that FX rates would be based on market rates at the time the trade is executed.

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

94. Correspondingly, State Street's FX trading revenue decreased 56% from the fourth quarter of 2008 ($330 million) to the fourth quarter of 2009 ($144 million).

95. While State Street attributed this revenue decrease to lower "customer volumes" and a decrease in "currency volatility," State Street Corporation's 2009 Form 10-K filing stated that customer volumes declined by only 16% from 2008 to 2009, and currency volatility decreased by only 4%. State Street Corp. Annual Report (Form 10-K) (Feb. 22, 2012) ("2009 Form 10-K") at 41. A substantial portion of the 56% decline was the direct result of the California Attorney General's intervention, which forced State Street to stop its profitable self-dealing.

96. In fact, State Street Corporation conceded in its 2009 Form 10-K filing that disclosing its FX transaction profits on non-negotiated trades for its custodial clients would likely continue to affect its revenues and profits from these transactions:

> In light of the action commenced by the California Attorney General, we are providing customers with greater transparency into the pricing of this product and other alternatives offered by us for addressing their foreign exchange requirements. Although we believe such disclosures will address customer interests for increased transparency, over time such action may result in pressure on our pricing of this product or result in clients electing other foreign exchange execution options, which would have an adverse impact on the revenue from, and profitability of, this product for us.

2009 Form 10-K at 12-13.

97. The State Street whistleblower—whose allegations formed the basis of the California Attorney General lawsuit—alleged that State Street had generated $400 million in improperly obtained FX trading revenue annually, constituting one-third of Defendant's trading revenue.

98. Without discovery of State Street's internal documents it is impossible to determine how much State Street overcharged the Plans and other members of the Proposed Class. However, in *Hill v. State Street Corp.*, No. 09-12146, 2011 WL 3420439 at *32 n.25 (D. Mass. Aug. 3, 2011), Judge Gertner found that participants in State Street's own ERISA defined contribution plan offered a "logical rationale for calculating that about 30% of State Street's reported FX revenue in the years before October 2009" was attributable to the improper self-dealing on non-negotiated trades, based on the 56% FX revenue decline in the quarter

immediately following the Attorney General's suit. Assuming that 30% of State Street's revenue for FX trading during the relevant period was attributable to self-dealing, State Street's clients, including Plaintiffs' Plans, and the Plans of the Proposed Class, have overpaid State Street for its services by hundreds of millions of dollars.

D. Facts Bearing on Fiduciary Breach for State Street's ERISA Clients

99. ERISA-covered defined contribution plans like the Andover Plan and the Boeing Plan invested in foreign securities (and hence foreign currency) through their State Street Bank-sponsored commingled funds. The commingled funds received principal, dividends, and interest that were paid in foreign currencies, or participated in other investments that required the exchange of foreign currency into and from US Dollars. The Andover Plan offered participants the option to invest in certain State Street-sponsored commingled International Equity Funds, including the International Growth Opportunities Securities Lending Class A Fund, and the SSgA Daily International Alpha Select Fund. Likewise, the Boeing Plan offered participants the option to invest in certain State Street-sponsored commingled International Equity Funds, including the International Index Fund held by Plaintiff Pehoushek-Stangeland.

100. These International Equity Funds invest in a wide variety of international equity securities issued throughout the world. To purchase or sell the foreign securities in these funds, and then repatriate the funds to clients, FX transactions were required. As investment manager for the commingled funds, SSgA negotiated or contracted with its affiliate, Global Markets, for the FX transactions. State Street Bank, in its various roles as the trustee, investment manager, and custodian for the commingled funds, was a fiduciary with discretion and control over the funds' FX transactions ordered by SSgA and undertaken by Global Markets.

101. As investment manager for the commingled funds, SSgA had discretion as to the type and nature of instructions it gave Global Markets when undertaking FX trades. Upon information and belief, rather than negotiating each FX trade for the funds, SSgA placed non-negotiated trade orders with Global Markets. Provision of standing instructions by SSgA was insufficient from a fiduciary duty standpoint because in so doing, State Street failed to

appropriately limit the designated price range and time period for the requested FX transactions. This fiduciary breach was compounded by SSgA's apparent failure to monitor, detect, and rectify Global Markets' mark-ups and mark-downs of the trades for its ERISA clients. As a result, State Street Bank engaged in a multi-year, self-dealing FX trade scheme—that is, it allowed SSgA and Global Markets to breach their fiduciary duties and act against Plaintiffs' interests in FX transactions year after year, and knew that SSgA and Global Markets would in fact act against Plaintiffs' interests.

102. SSgA, as the internal investment manager, would initiate FX transactions required for the investment management of the commingled funds through the MOMS system. *See supra* at ¶65. To do so, SSgA would submit a request to the Securities Processing Unit of State Street through MOMS, which would then pass the order on to the Global Markets FX trading desk. Placing non-negotiated trades allowed Global Markets to mark-up or mark-down rates and charge rates that were most favorable to itself, rather than in the best interest of the Plans. SSgA and Global Markets thereby both exercised discretion over Plan assets.

103. Because Plan fiduciaries whose Plans invested in the commingled funds entrusted all aspects of the investment management to State Street, including the FX transactions required for international purchases and sales, State Street had control over all aspects of the FX transactions. Neither the time stamp nor the rate of the actual FX transaction was disclosed to the Plans, their fiduciaries, or participants, by SSgA.

104. Over time, and with SSgA requesting and Global Markets executing thousands of FX transactions annually as part of the management of the Funds, Global Market's discretionary pilfering of Plan assets added up to large losses to participants and beneficiaries. State Street thus took advantage of its already-profitable relationship as trustee, investment manager, and custodian for the funds (and Plans) to rake in additional unauthorized profits.

105. Defendant State Street Bank, through its investment management division, SSgA, and its trading arm, Global Markets, provided FX trading services similar to those provided to the Andover Plan and the Boeing Plan to other Plans in the class, in its roles as trustee,

custodian, and investment manager. With no direction from the Plans, State Street commingled assets of the Plans, controlled where the Plans' assets were deposited and how and when they were invested and disbursed, and controlled all aspects of the FX transactions for the Plans, including Global Market's unauthorized mark-ups and mark-downs for non-negotiated trades on behalf of the funds, which amounted to State Street's self-dealing and taking of Plan assets for its own use and benefit.

106. State Street Bank also served as an ERISA fiduciary to defined benefit plans in the putative class. On information and belief, State Street provided custodial services and commingled fund investment options to the defined benefit plans and utilized non-negotiated FX transactions in a like manner to the transactions executed on behalf of its public fund clients and the defined contribution commingled fund clients. *See supra* at ¶¶50-81.

E. Defendant's Fiduciary Status under ERISA

1. The Nature of Fiduciary Status

107. There are two types of fiduciaries under ERISA: "named fiduciaries" and "*de facto* fiduciaries."

108. **Named Fiduciaries**. Every ERISA plan must have one or more "named fiduciaries." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The "administrator" in the plan instrument is automatically a named fiduciary, and in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

109. Investment managers are also ERISA fiduciaries. Under ERISA:

> (38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102 (a)(2) of this title)—
>
> (A) who has the power to manage, acquire, or dispose of any asset of a plan;
>
> (B) who
>
> (i) is registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.];
>
> (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [15 U.S.C. 80b–3a (a)], is

> registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary;
>
> (iii) is a bank, as defined in that Act; or
>
> (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and
>
> (C) has acknowledged in writing that he is a fiduciary with respect to the plan.

ERISA § 3(38), 29 U.S.C. § 1002(38).

110. ***De Facto* Fiduciaries**. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under section 402(a)(1), 29 U.S.C. section 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus a person is a fiduciary to the extent

> (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
>
> (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
>
> (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

2. Defendant State Street's Fiduciary Status

111. In the relevant Amended and Restated Declaration of Trust, State Street acknowledged its fiduciary status as Trustee with exclusive management and control of the commingled funds for all the ERISA-covered plans that offered the International Equity Funds as an investment option for participants' retirement savings.

112. As a trustee for the commingled funds with exclusive management and control State Street Bank authorized its investment management division to manage the commingled funds, and authorized Global Markets to convert any monies needed for the funds' operation into

the required currency through FX transactions of Plan assets. State Street Bank also served as a trustee and investment manager to the Plans pursuant to separate contracts. At all times, State Street Bank had the duty to prudently and loyally manage Plan assets, discretion to select appropriate service providers and custodians, and the duty to monitor its various divisions to ensure that these transactions were within the bounds of its fiduciary responsibilities and the limitations of ERISA.

113. State Street Bank, through its SSgA division, served as the Investment Manager for the International Equity Funds in Plaintiffs' Plans and, upon information and belief, numerous other plans. In this capacity, SSgA was responsible for prudently and loyally managing Plan assets, and authorizing, reviewing and controlling the conduct of any other State Street division or representative engaged in activities affecting the value or performance of the Funds for which State Street served as Investment Manager.

114. Under ERISA, investments in commingled Funds are subject to a "look-through" rule, pursuant to which, the "plan assets" of an ERISA-covered plan include both its undivided "equity interest [in the entity] and an undivided interest in each of the underlying assets of the entity …". 29 C.F.R. § 2510.3-101(a)(2); *see also* ERISA § 3(42), 29 U.S.C. § 1002(42) (authority of Secretary of Labor to define term "plan assets" by regulation). Specifically, when a Plan acquires or holds an interest in a commingled Fund, "its assets include its investment and an undivided interest in each of the underlying assets of the entity." 29 C.F.R. § 2510.3-101(h)(1).

115. "[A]ny person who exercises authority or control respecting the management or disposition of such underlying assets, and any person who provides investment advice with respect to such assets for a fee (direct or indirect) is a fiduciary of the investing plan." *Id.* § 2510.3-101(a).

116. As investment manager for the commingled funds, State Street Bank, through its SSgA division, exercised authority and control with respect to the management or disposition of the Plans' assets. Accordingly, State Street Bank was a fiduciary of each and every ERISA Plan which invested in the International Equity Funds, including the Plaintiffs' Plans and the Plans of

the Proposed Class members with respect to the underlying assets of each and every State Street Bank-sponsored commingled fund.

117. State Street Bank, through its Global Markets division, also functioned as a fiduciary to the Plans and the Class by acting as trustee and custodian for the commingled funds, and by exercising authority and control over the Plans' assets when undertaking FX transactions for the International Equity Funds as to the price and timing for these transactions involving Plan assets.

118. Global Market's conversion of U.S. dollars to foreign currency, and foreign currency to U.S. dollars constituted the exercise of authority or control respecting the management or disposition of the underlying assets of the commingled investment funds and, therefore, of assets of the ERISA Plans, within the meaning of ERISA section 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(1), and 29 C.F.R. section 2510.3-101(a). This is particularly so because Global Markets exercised discretion in choosing when and how to execute the trades, and whether to mark up or mark down the FX transactions over the market rates that Global Markets had received for the transactions, and then profited and engaged in self-dealing by pocketing the difference for itself. Accordingly, Global Markets was also a functional fiduciary of the ERISA Plans.

F. The Relevant Law

1. Fiduciary Duties under ERISA

119. ERISA sections 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) & (B), provide, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

120. These fiduciary duties under ERISA sections 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and are the "highest known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982). They entail, among other things:

> (a) The duty to conduct an independent and thorough investigation into, and to continually monitor, the merits of all the investment alternatives for a plan;
>
> (b) The duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor; and
>
> (c) The duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

2. Prohibited Transactions under ERISA

121. In addition to ERISA's extensive fiduciary duty provisions, the statute categorically bars certain transactions deemed likely to injure a plan. *See Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 241 (2000).

a. ERISA § 406(b) is an absolute bar against self-dealing

122. ERISA section 406(b), 29 U.S.C. § 1106(b), prohibits certain transactions between fiduciaries and a plan. The statute sets forth an "absolute bar against self dealing" by a fiduciary. *See Brock v. Hendershott*, 840 F.2d 339, 341 (6th Cir. 1988). ERISA section 406(b) provides the following:

> A fiduciary with respect to a plan shall not—
>
> (1) deal with the assets of the plan in his own interest or for his own account,
>
> (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

> (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

b. ERISA § 406(a) prohibits party-in-interest transactions

123. ERISA section 406(a), 29 U.S.C. §1106(a), prohibits transactions between a plan and a party in interest. A "party in interest" is defined broadly with respect to an ERISA-qualified plan and includes, among others, any fiduciary, counsel, or employee of such employee benefit plan, as well as any person providing services to such plan. ERISA § 3(14), 29 U.S.C. § 1002(14). Section 406(a)(1) provides the following:

> (1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—
>
> (A) sale or exchange, or leasing, of any property between the plan and a party in interest;
>
> (B) lending of money or other extension of credit between the plan and a party in interest;
>
> (C) furnishing of goods, services, or facilities between the plan and a party in interest;
>
> (D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; or
>
> (E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107 (a) of this title.

c. Foreign currency exchange exemptions

124. Section 406(a)'s prohibitions against transactions with a party in interest are subject to numerous exemptions to allow the normal course of business with regard to investment management. *See* ERISA § 408, 29 U.S.C. § 1108. Foreign currency exchanges between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to such plans are exempted from the prohibition provided they meet certain conditions.

> (18) Foreign exchange transactions.— Any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either), and a plan (as

> defined in section 1002(3) of this title) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other party in interest, if—
>
> (A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),
>
> (B) at the time the foreign exchange transaction is entered into, **the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated partie**s, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,
>
> (C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and
>
> (D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction.

ERISA § 408(b)(18), 29 U.S.C. § 1108(b)(18) (emphasis added).

125. This section existed first as a Department of Labor ("DOL") regulation, Prohibited Transaction Exemption 94-20, 59 Fed. Reg. 8022-02 (Feb. 17, 1994), and was later codified as 29 U.S.C. § 1108(b)(18) (effective Aug.17, 2006). Prohibited Transaction Exemption (PTE) 94-20 required that foreign exchange transactions be "directed" by a plan fiduciary *independent of the bank, broker dealer, or affiliate*. Four years later the DOL promulgated another regulation, to allow non-negotiated trades within carefully circumscribed conditions. Prohibited Transaction Exemption 98-54, 63 Fed. Reg. 63503-63510 (Nov. 13, 1998). PTE 98-54 exempts FX transactions "performed under a written authorization [i.e., standing instructions]…by a fiduciary of the plan…independent of the bank or broker-dealer engaging in the covered transaction." Section III(e), 63 Fed. Reg. at 63508.

126. Although PTE 94-20 and PTE 98-54 carve out a limited space for execution of FX transactions within the ERISA regulatory scheme, these exemptions do not relieve State Street of fiduciary responsibility. As the DOL explained,

The Department wishes to point out that ERISA's general standards of fiduciary conduct would apply to the standing instruction arrangements permitted by this class exemption. Section 404 of ERISA requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion.63 Fed. Reg. at 63505.

3. Civil Remedies under ERISA

127. ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant or a fiduciary for relief under ERISA section 409, 29 U.S.C. § 1109.

128. ERISA section 409(a), 29 U.S.C. § 1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part:

> any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

129. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes individual participants and fiduciaries to seek equitable relief from Defendant, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

130. Plaintiffs therefore bring this action under the authority of ERISA section 502(a)(2) for relief under ERISA section 409(a) to recover losses sustained by the Plans arising out of the breaches of fiduciary duties by the Defendant for violations under ERISA sections 404(a)(1) and 406, as well as pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3) for

equitable relief from Defendant as fiduciary , including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

V. CLASS ACTION ALLEGATIONS

131. **Class Definition.** Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Andover Plan and the Boeing Plan, and the following class of persons similarly situated (the "Class"):

> All qualified ERISA plans, and the participants, beneficiaries, and named fiduciaries of those plans, that invested directly or indirectly in the State Street Bank commingled Funds, which includes the "International Equity Funds" identified in this complaint; or for which State Street Bank provided investment management or custodial services, that utilized State Street Global Market's indirect FX trading services, and suffered damages as a result of the deceptive acts and practices and other misconduct alleged herein, at any time between January 2, 1998 and December 31, 2009. Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest, and the officer, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such entity.

132. Plaintiffs reserve the right to modify the class definition before moving for class certification, including a reservation of right to seek to certify subclasses of State Street's clients, or extension of the class period, if information gained during this litigation, through discovery or otherwise, reveals that modifying the class definition or seeking subclasses would be appropriate.

133. **Numerosity.** The members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that numerous ERISA-covered benefit plans throughout the country offered the commingled International Equity Funds and that these plans collectively have tens of thousands of participants and beneficiaries.

134. **Commonality.** The claims of Plaintiffs and the members of the Class have a common origin and share a common basis. The claims of all Class members originate from the same misconduct, breaches of duties, and violations of ERISA, perpetrated by Defendant.

Proceeding as a class is particularly appropriate here the claim goes to the same type of currency trade instruction, indirect trades, conducted by Global Markets on behalf of the funds, and also on behalf of custodial clients, and therefore, State Street's deceptive acts and practices and misconduct regarding its FX trading practices affected all Plans were uniform and widespread.

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

(a) Whether Defendant breached its fiduciary duties under ERISA by selecting its internal division to conduct the FX transactions for the Funds;

(b) Whether Defendant breached its fiduciary duties under ERISA by failing to prudently and loyally manage Plan assets when it permitted its affiliate to conduct FX transactions;

(c) Whether Defendant breached its fiduciary duties under ERISA by marking-up or marking-down the FX transactions for the Funds at issue and passing a lower NAV to the Plaintiffs' Plans or the funds;;

(d) Whether Defendant pocketed the difference between the actual, market-based FX rates it received when entering into the FX transactions, and the FX rates that were reported and charged to the commingled funds, and the Plans;

(e) Whether Defendant breached its fiduciary duties under ERISA by pocketing the difference between the actual, market-based FX rates and the mark-ups and mark-downs, and maximized profit to State Street at the expense of Plan assets;

(f) Whether Defendant's self-interested FX transactions constituted prohibited transactions under ERISA; and,

(g) Whether Defendant's acts proximately caused losses to the Plans, and if so, the appropriate relief to which Plaintiffs, on behalf of the Plans and the Class are entitled.

136. **Typicality.** Plaintiffs are willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to or which directly and irrevocably conflict with the interests of other members of the class.

137. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs are members of the Class described herein.

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

139. A class action is superior to other available methods for the adjudication of this controversy. Individual litigation by all Class members would increase the delay and expense to the parties and the Court given the complex legal and factual issues of the case, and judicial determination of the common legal and factual issues essential to this case would be more fair, efficient and economical as a class action maintained in this forum than in piecemeal individual determinations.

140. **Adequacy.** The interests of the Plaintiffs are co-extensive with, and not antagonistic to, those of the absent Class members. Plaintiffs will undertake to represent and protect the interests of absent Class members. The undersigned counsel for Plaintiffs and the Class are experienced in class action, complex, and ERISA litigation, will adequately prosecute this action, and will assert and protect the rights of and otherwise represent Plaintiffs and absent Class members.

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

142. **Rule 23(b)(1)(A) & (B) Requirements.** Class action status in this ERISA action is warranted under Federal Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendant. Class action status also is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

143. **Rule 23(b)(2) Requirements.** Certification under 23(b)(2) is warranted because Defendant have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

144. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

VI. CAUSES OF ACTION

COUNT I

ERISA Prohibited Transactions

(Violations of § 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1))

145. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

146. Defendant State Street Bank is a fiduciary based on its discretionary control over Plan assets for the purposes of FX transactions.

147. ERISA section 406(b), 29 U.S.C. § 1106(b), prohibits transactions between a plan and a fiduciary that amount to self-dealing. Plaintiffs allege that State Street's FX trading practices amounted to self-dealing because State Street Bank, through its Global Markets division, consistently used its discretionary control over Plan assets to select for itself the most favorable FX rate based on the range of the day, regardless of the actual rate at the time the transaction occurred, and pocketed the difference between the two rates, causing its fiduciary clients, the Plaintiffs' Plans, and other members of the Proposed Class to suffer losses.

148. State Street's practice of FX transaction rate manipulation was nothing less than a fiduciary dealing with the assets of a plan for its own account. Fiduciary self-dealing is categorically prohibited by ERISA section 406(b), 29 U.S.C. § 1106(b).

149. Pursuant to ERISA section 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) & (3), State Street Bank is liable to restore the losses to the Plans and provide other appropriate equitable relief.

COUNT II

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104)

150. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

151. Defendant State Street Bank, through its SSgA division, is an "investment manager" within the meaning of ERISA section 3(38), 29 U.S.C. § 1002(38), because it (i) has the power to manage, acquire, or dispose of plan assets placed in its custody; (ii) is a bank within the meaning of the Investment Advisers Act of 1940; and (iii) has acknowledged in writing that it is a fiduciary with respect to the Plans.

152. As a fiduciary under ERISA, State Street Bank is bound by the duties of prudence and loyalty laid out in ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1). These duties mean that as an investment manager for the Plaintiffs' Plans, State Street Bank is bound to act in the customer's interest when transacting business for the account, and thus bound, for example, to disclose fully to the Plans all the details of the relevant FX trading transactions it was undertaking, or negotiating on behalf of the funds, including the mark-ups or mark-downs that the funds were receiving for the FX trades.

153. As a fiduciary, State Street also had a duty to monitor its internal Global Markets division. Through its Global Markets division, State Street Bank knew that it was charging unauthorized mark-ups and mark-downs for the non-negotiated trades rather than the actual transaction rates and pocketing the difference.

154. State Street Bank has breached its ERISA fiduciary duties of prudence and loyalty because it knew that its Global Markets division was charging the Plans (or the commingled funds in which the Plans invested) unauthorized mark-ups and mark-downs for FX trading that

were unfavorable or unreasonable, above the transactional rates, and/or in excess of what Global Markets had agreed to charge, but did not ensure, by negotiation or otherwise, that Global Market's rates were in the best interest of the Plans.

155. State Street, through its Global Markets division, has breached the duties of prudence and loyalty by charging the Plans (or the commingled Funds in which the Plans invested) unauthorized mark-ups or mark-downs over the actual FX trade rates that were unfavorable or unreasonable, above the market rates, and/or in excess of what it had agreed to charge.

156. These breaches of fiduciary duty involved assets of the Plans on which fees were levied by State Street Bank. .

157. Section 409(a) of ERISA, 29 U.S.C. § 1109(a), imposes liability on State Street Bank for these breaches and requires State Street Bank to make good to the Plans the losses resulting from its breaches.

158. To enforce the relief available under ERISA section 409(a), 29 U.S.C. § 1109(a), Plaintiffs assert this claim against State Street Bank under ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2).

159. Further, pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), State Street Bank must provide other appropriate equitable relief to redress its breaches of duty and enforce its fiduciary duties.

COUNT III

ERISA Prohibited Transactions

(Violations of § 406(a)(1)(C) & (D) of ERISA, 29 U.S.C. § 1106(a)(1)(C) & (D))

160. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

161. ERISA section 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C), provides that a fiduciary shall not cause a plan to engage in a transaction if the fiduciary knows or should know that the

transaction constitutes a direct or indirect furnishing of goods, services, or facilities between the plan and a party in interest.

162. ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), provides that a fiduciary shall not cause a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of a party in interest, of any assets of the plan.

163. As noted above, State Street Bank is a fiduciary with respect to the Plans.

164. State Street Bank, State Street Global Advisors, and State Street Global Markets are "affiliates" within the meaning of the Prohibited Transaction Exemption and they directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with each other.

165. Global Markets, as an affiliate of State Street Bank, is a "party in interest" within the meaning of ERISA section 3(14), 29 U.S.C. § 1002(14), for at least two independently sufficient reasons: it is a functional fiduciary with respect to the Plans, and it is a person providing services to the Plans.

166. By allowing Global Markets to manipulate FX transaction prices to the detriment of the plan and pocket the difference between the actual transaction rate and the rate selected by Global Markets, State Street Bank violated ERISA section 406(a)(1)(C) & (D), 29 U.S.C. § 1106(a)(1)(C) & (D). State Street Bank caused the Plans to engage in transactions while knowing that such transactions constituted a direct or indirect transfer of assets of the Plans to a party in interest, Global Markets.

167. While ERISA section 408(b)(18), 29 U.S.C. § 1108(b)(18), provides an exemption from the prohibitions of ERISA section 406(a), 29 U.S.C. § 1106(a), for foreign currency exchanges between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to a plan, the exemption only applies if, at the time the FX transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange

transactions, and if the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction. The exemption does not apply here for two independently sufficient reasons: (1) the terms of the FX transactions, by which Global Markets essentially ensured that its clients would always get the worst exchange rate of the day, were indeed less favorable to the Plans than comparable arm's-length transactions, and (2) State Street, SSgA, and Global Markets had investment discretion (and SSgA provided investment advice) with respect to the investment of plan assets when it entered into the transactions. Thus, State Street's FX trades do not fall under the narrow exemption of section 408(b)(18).

168. Pursuant to ERISA section 502(a)(2) & (3), 29 U.S.C. § 1132(a)(2) & (3), State Street Bank is liable to restore the losses to the Plans and provide other appropriate equitable relief.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Declare that the Defendant has violated ERISA's prohibited transactions provisions;

2. Declare that the Defendant breached its fiduciary duties under ERISA;

3. Issue an order compelling a proper accounting of the FX transactions in which the Plans and other members of the Proposed Class have engaged;

4. Issue an order compelling Defendant to restore all losses caused to the Plans (or that will be caused to the Plans after the filing of this Complaint);

5. Issue an order compelling the Defendant to disgorge all fees paid and incurred to Defendant or its affiliates (or that will be paid or incurred by the Plans after the filing of this Complaint), including any profits thereon;

6. Order equitable restitution and other appropriate equitable monetary relief against the Defendant;

7. Award such other equitable, injunctive, or remedial relief as may be appropriate, including the permanent removal of the Defendant from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as FX custodian to the Plans;

8. That this action be certified as a class action and that the Class be designated to receive the amounts restored to the Plans by Defendant and a constructive trust be established for distribution to the extent required by law;

9. Enjoin Defendant collectively, and each affiliate individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

10. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA section 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

11. Award such other and further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs hereby demand a jury on all issues so triable.

Dated: October 18, 2012

HUTCHINGS, BARSAMIAN, MANDELCORN & ZEYTOONIAN, LLP

By: s/ Theodore M. Hess-Mahan
Theodore M. Hess-Mahan, Esq. BBO #557109
110 Cedar Street, Suite 250
Wellesley Hills, MA 02481
Telephone: 781-431-2231
Facsimile: 781-431-8726
thess-mahan@hutchingsbarsamian.com

KELLER ROHRBACK, L.L.P.
Lynn Lincoln Sarko (*pro hac vice pending)*
Derek W. Loeser (*pro hac vice pending)*
Laura R. Gerber (*pro hac vice pending)*
1201 3rd Avenue, Suite 3200
Seattle, WA 98101
Telephone: 206-623-1900
Facsimile: 206-623-8986
lsarko@kellerrohrback.com
dloeser@kellerrohrback.com
lgerber@kellerrohrback.com

Counsel for Plaintiffs

EX. 4

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Friday, August 28, 2015 12:04 PM
To: Lynn Sarko
Cc: Daniel P. Chiplock; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Goldsmith, David
Subject: Re: SSBT: Draft STIPULATION AND AGREEMENT OF SETTLEMENT

I didn't get the email from Brian. So I don't intend to respond.
Others who receive the email Caroline should respond. I am only seeking the same powers but all of the lead counsel in all other cases I've been in received.

Of course I intend to honor all commitments, contracts, obligations, agreements, understandings buy what ever name or title. But especially those that are in writing like Brian's.

Sent from my iPhone

> On Aug 28, 2015, at 1:02 PM, Lynn Sarko <lsarko@KellerRohrback.com> wrote:
>
> We need to be careful about this as the DOL had asked if there were any agreements on fees between counsel. I would never answer their question. And then they seem to forget about it.
> But I'd rather not highlight it and have the DOL go sideways on us.
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 9:35 AM, Brian McTigue <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>> wrote:
>
> I don't agree with lead settlement counsel distributing attorney's fees and expenses in its sole discretion. Attorney's fees and expenses should be distributed pursuant to the existing, written agreements of counsel.
>
> _____
> J. Brian McTigue
> McTigue Law LLP
> 4530 Wisconsin Ave. N.W.
> Suite 300
> Washington, DC 20016
> (202) 364-6900 ext. 300
> (202) 364-9960 fax
> bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>
> www.mctiguelaw.com<http://www.mctiguelaw.com/>
> Member of the District of Columbia and California Bars
>
>
>

>
> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
> Sent: Friday, August 28, 2015 9:29 AM
> To: 'Sucharow, Lawrence' <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>
> Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Lynn Sarko <lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>>; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; Evan Hoffman <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Kravitz, Carl S. <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; Brian McTigue <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> OK, sounds good. I will also get you whatever edits I have to the settlement docs by noon.
>
> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> Sent: Friday, August 28, 2015 9:28 AM
> To: Chiplock, Daniel P.
> Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
> Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
>
> I am speaking to Paine today at around 10 AM to both report to him and get his update.
> I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
> This looks OK to me, thanks. I'm happy to send it (after you've done the other redline) to Paine, if you like. Or someone else can, no matter.
>
> From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
> Sent: Thursday, August 27, 2015 3:27 PM
> To: Lynn Sarko; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Dear all,
>
> We've had some additional exchanges about the term sheet and, specifically, para 8(n). I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal. If you disagree, please let us know asap.
>
> When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.
>
> Thanks
>

>
>
>
>
>
>
> <image001.jpg><http://labaton.com/>
> Nicole M. Zeiss | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 | F: (212) 883-7067
> E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> <image002.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.jpg><https://twitter.com/LabatonSucharow> <image004.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Zeiss, Nicole
> Sent: Wednesday, August 26, 2015 5:09 PM
> To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.
>
> Thanks
>
>
>
>
>
>
>
> <image005.jpg><http://labaton.com/>
> Nicole M. Zeiss | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 | F: (212) 883-7067
> E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> <image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image007.jpg><https://twitter.com/LabatonSucharow> <image008.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Sucharow, Lawrence
> Sent: Wednesday, August 26, 2015 4:34 PM
> To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Then we can probably forget my proposed changes.

>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 4:26 PM
> To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Sure. If it works for them – its fine with me
>
> Lynn Lincoln Sarko
> Managing Partner
>
> Keller Rohrback L.L.P.
> 1201 Third Avenue, Suite 3200
> Seattle, WA 98101
>
> Phone: (206) 623-1900
> Fax: (206) 623-3384
> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>
> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> Sent: Wednesday, August 26, 2015 1:25 PM
> To: Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>; 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
> Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Can we leave para 8(n) the general way it is and protect the DOL through the express provision of para 12 limiting fees charged to ERISA allocation to $10.9 million?
>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 3:42 PM
> To: Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> David
> Thanks for sending this. Sorry, I had misunderstood what you were saying on our call earlier today.
>
> Two things:
>

> 1. I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
> 2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down. So—question—can we get rid of the word "fees" in this paragraph—does it still work?
>
> What do you think??
>
> Lynn
>
> Lynn Lincoln Sarko
> Managing Partner
>
> Keller Rohrback L.L.P.
> 1201 Third Avenue, Suite 3200
> Seattle, WA 98101
>
> Phone: (206) 623-1900
> Fax: (206) 623-3384
> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>
> From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
> Sent: Wednesday, August 19, 2015 2:59 PM
> To: 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
> Cc: Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>; Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
> Subject: SST--Proposed Revision to Term Sheet for DOL Deal
>
> All: The below reflects our proposed revisions to the Term Sheet (in red boldface) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet). Please comment. Thanks.
>
>
> 8(n). Plan of Allocation. . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court. However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.
>
> 12. Plaintiffs' Counsel's Attorneys' Fees and Expenses. Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of

the Settlement or the fee and expense award. Plaintiffs' Counsel shall may apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above. In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days. The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees. Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.

>
>
>
>
>
>
> [http://www.labaton.com/images/email-logo.jpg]<http://www.labaton.com/>
> David J. Goldsmith | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0879 | F: (212) 883-7079
> E: dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> [http://www.labaton.com/images/email-linkedin.gif]<http://www.linkedin.com/company/labaton-sucharow-llp> [http://www.labaton.com/images/email-twitter.gif] <https://twitter.com/LabatonSucharow> [http://www.labaton.com/images/email-facebook.gif] <https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
>
> ***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.
>
>
>
>
> 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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 5

From: Garrett Bradley
Sent: Wednesday, September 2, 2015 11:05 AM
To: Sucharow; Lawrence
Subject: Re: State Street FX - revised term sheet

My gut tells me they will press for a fee agreement deal or withhold signature at some point in the process. They may threaten their own fee app. State street may want us all on the dotted line but I wanted to raise it and have you think about it. It may be too late.

Garrett

> On Sep 2, 2015, at 12:02 PM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>
> Never thought of it.
> Why, is there a problem?
>
> -----Original Message-----
> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
> Sent: Wednesday, September 02, 2015 11:59 AM
> To: Sucharow, Lawrence
> Subject: Re: State Street FX - revised term sheet
>
> aren't you lead and Lieff Liason? no way around everyone signing?
>
> Garrett
>
>> On Sep 2, 2015, at 11:28 AM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>>
>> All Plaintiffs' Counsel for both Term Sheet and Stip.
>>
>> -----Original Message-----
>> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
>> Sent: Wednesday, September 02, 2015 11:25 AM
>> To: Sucharow, Lawrence
>> Subject: Re: State Street FX - revised term sheet
>>
>> Larry,
>>
>> Does any other counsel need to sign off besides you for the consumer side?
>>
>> Garrett
>>
>>> On Sep 2, 2015, at 11:16 AM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>>>
>>> I don't necessarily disagree, but would want it under my designation as Interim Lead Class Counsel, such as Interim Lead ERISA Sub-Class Counsel.
>>> That having been said, only the Court can make that designation, it is NOT a self-appointed title.
>>>

>>> -----Original Message-----
>>> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
>>> Sent: Wednesday, September 02, 2015 11:14 AM
>>> To: Robert L. Lieff; Sucharow, Lawrence; Michael Thornton
>>> Subject: FW: State Street FX - revised term sheet
>>>
>>> I'm going to respectfully suggest that we give Lynn this designation, if there needs to be one, in order to head this off.
>>>
>>> -----Original Message-----
>>> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
>>> Sent: Wednesday, September 02, 2015 11:10 AM
>>> To: Sucharow, Lawrence
>>> Cc: Chiplock, Daniel P.; Lieff, Robert L.; Garrett J. Bradley; Michael Thornton; Zeiss, Nicole
>>> Subject: Re: State Street FX - revised term sheet
>>>
>>> I will call him
>>>
>>> Sent from my iPhone
>>>
>>> On Sep 2, 2015, at 8:09 AM, Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>> wrote:
>>>
>>> Lynn this is getting crazy. We don't believe there is a need for such a designation, but if so, he should move before the Court so we can oppose.
>>> If I talk to him there may be a schism created. I suggest you ask him what the heck he's doing.
>>>
>>> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
>>> Sent: Wednesday, September 02, 2015 10:57 AM
>>> To: Sucharow, Lawrence; Lynn Sarko; Robert L. Lieff
>>> Subject: RE: State Street FX - revised term sheet
>>>
>>> I'm sure you guys noticed that Brian has appointed himself Interim Lead ERISA Counsel in the signature block?
>>>
>>> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
>>> Sent: Tuesday, September 01, 2015 11:07 PM
>>> To: Lynn Sarko
>>> Cc: Zeiss, Nicole; Chiplock, Daniel P.; Rogers, Michael H.; Goldsmith, David
>>> Subject: Re: State Street FX - revised term sheet
>>>
>>> Lynn, you and I should discuss how best to handle Brian, I completely agree with you.
>>>
>>> Perhaps a side letter from me as lead counsel saying I intend to abide by the agreement entered into between class counsel and ERISA counsel, dated, whatever, would satisfy him?
>>>
>>> Lawrence Sucharow
>>> Labaton Sucharow, LLP
>>> Sent from my iPad
>>>
>>> On Sep 1, 2015, at 10:43 PM, Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>> wrote:
>>> This is what went to the DOL as a draft.

>>>
>>> Lynn
>>>
>>> Lynn Lincoln Sarko
>>> Managing Partner
>>>
>>> Keller Rohrback L.L.P.
>>> 1201 Third Avenue, Suite 3200
>>> Seattle, WA 98101
>>>
>>> Phone: (206) 623-1900
>>> Fax: (206) 623-3384
>>> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>>>
>>>
>>> ***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.
>>>
>>>
>>> <#1397344v11_Active_ - State Street - Term Sheet.DOCX> <State Street - Term Sheet - State Street - Term Sheet.pdf>
>>>
>>>
>>> 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 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.
> 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.

EX. 6

From: Lynn Sarko
To: Lynn Sarko; 'Lieff, Robert L.'
CC: 'rlieff@lieff.com'; Lynn Sarko; Laura Gerber
Sent: 8/30/2013 1:22:50 PM
Subject: RE: State Street
Attachments: FeeAgreement083013.docx

Robert

I have signoff from the ERISA counsel on the fee division between the ERISA and Consumer counsel that we discussed this morning. Attached is a draft agreement that reflects the 91%/9% split.

I have received approval from the other ERISA counsel.

Regards,

Lynn

Lynn L. Sarko
Keller Rohrback LLP
206-224-7552

On Aug 28, 2013, at 2:31 PM, "Lieff, Robert L." <RLIEFF@lchb.com<mailto:RLIEFF@lchb.com>> wrote:

Lynn,

We are waiting to receive from you a draft agreement between ERISA and Consumer plaintiffs. Can we have it this week? We are drafting a settlement agreement for all plaintiffs including ERISA and defendants. Thanks.

Robert

<image001.gif>

Robert L. Lieff
Of Counsel
rlieff@lchb.com<mailto:rlieff@lchb.com>
t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com<http://www.lieffcabraser.com>

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.

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, Counsel for ERISA Plaintiffs), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis alleging state law claims against State Street Corporation, State Street Bank and Trust Company, and others, but no claims under ERISA.

1. WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al., vs. State Street Bank and Trust Company,, et. al.*, No. 11-cv-12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of

Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed, awarded and/or approved by the Court in connection with the *ARTRS, Andover or Henriquez* cases, whether the

product of settlement or litigated resolution of the cases, shall be divided 91 % to Counsel for Consumer Plaintiffs and 9 % to Counsel for ERISA Plaintiffs (the "Division of Fees").

2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.
7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

EX. 7

From: Chiplock, Daniel P.
To: Lynn Sarko; Laura Gerber
CC: lsucharow@labaton.com; Rogers, Michael H. (MRogers@labaton.com); 'Michael Thornton'; dgoldsmith@labaton.com; Michael Lesser; Lieff, Robert L.
Sent: 9/11/2013 12:23:26 PM
Subject: FW: State Street - Fee agreement
Attachments: LCHB_iManage_1129455_2.DOCX

Lynn/**Laura** (corrected):

Attached are redlines to the proposed fee agreement you circulated. Let us know if you have additional comments or care to discuss.

Thanks,

Dan

Lieff Cabraser Heimann & Bernstein
Attorneys at Law

Daniel P. Chiplock
dchiplock@lchb.com
t 212.355.9500
f 212.355.9592
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, NY 10013
www.lieffcabraser.com

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, "Counsel for ERISA Plaintiffs"), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging state and common law claims against State Street Corporation, State Street Bank and Trust Company, and others, on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis ~~alleging state law claims against State Street Corporation, State Street Bank and Trust Company, and others, but no claims under ERISA~~.

~~1.~~ WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al., vs. State Street Bank and Trust Company,, et. al.*, No. 11-cv-

Formatted: Indent: Left: 0.5", No bullets or numbering

12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state or common law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State State Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed to, awarded and/or approved by the Court in connection with ~~the~~any collective or joint resolution of the *ARTRS, Andover and~~or~~ Henriquez* cases ~~, whether the product of settlement or litigated resolution of the cases,~~ shall be divided 91 % to Counsel for Consumer Plaintiffs and 9 % to Counsel for ERISA Plaintiffs (the "Division of Fees").
2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.

Formatted: Indent: First line: 0.5", No bullets or numbering

Formatted: Indent: Left: 0.5", No bullets or numbering

7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, "Counsel for ERISA Plaintiffs"), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging state and common law claims against State Street Corporation, State Street Bank and Trust Company, and others, on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis ~~alleging state law claims against State Street Corporation, State Street Bank and Trust Company, and others, but no claims under ERISA~~.

~~1.~~ WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al., vs. State Street Bank and Trust Company,, et. al.*, No. 11-cv-

Formatted: Indent: Left: 0.5", No bullets or numbering

12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state or common law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed to, awarded and/or approved by the Court in connection with ~~the~~any collective or joint resolution of the *ARTRS, Andover and~~or~~ Henriquez* cases ~~, whether the product of settlement or litigated resolution of the cases,~~ shall be divided 91 % to Counsel for Consumer Plaintiffs and 9 % to Counsel for ERISA Plaintiffs (the "Division of Fees").
2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.

Formatted: Indent: First line: 0.5", No bullets or numbering

Formatted: Indent: Left: 0.5", No bullets or numbering

7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

EX. 8

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, Counsel for ERISA Plaintiffs), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis alleging state law claims against State Street Corporation, State Street Bank and Trust Company, and others, but no claims under ERISA.

1. WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al. vs. State Street Bank and Trust, et. al.*, No. 11-cv-12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of

Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed, awarded and/or approved by the Court in connection with the *ARTRS, Andover* ~~and~~ or *Henriquez* cases, whether the

product of settlement or litigated resolution of the cases, shall be divided __ % to Counsel for Consumer Plaintiffs and __ % to Counsel for ERISA Plaintiffs (the "Division of Fees").

2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.
7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

EX. 9

From: Cate Brewer
To: Laura Gerber
Sent: 12/10/2013 9:35:28 AM
Subject: SSFX
Attachments: FEEAGREEMENT082913.docx; FeeAgreement083013.docx


FeeAgreement083013.docx


FEEAGREEMENT082913.docx

Cate R. Brewer
Legal Assistant/Paralegal
to Gretchen Cappio, Laura Gerber and Harry Williams

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Phone: (206) 623-1900
Fax: (206) 623-3384
Email: cbrewer@kellerrohrback.com

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: [—] Labaton Sucharow LLP, Thornton & Naumes, LLP, [—] and Lieff Cabraser Heimann & Bernstein, LLP [—] (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigque Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and and Keller Rohrback Law Offices L.L.P. (collectively, Counsel for ERISA Plaintiffs), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

Formatted: Font: Times New Roman
Formatted: Font: Times New Roman

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis alleging public and private (ERISA) pension plans federal and state law claims against State Street Corporation, State Street Bank and Trust Company, and others and others, but no claims under ERISA.

1. WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al. vs. State Street Bank and Trust, et. al.*, No. 11-cv-12049 MLW

Formatted: LCPldBlank_L6, None, No bullets or numbering
Formatted: Bullets and Numbering
Formatted: Font: Italic, Underline

("Henriquez"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("Andover"), ~~and Arnold Henriquez, et. al. vs. State Street Bank and Trust, et. al., No. 11-cv-12049 MLW ("Henriquez"),~~ in the United States District Court for the District of Massachusetts, alleging on behalf of their clients, ~~the Andover Companies and~~ Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, ~~claims under~~ alleging breaches of federal ERISA law ~~ERISA~~ against State Street ~~Corporation~~ Bank and Trust Company, and others, but none of the other ~~federal and~~ state law ~~claims~~ alleged by ARTRS.

Formatted: Font: Italic

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

~~WHEREAS, State Street Corporation and the other defendants have produced data, on a confidential basis, in the mediation of the *ARTRS, Andover* and *Henriquez* cases regarding volume of FX trading by public and ERISA pension plans.~~

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed, awarded and/or approved by the Court in connection with the *ARTRS, Andover* and *Henriquez* cases, whether the product of settlement or litigated resolution of the cases, shall be divided __ % to Counsel for Consumer Plaintiffs and __ % to Counsel for ERISA Plaintiffs (the "Division of Fees").

~~2.~~ The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.

Formatted: Bullets and Numbering

2.

~~3. Notwithstanding Paragraphs 1 and 2 above, the Division of Fees does not apply in the event that there is no recovery in the *ARTRS* case or if there is no recovery in both the *Andover Company* and *Henriquez* cases. **[CSK Comment: this is a difficult issue. If ARTRS loses, we win, and the division applies, then ARTRS counsel gets virtually the entire fee. On the other hand, if it went the other way, then we get shut out. On balance, I think we want this provision, but it is definitely not perfect either way.]**~~

~~4. The Parties agree that the Division of Fees is consistent with the relative volume of FX trading by ERISA and non-ERISA plans as reflected in the data produced by State Street and the prospects of recovery on the various claims alleged, and is therefore reasonable and appropriate.~~

~~5.~~ The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.

3.

~~6.~~ The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.

4.

~~7.~~ The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.

5.

~~8.~~ This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.

6.

~~9.~~7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

EX. 10

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, "Counsel for ERISA Plaintiffs"), on the other hand (the "Parties"). This Agreement shall be effective as of December 11, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging state and common law claims against State Street Corporation, State Street Bank and Trust Company, and others, on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis.

WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al., vs. State Street Bank and Trust Company,, et. al.*, No. 11-cv-12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of

Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state or common law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed to, awarded and/or approved by the Court in connection with any collective or joint resolution of the *ARTRS, Andover*

and Henriquez cases shall be divided 91 % to Counsel for Consumer Plaintiffs and 9% to Counsel for ERISA Plaintiffs (the "Division of Fees").

2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.
7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.
8. This Agreement may be signed in counterpart, and faxed or emailed signatures will have the force of original signatures.

DATED: 12/11/13

Lawrence A. Sucharow
Labaton Sucharow LLP

DATED: 12/11/13

Michael P. Thornton
Thornton & Naumes, LLP

DATED: 12/11/13

Daniel P. Chiplock
Lieff Cabraser Heimann & Bernstein, LLP

DATED: _____

J. Brian McTigue
McTigue Law LLP

DATED: _____

Carl S. Kravitz
Zuckerman Spaeder, LLP

DATED: _____

Jonathan G. Axelrod
Beins, Axelrod, P.C.

DATED: _____

Michael J. Brickman
Richardson, Patrick, Westbrook & Brickman LLC

DATED: _____

Lynn Lincoln Sarko
Keller Rohrback L.L.P.

DATED: _____

Lawrence A. Sucharow
Labaton Sucharow LLP

DATED: _____

Michael P. Thornton
Thornton & Naumes, LLP

DATED: 12/11/13

Daniel P. Chiplock
Lieff Cabraser Heimann & Bernstein, LLP

DATED: _____

J. Brian McTigue
McTigue Law LLP

DATED: _____

Carl S. Kravitz
Zuckerman Spaeder, LLP

DATED: _____

Jonathan G. Axelrod
Beins, Axelrod, P.C.

DATED: _____

Michael J. Brickman
Richardson, Patrick, Westbrook & Brickman LLC

DATED: 12/11/13

Lynn Lincoln Sarko
Keller Rohrback L.L.P.

DATED: _____

Lawrence A. Sucharow
Labaton Sucharow LLP

DATED: _____

Michael P. Thornton
Thornton & Naumes, LLP

DATED: 12/11/13

Daniel P. Chiplock
Lieff Cabraser Heimann & Bernstein, LLP

DATED: _____

J. Brian McTigue
McTigue Law LLP

DATED: _____

Carl S. Kravitz / DWIGHT BOSTWICK
Zuckerman Spaeder, LLP

DATED: 12/13/13

Jonathan G. Axelrod
Beins, Axelrod, P.C.

DATED: _____

Michael J. Brickman
Richardson, Patrick, Westbrook & Brickman LLC

DATED: _____

Lynn Lincoln Sarko
Keller Rohrback L.L.P.

EX. 11

From: Lynn Sarko <lsarko@KellerRohrback.com>
Sent: Wednesday, November 23, 2016 10:22 AM
To: Kravitz, Carl S. <ckravitz@zuckerman.com>
Subject: Fwd: SST - ERISA Fee and Expense Allocations
Attach: image009.jpg; ATT00001.htm; image010.jpg; ATT00002.htm; image011.jpg; ATT00003.htm; image012.jpg; ATT00004.htm; SST - Fee and Expense Allocation for ERISA Actions (1668269_1).DOC; ATT00005.htm

---

So I spoke with the Labaton folks yesterday. They didn't want to put it in the formal letter but agreed to send us an email putting the numbers in and confirming the 10 percent. Here it is

Lynn

Sent from my iPhone

Begin forwarded message:

From: "Zciss, Nicole" <NZciss@labaton.com<mailto:NZciss@labaton.com>>
Date: November 23, 2016 at 7:17:24 AM PST
To: Lynn Sarko <lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>>, 'David Copley' <dcopley@KellerRohrback.com<mailto:dcopley@KellerRohrback.com>>, 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>, "'Kravitz, Carl S.'" <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>

Cc: "Sucharow, Lawrence" <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>, "Goldsmith, David" <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>

Subject: SST - ERISA Fee and Expense Allocations

Dear all,

Attached and below are tables showing the ERISA fee and expense allocations. Please let us know if you have any questions or changes. Thanks

FEES AND LITIGATION EXPENSES:

Total Fee Awarded: $74,541,250.00, plus accrued interest to be calculated
ERISA Fee Allocation 10%: $7,454,125.00,[1] plus accrued interest to be calculated
Total ERISA Expenses Awarded: $431,613.31, without interest

FEE ALLOCATION

Firm

Fee

Keller Rohrback LLP

$2,484,708.33

McTigue Law LLP

$2,484,708.34

Zuckerman Spaeder LLP

$2,484,708.33

TOTAL

$7,454,125.00

EXPENSE ALLOCATION

Firm

Expenses

Keller Rohrback LLP, on behalf of itself and
-Hutchings Barsamian Mandelcorn LLP

$342,270.63
$496.00

McTigue Law LLP, on behalf of itself and
- Beins Axelrod PC
- Richardson Patrick Westbrook & Brickman LLC
- Feinberg Campbell & Zack PC

$41,412.90
$1,306.83
$7,456.66
$0.00

Zuckerman Spaeder LLP

$38,670.29

TOTAL

$431,613.31

1 Although the fee agreement with ERISA Counsel provides for a 9% allocation from the awarded fee, counsel in the ARTRS Action have determined to increase the allocation to 10% in light of the excellent work and contribution of ERISA Counsel.

<https://urldefense.proofpoint.com/v2/url?u=http-3A__labaton.com_&d=DgIFAg&c=kWwxgxBGq8MXL6t_SoviyQ&r=EFKDQsqQzO6nTYTa8RwS5Q9M2leSqI2v4EMjMy0k2eA&m=LIDDE2W-oq6r1H24vdfZGej1nAzDuuCcFGQ0L4lzkwI&s=fEywAfJB3Bc44abxskTbAGK3ooX9Okbd8Z85QHGKadA&e=>

EX. 12

From: Kravitz, Carl S. <csk1@zuckerman.com>
Sent: Wednesday, November 23, 2016 2:56 PM
To: Brian McTigue <bmctigue@mctiguelaw.com>
Subject: Fwd: SST - ERISA Fee and Expense Allocations
Attach: image009.jpg; ATT00001.htm; image010.jpg; ATT00002.htm; image011.jpg; ATT00003.htm; image012.jpg; ATT00004.htm; SST - Fee and Expense Allocation for ERISA Actions (1668269_1).DOC; ATT00005.htm

---

At least we got the numbers up a bit!!

Sent from my iPhone

Begin forwarded message:

From: "Zeiss, Nicole" <NZeiss@labaton.com>
Date: November 23, 2016 at 10:17:24 AM EST
To: Lynn Sarko <lsarko@kellerrohrback.com>, 'David Copley' <dcopley@KellerRohrback.com>, 'Brian McTigue' <bmctigue@mctiguelaw.com>, "'Kravitz, Carl S.'" <ckravitz@zuckerman.com>
Cc: "Sucharow, Lawrence" <LSucharow@labaton.com>, "Goldsmith, David" <dgoldsmith@labaton.com>
Subject: SST - ERISA Fee and Expense Allocations

Dear all,

Attached and below are tables showing the ERISA fee and expense allocations. Please let us know if you have any questions or changes. Thanks

FEES AND LITIGATION EXPENSES:

Total Fee Awarded: $74,541,250.00, plus accrued interest to be calculated
ERISA Fee Allocation 10%: $7,454,125.00,[1] plus accrued interest to be calculated
Total ERISA Expenses Awarded: $431,613.31, without interest

FEE ALLOCATION

Firm	Fee
Keller Rohrback LLP	$2,484,708.33
McTigue Law LLP	$2,484,708.34
Zuckerman Spaeder LLP	$2,484,708.33
TOTAL	**$7,454,125.00**

EXPENSE ALLOCATION

Firm	Expenses
Keller Rohrback LLP, on behalf of itself and -Hutchings Barsamian Mandelcorn LLP	$342,270.63 $496.00

McTigue Law LLP, on behalf of itself and - Beins Axelrod PC - Richardson Patrick Westbrook & Brickman LLC - Feinberg Campbell & Zack PC	$41,412.90 $1,306.83 $7,456.66 $0.00
Zuckerman Spaeder LLP	$38,670.29
TOTAL	**$431,613.31**

1 Although the fee agreement with ERISA Counsel provides for a 9% allocation from the awarded fee, counsel in the ARTRS Action have determined to increase the allocation to 10% in light of the excellent work and contribution of ERISA Counsel.

EX. 13

ATTORNEY-CLIENT PRIVILEGE – ATTORNEY WORK PRODUCT

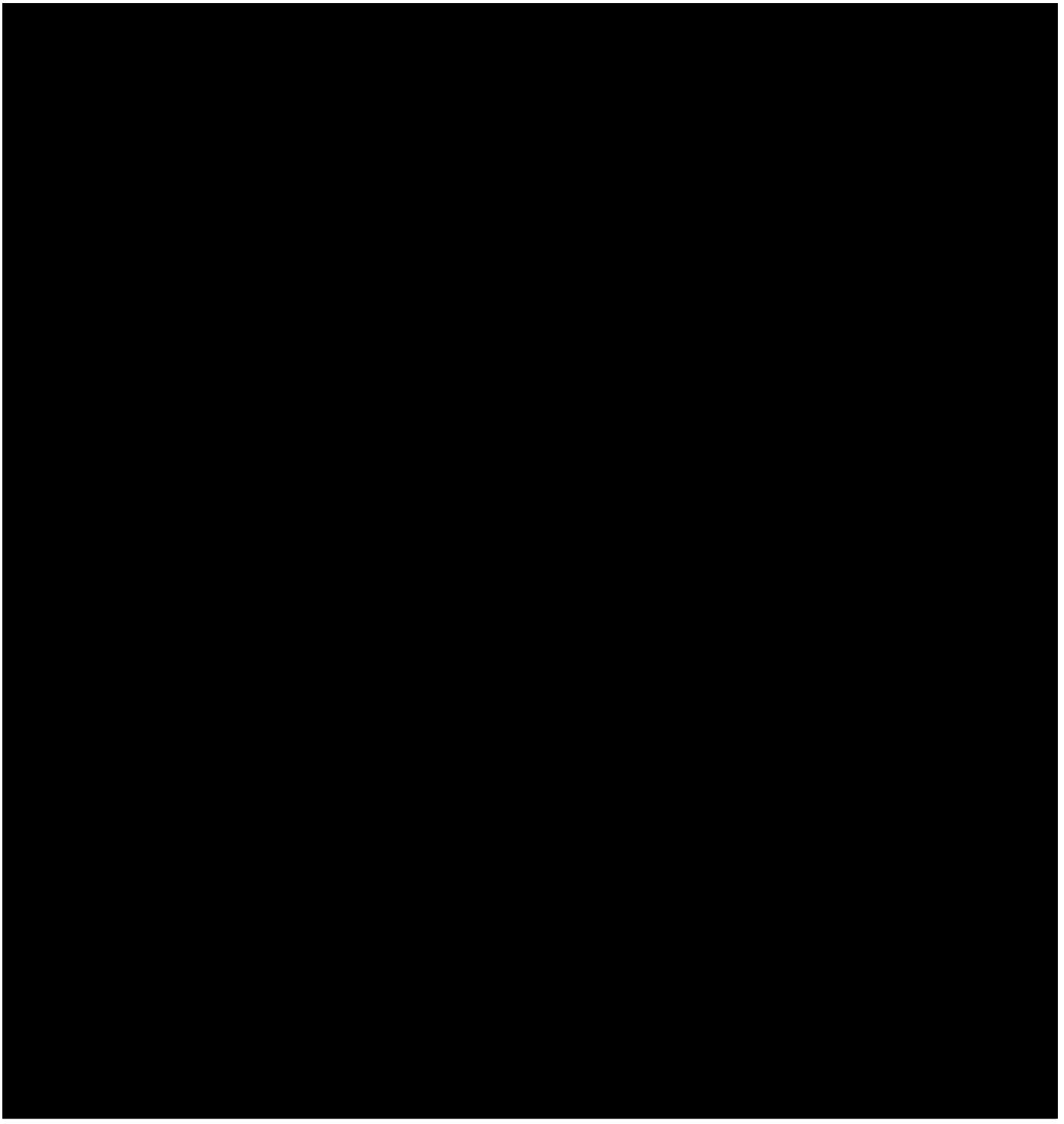
MEMORANDUM

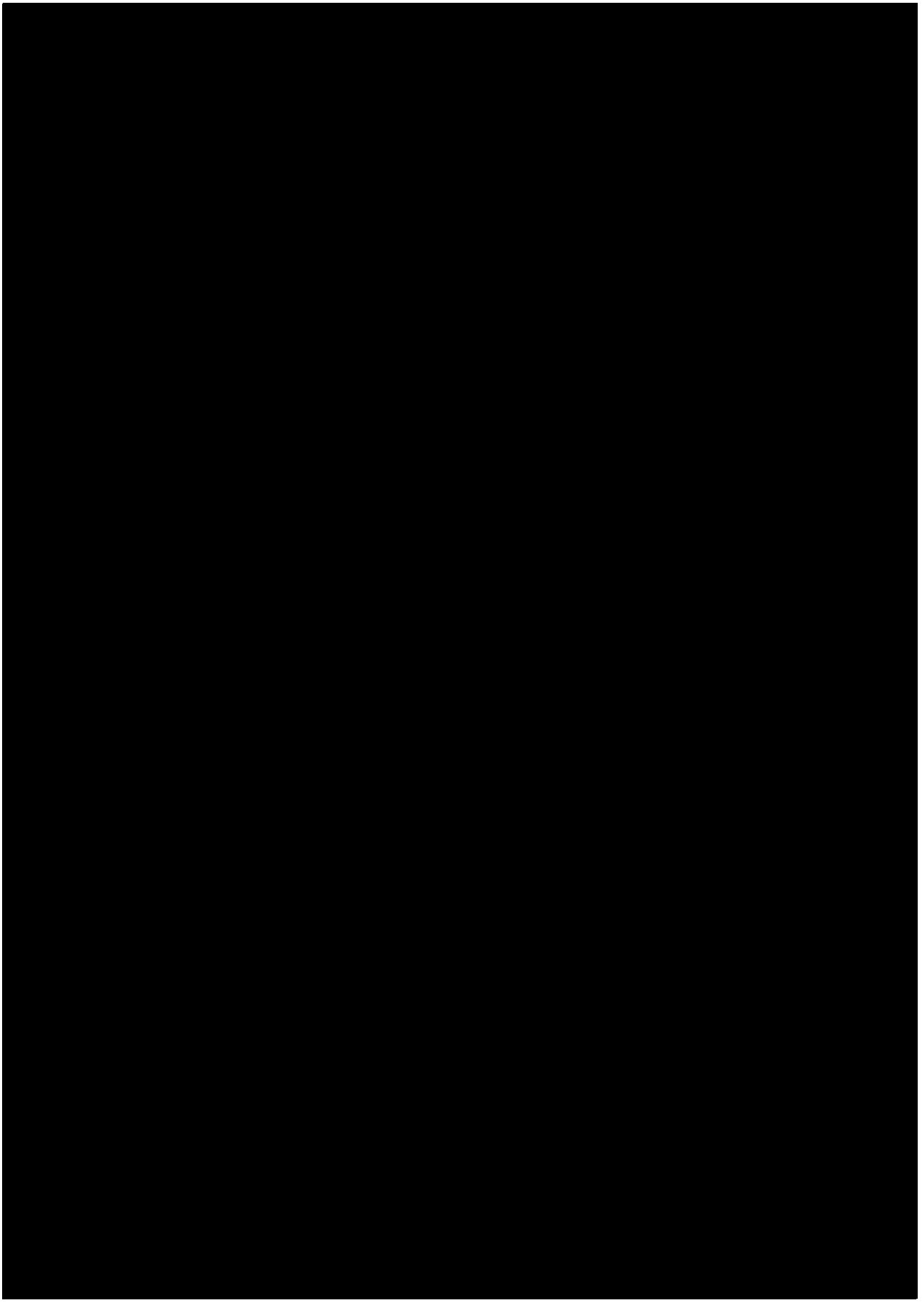
From: Maritza Bolano,

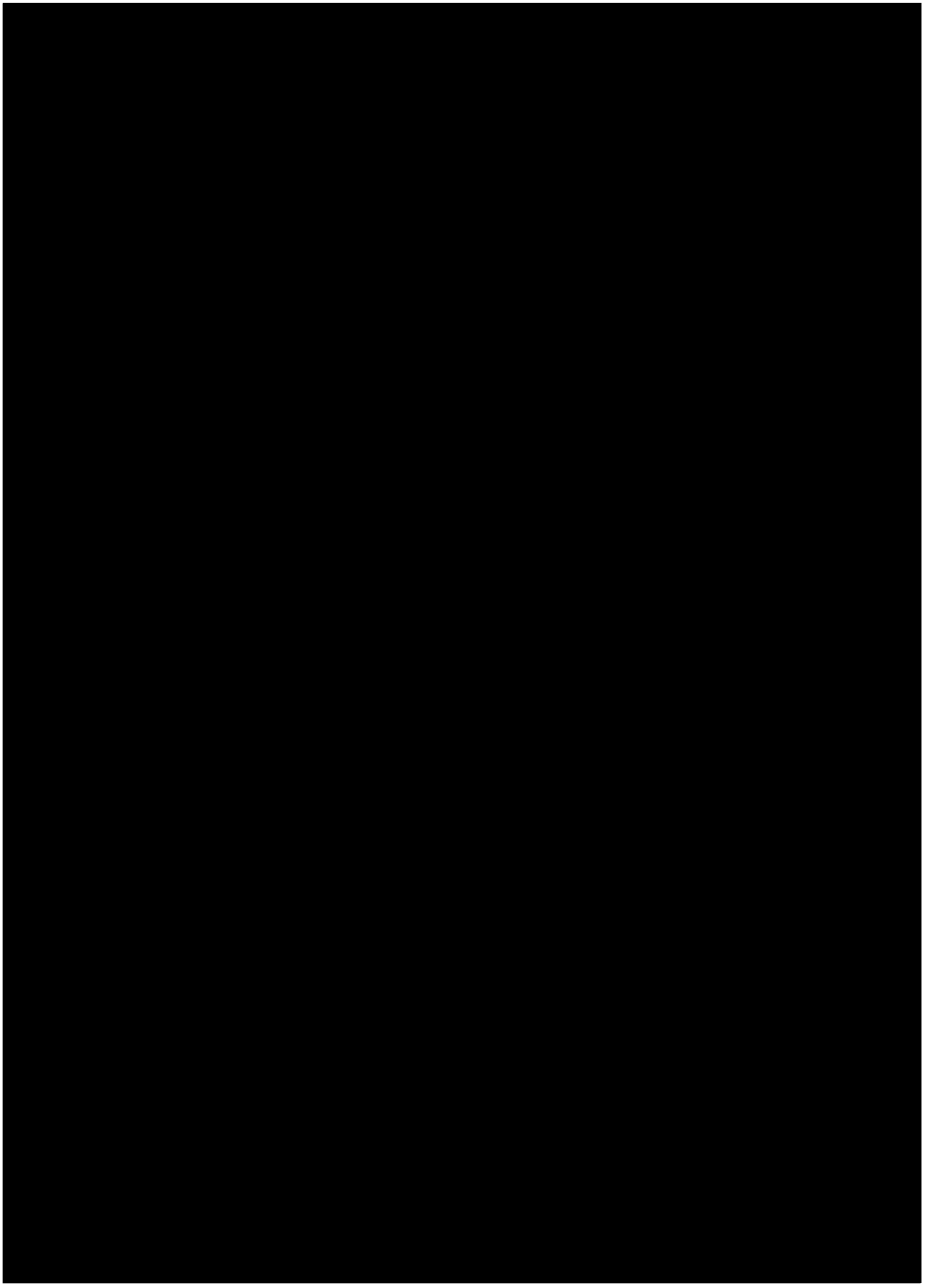
To: Files

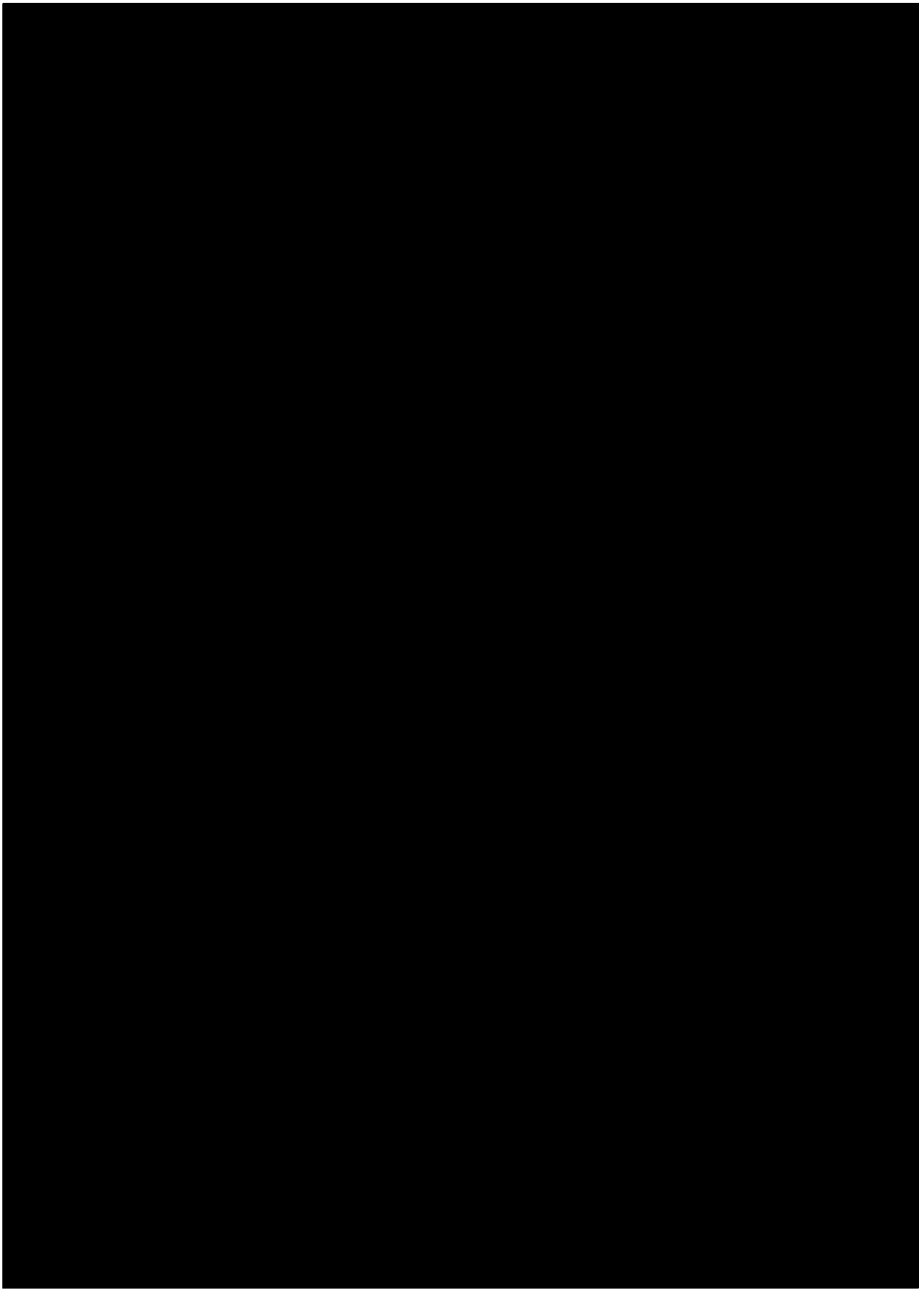
CC: Todd S. Kussin

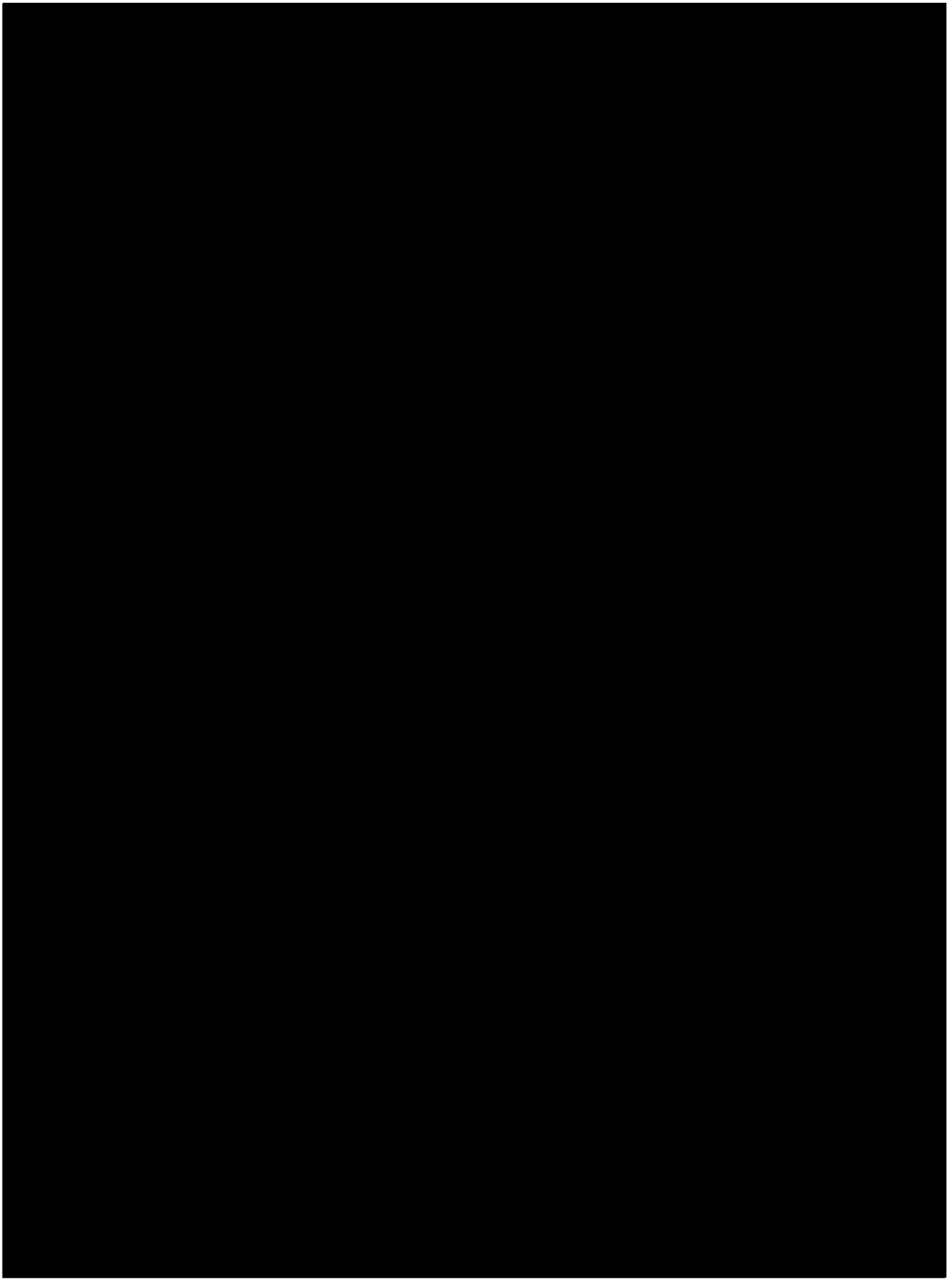
Re: Contracts/RFPs Topic - ATRS vs. State Street Class Action, No. 11-CV-10230 (MLW)

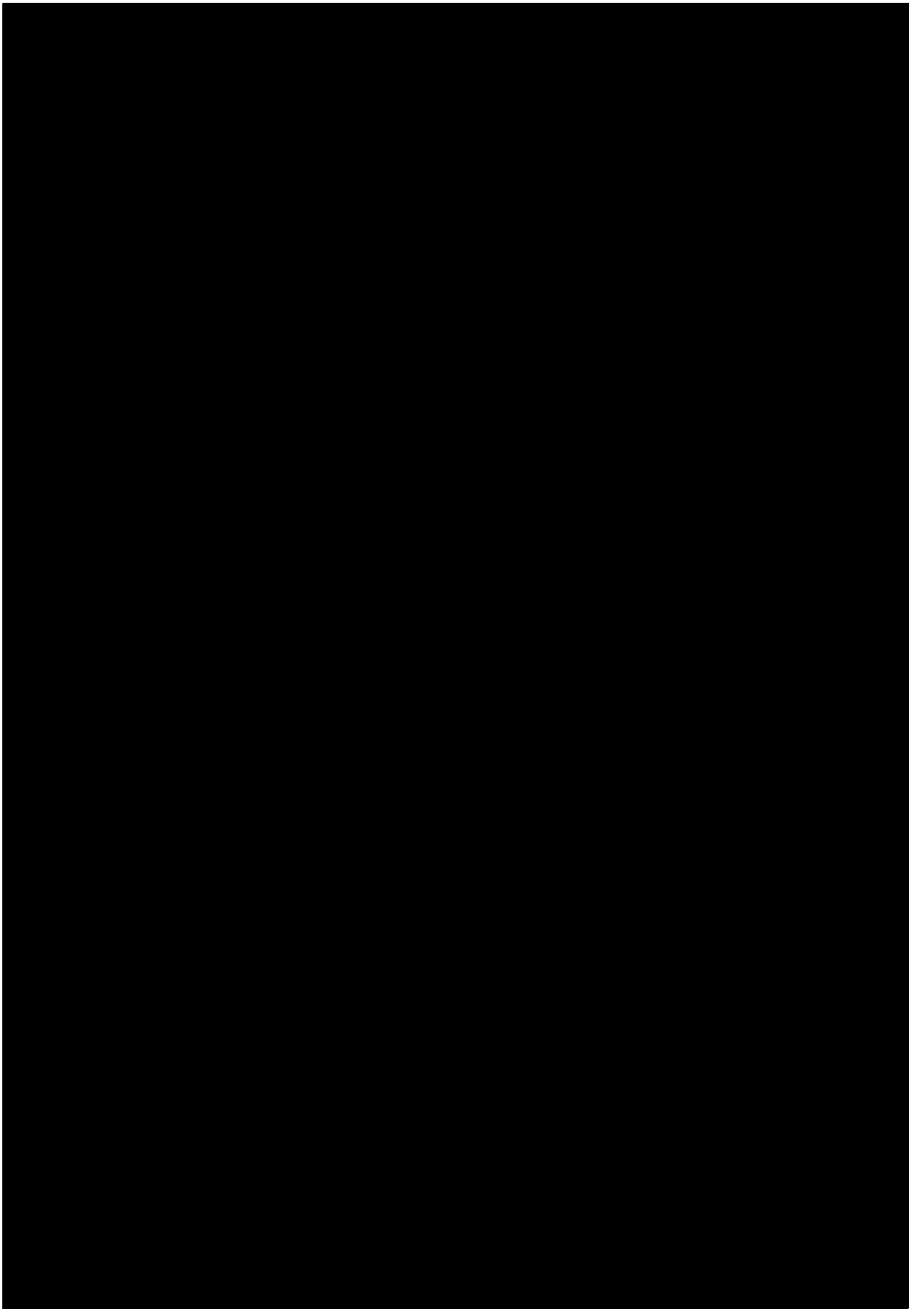


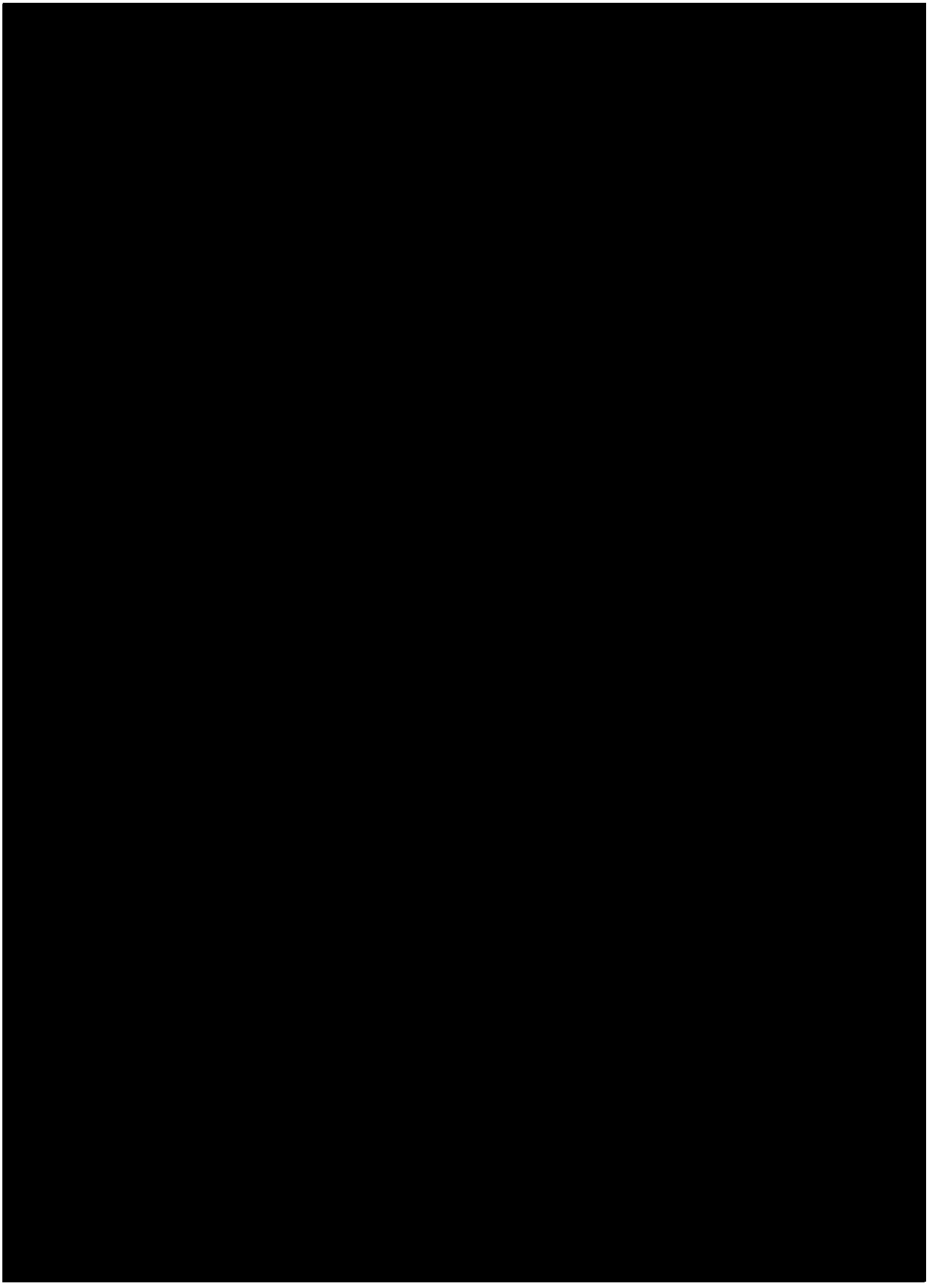


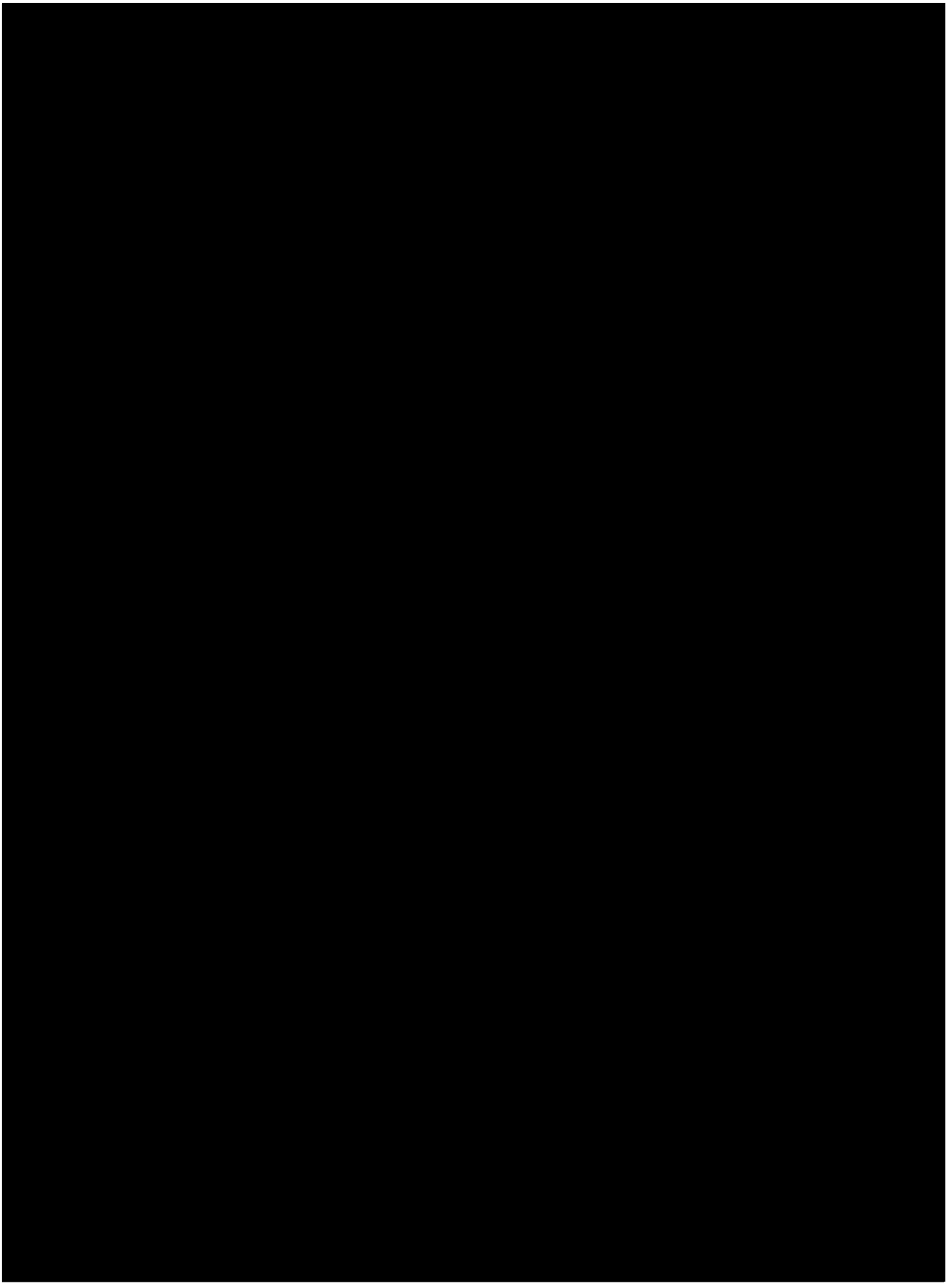


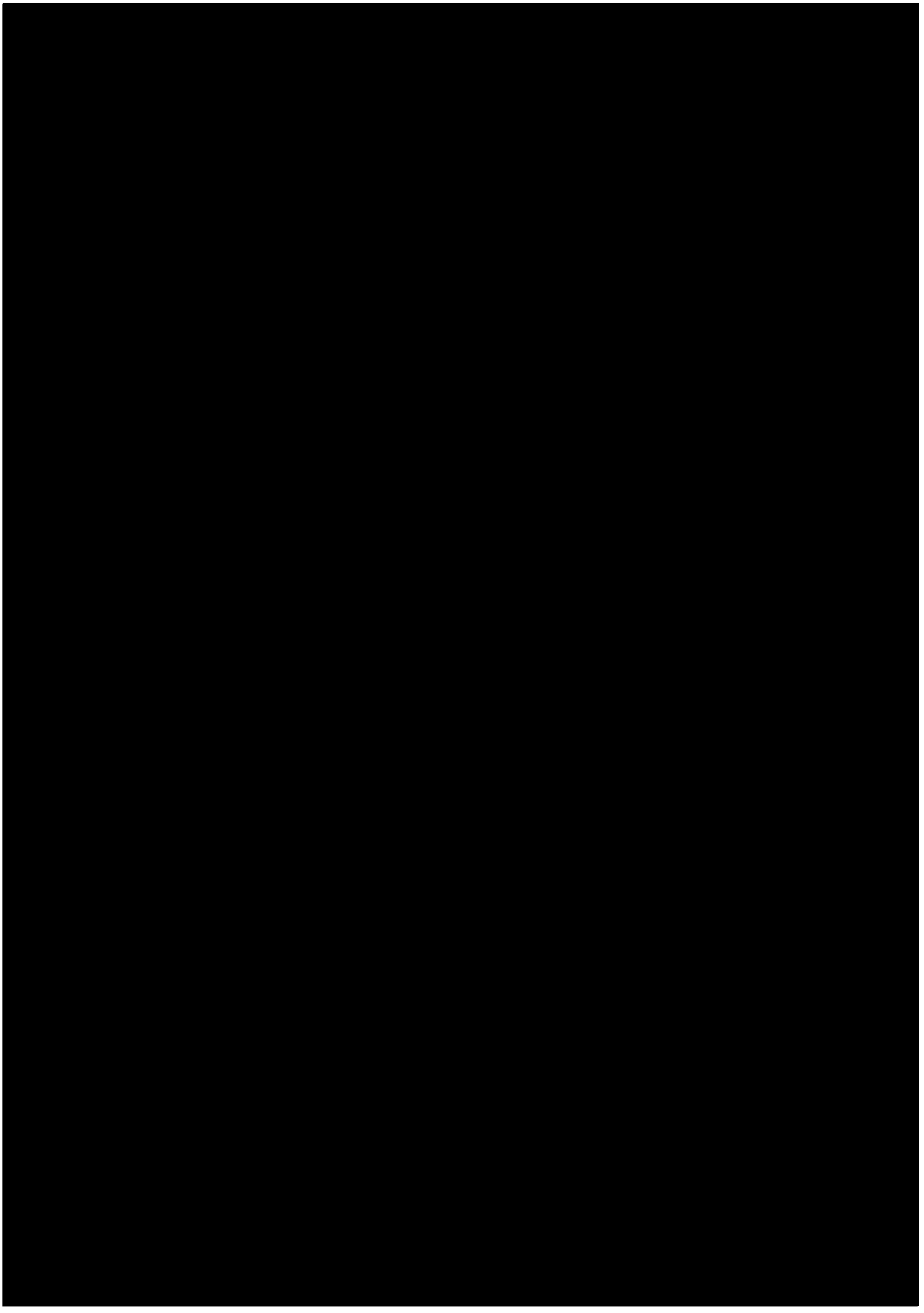


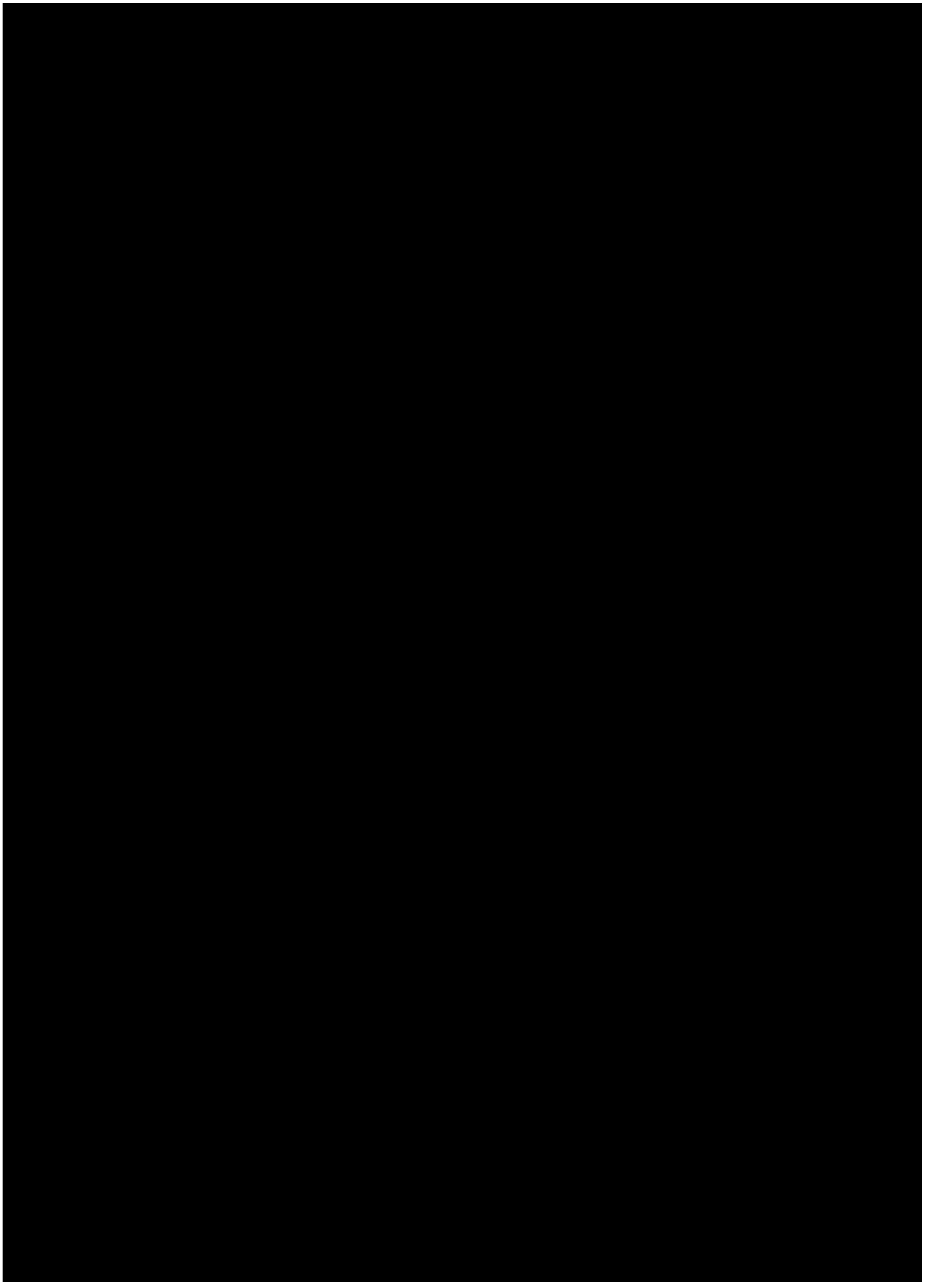


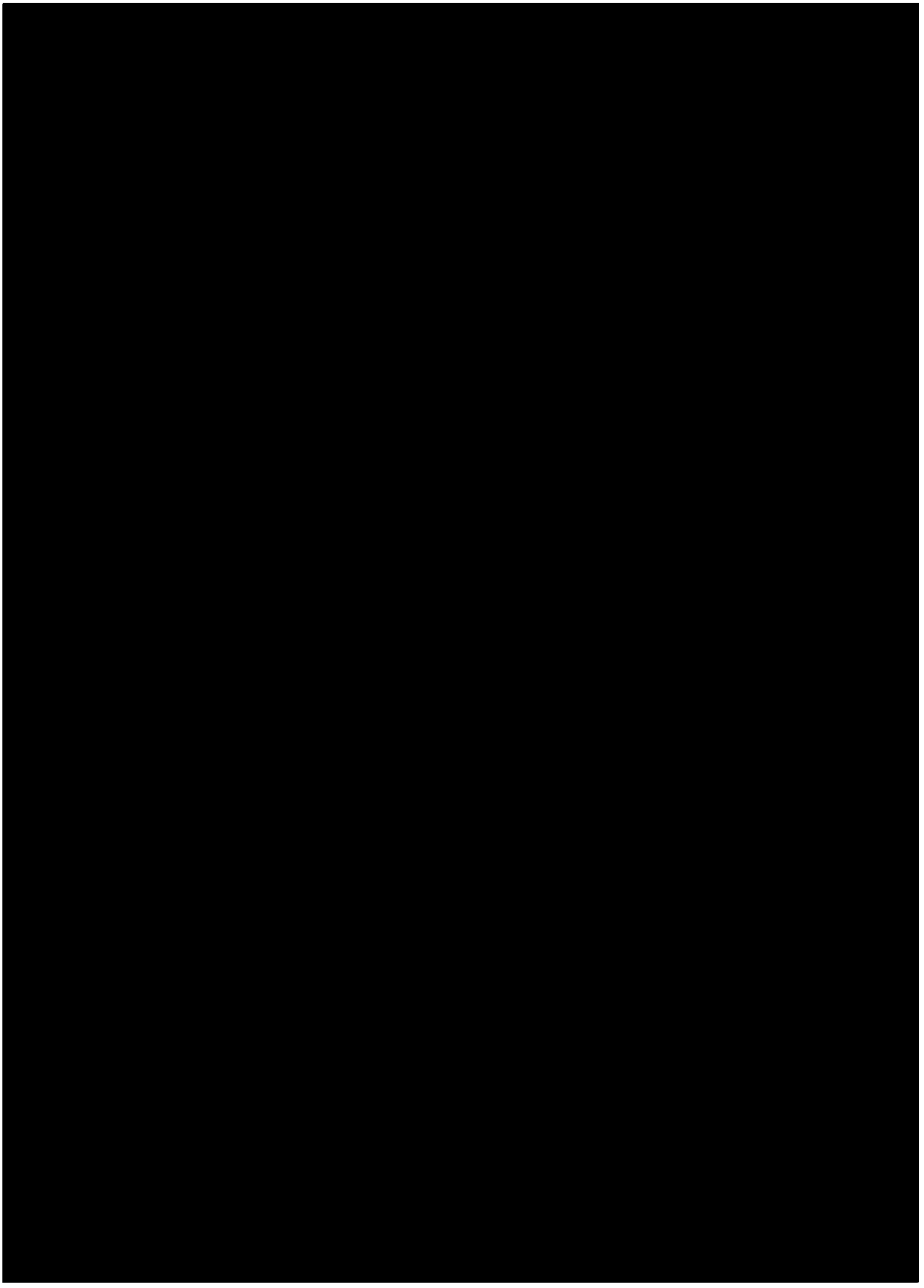




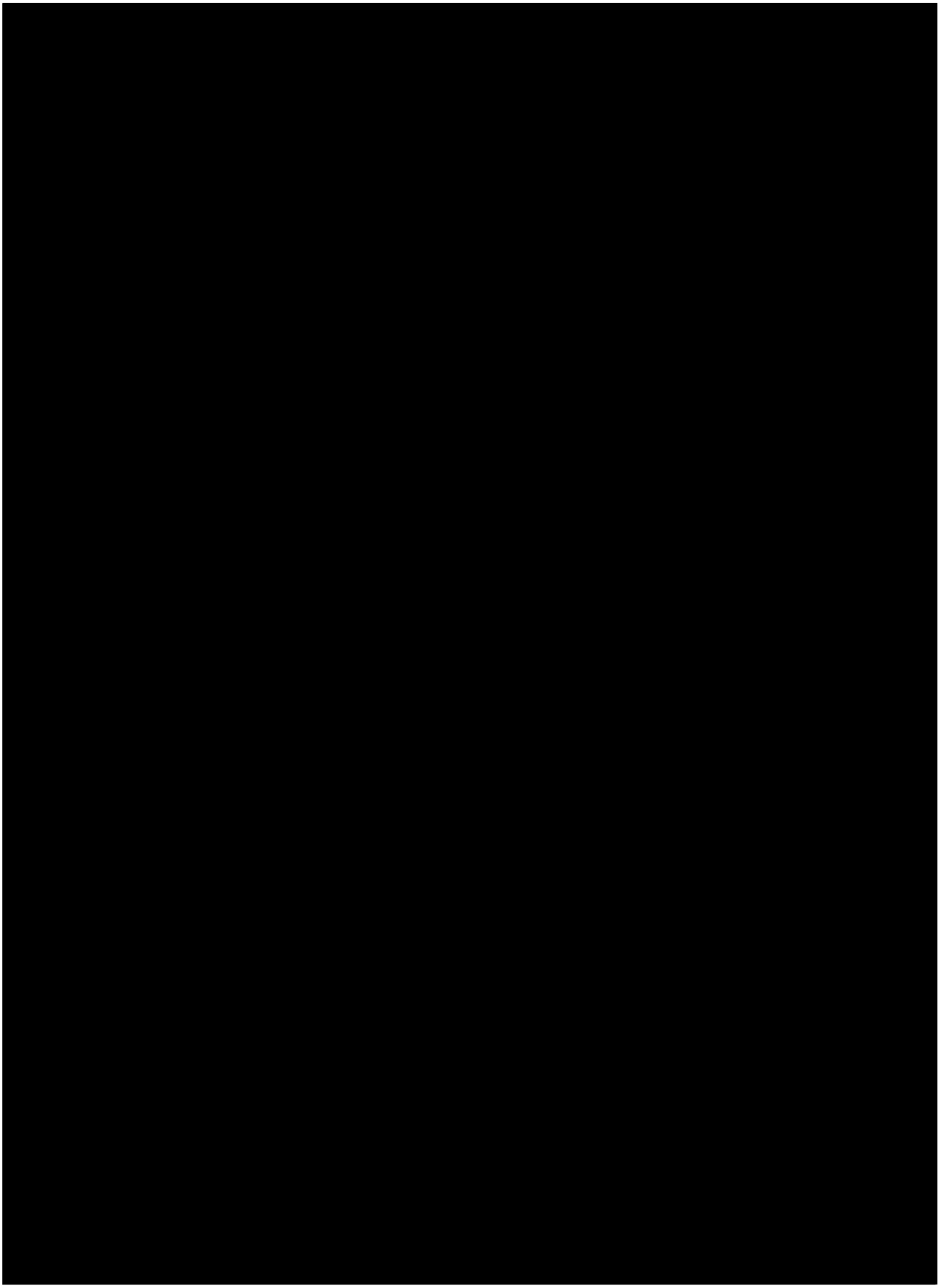




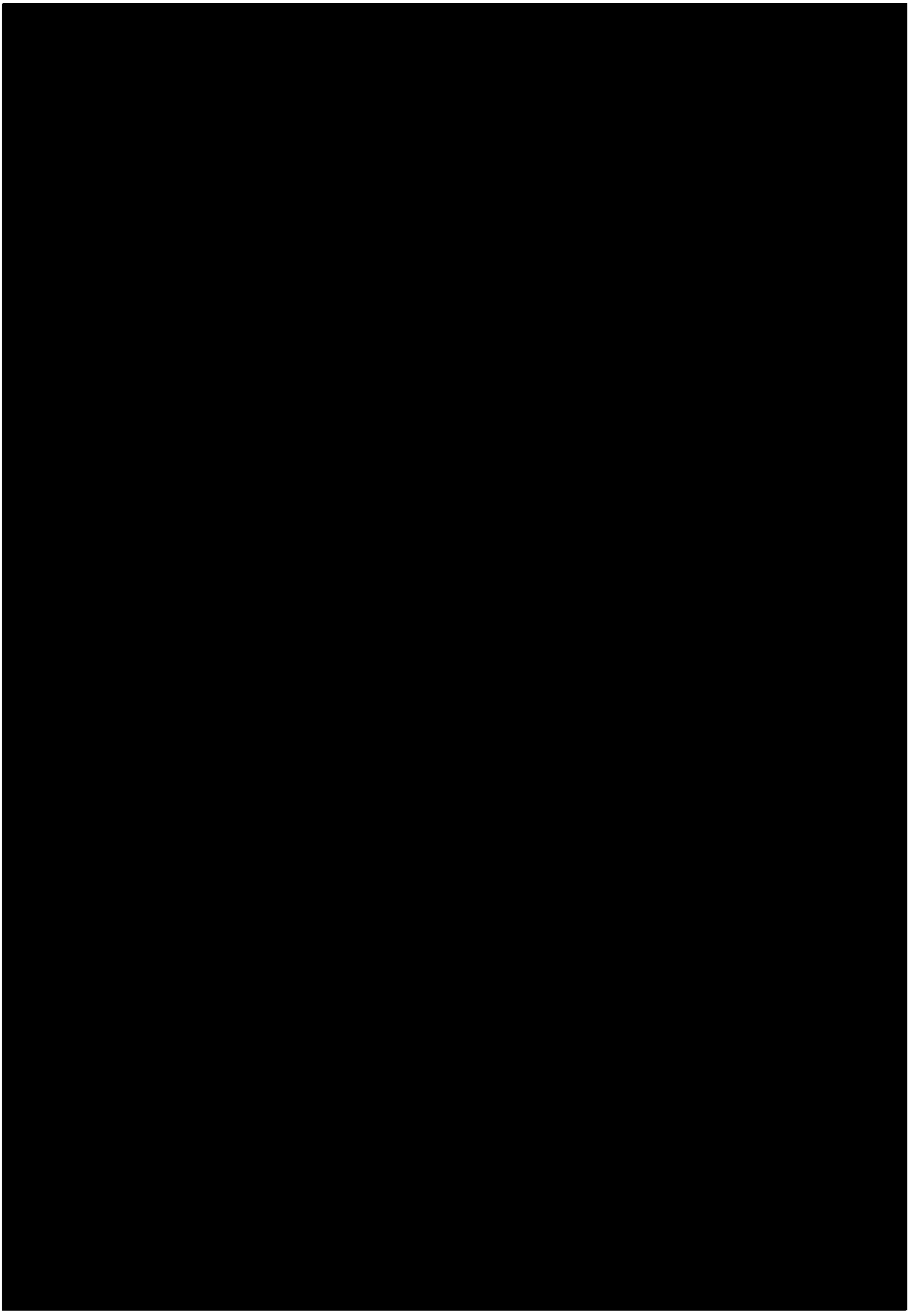


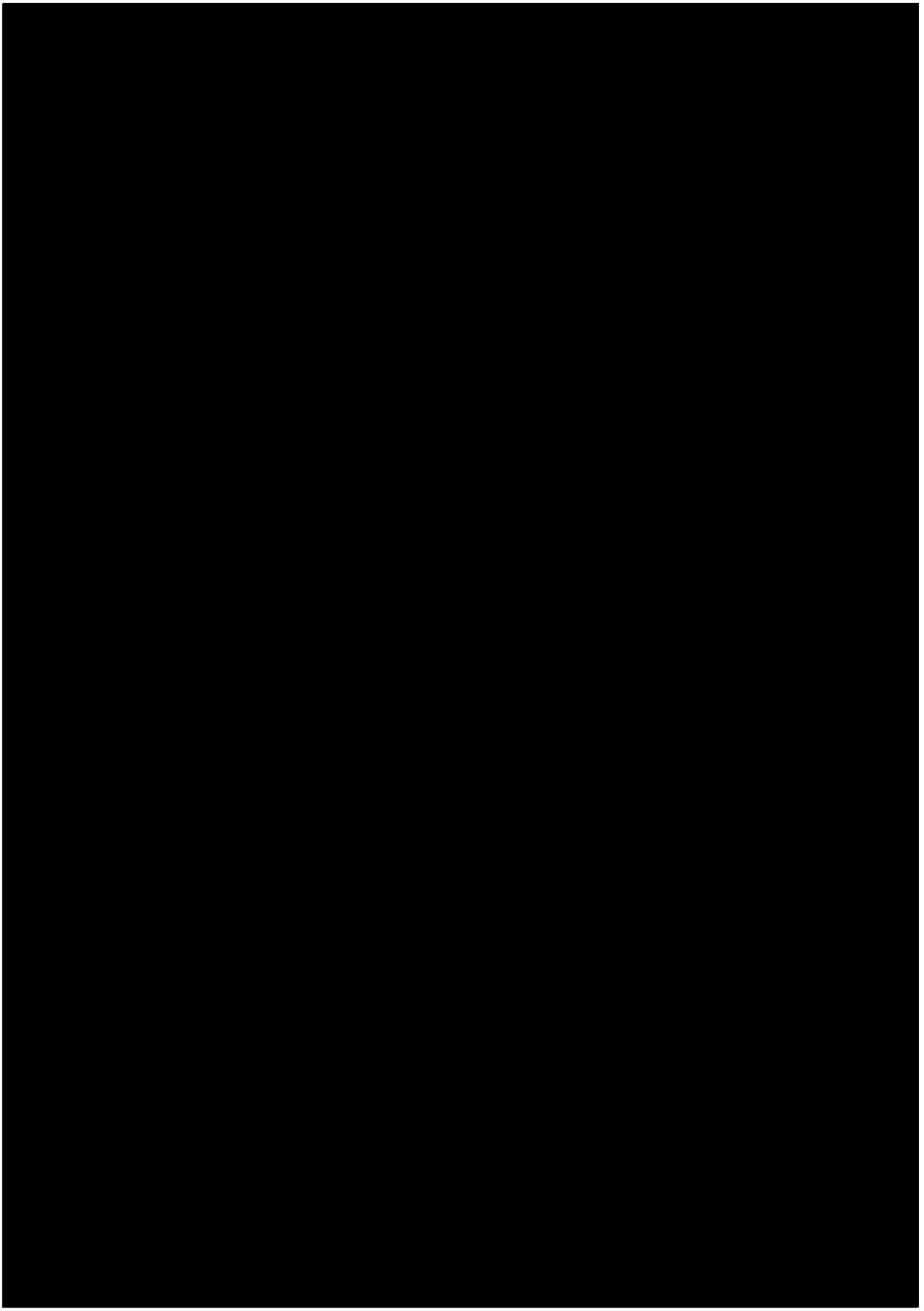


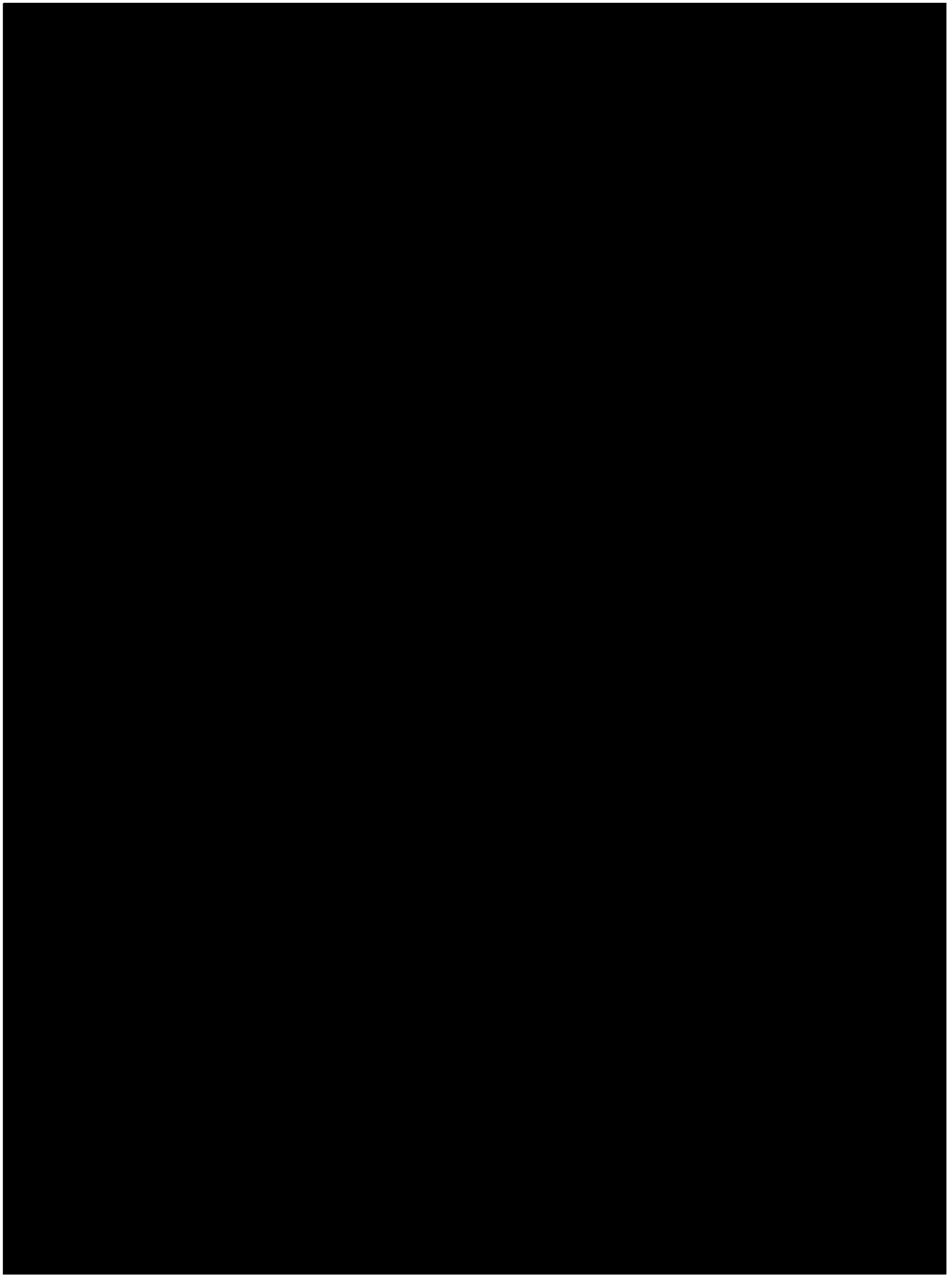
[redacted]

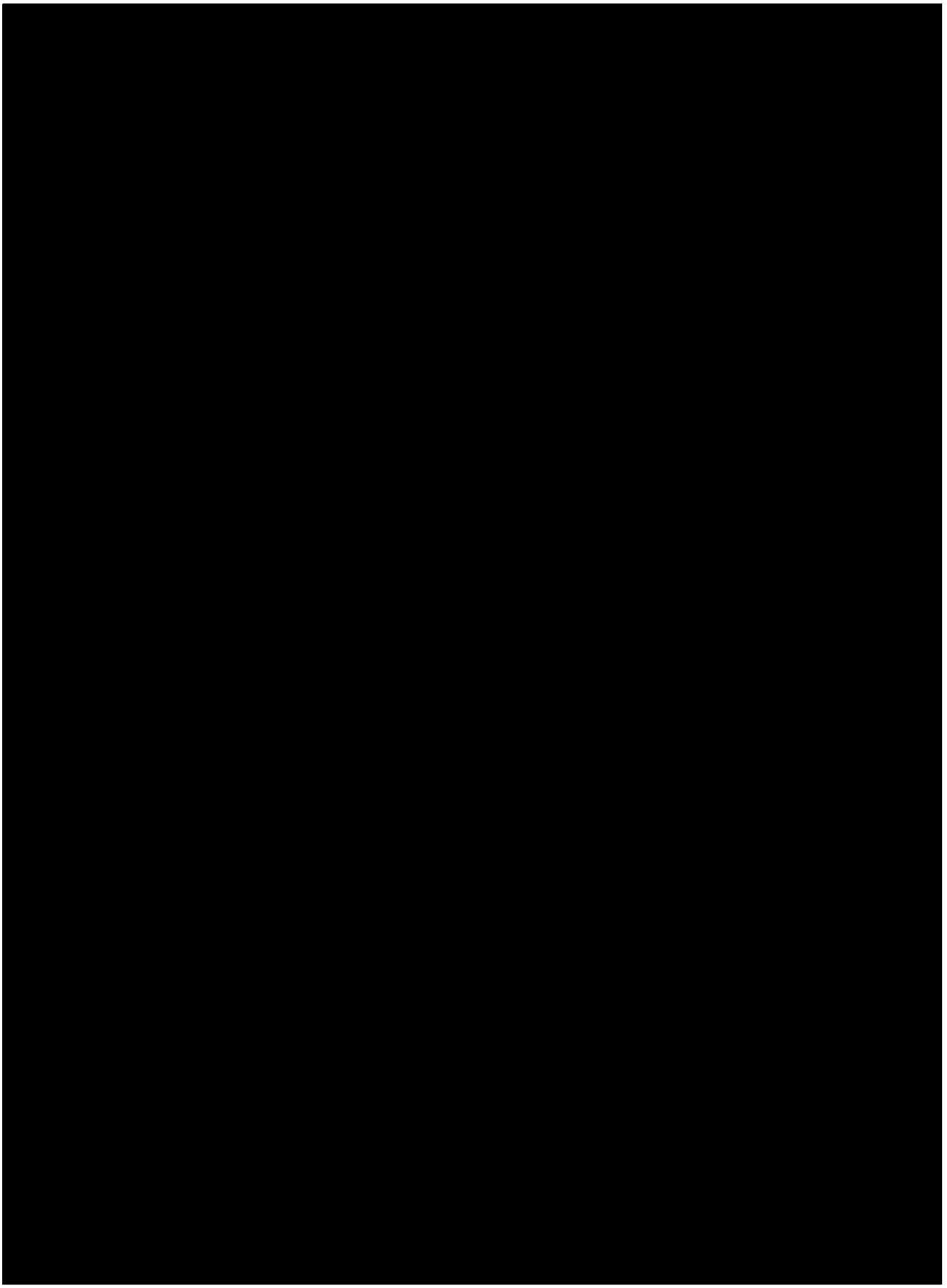


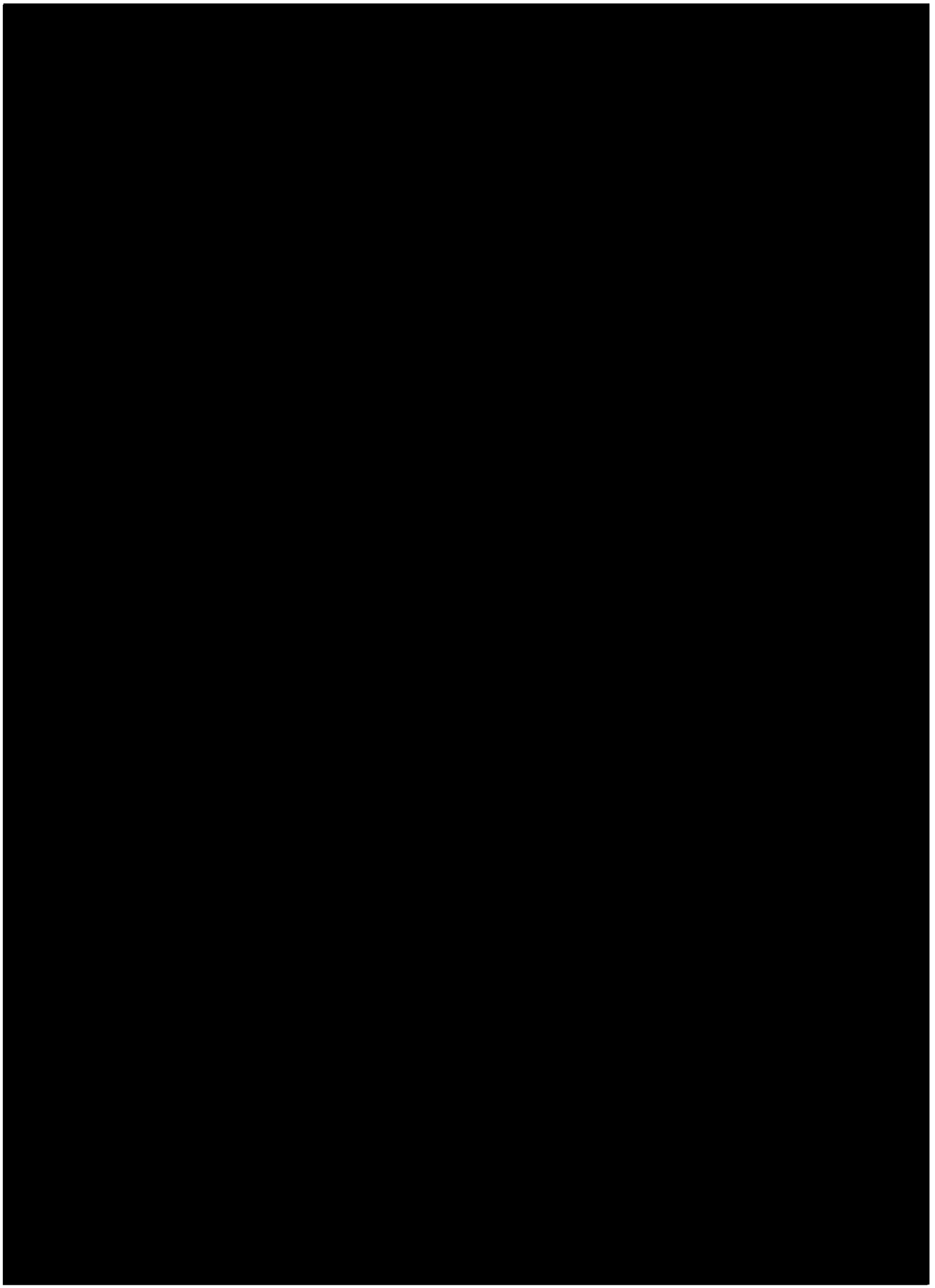
[redacted]

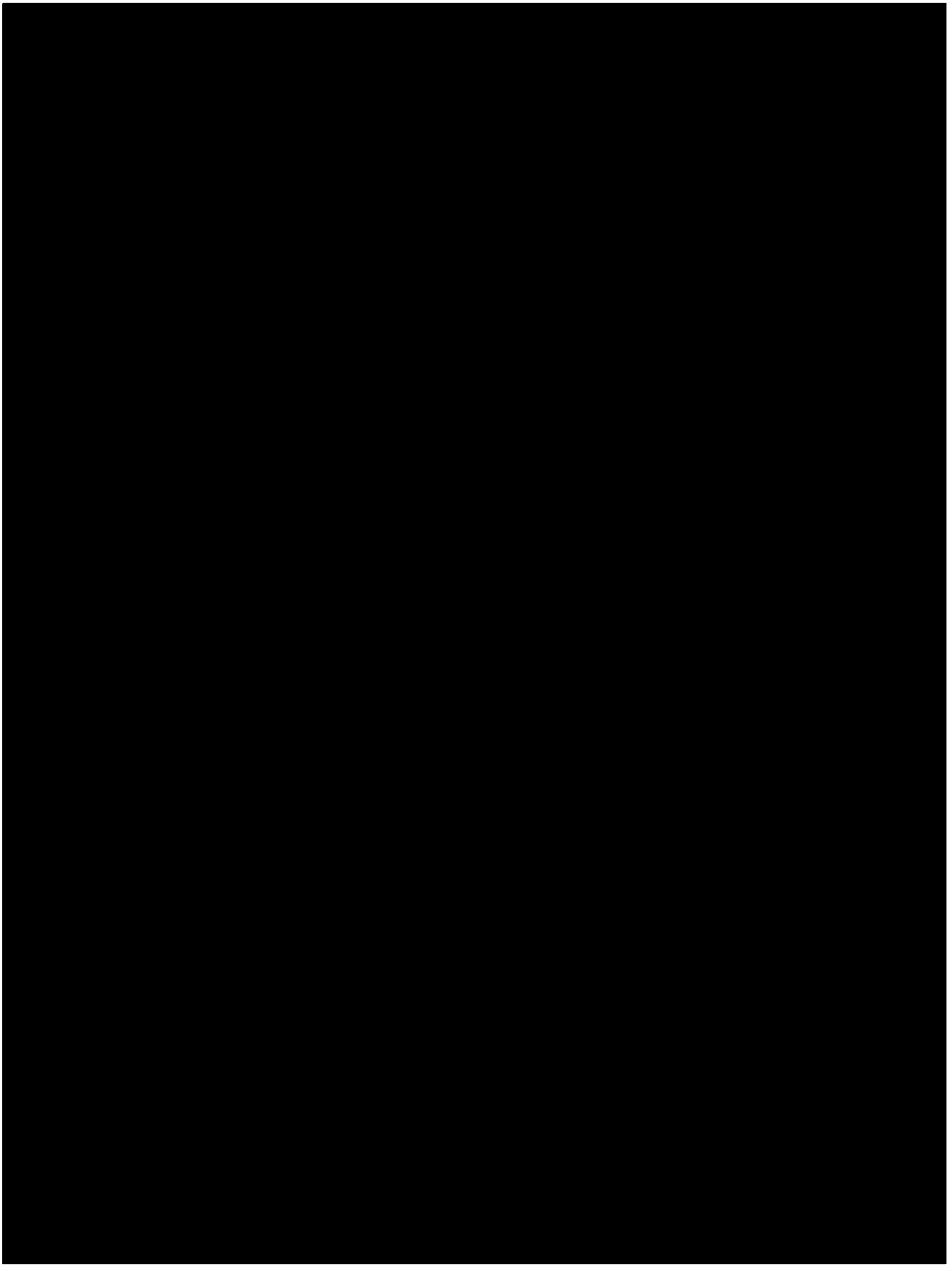


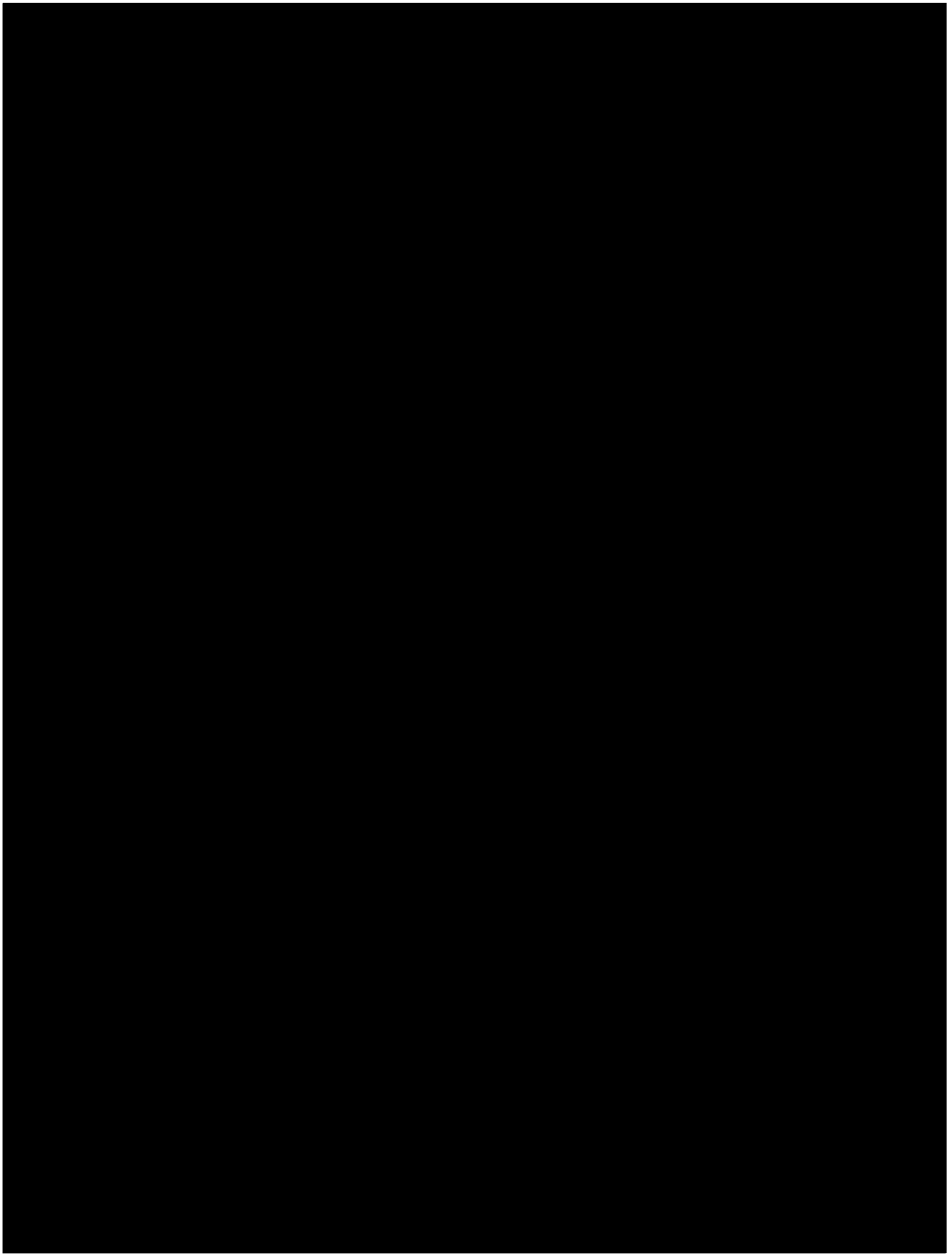


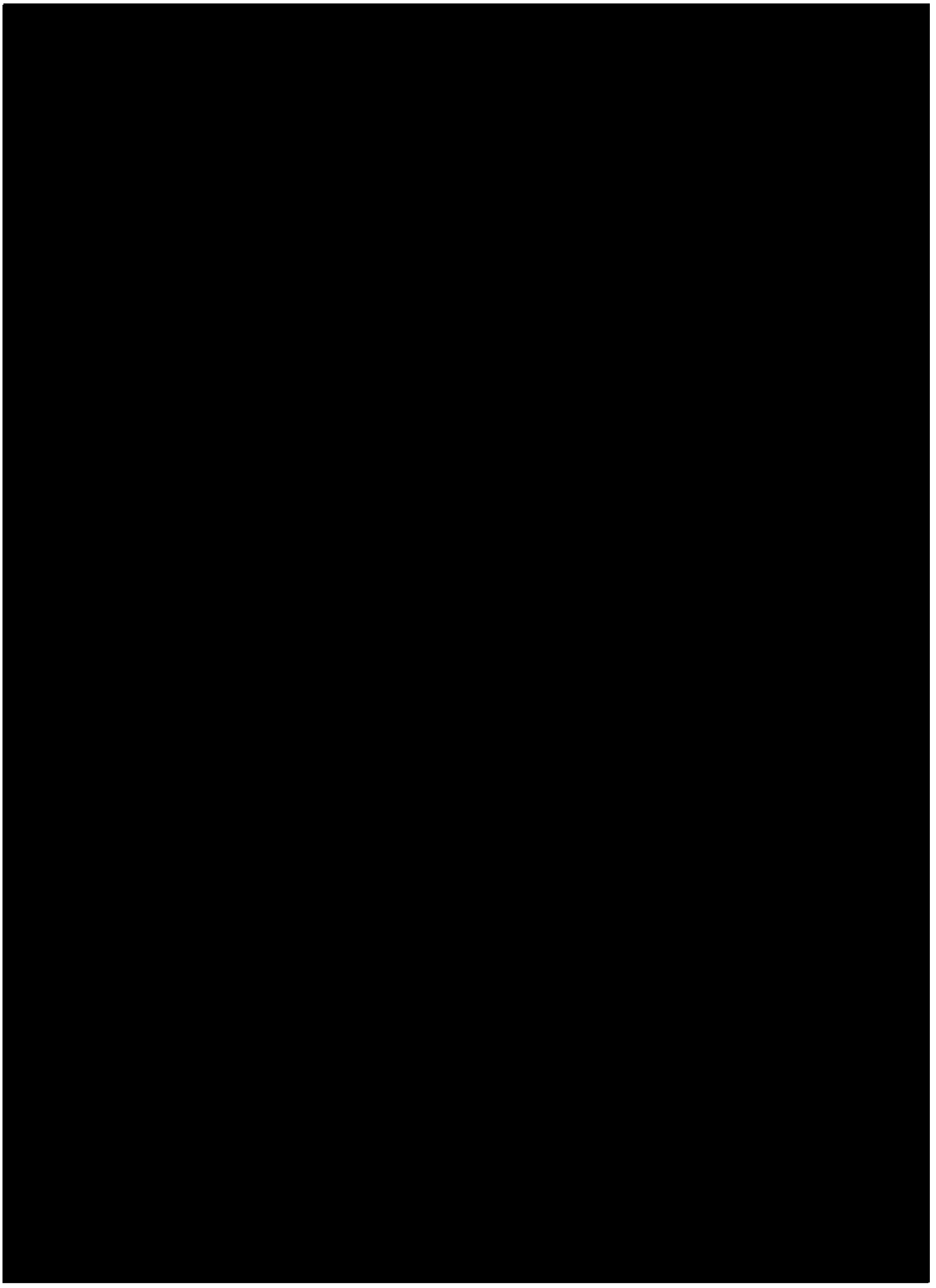


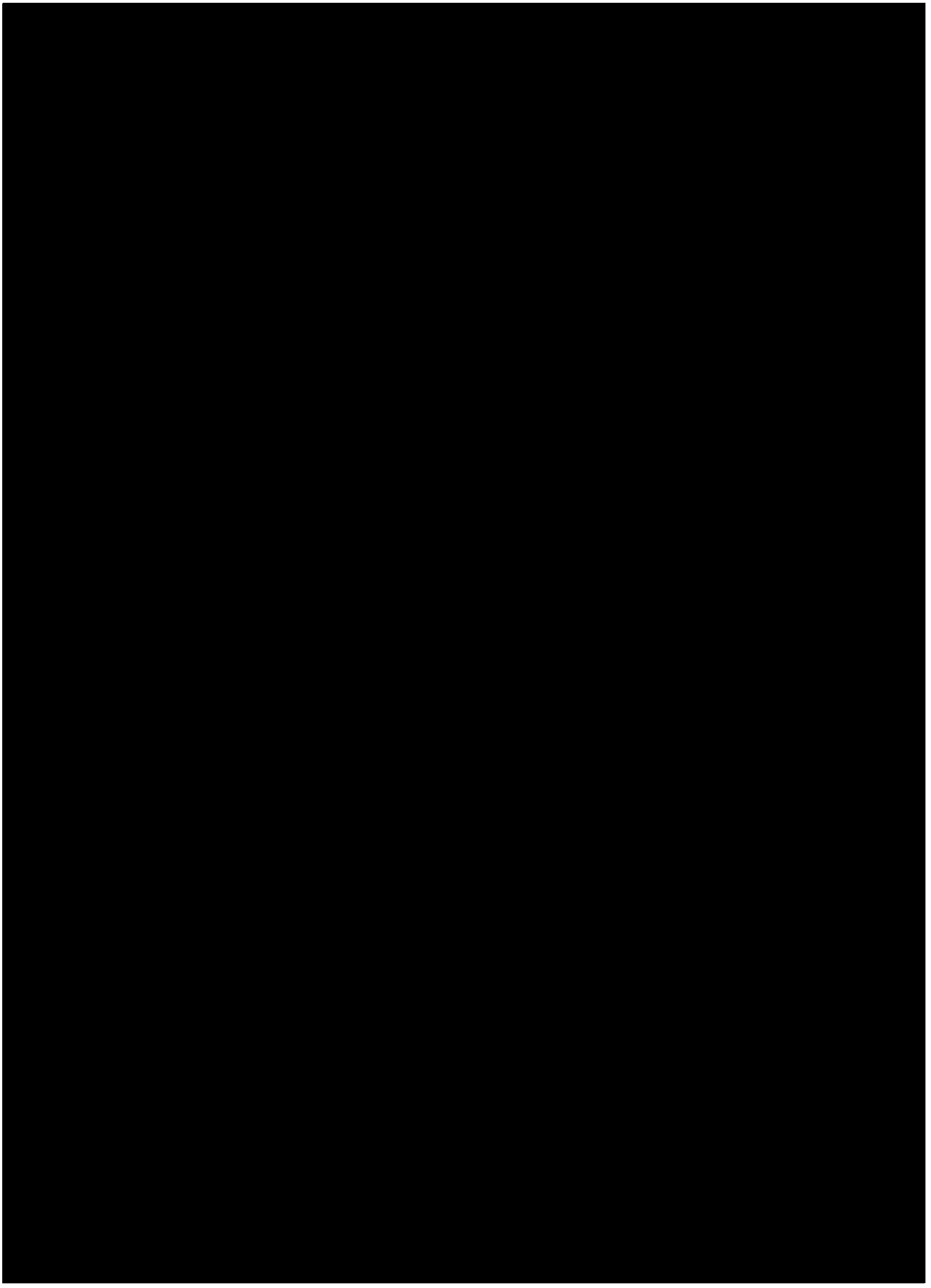


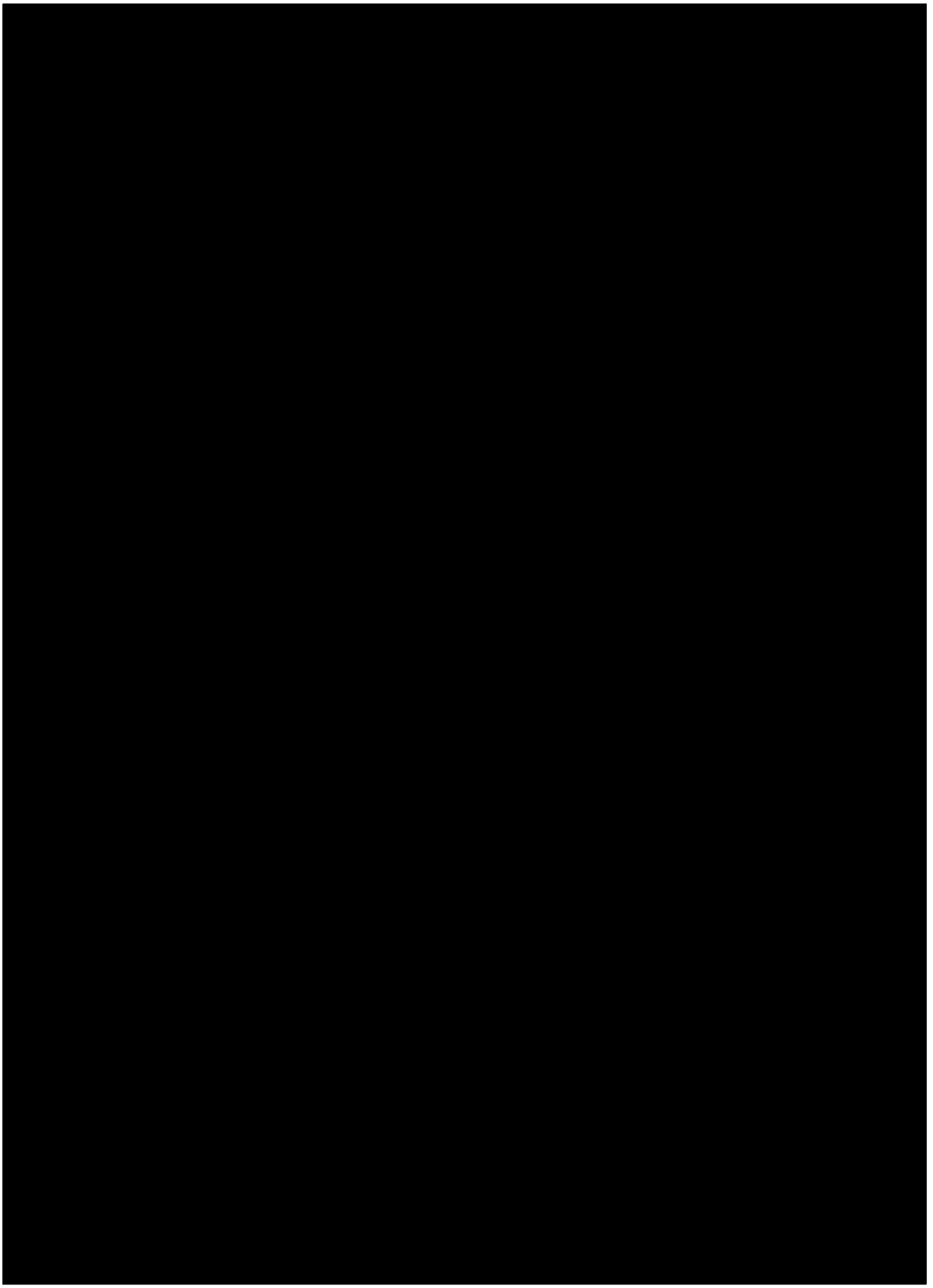


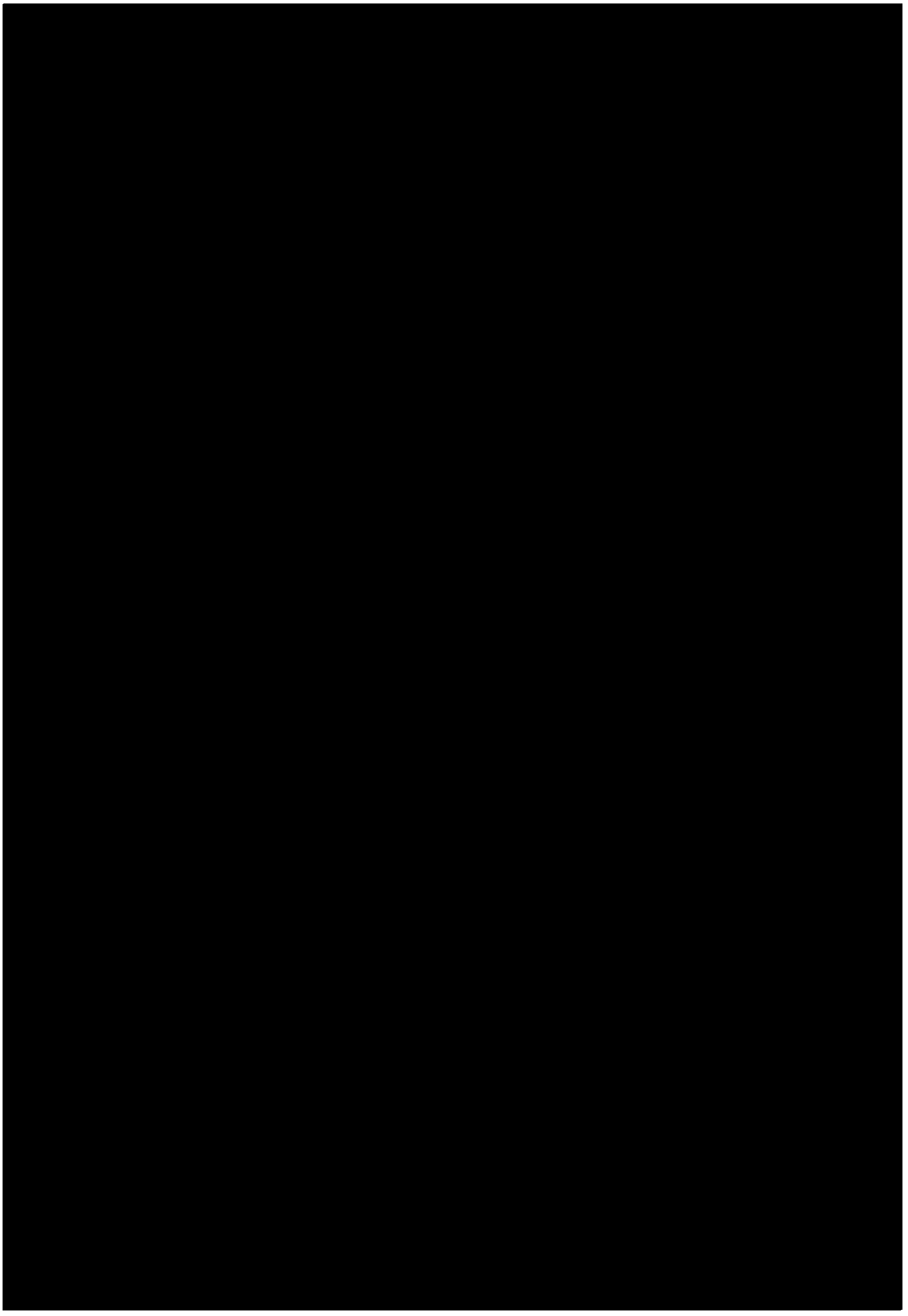


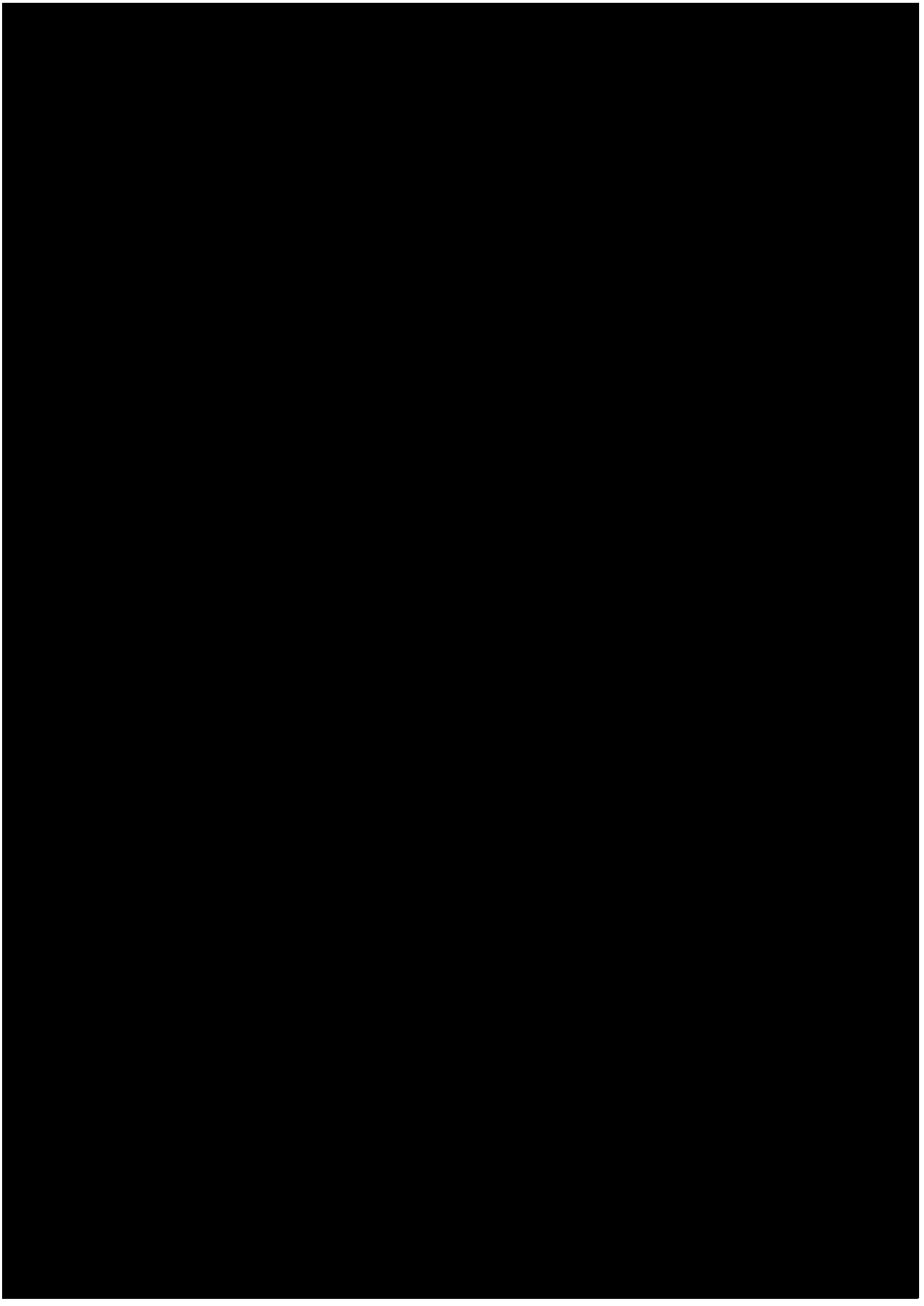












EX. 14

From: Michael Lesser
Sent: Wednesday, March 11, 2015 1:44 PM
To: Garrett Bradley
Cc: Michael Thornton; Evan Hoffman
Subject: Re: State street

He's looking into it.

On Mar 11, 2015, at 12:53 PM, Garrett Bradley <GBradley@tenlaw.com> wrote:

> Ask Rodgers
>
> **From:** Michael Lesser
> **Sent:** Wednesday, March 11, 2015 12:43 PM
> **To:** Garrett Bradley
> **Cc:** Michael Thornton; Evan Hoffman
> **Subject:** RE: State street
>
> The invoice and email date are 2/6. The invoice shows billing through 2/28. Did they bill for time before it was incurred?
>
> **From:** Garrett Bradley
> **Sent:** Wednesday, March 11, 2015 12:42 PM
> **To:** Michael Lesser
> **Cc:** Michael Thornton; Evan Hoffman
> **Subject:** Re: State street
>
> double count for what?
>
> Garrett
>
> On Mar 11, 2015, at 11:54 AM, Michael Lesser <MLesser@tenlaw.com> wrote:
>
> > Garrett: Just following up on the doc review recordkeeping. The attached invoice is dated 2/6/2015 (and was sent by e-mail on 2/6 as well) but includes billables through 2/28. Can you ask them to confirm whether these hours were billed for 2/6 – 2/28? I don't want us to double-count anything.
> >
> > Thanks,
> >
> > M
> >
> > **From:** Garrett Bradley
> > **Sent:** Friday, February 06, 2015 3:48 PM
> > **To:** Michael Thornton
> > **Cc:** Michael Lesser
> > **Subject:** Fwd: State street

First month bill. I have not heard a thing from Chiplock on how he is doing....He has not been playing nice in the sand box lately. I emailed him yesterday asking for a call with Belfi to discuss this. No response.

This is the best way to jack up the loadstar though.

Garrett

Begin forwarded message:

From: "Ng, Cindy" <CNg@labaton.com>
Date: February 6, 2015 at 3:44:56 PM EST
To: "Garrett J. Bradley" <gbradley@tenlaw.com>
Cc: Anastasia Maranian <AMaranian@tenlaw.com>, "Stroock, Naomi" <nstroock@labaton.com>, "Politano, Ray" <rpolitano@labaton.com>
Subject: RE: State street

Garrett,

Attached is the invoice regarding State Street document review.

Cindy Ng | Senior Accountant
140 Broadway, New York, New York 10005
T: (212) 907-0657 | F: (212) 883-7556
E: cng@labaton.com | W: www.labaton.com

<State Street - 1020347 (Feb 2015).pdf>

EX. 15

Message

From: Ng, Cindy [CNg@labaton.com]
Sent: 4/9/2015 3:49:35 PM
To: Garrett J. Bradley [gbradley@tenlaw.com]
CC: 'Anastasia Maranian' [AMaranian@tenlaw.com]; Stroock, Naomi [nstroock@labaton.com]; Politano, Ray [rpolitano@labaton.com]
Subject: RE: State street
Attachments: State Stree - 1020423 (April 2015).pdf

Garrett,

Attached is the April invoice regarding State Street document review.

Labaton Sucharow

Cindy Ng | Senior Accountant
140 Broadway, New York, New York 10005
T: (212) 907-0657 | F: (212) 883-7556

E: cng@labaton.com | W: www.labaton.com

Labaton Sucharow

Mr. Garrett Bradley
Thornton Law Firm LLP
100 Summer Street, 30th Floor
Boston, MA 02110

April 9, 2015
ID: 016576.0001
Invoice # 1020423

RE: State Street Corporation-Class Action

For Document Reviewer Services Rendered from April 1, 2015 through April 30, 2015.

Total Hours	Rates	Amount
1600.00	$50.00	$80,000.00
Adjustment - March 2015 (150.0 Hours)		$ 7,500.00

Invoice Amount	$87,500.00
Past Due Invoice#1020393 - 03/09/2015	$45,710.00
Total Amount Due	**$133,210.00**

Please make checks payable to Labaton Sucharow LLP

Expenses and disbursements, if any, recorded after date of statement will appear on a later statement
Tax Identification Number 13-1987846

EX. 16

Christopher J. Keller
Partner
212 907 0853 direct
212 883 7053 fax
email ckeller@labaton.com

May 4, 2011

VIA ELECTRONIC MAIL
Michael P. Thornton, Esq. (MThornton@tenlaw.com)
Garrett J. Bradley, Esq. (GBradley@tenlaw.com)
Thornton & Naumes LLP
100 Summer Street, 30th Floor
Boston, MA 02110

Steven E. Fineman, Esq. (sfineman@lchb.com)
Daniel P. Chiplock, Esq. (dchiplock@lchb.com)
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413

Richard M. Heimann, Esq. (rheimann@lchb.com)
Lexi J. Hazam, Esq. (lhazam@lchb.com)
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339

Re: *Arkansas Teacher Retirement System v. State Street Corporation*
Civil Action No. 11-cv-10230-MLW (D. Mass.)

Dear Counsel:

I am pleased we were able to come to terms and will be working together in this matter. I have outlined below the terms of the agreement we have reached.

Arkansas Teacher Retirement System ("Arkansas Teacher") will be represented in the action by Labaton Sucharow LLP ("Labaton Sucharow") as Lead Counsel, and Thornton & Naumes LLP ("Thornton & Naumes") and Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") will serve as additional counsel for Arkansas Teacher in this action.

Arkansas Teacher has made an application to the Court for appointment of its selection of Labaton Sucharow as Interim Lead Counsel. In the event that the Court appoints Labaton Sucharow as interim Lead Counsel and subsequently as Lead Counsel, we agree as follows:

We agree that our firms will act in good faith to divide the work so that each of the firms performs at least 20% of the work and each will receive at least 20% of the fees awarded in this matter. The remaining 40% of the fees awarded shall be allocated in good faith at the conclusion of the case based on each firms' actual time spent on this matter..

There is an "off the top" obligation to referring counsel of 6% of the fees awarded. In addition, we agree to exchange on a quarterly basis our then current lodestar reports showing quarterly and aggregate billings in this matter.

We also agree that any dispute arising under this agreement or in this case may not be litigated in court and that all such disputes or claims shall be resolved, upon election of any party, through binding arbitration conducted pursuant to the applicable rules of the American Arbitration Association in any jurisdiction in which any of the firms reside.

Please sign below indicating your agreement to these terms.

Very truly yours,

Christopher Keller, Esq.

Accepted and agreed by:

Thornton & Naumes LLP

_____ Date: _____

Michael P. Thornton, Esq.

Lieff Cabraser Heimann & Bernstein, LLP

_____ Date: _____

Steven E. Fineman, Esq.

EX. 17

From: Chiplock, Daniel P. <DCHIPLOCK@lchb.com>
Sent: Friday, August 28, 2015 7:04 PM
To: Sucharow, Lawrence
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Not to be difficult, but I don't see how that matters. It would seem that the respective lodestars, contributions, etc. are not terribly divergent. And not a skeptical judge, as far as we can tell. A very different situation, in other words, from BNYM (which I know doesn't involve you, Larry, but seems to be coloring this discussion).

On Aug 28, 2015, at 6:27 PM, Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>> wrote:

For one thing, we will know the actual fees awarded by the court.

Sent from my iPhone

On Aug 28, 2015, at 2:21 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:

I guess I don't understand the reluctance to square up the percentages. What don't we understand about the firm's respective contributions that we will understand better 3-4 months from now?

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Friday, August 28, 2015 2:11 PM
To: Chiplock, Daniel P.
Cc: Sucharow, Lawrence; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I see no need for that at this time. It can even be done after final approval.

Garrett

On Aug 28, 2015, at 2:00 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
Those were the contours as I understood them, yes – after costs, 20% of the fee to be allocated to each of the three firms, with the remaining 40% to be allocated based on contributions to the outcome. I don't think anyone would dispute that Labaton as lead counsel should get more of that 40% than the other two firms. But it may be beneficial to figure out what the breakdown is going to be and get it down in writing now.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:50 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, agreement among our three firms it's that after payment of all of the council I was three firms show each receive 20% with the 40% balance to be determined at a later date. If this is the understanding you are referring to but I can't confirm it. Please advise.

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/>

<image002.gif><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.gif><https://twitter.com/LabatonSucharow> <image004.gif><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

OK, sounds good. I will also get you whatever edits I have to the settlement docs by noon.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 9:28 AM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I am speaking to Paine today at around 10 AM to both report to him and get his update.
I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.

Sent from my iPhone

On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
This looks OK to me, thanks. I'm happy to send it (after you've done the other redline) to Paine, if you like. Or someone else can, no matter.

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Thursday, August 27, 2015 3:27 PM
To: Lynn Sarko; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David

Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Dear all,

We've had some additional exchanges about the term sheet and, specifically, para 8(n). I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal. If you disagree, please let us know asap.

When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.

Thanks

<image001.jpg><http://labaton.com/>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 | F: (212) 883-7067
E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>

<image002.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.jpg><https://twitter.com/LabatonSucharow> <image004.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Zeiss, Nicole
Sent: Wednesday, August 26, 2015 5:09 PM
To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.

Thanks

<image005.jpg><http://labaton.com/>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 | F: (212) 883-7067
E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>

<image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image007.jpg><https://twitter.com/LabatonSucharow> <image008.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Sucharow, Lawrence
Sent: Wednesday, August 26, 2015 4:34 PM
To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Then we can probably forget my proposed changes.

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 4:26 PM
To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Sure. If it works for them – its fine with me

Lynn Lincoln Sarko
Managing Partner

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>; 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Can we leave para 8(n) the general way it is and protect the DOL through the express provision of para 12 limiting fees charged to ERISA allocation to $10.9 million?

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 3:42 PM
To: Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

David
Thanks for sending this. Sorry, I had misunderstood what you were saying on our call earlier today.

Two things:

1. I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down. So—question—can we get rid of the word "fees" in this paragraph—does it still work?

What do you think??

Lynn

Lynn Lincoln Sarko
Managing Partner

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Wednesday, August 19, 2015 2:59 PM
To: 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
Cc: Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>; Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
Subject: SST--Proposed Revision to Term Sheet for DOL Deal

All: The below reflects our proposed revisions to the Term Sheet (in red boldface) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet). Please comment. Thanks.

8(n). Plan of Allocation. . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court. However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.

12. Plaintiffs' Counsel's Attorneys' Fees and Expenses. Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award. Plaintiffs' Counsel shall may apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above. In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days. The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees. Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.

<image005.jpg><http://www.labaton.com/>
David J. Goldsmith | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0879 | F: (212) 883-7079
E: dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com> | W: www.labaton.com<http://www.labaton.com/>

<image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image006.jpg><https://twitter.com/LabatonSucharow> <image006.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

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 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.
<LCHB_iManage_1271399_1.DOC>
<LCHB_iManage_1271400_1.DOCX>

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.
<LCHB_iManage_1271399_1.DOC>
<LCHB_iManage_1271400_1.DOCX>

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 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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 18

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Friday, August 28, 2015 1:40 PM
To: Daniel P. Chiplock
Cc: Garrett J. Bradley; Michael Thornton; Robert L. Lieff
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Also, I believe that there are other cases and other agreements which are influencing people's desire to either reach agreement now or later.

I don't have a dog in the hunt and don't want to be drawn into it.

I apologize for any mistakes but I am not in a place where I can edit my emails so I'm just dictating them I'm hoping that spell correct doesn't fuck me up too much.&

Sent from my iPhone

On Aug 28, 2015, at 2:21 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> I guess I don't understand the reluctance to square up the percentages.& What don't we understand about the firm's respective contributions that we will understand better 3-4 months from now?
> &
>
> **From:** Garrett Bradley [mailto:GBradley@tenlaw.com]
> **Sent:** Friday, August 28, 2015 2:11 PM
> **To:** Chiplock, Daniel P.
> **Cc:** Sucharow, Lawrence; Michael Thornton; Lieff, Robert L.
> **Subject:** Re: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> I see no need for that at this time. & It can even be done after final approval.
>
> Garrett
>
> On Aug 28, 2015, at 2:00 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:
>
> > Those were the contours as I understood them, yes – after costs, 20% of the fee to be allocated to each of the three firms, with the remaining 40% to be allocated based on contributions to the outcome.& I don't think anyone would dispute that Labaton as lead counsel should get more of that 40% than the other two firms.& But it may be beneficial to figure out what the breakdown is going to be and get it down in writing now.
> > &
> >
> > **From:** Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> > **Sent:** Friday, August 28, 2015 1:50 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, agreement among our three firms it's that after payment of all of the council I was three firms show each receive 20% with the 40% balance to be determined at a later

date. If this is the understanding you are referring to but I can't confirm it. Please advise.

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> Mike, Garrett – Hope you're well – please see below.& If we can figure this out early next week that may help speed the process.
>
> Thanks,
> &
> Dan
> &
>
> **From:** Chiplock, Daniel P.
> **Sent:** Friday, August 28, 2015 1:33 PM
> **To:** 'Sucharow, Lawrence'
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> The purpose of my email was just to get your reaction, Larry, since these are your drafts.& Thank you for responding quickly, and for giving me your reaction.& I would love to include them so we can move forward promptly.& I'll re-send.&
> &
>
> **From:** Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> **Sent:** Friday, August 28, 2015 1:28 PM
> **To:** Chiplock, Daniel P.
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** Re: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore he sensual to any memorialization of that understanding. & If you more willing to resend your email and include them,we can see if there is any disagreement as to what our understanding is/was.
> Larry
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 1:10 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:
>
> > Larry and Nicole:
> > &
> > Attached are my redlines to the preliminary approval order and final judgment.& These edits are consistent with the Court's January 2012 order concerning leadership structure.&
> > &
> > I'm emailing just you (and copying Bob) so as to try not to make a big thing over this, but I do think it's appropriate to memorialize what the fee allocation amongst customer class counsel is going to be

(consistent with the understanding that the firms have been operating under for a couple years now) before we proceed much further.& & I think we'd be willing to support Lead Counsel having final authority over fee and expense allocations, etc., for purposes of the settlement stip, and thus present a united front against a perpetual troublemaker like McTigue—which should be in everyone's interest--provided we had some basic written comfort ourselves.& I don't think it's too early for that, given the interest in seeing the funds come in this year.
&
Thanks,
Dan
&

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Friday, August 28, 2015 9:53 AM
To: Chiplock, Daniel P.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Thank you!
&
&
&
&
&
&
&
&<image001.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image002.gif&>& &<image003.gif&>& &<image004.gif&>
&

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
OK, sounds good.& I will also get you whatever edits I have to the settlement docs by noon.
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]

Sent: Friday, August 28, 2015 9:28 AM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
I am speaking to Paine today at around 10 AM to both report to him and get his update.
I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.

Sent from my iPhone

On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> This looks OK to me, thanks.& I'm happy to send it (after you've done the other redline) to Paine, if you like.& Or someone else can, no matter.
> &
> **From:** Zeiss, Nicole [mailto:NZeiss@labaton.com]
> **Sent:** Thursday, August 27, 2015 3:27 PM
> **To:** Lynn Sarko; 'rlieff@lieff.com'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> **Cc:** Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> Dear all,
> &
> We've had some additional exchanges about the term sheet and, specifically, para 8(n).& I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal.& If you disagree, please let us know asap.
> &
> When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.
> &
> Thanks

&
&
&
&
&
&
&
&<image001.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image002.jpg&>& &<image003.jpg&>& &<image004.jpg&>
&

From: Zeiss, Nicole
Sent: Wednesday, August 26, 2015 5:09 PM
To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.
&
Thanks
&
&
&
&
&
&
&
&<image005.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& &<image007.jpg&>& &<image008.jpg&>
&

From: Sucharow, Lawrence
Sent: Wednesday, August 26, 2015 4:34 PM
To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Then we can probably forget my proposed changes.
&

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 4:26 PM
To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Sure.& & If it works for them – its fine with me
&

Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Lynn Sarko &<lsarko@KellerRohrback.com&>; Goldsmith, David &<dgoldsmith@labaton.com&>; 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>;

Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
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'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
David
Thanks for sending this.& Sorry, I had misunderstood what you were saying on our call earlier today.
&
Two things:
&
1.& I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
2. On paragraph 8(n)- the problem is the word “fees”—since the DOL has given us a hard number for ERISA fees—that won’t be going up or down.& & So—question—can we get rid of the word “fees” in this paragraph—does it still work?
&
What do you think??

&
Lynn
&
Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Wednesday, August 19, 2015 2:59 PM
To: 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; Lynn Sarko &<lsarko@KellerRohrback.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Sucharow, Lawrence &<LSucharow@labaton.com&>; Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: SST--Proposed Revision to Term Sheet for DOL Deal
&
All:& The below reflects our proposed revisions to the Term Sheet (in **red boldface**) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet).& Please comment.& Thanks.
&
&
8(n).& & & & & & & **Plan of Allocation**. & . . . The amount allocated to the ERISA Plans and Investment

Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court.& **However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.**
&

12.& & & & & & & & & **Plaintiffs' Counsel's Attorneys' Fees and Expenses.**& & & & & Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award.& Plaintiffs' Counsel ~~shall~~ **may** apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, **but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above.** & In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement,

and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days.& The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees.& Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.
&
&
&
&
&
&
&<image005.jpg&>
David J. Goldsmith | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0879 | F: (212) 883-7079
E: dgoldsmith@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& & &<image006.jpg&>& & &<image006.jpg&>
&

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.

&

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 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 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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 19

From: Michael Lesser
Sent: Sunday, August 30, 2015 1:05 PM
To: Evan Hoffman
Subject: Fwd: State Street

Begin forwarded message:

From: "Chiplock, Daniel P." <DCHIPLOCK@lchb.com>
Date: August 30, 2015 at 12:49:38 PM EDT
To: 'Michael Thornton' <MThornton@tenlaw.com>, Garrett Bradley <GBradley@tenlaw.com>
Cc: "Lieff, Robert L." <RLIEFF@lchb.com>, "rlieff@lieff.com" <rlieff@lieff.com>, Michael Lesser <MLesser@tenlaw.com>
Subject: RE: State Street

Excellent and I would expect and anticipate nothing less, Mike. I just know what some of our colleagues can do when presented with an easy target in order to hold up the process, and we don't want to do that. Thanks.

-----Original Message-----
From: Michael Thornton [mailto:MThornton@tenlaw.com]
Sent: Sunday, August 30, 2015 12:45 PM
To: Chiplock, Daniel P.; Garrett Bradley
Cc: Lieff, Robert L.; rlieff@lieff.com; Michael Lesser
Subject: Re: State Street

Thank you for the tip Dan. I did say something like that on the call, but preceded it by saying it was a guess and that I would have to ask Mike Lesser for the actual figure at that point which of course is not complete as with the other firms. I appreciate your concern and I guess I can only assure you that it generally our policy to truthful and accurate hour claims.

Original Message
From: Chiplock, Daniel P.
Sent: Sunday, August 30, 2015 12:24 PM
To: Garrett Bradley
Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com
Subject: RE: State Street

No problem. It may be tomorrow since I have to go back to archives.

In the meantime, while we're on the subject of credibility, I want to point out that we need to be consistent and credible with our lodestar reporting in State Street. We are gathering final lodestar reports now, but I heard third-hand that Mike recently said on a call (that I wasn't on) that Thornton Law Firm was showing $14 million. That number does not comport with the hours Mike Lesser told me for Thornton as of June 29 (around 12,750), which make more sense given

what we know about the work that was done. I am hopeful Mike T. simply misspoke or was guessing when he said $14 million and that we are not going to suddenly see an additional 12,000 hours mysteriously appear on Thornton Law Firm's behalf. I would expect that you would object if LCHB or Labaton tried something like that, and ERISA counsel certainly will (and tie up this process as long as possible) if they suspect anything remotely amiss on that front. Let's not make problems for ourselves that we don't need. Also recognize that your reviewers were all housed outside of your firm and their respective overhead and facilities expenses were paid for by others, which we were happy to do as a courtesy. Thanks.

-----Original Message-----
From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Sunday, August 30, 2015 10:43 AM
To: Chiplock, Daniel P.
Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com
Subject: Re: State Street

That would be helpful thank you.

Garrett

On Aug 30, 2015, at 10:30 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:

> I don't look past that point, Garrett. But you need to also recognize that you are only in the BNYM class case because of us.
>
> I guess I'll gather the emails etc concerning the assignments that were given to your firm. As if that's going to change your position.
>
> Sent from my iPhone
>
> On Aug 30, 2015, at 10:19 AM, Garrett Bradley <GBradley@tenlaw.com<mailto:GBradley@tenlaw.com>> wrote:
>
> Dan,
>
> Thanks for the email. I think we will have to agree to disagree as you keep looking past the fact that but for Mike Thornton you would not be in the state street case just like Labaton is not in BONY.
>
> Can you clarify what you mean by we did not "get the work done" as you indicated. That has never been specified and really should be to be deemed credible. Thanks.
>
> Garrett

On Aug 30, 2015, at 9:04 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:

Garrett,

Thanks for your email and I actually think it's useful so that Mike and Bob can participate in this.

This idea of "protection" in BNYM is where I think we keep talking past each other. The bottom line is that LCHB is the least protected of all in that case. This is the fact that has kept me up at night for 2.5 years while we've continued pouring lodestar into that case (because we had to). We invested the most in order to try to get a class certified there and to sufficiently man 110 depositions, defend counterclaims, etc., but if Judge Kaplan takes a negative view of the value of document review/analysis (our arguments to the contrary notwithstanding), then LCHB will get hit the hardest. You are totally shielded from this because you didn't invest in document review. In other words, LCHB has a real risk of actually losing money in BNYM. You have virtually no risk of that. If Thornton is not treated "fairly" in BNYM by the Court it will be because nobody (least of all LCHB) was treated "fairly." It's not clear to me what it is you expect in that circumstance.

The $10 million in State Street that you mention below also does not make up for LCHB's investment in that case. And we've certainly contributed our share to the result in State Street, having litigated BNYM (thus substantially increasing the value of State Street) and developed the ch. 93A theory (the most readily certifiable claim in State Street, and by far the most valuable).

Dan

From: Garrett Bradley [mailto:GBradley@tenlaw.com]

Sent: Friday, August 28, 2015 3:01 PM

To: Chiplock, Daniel P.

Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com<mailto:rlieff@lieff.com>

Subject: Re: State Street

Dan,

I tried to call you but you are out. I think these things are best discussed rather than emailed so please call my cell when you can 6174134892 as I do not have yours.

However a few points. I do not dismiss your efforts in Mellon but your guaranteed percentage was established years prior to a Mellon result. What I am pointing out is the inequities of our different positions. In Mellon, when we had created that case by developing the fx case all that we got was some work that resulted in $1.5 million in time. Also please elaborate on your statement that "the work was not getting done".

Now contrast that to state street where you had no client and no concept (and Mellon was years from setting) and Mike Thornton demands that you get a floor of 20% which is probably worth about $10 million.

You must agree you are in a much better position in state street than we are in Mellon. As I have said to Bob, we are only looking for a fair outcome in these matters. I think you would agree we have protected you better in state street than we are protected in Mellon. Once we have an idea of what our Mellon number looks like then we can discuss how to approach the balance of the 40% with Labaton .

Garrett

On Aug 28, 2015, at 2:34 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:

Garrett,

I know you didn't really mean to diminish LCHB's role in creating the result in BNY Mellon, at extraordinary risk to itself, which in turn doubled the value of State Street. You need to know that we advocated for you guys too, getting you a role in the BNYM class case (and pushing back against several co-counsel in the process) when you weren't actually owed one. I also gave your firm more assignments than others at the outset in BNYM, until it became clear that the work simply wasn't getting done. In other words, we've each tried to look out for the other in the past. This has been far from a one-way street.

As you know, Judge Kaplan controls everyone's fate in BNYM and LCHB has the most risk before him, having invested the most. We asked for a multiplier for your firm that is much larger than anyone else's, and I really, truly hope that he grants that request.

Thanks,

Dan

From: Garrett Bradley [mailto:GBradley@tenlaw.com]

Sent: Friday, August 28, 2015 2:18 PM

To: Lieff, Robert L.

Cc: Michael Thornton; Chiplock, Daniel P.; rlieff@lieff.com<mailto:rlieff@lieff.com>

Subject: Re: State Street

Bob,

I am driving but took a quick look at your email and pulled over to type this. I think you are misunderstood. I have not agreed that it would be equitable to split the balance of the forty percent the way you described below. What I have said is that may be a fair approach depending on the outcome of our fee in the Mellon matter. If we are treated fairly there, then we will do all we can to treat you fairly in the state street matter. As I have said before, because of Mike Thornton's advocacy, you are guaranteed at least 20% of the State Street case in which you have no client and did not develop the concept. Yet, we have no corresponding protection in the Mellon matter. Happy to discuss further at any time.

Garrett

On Aug 28, 2015, at 2:05 PM, Lieff, Robert L. <RLIEFF@lchb.com<mailto:RLIEFF@lchb.com>> wrote:

Garrett,

I called and suggested that we have a meeting together with the Labaton people to talk about putting in writing an understanding of the fee division in this case.

You, Mike and I have discussed the State Street fee division and have focused on the existing verbal understanding that was reached on November 9, 2010, with Chris Keller. We agreed that among the three firms we will each have a 20% interest in the fee with the balance to be divided later. Of course, we also have to factor in the 9% that ERISA counsel get pursuant to written agreement and a provision for Arkansas local counsel.

You and I have agreed that it would be equitable to divide the balance of the fee with Labaton getting 50% and each of our firms 25%. This would result in a fee division as follows:

Labaton 33.0 (20 + 13)

Thornton 26.5 (20 + 6.5)

Lieff Cabraser 26.5 (20 + 6.5)

ERISA 9.0

Arkansas Local 5.0

100.0%

If we put the above into an agreement among the three firms, that would certainly provide protection for everyone.

Bob

<image001.gif>

Robert L. Lieff
Of Counsel
rlieff@lchb.com<mailto:rlieff@lchb.com>
t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com<http://www.lieffcabraser.com>

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.

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.

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.

This message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 20

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. 21

From: Kravitz, Carl S. <ckravitz@zuckerman.com>
Sent: Saturday, August 22, 2015 2:59 PM
To: 'Lieff, Robert L.'; Sucharow, Lawrence
Cc: Michael Thornton; lsarko@kellerrohrback; Garrett J. Bradley; rlieff@lieff.com
Subject: RE: State Street

Thanks for the report. Not surprised that they have dug their heels in, but maybe DOL will compromise a little more. No harm in hoping.

<http://mm1.lettermark.net/zuckerman/card/ORBH_9.map>
[Description: Carl Kravitz 202.778.1873
ckravitz@zuckerman.com]<http://mm1.lettermark.net/zuckerman/card/ORBH_9.map>

-----Original Message-----
From: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Saturday, August 22, 2015 11:20 AM
To: Sucharow, Lawrence
Cc: Michael Thornton; lsarko@kellerrohrback; Kravitz, Carl S.; Garrett J. Bradley; rlieff@lieff.com
Subject: RE: State Street

I am uncertain as to whether we advised all of you of the results of our telephone call to Suzanne Riley. The call lasted one hour and Lynn and I did our best to convince a mid level government lawyer that compromise is the essence of negotiation without success. The problem is that she has no power to negotiate. We pushed for 290/10 split and she was at 280/20 with a willingness to agree to 282/18 , which was where we were when we began. She is going to speak to her superiors on Monday and we will talk to her one last time. Bob

---

From: Sucharow, Lawrence [LSucharow@labaton.com]
Sent: Friday, August 21, 2015 7:56 AM
To: Lieff, Robert L.
Cc: Michael Thornton; Lynn Sarko; Carl S. Kravitz; Garrett J. Bradley; rlieff@lieff.com
Subject: Re: State Street

I have no problem with you guys trying one additional time to secure a "better deal". I agree that consistency in the percentages is the best way forward and the only way of doing that is to give the DOL credit for a certain amount out of the 300 million and applying for an across the board percentage of 25% on the balance. This is what I thought we agreed to two conversations ago but I was taken aback in the recent conversation by the vehemence against the $18 million reduction which has been negotiated to to achieve the $10.5 million fee demand by DOL.
Obviously any number lower than 18 million is a benefit to us. In any event now that you set the call up you might as well take a crack at it (without fracturing the relationship).

Sent from my iPhone

> On Aug 21, 2015, at 10:17 AM, Lieff, Robert L. <RLIEFF@lchb.com> wrote:

>
> Larry, I think the most important aspect of this is to achieve consistency in the fee percentage between the customer class and the Erisa class. That is 25% for both. In order to accomplish this we need to reduce our settlement to $282 M and to let the DOL take credit for 18M. If we are to make one more stab at it then it would be to try to make our settlement $290M and the DOL 10M. This would give us a fee request of 72.5 rather that 70.5. Is this worth the effort of one more call? I gather that you and Carl are saying "no" and Mike is saying "yes". The structure of the settlement would be the same as BNYM where we have 14M that the DOL got not being included for purposes of our fee request. Lynn and I have a call scheduled with the DOL at 11 PDT We can make a soft pitch for an extra 8M (from 282 to 290) This has been turned down by the DOL before. As lead counsel do you want us to proceed or not? The important thing to me is consistency of the fee request at 25% and not the extra 8M.
> _____
> From: Michael Thornton [MThornton@tenlaw.com]
> Sent: Friday, August 21, 2015 6:36 AM
> To: Sucharow, Lawrence; Lieff, Robert L.; Lynn Sarko; Carl S. Kravitz; Garrett Bradley
> Subject: Re: State Street
>
> Larry, I think that most of us have long ago have become pragmatists. I think that the concern with the negotiations now is not that they are unfair, but that the result might be something that with "reverse engineering" show a significant disparity between the way ERISA funds and the non are treated. Then the judge might be tempted to go with the low percentage for all.
> The fact is the the DOL has left us at this point with no good choices. I don't think there is a downside to continue to negotiate.
>
> Original Message
> From: Sucharow, Lawrence
> Sent: Friday, August 21, 2015 8:10 AM
> To: Michael Thornton; Robert L. Lieff; Lynn Sarko; Carl S. Kravitz; Garrett Bradley
> Subject: State Street
>
> Guys:
> I just want to let you know that I woke up with a very bad feeling this morning on how we left our negotiations with the DOL.
>
> While I too am unhappy that they are seeking to restrict our fees, I also understand their need and desire to take some credit for what was achieved. It's unfair, It's wrong, but completely understandable.
>
> We had negotiated in good faith with them to a point where it would cost us $4.5 million from our maximum fees in order to have complete peace.
>
> To me, this is a relatively small price to pay in order to have a united front before the court and protect the balance of our fees. Indeed the differential we had negotiated between their offer and our last offer is only about $600,000 on fees of 70,000,000+.
>
> Now that the heat of our conversation has cooled down, I am asking everyone to reconsider renegotiating with the DOL and accepting their latest proposal.
>
> Larry
>
> Sent from my iPhone
>
>
> ***Privilege and Confidentiality Notice***

>
> 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.
>
>
> 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.
>
>
> 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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 22

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Wednesday, August 26, 2015 11:13 AM
To: Lynn Sarko; Robert L. Lieff; Daniel P. Chiplock; Michael Thornton; 'Kravitz, Carl S.'; Brian McTigue; Goldsmith, David; Garrett J. Bradley
Cc: Lynn Sarko
Subject: RE: State Street FX-- ERISA atty fees

Thanks for your and Bob's efforts.
&

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 11:30 AM
To: Sucharow, Lawrence; Robert L. Lieff; Daniel P. Chiplock; Michael Thornton; 'Kravitz, Carl S.'; Brian McTigue; Goldsmith, David; Garrett J. Bradley
Cc: Lynn Sarko
Subject: State Street FX-- ERISA atty fees
&
SUCCESS.
&
I am happy to report that we have a deal with the DOL on the amount of atty fees we can charge in the Class cases.
&
They have agreed that they are agreeable for us to charge the ERISA plans-& **$10.9 million atty fees**.& & To put it another way- that the settlement amount going to ERISA plans "**net of fees" will be $49.1 million**
&
They understand that we have not yet decided how we want to present the settlement—and they are agnostic on the structure.& & They would like to see how we are going to phrase it—to make sure that we are living up to this agreement---&
But they are fine with:
1.& We can ask the Court for whatever percentage fee we want- as long as the ERISA plans are only charged $10.9 million.
2.& We can phrase the settlement amount as whatever we want—although they are expecting us to say that the class **settlement amount was $300 million**.& However- if we want to say it is some lesser amount—or say that we are not seeking fees on the whole portion of the $60 million gross recovery- that is our business.
&
In other words—they & have given us a green light on how we describe it.& & & Based on this understanding they will not object to our fee application.
&
They also understand that "Litigation costs" will be charged pro rata on the whole $300 million.
&
Next step--- they would like to see how we are going to phrase this----- ie: by putting something in our term sheet- or them putting something in their term sheet- or some other writing, etc.
&
Now that we know the numbers—let's go back to a discussion of how we are going to present this in the papers.
&
One last thing—please caution everyone in your firms—that we should not start having separate discussion with the DOL on how to phrase the ERISA fee issue.& Once we come up with the language, I will volunteer to deal with the DOL.
&

But the bottom line—we have a deal for $10.9 million ERISA fees.& & & & Let's not discuss this on today's "plan of allocation call" at 2 pm Eastern.& & The DOL will be circulating a new dial in number for that call = as the current number doesn't work.

&

Lynn

&

Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com

&

&

EX. 23

Message

From: Damon Chargois [damon@cmhllp.com]
Sent: 4/25/2013 1:23:44 AM
To: Garrett J. Bradley [gbradley@tenlaw.com]
CC: Robert L. Lieff [RLIEFF@lchb.com]; Robert L. Lieff [rlieff@lieff.com]; Michael Thornton [MThornton@tenlaw.com]; Belfi, Eric J. [EBelfi@labaton.com]; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: Re: State street fee regarding local counsel

Thank you, Garrett. Agreed.

Sent from my iPhone

On Apr 24, 2013, at 8:08 PM, "Garrett Bradley" <GBradley@tenlaw.com> wrote:

> Bob,
>
> As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% guaranteed each with the balance to be decided upon at a later date. Obviously this may go up should Labaton receive an amount higher than 20%.
>
> We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), will be paid off the top with the balance of the overall fee 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
>
>
> _____
>
>
>
> This e-mail and any files transmitted with it are confidential and are
>
> intended solely for the use of the individual or entity to whom they are
> addressed. This communication may contain material protected by the
> attorney-client privilege. If you are not the intended recipient or the person
> responsible for delivering the e-mail to the intended recipient, be advised that
> you have received this e-mail in error and that any use, dissemination,
> forwarding, printing, or copying of this e-mail is strictly prohibited. If you
> have received this e-mail in error; please immediately notify us by telephone at
> (800) 431-4600. You will be reimbursed for reasonable costs incurred in
> notifying us.
>
>
>
> Please consider the environment before printing this email.

EX. 24

JOINT RESPONSE BY LABATON SUCHAROW LLP
AND CHARGOIS & HERRON, LLP

TO THE REQUEST FOR QUALIFICATIONS ("RFQ") FOR OUTSIDE LEGAL COUNSEL
SECURITIES LITIGATION, CLASS ACTION MONITORING AND ADVICE;
ASSET RECOVERY

July 30, 2008

LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone (212) 907-0700
Facsimile (212) 818-0477

Eric J. Belfi
Partner
Direct Dial (212) 907-0878
ebelfi@labaton.com

CHARGOIS & HERRON, LLP
2201 Timberloch Place
Suite 110
The Woodlands, Texas 77380
Telephone (281) 444-0604
Facsimile (281) 440-0124

Damon Chargois
Managing Partner
Dial (281) 444-0604
damon@cmhllp.com

5. Requested Information

5.2 *If with a firm, provide a description of your law firm, including historical background, number and location of firm offices, number of attorneys, and major areas of practice.*

Response of Labaton Sucharow

Labaton Sucharow LLP was established in 1963 in New York City. At the firm's inception, the majority of the practice was commercial work and less than half the work was contingent litigation. Labaton Sucharow began providing securities litigation consulting services to public pension plans in 1995, the year of the passage of the Private Securities Litigation Reform Act (PSLRA).

Currently, two-thirds of the firm's approximately 55 lawyers are dedicated to the prosecution of securities class actions, institutional investor "opt out" cases, and other shareholder actions. Labaton Sucharow has one office location where the services discussed herein would be performed. The firm is located at 140 Broadway, New York, NY 10005; Tel: (212) 907-0700. Labaton Sucharow currently has approximately 55 attorneys, 17 paralegals and 69 additional support staff. Class action securities litigation and related portfolio monitoring services represent Labaton Sucharow's principal practice area and source of revenue. The firm also maintains an active antitrust class action practice.

Response of Chargois & Herron

Chargois & Herron, LLP was established in 2005 by Timothy P. Herron and Damon J. Chargois after working together and separately in commercial, class action, mass tort and insurance defense litigation for fourteen (14) plus years. Both attorneys, along with partner, Che Williamson are licensed in all federal and state courts in Arkansas and Texas. Chargois & Herron began providing securities litigation services in 2006 and have been pleased to achieve significant monetary results for public pension plans since that time.

Currently, we have offices in Little Rock, Arkansas and The Woodlands, Texas with six full-time practicing attorneys who have held law licenses as follows: (Timothy Herron – 28 years), (Che Williamson – 18 years), (Kamran Masheyekh – 18 years), (Damon Chargois – 14 years), (Carlos Fernandez – 5 years) and (Kirk Chargois – 2 years). Our primary address is 2201 Timberloch Place, Suite 110, The Woodlands, Texas 77380; (281) 444-0604.

5.3 *State whether your response excludes any services contemplated by the RFQ set forth in the scope of services in section 3.2.*

Labaton Sucharow's and Chargois & Herron's responses do not exclude any services contemplated by the RFQ set forth in the scope of services in section 3.2.

5.4 *State whether your firm is able to conduct ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims) by reviewing the System's portfolio losses on a regular basis, investigating potential claims, preparing detailed reports of findings; and presenting the findings to ATRS.*

Response of Labaton Sucharow

Labaton Sucharow is committed to high-level client service. A major component of the litigation and client services that we propose to the ATRS is our portfolio monitoring program, that utilizes a full compliment of professional analyses as well as out proprietary software system called LPAS©.

We believe that a strong analysis and quick determination of possible financial exposure can be the first line of defense when corporate misconduct and fraud result in investment losses.

Identification In its Case Evaluation Group, Labaton Sucharow has assembled several attorneys and other professionals with decades of combined experience distilling information in the marketplace in an effort to uncover and investigate instances of potential securities fraud on behalf of our clients. Labaton Sucharow subscribes to and monitors sophisticated financial research services, including Bloomberg and Thomson Reuters, the same tools used by analysts at major financial services firms. We use these information services to monitor news coverage and market activity throughout the day to identify potential securities law violations and analyze the impact of the claims on our clients' portfolios. Among the other sources we monitor are: (i) the Federal Securities Law Reports published by CCH; (ii) the Securities Class Action Services database maintained by the Riskmetrics Group; (iii) Stanford Law School's Securities Class Action Clearinghouse; and (iv) other legal journals and newspapers.

The Group includes five attorneys, led by Christopher Keller, who have many years of experience performing this specialized function. The Group also includes two Wall Street analysts, several damages analysts, and private investigators formerly with the Federal Bureau of Investigation. This group has been pivotal to enhancing Labaton's institutional shareholder services by being able to marshall the critical facts necessary to prevail in complex securities class action litigation.

Analysis When a security suffers a significant decline in value or when litigation has been commenced against a company, we commence a multi-tiered analysis of the situation. The analysis includes early identification and assembly of facts, legal and factual analysis and ranking (using a proprietary grading system that allows us to objectively rate the facts), determination of the magnitude of the alleged fraud (in terms of class-wide damages), and investigation of non-public information and sources. This in-depth review yields a "grade" for the case that reflects our analysis of the strengths and weaknesses of the claim. This grade is based upon a number of factors, including the size of the company, evidence of intentional or reckless wrongdoing, the types of issues involved (including any earnings restatements or other accounting issues), whether there is an ongoing governmental investigation, the potential liability of third-party defendants such as auditors or underwriters, the solvency of the defendant, and whether there was a significant stock price decline in reaction to the alleged wrongdoing. The findings are captured in a summary report. An example of such a review is attached as **Exhibit A**.

Review of losses If we discover that the ATRS invested in a company that has engaged in allegedly fraudulent behavior, we quickly can assess the losses incurred. This loss amount is an estimated loss as limited by the PSLRA, which is not the same as your legally compensable damages. To that end, LPAS (further discussed in Section 5.5, below), allows us to quickly quantify our clients' financial exposure to the security at issue so that we may advise our clients on the strength of their position to pursue litigation, either individually or as a lead plaintiff on behalf of a class of investors. This assessment can be made as soon as a situation has been identified, depending on the data that is available to us, and is an essential component of the advice we could provide to the ATRS on the likelihood of its success were the ATRS to move to be appointed Lead Plaintiffs. Whether our advice is to pursue litigation or not, it is based on our client's true financial interest in the litigation and the merits of the case.

Reporting Included in our analysis of the case, is an analysis of the options available to our clients. If a case meets certain criteria, we will inform the ATRS about the issues involved in the case, and we may request that the ATRS research their holdings so that we can provide an analysis of the ATRS's financial exposure. On a case-by-case basis, we will provide a comprehensive legal analysis for the client's review. An example of such a review is attached as **Exhibit B**. Additionally we provide reports each quarter that recite our findings for the cases we have reviewed in prior periods and the results of our research. Please refer to **Exhibit C** for an example of a Quarterly Report.

Many institutional clients expect and receive regular oral or written updates concerning matters of potential interest. Typically, we would first discuss the issues of a specific case that we are analyzing with the ATRS before a report is submitted. However, other reports – primarily our quarterly reports and any urgent/time-sensitive matter that we are bringing to the ATRS's attention – might be transmitted via e-mail to our contact at the ATRS without a formal discussion beforehand. The decision to commence an action and overall litigation strategy are always made after close consultation between Labaton Sucharow and our client, and at a client's request, Labaton Sucharow will circulate drafts of court filings well in advance of filing dates for review and comment. Monitoring services will be handled by partner, Christopher Keller, and the overall relationship would be managed by partner, Eric Belfi. Matters connected to litigation would be managed by Mr. Belfi and chairman, Mr. Lawrence Sucharow. Please see **Exhibit D**, to view the full resume of each attorney.

Recommendation We are protective of our institutional clients and therefore proceed carefully before recommending legal action. Quite often, the results of our analysis indicate that it is not advisable for the client to participate as a lead plaintiff, because the amount of the loss is not significant or participating as a lead plaintiff may not be in the client's best interests for other reasons. If we determine that claims lack merit or are weak, we will so advise. A law firm cannot guarantee success in securities litigation, but according to the annual securities class actions study published by Cornerstone Research, for the past three years Labaton Sucharow, on a percentage basis, recovers more than any other plaintiffs' class action firm.

In any case, our recommendation will be an informed one, suited to the needs of the client. Labaton Sucharow recognizes that clients desire varying levels of involvement with these processes, and the firm certainly can provide training to effectively supervise and assist in these activities.

Response of Chargois & Herron

Chargois & Herron has six attorneys and three paralegals with decades of combined experience in monitoring and researching corporations and the market in analyzing conduct with an eye toward discovering possible impropriety. Additionally, we work closely with counsel in New York, including Labaton Sucharow, and California in order to stay abreast of trends and activities in the market. We are free to utilize their resources and they ours – at any time in an effort to provide the best service to our institutional investor clients.

Chargois & Herron owns an Alabama company called 270 Discovery Solutions which provides document research, indexing and computer inputting of the millions of items of information contained in the documents that are routinely produced – usually under court order – in securities class action litigation. Uniquely, our company is staffed almost entirely by licensed attorneys, numbering in excess of 25 attorneys. This puts Chargois & Herron in a unique and special position to handle any securities litigation matter, regardless of size.

5.5 *State whether your firm has the ability to monitor the ATRS portfolio in this regard through access to the ATRS custodial account, rather than requesting ATRS staff for information regarding securities holdings.*

Response of Labaton Sucharow

Yes, Labaton Sucharow has the ability to monitor the ATRS portfolio through access to the ATRS custodial account. We have relationships with all of the major custodial banks in the U.S. and have handled multiple systems when retrieving our clients' data. Therefore, the necessary information is gathered without intrusion into our clients' day-to-day business. At the outset, a minimal effort is required to set up the authorization and permissions for our access to the ATRS portfolio. Beyond that, our team handles the rest of the communications with the custodian and the retrieval of the ATRS portfolio records.

Labaton Sucharow has invested significant resources to develop and maintain an infrastructure and software program to accomplish this for our clients. Labaton Portfolio Analysis System (LPAS) is a unique and proprietary database management and software application that allows us to capture our clients' trading information and over time build a historical record of the transactions, housed in our internal, secure database. In particular, with access to our clients' historic trading records, LPAS allows us to monitor the data and identify eligible losses. When a new situation is identified, LPAS identifies matches between the securities owned by ATRS and will perform an analysis of their financial exposure, using court-approved evaluation models. Please see **Exhibit E** for a description of LPAS.

Additionally, Labaton Sucharow has access to comprehensive information with respect to securities class action settlements. The firm can provide this information to the ATRS's custodian bank at no charge and make all necessary forms available to the custodian.

Response of Chargois & Herron

Chargois & Herron has the ability to monitor the ATRS through access to the ATRS custodial account, rather than requesting ATRS staff for information regarding securities holdings.

5.6 *Subject to the consent of clients as required by applicable ethics rules, provide a listing of representative clients. Responses may, with the consent of the clients, include names and phone numbers of specific references. Subject to the clients' consent, identify specifically any pension plans or other major institutional investors, either private or public, to which you render or have rendered significant legal services concerning the relevant subject area(s) during the past year. If no clients consent, or if you elect not to request such consent, please so state and describe the representative clients in general terms to support your firm's qualification and experience to represent ATRS.*

Response of Labaton Sucharow

[redacted]

[redacted]

Response of Chargois & Herron

Among others, Chargois & Herron has represented, along with co-counselors, Bristol County Retirement Systems, Inc., Plymouth County Retirement System and merchants in Class Action litigation against credit card companies based on hidden surcharges.

5.7 *Provide a very brief summary resume describing the education, legal or investment experience, recent speaking engagements, and a list of significant, relevant publications of the attorney or attorneys proposed to work as lead attorney(s).*

Response of Labaton Sucharow

The number and identity of the Labaton Sucharow and Chargois & Herron attorneys and other legal professionals who would be assigned to a securities litigation matter on behalf of the ATRS would vary depending on the size, complexity and issues in any given case. Assuming that a particular case involved complex accounting issues, large numbers of documents, and dozens of fact and expert witnesses, the team likely would be comprised of the following attorneys from Labaton Sucharow: Eric J. Belfi, Lawrence A. Sucharow, Thomas A. Dubbs, Christopher J. Keller, Zachary M. Ratzman, Ann E. Gittleman, and Krista T. Rosen; and Damon J. Chargois, Timothy P. Herron, Kamran Mashayekh, and Che D. Williamson from Chargois & Herron. To view the full resume of each attorney, please see **Exhibit D**.

Eric J. Belfi, a partner with the firm, is an accomplished litigator in a broad range of commercial matters. He concentrates his practice in the investigation and initiation of securities and shareholder class actions, with an emphasis on the representation of major international and domestic pension funds and other institutional investors. Prior to entering private practice, Mr. Belfi served as an Assistant Attorney General for the State of New York and an Assistant District Attorney for the County of Westchester, New York. As a prosecutor, Mr. Belfi investigated and prosecuted numerous white-collar criminal cases, including securities law violations. In this capacity, he presented hundreds of cases to the grand jury and obtained numerous felony convictions after jury trials.

Mr. Belfi is a regular speaker and author on issues surrounding securities litigation, with a focus on international institutional investors. He was invited to speak at the prestigious Eurosharehoders Annual Conference, in Brussels, in February 2008. Most recently, he spoke regarding securities class actions at the William H. Bowen School of Law at the University of Arkansas in June of 2008. Mr. Belfi is the co-author of *The Proportionate Trading Model: Real Science or Junk Science?* 52 Cleveland St. L.

Rev. 391 (2004-05) and "International Strategic Partnerships to Prosecute Securities Class Actions, Investment & Pensions Europe," *Investments & Pensions Europe*, 2005.

He received a B.A. from Georgetown University in 1992 and a J.D. from St. John's University School of Law in 1995.

Lawrence A. Sucharow, a nationally and peer recognized leader of the class action bar, is the chairman of Labaton Sucharow. In his capacity as chairman, he participates in developing the litigation and settlement strategies for virtually all of the class action cases Labaton Sucharow prosecutes. For more than three decades, Mr. Sucharow has devoted his practice to counseling clients and prosecuting cases on complex issues involving securities, antitrust, business transaction, product liability, and other class actions.

Mr. Sucharow is the co-author of "Executive Compensation -- Despite Reforms, Pay Is Less Transparent and Shareholder-Friendly Than in the Past," *New York Law Journal*, March 20, 2008, and "FIFO vs LIFO, Different ways to calculate shareholder losses for purposes of appointing lead plaintiff lead to different results," *Investment & Pensions Europe*, May 2006.

Mr. Sucharow earned a B.B.A., *cum laude*, from the Baruch School of the City College of the City University of New York in 1971 and a J.D., *cum laude*, from Brooklyn Law School in 1975.

Thomas A. Dubbs, a senior partner with the firm, specializes in the representation of institutional investors including pension funds in securities fraud and other types of litigation. A recognized leader in the field, Mr. Dubbs represented the first major private institutional investor to become a lead plaintiff in a class action under the Private Securities Litigation Reform Act. He was formerly Senior Vice President and Senior Litigation Counsel for Kidder, Peabody & Co. Incorporated ("Kidder") for seven years, where he represented Kidder in a variety of matters, including in many class actions. He is the only member of the plaintiffs' bar who has held a senior position at a major investment bank, and is, thus, uniquely able to advise on issues involving the underwriting process and due diligence requirements. Also, he is able to understand and anticipate the perspective and strategy of defense counsel in securities cases, a substantial tactical advantage in determining the proper approach to take in litigating, settling or trying a particular action.

Mr. Dubbs is the co-author of "US Focus: Time for Action," *Legal Week*, April 17, 2008. Mr. Dubbs frequently lectures to institutional investors and other groups such as the Government Finance Officers Association, the National Conference of Public Employee Retirement Systems and the Council of Institutional Investors. In March 2008, Mr. Dubbs participated in a roundtable discussion hosted by The Law Society in London regarding class actions lawsuits.

Mr. Dubbs received a B.A. and a J.D. from the University of Wisconsin in 1969 and 1974, respectively. In 1971, he earned an M.A. from the Fletcher School of Law and Diplomacy of Tufts University.

Christopher J. Keller, a partner with the firm, leads the firm's Case Evaluation Group and has been involved in investigating and initiating numerous securities class actions. He was a member of the trial team that successfully litigated the *In re Real Estate Associates Limited Partnership Litigation* in the United States District Court for the Central District of California. The six-week jury trial resulted in a landmark $184 million plaintiffs' verdict, which is one of the largest jury verdicts since the passage

of the Private Securities Litigation Reform Act of 1995. Most recently, he was instrumental in securing a $117.5 million settlement in *In re Mercury Interactive Securities Litigation*, which is one of the largest settlements to date in a securities options backdating class action.

Mr. Keller is the co-author of "Tellabs': PSLRA Pleading Test Comparative, Not Absolute," *New York Law Journal*, October 3, 2007, and "FIFO vs LIFO, Different ways to calculate shareholder losses for purposes of appointing lead plaintiff lead to different results," *Investment & Pensions Europe*, May 2006. Mr. Keller is a regular speaker at institutional investor gatherings. In June 2008, he spoke at a Continuing Legal Education course on subprime and mortgage related claims.

Mr. Keller received a B.S. from Adelphi University in 1993 and a J.D. from St. John's University School of Law in 1997.

Zachary M. Ratzman, Of Counsel to the firm, has been practicing in the area of securities fraud litigation for five years. Since early 2005, he has litigated the case *In re American International Group, Inc. Securities Litigation*, on behalf of three Ohio pension funds and a class of defrauded investors, and has played key roles in other noteworthy actions, including *In re Bristol-Myers Squibb Securities Litigation*. Prior to joining Labaton Sucharow, Mr. Ratzman practiced white-collar criminal defense and complex commercial litigation as an associate in the New York offices of Skadden Arps Slate Meagher & Flom LLP and Patterson Belknap Webb & Tyler LLP.

Mr. Ratzman received a B.A. from Ohio University, where he graduated *summa cum laude* and with Phi Beta Kappa honors. He earned a J.D. from the University of Michigan Law School, where he graduated, *magna cum laude,* and as a member of the Order of the Coif.

Ann E. Gittleman, an associate with the firm, is a Certified Public Accountant. Before becoming an attorney, she worked for PricewaterhouseCoopers LLP for more than two years, where she performed audits and interacted with governmental organizations, such as the SEC, IRS and Attorney General Office, in coordinating and facilitating investigations. As such, she is uniquely qualified to analyze complex fact patterns and utilize various principles of the accounting and auditing profession in actions involving accounting fraud.

Ms. Gittleman earned a B.S. and a B.A., both *magna cum laude*, from Bryant University in 1999, and received her J.D. from Brooklyn Law School in 2004, where she was a member of both the Moot Court Honor Society and the Securities Law Association.

Krista T. Rosen, an associate with the firm, focuses her practice in the area of securities class action litigation. She is a member of the team litigating the federal securities fraud class action against AIG, representing as Lead Plaintiff several Ohio pension funds.

Ms. Rosen earned a J.D. from the Benjamin N. Cardozo School of Law in 2006. During law school, she was selected to participate in the Securities Arbitration Clinic, where she represented investors in arbitration actions against securities brokers. Additionally, she served as the Articles Editor of the *Cardozo Law Review*. In March 2006, she was awarded third place in the 2005-2006 national writing competition sponsored by the Association of Securities and Exchange Commission Alumni (ASECA) for her Note entitled, *Staying in Court While Staying Discovery: Finding Exceptions for Government-Produced Documents Under the PSLRA.*

Damon J. Chargois was born on December 26, 1966. He was admitted to the Texas Bar on November 4, 1994, and the Arkansas Bar in 2006. Mr. Chargois received his undergraduate degree in English Literature in 1991 and received his Doctor of Jurisprudence from the University of Houston Law Center in May 1994. Mr. Chargois is licensed to practice in all Texas and Arkansas Courts, as well as Federal District Courts and the U.S. 5th Circuit Court of Appeals. Additionally, he has successfully tried a federal case to unanimous positive verdict that was subsequently affirmed by the 5th Circuit Court of Appeals and, then, had writ of certiorari denied by the U.S. Supreme Court, resulting in a final ruling affirming Mr. Chargois' verdict.

Mr. Chargois has handled a variety of class action and mass tort litigation cases, including a commercial, occupational, mass torts, including business transactions, products liability, pharmaceutical, class action, asbestos and benzene chemical exposures.

Upon graduating as class captain from his law school, Mr. Chargois worked as a corporate and insurance defense attorney in Dallas, Texas, with the law firm Cowles & Thompson, P.C., while also serving as criminal prosecutor for the townships of Rockwall, Rowlette, and Heath, Texas. In 1996, he became a mass tort plaintiff's trial lawyer, ultimately rising to Head of Litigation for national law firm Foster & Sear, L.L.P.

In 2004, the law firm Chargois & Herron was founded with Damon Chargois and Timothy P. Herron. In 2006, Chargois, Mashayekh & Herron was formed to specialize in commercial and class action lawsuits, and expand the firm's commercial and financial business interests. Mr. Chargois' practice is multi jurisdictional and he oversees litigation in several states on the federal and state level. He is a member of the State Bar of Texas Litigation Section, the American Association for Justice, and Texas Trial Lawyers Association. Chargois, Mashayekh & Herron has offices in the Woodlands, Texas; Little Rock, Arkansas; and New York, New York.

Mr. Chargois is a member of the Board of Directors for the University of Houston Law Alumni Foundation. Additionally, he is a member of the Advisory Board of Directors for Houston Achievement Place, a charity specializing in caring for the needs of at risk foster children. He has also served as a guest lecturer on a number of legal topics, including mass tort litigation and bankruptcy to the University of Arkansas—Little Rock Law School.

Timothy P. Herron was born in Hot Springs, Arkansas, on October 18, 1952. He was admitted to the Texas Bar in 1980. Mr. Herron did his undergraduate and graduate education at Texas Christian University receiving a Bachelor of Fine Arts in Speech and Communication in 1974 and a Master of Science in Speech and Communication in 1975. He taught as a professor at Samford University before being awarded a Fulbright Scholarship to attend Baylor Law School in Waco, Texas where he obtained his Juris Doctor Degree in 1980 (*cum laude*).

In law school, he was voted the most outstanding trial advocate in the nation and was on Baylor's national winning mock trial team. Mr. Herron began as an attorney with Baker & Botts in Houston in the employment litigation section. He left Baker Botts, to become a partner in the firm of Hope & Mays and later Crews & Herron in Conroe, Texas. In 1990, along with Don Wetzel, he formed the law firm of Wetzel & Herron which specialized in insurance defense and commercial litigation.

After representing mainly defense and commercial clients for eighteen years, Mr. Herron changed his practice to handle only plaintiffs' mass torts. In 1998, he started the law firm of Hissey Kientz &

Herron with Rob Kientz, and Mike Hissey, which since that time continues to handle mass tort litigation. Their cases include a wide range of occupational and mass torts, including asbestos and pharmaceutical litigation.

In 2004, the law firm Chargois & Herron was founded with Damon Chargois and Timothy P. Herron. In 2006, the firm expanded to specialize in commercial and class action lawsuits, and expand the firm's commercial and financial business interests. Mr. Herron's practice is multi jurisdictional and he oversees litigation in several states on the federal and state level. He is licensed in Texas and Arkansas. He is board certified in Civil Trial Litigation since 1989, is licensed to practice in the Federal Courts of Texas, and is a member of the State Bar of Texas in the Litigation Section and the AAJ and TTLA. In addition, he is chairman of the Unauthorized Practice of Law Committee of the State Bar of Texas, Region 5A. Chargois & Herron has offices in the Woodlands, Texas; Little Rock, Arkansas; and New York, New York.

Mr. Herron has expanded his business interests to include commercial banking and real estate. He was also involved in the founding of Post Oak Bank in Houston in 2003. He has been involved in the development and funding of commercial property development for the past four years in Texas, Oklahoma and Alabama.

Tim Herron has resided in Montgomery County, Texas for the past 26 years and has six children and one grandchild.

Kamran Mashayekh was admitted to the Texas State Bar on November 11, 1990. Mr. Mashayekh received his undergraduate degree in Political Science from Rice University in 1987 and received his Doctor of Jurisprudence from South Texas College of Law in August 1989.

In 2006, Kamran Mashayekh joined the law firm of Chargois & Herron to specialize in commercial and class action lawsuits and expand the firm's commercial and financial business interest. Mr. Mashayekh is fluent in English, Arabic, French and Spanish.

Che D. Williamson was born on November 25, 1964. She is married to Tim Herron and has 2 children and one grandchild. Ms. Williamson earned her Juris Doctor degree from South Texas College of Law in 1989. She has practiced law with her husband, Tim Herron since 1989. Ms. Williamson teaches mass torts at the William H. Bowen Law School at the University of Arkansas. She is also board certified in Civil Trial Litigation and holds a Ph.D. degree in criminal justice from Sam Houston State University and an L.L.M. in environmental law and policy from the University Houston Law School.

5.8 *Provide a very brief summary general description of your firm's practice in the subject matter areas covered by this RFQ, including the size and scope of the practice and any other resources of your firm which are relevant to your practice in those areas.*

Response by Labaton Sucharow

Labaton Sucharow has developed its expertise in prosecuting securities class actions over decades, and litigation on behalf of injured institutional and individual investors represents the firm's principal practice area. Since passage of the PSLRA, the firm has been appointed lead counsel on numerous occasions, including cases involving the largest investor losses and most egregious frauds, such as the current *Countrywide*, *American International Group* and *HealthSouth* litigations.

As noted above in response to question 5.4, Labaton Sucharow has a dedicated Case Evaluation Group comprised of attorneys and non-attorney professionals, who identify and evaluate cases of possible fraud, and who have developed proprietary criteria to rate such cases.

Labaton Sucharow has cultivated a specific expertise in enforcing accountability on the part of underwriters and accounting firms – entities that play an important role in the financial markets and, we believe, have special responsibility to ensure its proper functioning. One partner of the firm, who practiced for many years in the financial services sector, has made litigation against underwriters a principal focus of his practice with the firm. Two attorneys at Labaton Sucharow are certified public accountants, both with significant auditing experience. Their expertise in both law and accounting provides the firm a special capacity to identify and analyze accounting-related fraud, coordinate expert testimony, and effectively depose financial personnel.

The firm also highly values its non-attorney professionals, and believes that the close integration of their financial and investigative expertise with the firm's legal work provides Labaton Sucharow an unusual ability to build well-developed, thoroughly researched, and analytically rigorous cases and present them effectively to judges and juries.

Distinctively, the firm has a demonstrated willingness to go to trial when necessary. Since 2000, partners of the firm have served as lead or co-lead counsel in several major securities trials including, *In re Real Estate Associates Limited Partnerships Litigation*, No. 98-7035 (C.D. Cal.) and *Koppel v. 4987 Corp.*, 167 F.3d 125 (2d Cir. 1999). In the *Real Estate Associates* litigation, Lawrence Sucharow co-led a month-long jury trial that resulted in a $92 million compensatory award and a $92 million punitive damages award (later reduced to the maximum allowed under California law). In *Koppel*, the firm established a significant corporate governance precedent. We see our record of taking cases to trial as critical to our ability to negotiate credibly and forcefully on behalf of the institutions and classes we represent.

Finally, Labaton Sucharow strongly believes that shareholder litigation provides important public benefits by insuring fair and efficient public markets, regulating corporate governance, and controlling other deceptive conduct by public companies. The firm's senior partner, Edward Labaton, is a recognized authority on corporate governance issues, and is a member of the Advisory Committee of the University of Delaware's Weinberg Center for Corporate Governance and the New York City Bar Association's Task Force on the Role of Lawyers in Corporate Governance. He has also been President of the Institute for Law and Economic Policy since its founding.

Response by Chargois & Herron

Chargois & Herron has offices in Little Rock, Arkansas and The Woodlands, Texas, in addition to counsel affiliations with Labaton Sucharow in New York, Friedman Law Group in New York and Markun, Zussman & Compton in Los Angeles, California for the primary purpose of investigating and pursuing class action securities, commercial and consumer litigation which includes cases involving large investor losses and egregious fraud. Chargois & Herron has an attorney who dedicates a major portion of his work week watching the market, scouring financials and personally speaking with clients, financial experts and business leaders in our continuing effort to discover and root out fraud and misrepresentations by corporate wrongdoers.

5.9 *Provide a very brief summary description of not more than ten (10) significant transactions or cases in which your firm has provided extensive legal services involving pension funds or other institutional clients relating to the subject matter areas covered by this RFQ.*

Response by Labaton Sucharow

With respect to securities litigation, Labaton Sucharow has obtained substantial recoveries for institutional clients and associated classes in dozens of cases, and is recognized today as one of a small number of firms with the expertise and resources to prosecute the largest and most complex cases.

In one of the largest cases involving the recent subprime mortgage crisis, Labaton Sucharow serves as lead counsel representing Lead Plaintiffs the State of New York and the New York City Pension Funds (collectively, "the New York Funds") in *In re Countrywide Securities Litigation*, No. CV-07-5295 MRP (MANx) (C.D. Cal.), pending before U.S. District Judge Mariana R. Pfaelzer in the U.S. District Court for the Central District of California. This case is a consolidated class action asserting claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 against Countrywide Financial Corporation, certain of its current and former directors and officers, outside accountants, and underwriters of public offerings of Countrywide securities.

In *In re American International Group Inc. Securities Litigation*, Civ. No. 04-8141 (LTS) (S.D.N.Y.), Labaton Sucharow is lead counsel on behalf of Lead Plaintiffs the Ohio Public Employees Retirement System, and certain other Ohio state pension funds. Defendants include AIG, and its present and former senior executives, underwriters, auditor, and parties to various fraudulent transactions. In 2006, the court denied defendants' numerous motions to dismiss in substantially all respects. The document review will likely be one of the largest in the history of securities litigation; to date, we have reviewed more than 37 million pages of 40 million that defendants produced. Both fact depositions and class certification depositions have begun.

In *In re Mercury Interactive Corp. Securities Litigation*, Master File No. 05-3395, pending in the United States District Court for the Northern District of California, Labaton Sucharow is acting as co-lead counsel representing Lead Plaintiffs the Steamship Trade Association/International Longshoremen's Association Pension Fund, the City of Sterling Heights General Employees Retirement System, the City of Dearborn Heights Police and Fire Retirement System, and the Charter Township of Clinton Police & Fire Pension System. The allegations in Mercury concern backdated option grants used as unreported compensation to employees and officers of the Company. Mercury's former CEO, CFO, and General Counsel actively participated in and benefited from the options backdating scheme, which came at the expense of Mercury shareholders and the investing public. Labaton Sucharow and Hewlett-Packard's counsel reached an agreement in principle that will compensate injured plaintiffs in the total sum of $117.5 million, a figure representing the second largest known settlement or judgment in an options backdating suit to date. Labaton Sucharow and Hewlett-Packard's counsel executed a Stipulation of Settlement and the court granted preliminary approval of the settlement on June 2, 2008.

In *In re Bristol-Myers Squibb Securities Litigation*, Civ. No. 00-1990 (GEB) (D.N.J.), Labaton Sucharow, as sole lead counsel, prosecuted class claims on behalf of Lead Plaintiff, Longview Collective Fund of the Amalgamated Bank. The firm reviewed more than 5 million pages of documents, took 44 factual depositions and 18 expert depositions and defended 8 experts. The case settled in January 2006 for $185 million. The settlement also included the important public benefit of an agreement

by Bristol-Myers Squibb to post results of its clinical trials, including all adverse events, for a period of ten years.

In *In re HealthSouth Corp. Stockholder Litigation*, No. CV-03-BE-1501-S (N.D. Ala.), Labaton Sucharow represents Lead Plaintiffs the New Mexico State Investment Council and the New Mexico Educational Retirement Board and serves as co-lead counsel. The litigation alleges a broad scheme by the company's former senior managers in the largest securities fraud in the healthcare industry. In January 2007, the court approved a settlement valued at $445 million with HealthSouth Corporation and several of the Company's former officers and directors. The partial settlement, comprised of cash and HealthSouth securities, is one of the largest in history. Lead Plaintiffs continue their prosecution of the litigation against HealthSouth's former CEO, Ernst & Young, and UBS.

In *In re Waste Management, Inc. Securities Litigation*, Civ. No. H-99-2183 (S.D. Tex.), Labaton Sucharow was retained by the Connecticut Retirement Plans and Trust Funds. The litigation resulted in a $457 million settlement, one of the largest securities class action recoveries ever obtained. On behalf of its client and the Class, Labaton Sucharow secured substantial corporate governance enhancements, including measures designed to strengthen the role and independence of the defendant's audit committee, declassify its board of directors, and encourage and safeguard whistleblowers among the company's employees.

In *In re Real Estate Associates Limited Partnerships Litigation*, No. 98-7035 (C.D. Cal.), Labaton Sucharow litigated and tried this case to a jury verdict in federal court in California in late 2002. The firm obtained a precedent setting award of $92 million in compensatory damages under various legal theories, including violations of Section 14(a) of the Exchange Act. The jury also awarded an additional $92 million for punitive damages on a breach of fiduciary duty claim (which was later reduced by the court on a motion for remittitur). The case was eventually settled for more than 100% of claimed damages.

Labaton Sucharow also represents institutional investors in a number of individual securities actions. For example, in *In re Adelphia Communications Corp. Securities & Derivative Litigation*, Civ. No. 03 MD 1529 (LMM) (S.D.N.Y.), the firm represents the New York City Employees' Retirement System (and certain other New York City pension funds) and the Division of Investment of the New Jersey Department of the Treasury in separate individual actions against Adelphia's officers, auditors, underwriters, and lawyers. To date, Labaton Sucharow has fully resolved certain of the claims brought by New Jersey and New York City for amounts that significantly exceed the percentage of damages recovered by the Class. New Jersey and New York City continue to prosecute their claims against the remaining defendants. In *In re WorldCom Inc. Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.), Labaton Sucharow secured a substantial settlement in an individual action brought by our clients SunTrust Bank and Trusco Capital Management, Inc. against the former underwriters, auditors, and directors of WorldCom, Inc. In *In re Qwest Communications International Securities Litigation*, 01-cv-01451 (D. Col.), after a class action settlement was announced in September 2006, Labaton Sucharow was engaged by CalPERS to pursue all appropriate opt-out securities claims in connection with CalPERS' securities holdings in Qwest Communications Int'l Inc. We drafted complaints for use in both federal and state courts, obtained and extension of pre-existing polling agreement (which made it unnecessary for us to file complaints), represented CalPERS at two mediation sessions with Qwest and related defendants, and negotiated the final settlement

which was far greater than what CalPERS would have obtained in the class action and was proportional to the largest other opt-out settlement obtained against Qwest that we know of.

Response by Chargois & Herron

Chargois & Herron has represented a number of plaintiffs against corporations who have been proven to have acted fraudulently with respect to their shareholders or consumers.

In *Bristol County Retirement System vs. HCC Insurance Holdings, Inc.*, we served as liaison counsel representing the Massachusetts Public Pension Funds against HCC Holdings, Inc. arising out of its fraudulent options backdating practices we alleged. After almost two years of litigation, we are finalizing a significant settlement for our clients.

In *Holloway v. Countrywide*, we have co-counseled with Markun, Zussman & Compton against Countrywide arising out of its fraudulent subprime mortgage practices. Recently, our case received class certification status for the State of California.

Chargois & Herron owns an Alabama company called 270 Discovery Solutions which provides document research, indexing and computer inputting of the millions of items of information contained in the documents that are routinely produced – usually under court order – in securities class action litigation. Uniquely, our company is staffed almost entirely by licensed attorneys, numbering in excess of 25 attorneys. This puts Chargois & Herron in a unique and special position to handle any securities litigation matter, regardless of size.

5.10 *Please describe proposed billing arrangements, including contingency fees, for securities litigation. If other than contingency fees are contemplated, please state the range of hourly billing rates, by timekeeper status (paralegal, 1st to 3rd year associate, etc., staff attorney, shareholder or partner, of counsel, etc.), of all attorneys and paralegals proposed for assignment to ATRS matters. State what discount, if any, to these rates the firm proposes to provide to ATRS. While this RFQ primarily seeks the services of one lead attorney, the involvement of other firm attorneys may be required from time to time, depending on the matter.*

Response of Labaton Sucharow

Labaton Sucharow confirms that monitoring and evaluating services provided under this Proposal would be carried out at no cost to the ATRS.

The range of contingency fees that Labaton Sucharow proposes with respect to securities class actions (and individual actions) that we successfully resolve as litigation counsel for the ATRS is dependent on several factors anticipated at the beginning of the case, including the likelihood of success, the likely size of any settlement or judgment from any or all defendants. For example, in a case involving a solvent company, hundreds of millions of dollars in damages, and a defendant company that has admitted wrongdoing and/or filed a restatement, the proposed contingency fee would be at the low end of the proposed range. In a case involving smaller damages, no admission, no restatement, and potential difficulties in funding a settlement or a judgment, the risks of litigation would be greater and therefore the proposed attorneys' fees would be at the higher end of the range.

On the basis described above, Labaton Sucharow proposes a range of fees generally conforming to the following:

AMOUNT OF RECOVERY	STAGE OF LITIGATION: Initiation of action to completed briefing of motion to dismiss (or, if no such motion, initiation of discovery)	Thereafter, to completed briefing of motion for summary judgment (or, if no such motion, to completion of discovery)	Thereafter, to trial and entry of judgment	Thereafter (including appellate proceedings), to ultimate resolution
Up to $150 million	5-7%	12-17%	18-22%	21-24%
Greater than $150 million, up to $250 million	4-6%	7-10%	10-12%	12-14%
Greater than $250 million	4-6%	6-8%	8-9%	10%

Labaton Sucharow would offer legal services to the ATRS outside the scope of the "evaluation counsel" and "litigation counsel" functions discussed in the RFQ at the discounted hourly rates set forth below. These rates represent a discount of 40%-60% of the Firms' standard billing rates for their attorneys.

Eric J. Belfi
Lawrence A. Sucharow
Thomas A. Dubbs
Christopher J. Keller
Other Partners
} $350

Zachary M. Ratzman
Other Of Counsel
} $300

Ann E. Gittleman
Krista T. Rosen
Other Associates
} $250

Response by Chargois & Herron

Chargois & Herron, LLP confirms that monitoring and evaluating services provided under this Proposal would be carried out at no cost to the ATRS.

The range of contingency fees that Chargois & Herron proposes with respect to securities class actions (and individual actions) that we successfully resolve as litigation counsel for the ATRS is dependent on several factors anticipated at the beginning of the case, including the likelihood of success, the likely size of any settlement or judgment from any or all defendants. For example, in a case involving a solvent company, hundreds of millions of dollars in damages, and a defendant company that has admitted wrongdoing and/or filed a restatement, the proposed contingency fee would be at the low end of the proposed range. In a case involving smaller damages, no admission, no restatement, and potential difficulties in funding a settlement or a judgment, the risks of litigation would be greater and therefore the proposed attorneys' fees would be at the higher end of the range.

On the basis described above, Chargois & Herron proposes a range of fees generally conforming to the following:

AMOUNT OF RECOVERY	STAGE OF LITIGATION: Initiation of action to completed briefing of motion to dismiss (or, if no such motion, initiation of discovery)	Thereafter, to completed briefing of motion for summary judgment (or, if no such motion, to completion of discovery)	Thereafter, to trial and entry of judgment	Thereafter (including appellate proceedings), to ultimate resolution
Up to $150 million	5-7%	12-17%	18-22%	21-24%
Greater than $150 million, up to $250 million	4-6%	6-10%	10-12%	12-14%
Greater than $250 million	4-6%	4-6%	7-8½%	8-9½%

Chargois & Herron would offer legal services to the ATRS outside the scope of the "evaluation counsel" and "litigation counsel" functions discussed in the RFQ at the discounted hourly rates set forth below. These rates represent a discount of 40%-60% of the Firms' standard billing rates for their attorneys.

Damon J. Chargois
Tim Herron
Kamran Mashayekh
Che Williamson
(Partners) } $350

Kirk A. Chargois
Carlos A. Fernandez
(Associates) } $250

5.11 *State any inability to comply with terms of the engagement described in Section 3.3 of this RFQ. If any inability exists, be specific.*

For both Labaton Sucharow and Chargois & Herron, there are no inabilities to comply with the terms of the engagement described in Section 3.3 of this RFQ.

5.12 *Identify any known relationship, either business or personal, which you or a member of your firm has with any ATRS Board member, investment consultant, investment manager, or key employee. If aware of none, state "None." (A list of ATRS Board members, investment consultants, investment managers, and key employees can be provided upon request. A formal conflicts check will be required prior to contracting.)*

Labaton Sucharow and Chargois & Herron are not aware of any known relationships.

5.13 *Identify any relationship, either business or personal, which you or a member of your firm has with a person known to you to have substantial business dealings with ATRS or its real estate title-holding corporation.*

To the best of our knowledge, Labaton Sucharow and Chargois & Herron do not have any relationships, either business or personal, with a person who has substantial dealings with the ATRS or its real estate title-holding corporation.

5.14 *State whether you or any firm attorney proposed to provide services for this engagement has ever had a formal grievance or complaint lodged against him or her pursuant to the applicable disciplinary rules or has ever been sued for malpractice or any civil or criminal regulatory enforcement action in connection with any type of legal representation, and whether any such attorneys have been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution.*

Response by Labaton Sucharow

Labaton Sucharow (and its predecessor firms) have been in business for more than 45 years. For much of that time, the firm had a substantial general billable corporate practice as well as its contingent class action litigation practice. Labaton Sucharow currently has a very small general billable corporate practice. Throughout its existence, from time to time, issues have arisen which required notification of our malpractice insurance carrier. At the present time, the firm has provided notice of the following matters to its malpractice insurance carrier. (None of the matters of which our carrier has been notified involves class action litigation).

Labaton Sucharow is a defendant in a legal malpractice case brought by a former client who asserts the firm and others committed malpractice in representing him in civil and criminal matters, and that the firm inappropriately failed to compensate him in connection with a qui tam proceeding. The claim is for an unspecified amount of damages.

In a separate action, on March 19, 2008, the preliminary executors of the estate of Jack Maurer commenced an action in the Supreme Court of the State of New York against Labaton Sucharow, charging that the firm had committed malpractice in connection with estate planning services rendered in 2001. The firm has moved to dismiss and the motion is currently pending before the court.

Labaton Sucharow's attorneys have never been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution.

Response by Chargois & Herron

Chargois & Herron has never been sued for malpractice, nor had a formal grievance or complaint lodged against it nor had any civil or criminal regulatory enforcement action brought against it; however, Damon J. Chargois, individually has had a grievance in the Dillard's discrimination litigation and a grievance in asbestos litigation brought against him, but both have been and were dismissed

5.15 *For your response to this RFQ, please indicate the firm's or attorney's professional liability insurance limits within the following ranges, and the name of the carrier or carriers.*

Response of Labaton Sucharow

$5 million to $ 10 million

Labaton Sucharow's malpractice insurer is Lloyd's of London. Labaton Sucharow maintains professional malpractice insurance coverage in the amount of $10 million, representing both the

aggregate and per-claim annual policy limits and it is applied to the firm as a whole. Labaton Sucharow also maintains a fiduciary policy with a $2 million limit.

Response of Chargois & Herron
Under $5 million

Chargois & Herron's malpractice insurer is Texas Lawyers Insurance Exchange (TLIE). Chargois & Herron maintains professional malpractice insurance coverage in the amount of $1 million.

Indicate below the range or the deductible or any self-insured retention with respect to the foregoing insurance.

Response of Labaton Sucharow
Between $500,001 and $1 million

Labaton Sucharow's deductible is $1 million.

Response of Chargois & Herron
Between 0 and $100,000

Chargois & Herron's deductible is $25,000.

EX. 25

From:	Keller, Christopher J. </O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KELLERC>
Sent:	Monday, October 13, 2008 3:38 PM
To:	Belfi, Eric J. <EBelfi@labaton.com>; Bankston, Jennifer S. <jbankston@labaton.com>
Cc:	Sucharow, Lawrence <LSucharow@labaton.com>; Dubbs, Thomas <TDubbs@labaton.com>
Subject:	Arkansas Teachers RFQ 2008-2

Great news.

Christopher J. Keller, Esq.
Partner
Labaton Sucharow LLP
140 Broadway
New York, NY 10005
Phone: (212) 907-0853
Fax: (212) 883-7053
e-mail: ckeller@labaton.com
www.Labaton.com

-----Original Message-----
From: Belfi, Eric J.
Sent: Monday, October 13, 2008 1:57 PM
To: Keller, Christopher J.; Bankston, Jennifer S.
Cc: Sucharow, Lawrence; Dubbs, Thomas
Subject: Fw: Arkansas Teachers RFQ 2008-2

Please see communication from ATRS below.

I have reached out to Damon & Tim - it should not be an issue.

Eric J. Belfi
Partner
Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
Telephone: +1.212.907.0878
Facsimile: +1.212.883.7078
ebelfi@labaton.com
www.labaton.com

----- Original Message -----
From: Christa Clark <christac@artrs.gov>
To: Belfi, Eric J.
Cc: Tamara Henderson <tamarah@artrs.gov>
Sent: Mon Oct 13 12:20:49 2008
Subject: Arkansas Teachers RFQ 2008-2

I am pleased to inform you that subject to final approval of the Attorney General's office, ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system.

I would like to speak with you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.

If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or utilize them as independent contractors, if you deem is appropriate, on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conducive to a joint proposal.

Upon approval of the Attorney General, ATRS will send you a request for a form W-9, Arkansas Professional Services contract form, and State grant/contract disclosure form for your completion.

Please call me if you have a minute to discuss.

Regards,
--
Christa S. Clark
Chief Counsel
Arkansas Teacher Retirement System
1400 W. 3rd St.
Little Rock, AR 72201
(501) 682-1266 Direct
(501) 682-6326 Fax
(501) 590-2869 MOBILE
email: christac@artrs.gov

EX. 26

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/10/2010 12:59:55 PM
To: 'Tim Herron' [tim@cmhllp.com]; Damon Chargois [damon@cmhllp.com]
Subject: FW: Goldman Sachs
Attachments: Goldman Sachs Blue Ribbon Report (ATRS).pdf; Exhibit Nos. 1-9.pdf

---

From: Belfi, Eric J.
Sent: Monday, May 10, 2010 8:39 AM
To: 'George Hopkins'
Subject: RE: Goldman Sachs

Dear George:

Please find our Blue Ribbon Report for Goldman Sachs.

If you have any questions, do not hesitate to contact us.

Best regards,

Eric

From: Belfi, Eric J.
Sent: Thursday, April 22, 2010 9:54 AM
To: 'George Hopkins'
Subject: Goldman Sachs

George:

Please find our case report on Goldman Sachs. [redacted]

Since there are a number of outstanding issues with ATRS, please let us know if it would be beneficial for us to come down and met with you to go over everything.

Best regards,

Eric J. Belfi
Partner || Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
Telephone: +1.212.907.0878
Facsimile: +1.212.883.7078
ebelfi@labaton.com
<http://www.labaton.com/> www.labaton.com

EX. 27

From:	Belfi, Eric J. </O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE>
Sent:	Thursday, May 6, 2010 7:59 AM
To:	George Hopkins <georgeh@artrs.gov>
Bcc:	'Tim Herron' <tim@cmhllp.com>
Subject:	The Hartford - ATRS - REVISED
Attach:	HIG Litigation Update.pdf; The Hartford Investigative Update #1.pdf

Dear George:

Attached please find a memorandum summarizing the fruits of our internal research to date, particularly regarding evidence of scienter and areas of exploration into which our insurance and accounting experts are delving. Also attached hereto is our first investigative update, summarizing information provided by two confidential witnesses. We have a number of additional promising confidential witness leads, and look forward to providing ATRS with another progress update shortly, together with the initial findings of our experts.

Please do not hesitate to let me know if you have any questions relating to The Hartford securities class action -- or any other matters.

Best regards,

Eric J. Belfi
Partner | | Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
Telephone: +1.212.907.0878
Facsimile: +1.212.883.7078
ebelfi@labaton.com
www.labaton.com

EX. 28

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/17/2010 2:31:39 PM
To: tim@cmhllp.com; 'damon@cmhllp.com' [damon@cmhllp.com]
Subject: FW: Follow up

This is one, now we need [redacted]

-----Original Message-----
From: George Hopkins [mailto:georgeh@artrs.gov]
Sent: Sunday, May 16, 2010 3:51 PM
To: Brad Beckworth
Cc: Belfi, Eric J.; ATRS Laura Gilson
Subject: Re: Follow up

I think this is a great plan with a great team. Ghop ------Original Message------
From: Brad Beckworth
To: Ghop
Cc: Eric J. Belfi
Cc: ATRS Laura Gilson
Cc: Ghop
Subject: Re: Follow up
Sent: May 16, 2010 2:37 PM

Thanks George.

Eric and I talked and we are willing to work together. We will get the papers prepared and be in touch.

Have a nice rest of the weekend.

Brad Beckworth
Nix, Patterson & Roach LLP
205 Linda Drive
Daingerfield, Texas 75638
(903) 645-7333

On May 15, 2010, at 9:33 AM, "George Hopkins" <georgeh@artrs.gov> wrote:

> I think the decision is so close that I cannot make a choice between
> NP and Labaton. The strengths of both firms vary and the combined
> firms has great coverage of all concerns. So I have decided to ask
> the two firms to seek a joint filing on behalf of ATRS. I have added
> both contacts by this email. Let me know if each of you are willing
> to work with the other. Ghop ------Original Message------
> From: Brad Beckworth
> To: Ghop
> Subject: Follow up
> Sent: May 15, 2010 9:23 AM
>
> Hi George,
> It was good seeing you Wednesday. I know you had a busy day and
> appreciate you taking time out for us.
> I wanted to follow up and see where things stand regarding Hartford.
> We are a couple weeks out on the lead plaintiff deadline, so I want to
> make sure we are ready.
> I am available to talk this weekend if you'd like (903-235-7709)----I
> didn't want to call and bother you on a weekend.
>
> Otherwise, I will try you Monday.
>
> Take care,
> Brad
>
>
> Brad Beckworth
> Nix, Patterson & Roach LLP
> 205 Linda Drive
> Daingerfield, Texas 75638

> (903) 645-7333
>
>
>
> ATRS Executive Director

ATRS Executive Director

EX. 29

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/17/2010 6:41:39 PM
To: 'damon@cmhllp.com' [damon@cmhllp.com]; tim@cmhllp.com
Subject: Colonial
Attachments: 20100514163957.PDF

Here was the letter to George

From: Johnson, James
Sent: Friday, May 14, 2010 5:39 PM
To: Johnson, James
Subject:

Labaton Sucharow

Eric J. Belfi
Partner
212 907 0878 direct
212 883 7078 fax
email ebelfi@labaton.com

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

May 14, 2010

Via Email

George Hopkins, Executive Director
Arkansas Teachers Retirement System – Domestic
1400 West Third Street
Little Rock, AR 72201

Re: In re Colonial BancGroup, Inc. Sec. Litig.
Our File No. 016486.0001

Dear George:

I am writing to update you regarding recent developments in the *Colonial BancGroup* action.

[redacted]

Sincerely yours,

Eric

Eric J. Belfi

EX. 30

Message

From: /o=Goodkin Labaton Rudoff Sucharow/ou=First Administrative Group/cn=Recipients/cn=belfie [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/2/2013 9:03:50 PM
To: George Hopkins (georgeh@artrs.gov) [georgeh@artrs.gov]
BCC: Damon Chargois (damon@cmhllp.com) [damon@cmhllp.com]
Subject: Facebook Motion to Dismiss - Email 2 of 2
Attachments: 2013-04-30 DECLARATION of Andrew B. Clubok in Support MOTION to Dismiss Dkt 91.pdf

George:

Attached is the Declaration in support of the motion to dismiss.

Eric

EX. 31

Message

From: /o=Goodkin Labaton Rudoff Sucharow/ou=First Administrative Group/cn=Recipients/cn=belfie [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 10/23/2013 7:36:59 PM
To: Damon Chargois (damon@cmhllp.com) [damon@cmhllp.com]
Subject: In re Facebook Securities Litigation
Attachments: October 23, 2013 Ltr to ATRS.pdf; PowerPoint Presentation - Lead Plaintiffs' Opposition to the Motion to Dismiss.pdf; 2013-10-08 HEARING TRANSCRIPT Motion to Dismiss (WORD file) (1082701_1).DOC; Law 360 Article.pdf

Here is the letter to George Hopkins together with all the attachments.

EX. 32

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 7/24/2013 11:06:56 AM
To: George Hopkins [georgeh@artrs.gov]
BCC: Damon Chargois [damon@cmhllp.com]
Subject: Goldman

George:

We have been following the trial - some interesting testimony.

Share us on:
<http://twitter.com/share?text=Player%20In%20Goldman%20Deal%20Says%20She%20Was%20Misled%20About%20Abacus&url=http://www.law360.com/securities/articles/459453> Twitter
<http://www.facebook.com/share.php?u=http://www.law360.com/securities/articles/459453> Facebook
<http://www.linkedin.com/shareArticle?mini=true&url=http://www.law360.com/securities/articles/459453&summary=A+key+government+witness+in+the+fraud+trial+against+former+Goldman+Sachs+Group+Inc.+trader+Fabrice+Tourre+said+Tuesday+that+she+was+misled+about+the+allegedly+built-to-fail+Abacus+transaction%2C+though+stopped+short+of+saying+that+Tourre+himself+lied.&title=Player+In+Goldman+Deal+Says+She+Was+Misled+About+Abacus&source=Law360> LinkedInBy Richard Vanderford
<http://www.law360.com/securities/articles/459453?nl_pk=e815b2bc-ec37-4835-b586-99356fa52f10&utm_source=newsletter&utm_medium=email&utm_campaign=securities#comments> 0 Comments

Law360, New York (July 23, 2013, 7:25 PM ET) -- A key government witness in the fraud trial against former Goldman Sachs Group Inc <http://www.law360.com/companies/goldman-sachs-group-inc> . trader Fabrice Tourre said Tuesday that she was misled about the allegedly built-to-fail Abacus transaction, though stopped short of saying that Tourre himself lied.

Laura Schwartz, a former senior managing director at ACA Management LLC, said she was not told that a hedge fund that helped structure the Abacus transaction, Paulson & Co., had actually bet against it. ACA was formally in charge of picking a bundle of residential mortgage-backed securities that formed Abacus 2007-AC1, a collateralized debt obligation.

Paulson, which allegedly had significant influence on what RMBS were put into Abacus, made about $1 billion when the CDO collapsed along with the housing market, according to the U.S. Securities and Exchange Commission <http://www.law360.com/agencies/securities-and-exchange-commission> . The commission claims Tourre, the alleged "deal captain" for the Abacus deal, defrauded investors by failing to disclose Paulson's intention to go short and also tricked ACA.

Schwartz, though, said she was not directly lied to and did not explicitly blame Tourre for her misperception.

"I believed Paulson would be the equity investor in that transaction," Schwartz said.

But when asked where she got that belief, Schwartz responded that her early knowledge of the structure of the deal came from a meeting with Gail Kreitman, a Goldman salesperson when the Abacus deal was being worked out.

Kreitman, another SEC witness, has already testified that she believed Paulson was long on Abacus. She said she did not know who in particular at Goldman gave her that impression.

Schwartz stressed under SEC questioning that, whatever the source of her belief about Paulson's role in the transaction, ACA was allowed to maintain its misperception. No one at Goldman corrected Schwartz after, in an email to Krietman, she referred to Paulson's "equity perspective" on Abacus, Schwartz testified.

She added that Paulson was referred to as "transaction sponsor" in an email from Tourre, though later conceded that term has no specific definition in the financial world.

Schwartz told jurors that Paulson was given the opportunity to put forward RMBS for inclusion in Abacus. ACA would not have gone forward with the deal had it known the fund was an intended short investor, Schwartz said.

"If somebody only wanted to go short that means it was designed to fail and that was not something we would have done," Schwartz said.

Schwartz's testimony on that point echoed <http://www.law360.com/articles/459149/short-on-goldman-deal-kept-quiet-tourre-jury-told> that of her former boss, ex-ACA CEO Alan Roseman, who said knowledge of Paulson's intention to short would have stopped the transaction in its place.

On cross-examination, Schwartz conceded that ACA had detailed standards for deciding what RMBS were worthy of inclusion in a portfolio and would not have changed those standards based on input from a prospective investor.

"What if Joe had recommended it," Tourre's lawyer John P. Coffey asked, referring to the courtroom deputy. "Would that have affected whether it met the standards of being on the approved list?"

"No," Schwartz said.

"What if it's a long investor," Coffey said.

"No," she said.

Schwartz testimony is scheduled to resume Wednesday morning. Tourre is slated to testify Wednesday afternoon, according to U.S. District Judge Katherine B. Forrest, who is presiding over the case.

Goldman in 2010 agreed to pay $550 million to settle an SEC suit related to Abacus.

Tourre's lawyers have argued that he was one of many Goldman employees who had a hand in Abacus and that disclosures to clients were looked over by Goldman professionals.

Tourre is represented by Pamela R. Chepiga and Andrew Rhys Davies of Allen <http://www.law360.com/firms/allen-overy> & Overy LLP and the Law Office of John P. Coffey.

The case is SEC v. Goldman Sachs & Co. et al., case number 1:10-cv-03229 <http://www.law360.com/cases/4d43f5345002d10782000062> , in the U.S. District Court for the Southern District of New York.

--Editing by Andrew Park.

Related Articles

* <http://www.law360.com/articles/458711/tourre-did-nothing-wrong-goldman-exec-testifies?article_related_content=1> Tourre Did Nothing Wrong, Goldman Exec Testifies

Eric Belfi
Partner
Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
o: 1.212.907.0878
c: 1.516.509.5236

EX. 33

Labaton Sucharow

Eric J. Belfi
Partner
212 907 0878 direct
212 883 7078 fax
ebelfi@labaton.com

September 24, 2010

VIA E-MAIL

Mr. George Hopkins
Arkansas Teacher Retirement System
1400 West Third Street
Little Rock, AR 72201

Re: State Street Corp.

Dear Mr. Hopkins:

We are pleased that Arkansas Teacher Retirement System ("Arkansas Teacher") has asked Labaton Sucharow LLP ("Labaton") to represent it and pursue claims against its custodian, State Street Corporation ("State Street" or the "Company") in connection with State Street's foreign currency ("FX") pricing misconduct. This representation includes the commencement of litigation against the Company's board of directors for breach of fiduciary duties. We would like to confirm our arrangements with respect to this matter.

Labaton will be paid a fee of between 22.5% and 30% of any recovery or benefit conferred on the shareholder class, subject to court approval, plus expenses which will be advanced by Labaton. Expenses subject to reimbursement may include, among other things, expert witness fees, photocopying, computer research, long distance telephone charges, fax charges, court fees, travel expenses and delivery charges. Labaton will also advance costs of Arkansas Teacher relating directly to the litigation, such as for travel. Arkansas Teacher shall have no obligation to pay any fee or expense related to the action. Typically, such fees or reimbursement of expenses are paid by or on behalf of State Street. If nothing is recovered, Arkansas Teacher shall owe Labaton no fees or expense reimbursement.

Labaton
Sucharow

Arkansas Teacher agrees that Labaton may divide fees with other attorneys for serving as local counsel, as referral fees, or for other services performed in connection with the litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting the prosecution of an action. The division of fees with other counsel is Labaton's sole responsibility and will not increase the fees payable upon a successful resolution of the litigation.

Labaton will keep Arkansas Teacher timely apprised of significant developments and decisions in the case. Labaton will provide periodic written reports on a regular basis and will notify Arkansas Teacher in advance regarding court appearances, depositions or other significant proceedings. Labaton will consult with Arkansas Teacher to discuss legal issues and strategies and will seek prior approval regarding significant decisions; specifically, those decisions concerning settlement or fee proposals. Labaton agrees to provide Arkansas Teacher with copies of all pleadings pertaining to this matter and will provide significant pleadings to Arkansas Teacher in advance of submission to the court. Labaton agrees to meet with Arkansas Teacher, or its representatives, to discuss this matter, as required.

Arkansas Teacher hereby provides Labaton with authority to execute documents and agreements relating directly to the litigation on its behalf and to collect and hold on its behalf monies paid to it by way of settlement. Arkansas Teacher also agrees to cooperate fully with Labaton in its handling of the claims. Arkansas Teacher will make its representatives available for consultation and legal proceedings, promptly supply information and documents requested in a truthful and complete fashion, refrain from negotiating and settling the matter without the participation of Labaton and notify Labaton of any change of address.

It is hereby expressly recognized that Arkansas Teacher may at some future time choose to move to be lead plaintiff in an unrelated shareholder case and choose a firm other than Labaton as counsel. In such a case, Arkansas Teacher agrees that it is not a conflict if Labaton is retained by another investor also seeking to be lead plaintiff and hereby waives any possible conflict.

If the terms of this engagement letter meet with Your approval, please sign below and where indicated on the enclosed copy. Return one fully executed copy to us, keeping the second copy for your files.

Labaton Sucharow

We are grateful for the opportunity to represent Arkansas Teacher in this matter, and look forward to the prospect of a favorable resolution.

Very truly yours,

Eric J. Belfi

AGREED TO AND ACCEPTED

this _____ day of _____, 2010

_____

George Hopkins
Executive Director

EX. 34

Labaton Sucharow

Eric J. Belfi
Partner
212 907 0878 direct
212 883 7078 fax
ebelfi@labaton.com

February 8, 2011

VIA E-MAIL

Mr. George Hopkins
Arkansas Teacher Retirement System
1400 West Third Street
Little Rock, AR 72201

Re: State Street Corporation

Dear Mr. Hopkins:

We are pleased that the Arkansas Teacher Retirement System ("Arkansas Teacher" or the "System") has agreed to retain Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") in connection with the pursuit of claims against the System's custodian, State Street Corporation ("State Street"), as a result of State Street's misconduct as it relates to the pricing of foreign currency ("FX") transactions. The Firm's representation includes the commencement of class litigation against State Street and certain of its subsidiaries and/or officers or directors for, among other potential viable claims, breaches of fiduciary and other duties (the "Litigation"). The following confirms our arrangement with respect to the Litigation.

Labaton Sucharow will prosecute this Litigation on a wholly contingent fee basis. In addition, any fee request will be based upon customary and ordinary fees for class actions and our lodestar and submitted to the Court for its approval. Labaton Sucharow will be entitled to receive only such fees as the Court determines to award, plus expenses, which will be advanced by the Firm. Expenses will include, among other things, expert witness fees, photocopying, computer research, long distance telephone charges, fax charges, court fees, travel expenses, and delivery charges. Labaton Sucharow will also advance any Arkansas Teacher's out-of-pocket costs relating directly to the Litigation, *e.g.*, travel costs.

Labaton Sucharow

Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting with the prosecution of the Litigation. Any division of fees among counsel will be Labaton Sucharow's sole responsibility and will not increase the fees payable by Arkansas Teacher or the Class upon a successful resolution of the Litigation.

Labaton Sucharow will keep Arkansas Teacher timely apprised of significant developments and, on a regular basis, will provide periodic written reports and will notify the System as to court appearances, depositions, and other significant proceedings in advance thereof. Labaton Sucharow will consult with Arkansas Teacher to discuss legal issues and strategies and will seek prior approval regarding significant decisions; specifically, decisions concerning settlement and fee proposals. Labaton Sucharow agrees to provide Arkansas Teacher with copies of all pleadings pertaining to the Litigation and will provide the System with significant pleadings in advance of submission to the court. Labaton Sucharow agrees to meet with the representatives of Arkansas Teacher to discuss this matter, from time to time as required.

Arkansas Teacher hereby provides Labaton Sucharow with authority to execute documents and agreements on its behalf relating directly to the Litigation. Arkansas Teacher also agrees to cooperate fully with the Firm in its handling of the Litigation. Arkansas Teacher will make its representatives available for consultation and legal proceedings, promptly supply information and documents requested in a truthful and complete fashion, refrain from negotiating and settling the matter without the participation of the Firm, and will notify Labaton Sucharow of any change of address and other administration changes relevant to the Firm's representation.

In the event that the Court does not certify the class and the Litigation is prosecuted individually, on behalf of Arkansas Teacher, Labaton Sucharow's fee will be negotiated in good faith based upon customary and ordinary fees for individual actions and our lodestar (the "Negotiated Fee"). Labaton Sucharow acknowledges that the Negotiated Fee will be subject to approval by the Arkansas Teacher's Board.

If the terms of this engagement letter meet with Arkansas Teacher's approval, please sign below where indicated on the enclosed copy. Please return one fully executed copy to us, and retain the second copy for the System's files.

We are grateful for the opportunity to represent Arkansas Teacher in this matter, and look forward to the prospect of a favorable resolution.

Labaton Sucharow

Very truly yours,

Eric J. Belfi

Eric J. Belfi

AGREED TO AND ACCEPTED

this ____ day of _____, 2011

_____

George Hopkins
Executive Director

EX. 35

Labaton Sucharow

Eric J. Belfi
Partner
212 907 0878 direct
212 883 7078 fax
ebelfi@labaton.com

February 8, 2011

VIA E-MAIL

Mr. George Hopkins
Arkansas Teacher Retirement System
1400 West Third Street
Little Rock, AR 72201

Re: State Street Corporation

Dear Mr. Hopkins:

We are pleased that the Arkansas Teacher Retirement System ("Arkansas Teacher" or the "System") has agreed to retain Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") in connection with the pursuit of claims against the System's custodian, State Street Corporation ("State Street"), as a result of State Street's misconduct as it relates to the pricing of foreign currency ("FX") transactions. The Firm's representation includes the commencement of class litigation against State Street and certain of its subsidiaries and/or officers or directors for, among other potential viable claims, breaches of fiduciary and other duties (the "Litigation"). The following confirms our arrangement with respect to the Litigation.

Labaton Sucharow will prosecute this Litigation on a wholly contingent fee basis. In addition, any fee request will be based upon customary and ordinary fees for class actions and our lodestar and submitted to the Court for its approval. Labaton Sucharow will be entitled to receive only such fees as the Court determines to award, plus expenses, which will be advanced by the Firm. Expenses will include, among other things, expert witness fees, photocopying, computer research, long distance telephone charges, fax charges, court fees, travel expenses, and delivery charges. Labaton Sucharow will also advance any Arkansas Teacher's out-of-pocket costs relating directly to the Litigation, *e.g.*, travel costs.

Labaton Sucharow

Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting with the prosecution of the Litigation. Any division of fees among counsel will be Labaton Sucharow's sole responsibility and will not increase the fees payable by Arkansas Teacher or the Class upon a successful resolution of the Litigation.

Labaton Sucharow will keep Arkansas Teacher timely apprised of significant developments and, on a regular basis, will provide periodic written reports and will notify the System as to court appearances, depositions, and other significant proceedings in advance thereof. Labaton Sucharow will consult with Arkansas Teacher to discuss legal issues and strategies and will seek prior approval regarding significant decisions; specifically, decisions concerning settlement and fee proposals. Labaton Sucharow agrees to provide Arkansas Teacher with copies of all pleadings pertaining to the Litigation and will provide the System with significant pleadings in advance of submission to the court. Labaton Sucharow agrees to meet with the representatives of Arkansas Teacher to discuss this matter, from time to time as required.

Arkansas Teacher hereby provides Labaton Sucharow with authority to execute documents and agreements on its behalf relating directly to the Litigation. Arkansas Teacher also agrees to cooperate fully with the Firm in its handling of the Litigation. Arkansas Teacher will make its representatives available for consultation and legal proceedings, promptly supply information and documents requested in a truthful and complete fashion, refrain from negotiating and settling the matter without the participation of the Firm, and will notify Labaton Sucharow of any change of address and other administration changes relevant to the Firm's representation.

In the event that the Court does not certify the class and the Litigation is prosecuted individually, on behalf of Arkansas Teacher, Labaton Sucharow's fee will be negotiated in good faith based upon customary and ordinary fees for individual actions and our lodestar (the "Negotiated Fee"). Labaton Sucharow acknowledges that the Negotiated Fee will be subject to approval by the Arkansas Teacher's Board.

If the terms of this engagement letter meet with Arkansas Teacher's approval, please sign below where indicated on the enclosed copy. Please return one fully executed copy to us, and retain the second copy for the System's files.

We are grateful for the opportunity to represent Arkansas Teacher in this matter, and look forward to the prospect of a favorable resolution.

Labaton Sucharow

Very truly yours,

Eric J. Belfi

Eric J. Belfi

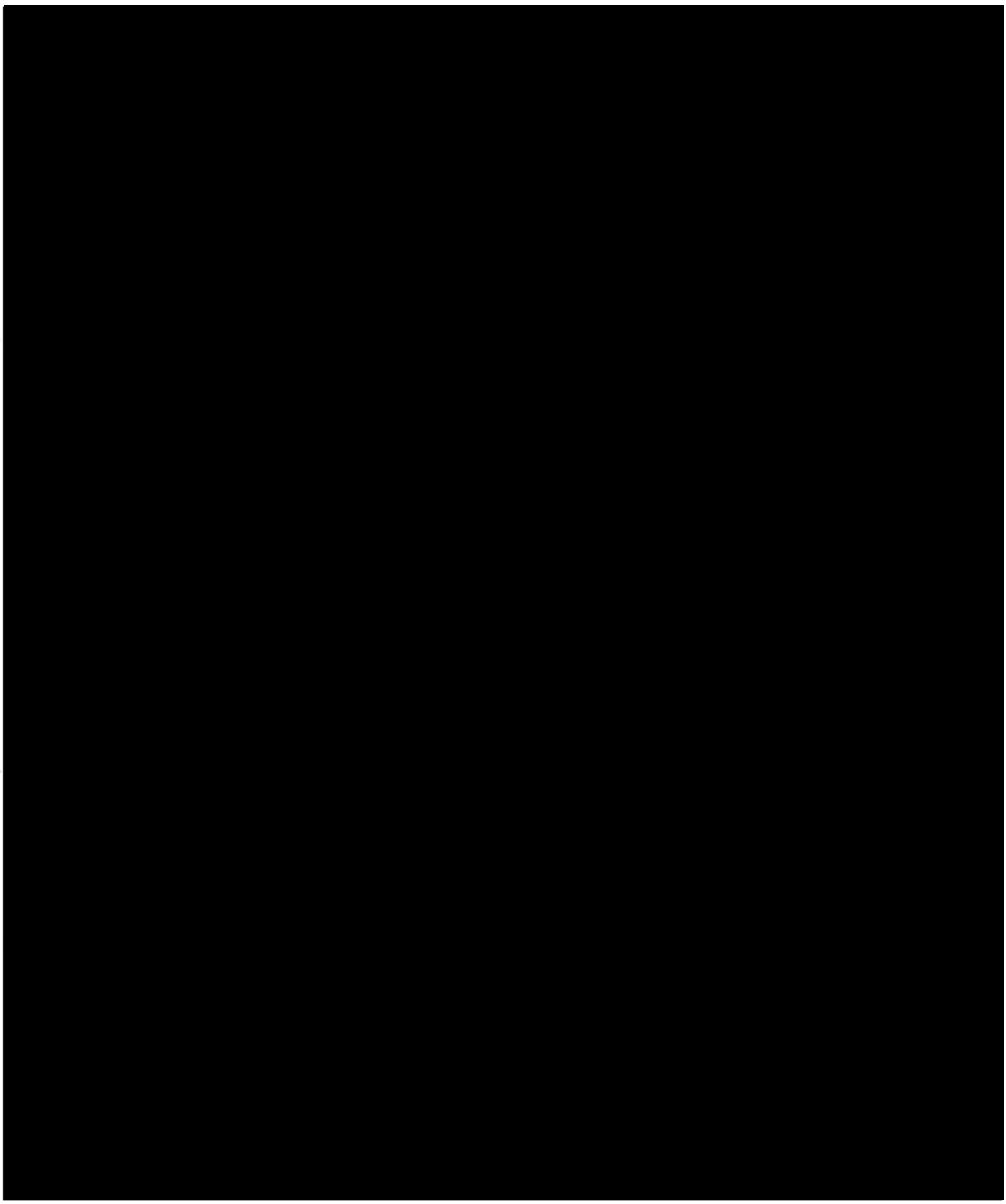
AGREED TO AND ACCEPTED

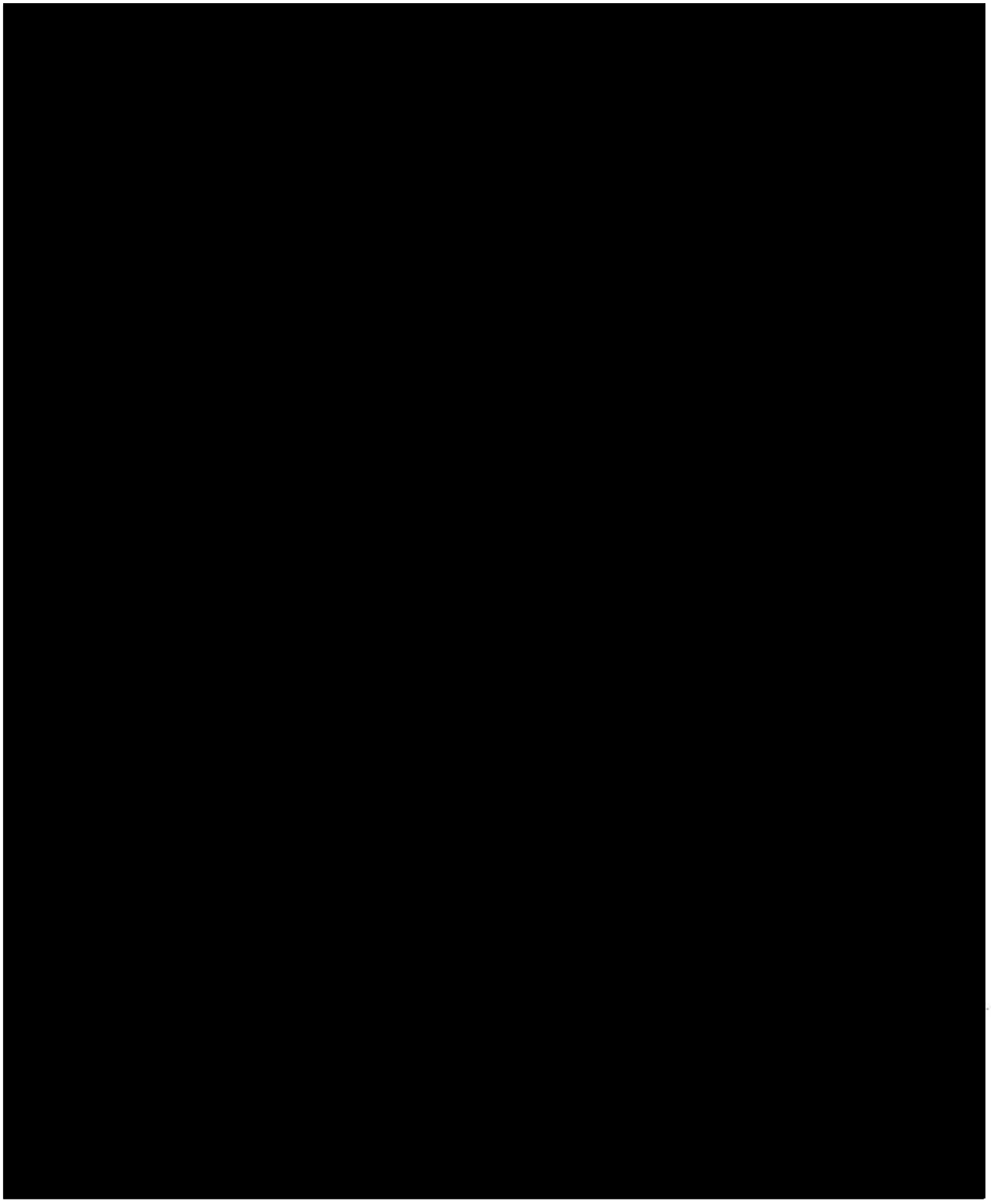
this ____ day of _____, 2011

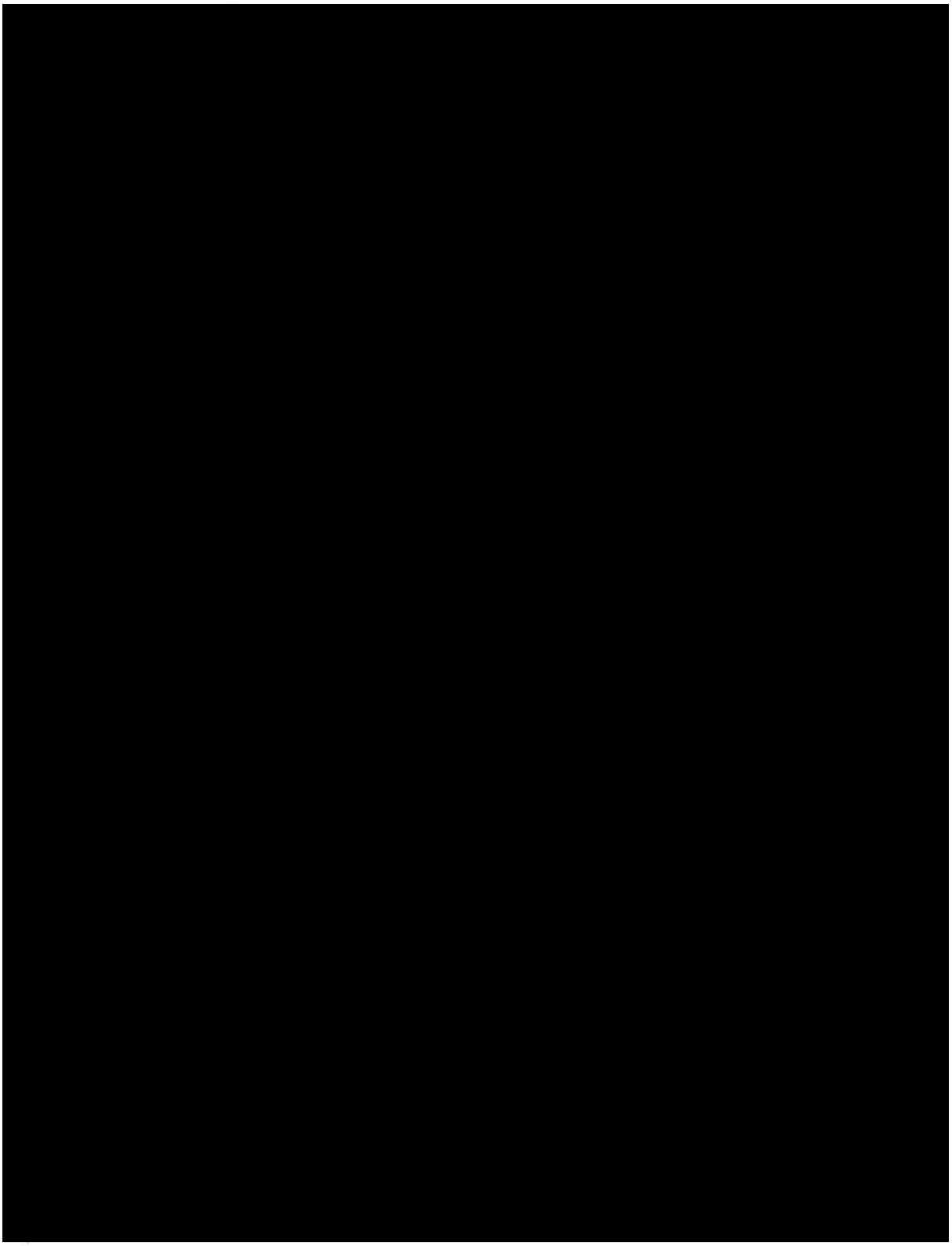
_____

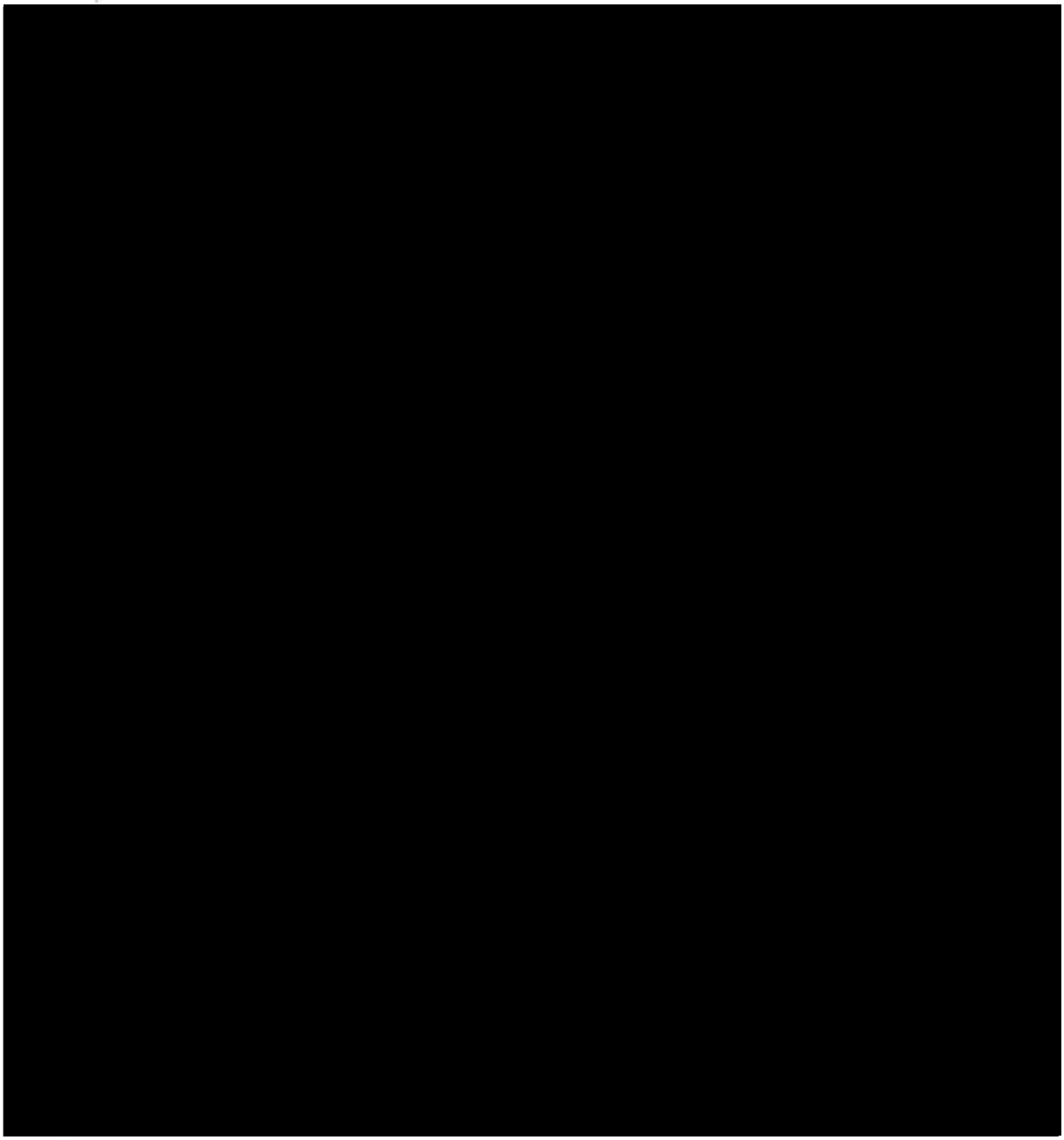
George Hopkins
Executive Director

EX. 36









EX. 37

Message

From: Damon Chargois [damon@cmhllp.com]
Sent: 4/25/2013 1:23:44 AM
To: Garrett J. Bradley [gbradley@tenlaw.com]
CC: Robert L. Lieff [RLIEFF@lchb.com]; Robert L. Lieff [rlieff@lieff.com]; Michael Thornton [MThornton@tenlaw.com]; Belfi, Eric J. [EBelfi@labaton.com]; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: Re: State street fee regarding local counsel

Thank you, Garrett. Agreed.

Sent from my iPhone

On Apr 24, 2013, at 8:08 PM, "Garrett Bradley" <GBradley@tenlaw.com> wrote:

> Bob,
>
> As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% guaranteed each with the balance to be decided upon at a later date. Obviously this may go up should Labaton receive an amount higher than 20%.
>
> We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), will be paid off the top with the balance of the overall fee 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
>
>
> _____
>
>
>
> This e-mail and any files transmitted with it are confidential and are
>
> intended solely for the use of the individual or entity to whom they are
> addressed. This communication may contain material protected by the
> attorney-client privilege. If you are not the intended recipient or the person
> responsible for delivering the e-mail to the intended recipient, be advised that
> you have received this e-mail in error and that any use, dissemination,
> forwarding, printing, or copying of this e-mail is strictly prohibited. If you
> have received this e-mail in error; please immediately notify us by telephone at
> (800) 431-4600. You will be reimbursed for reasonable costs incurred in
> notifying us.
>
>
>
> Please consider the environment before printing this email.

EX. 38

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/6/2013 11:50:34 AM
To: Robert L. Lieff [RLIEFF@lchb.com]; Garrett J. Bradley [gbradley@tenlaw.com]; =SMTP:rlieff@lieff.com; Michael Thornton [MThornton@tenlaw.com]
CC: =SMTP:damon@cmhllp.com; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: RE: State street fee regarding local counsel

We are in full agreement.

Eric

-----Original Message-----
From: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Wednesday, April 24, 2013 9:18 PM
To: Garrett J. Bradley; Robert L. Lieff; Michael Thornton; Belfi, Eric J.
Cc: Damon Chargois Esq.; Keller, Christopher J.; Daniel P. Chiplock
Subject: RE: State street fee regarding local counsel

I am in full agreement. Bob

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: Wednesday, April 24, 2013 6:07 PM
To: Lieff, Robert L.; Robert L. Lieff; Michael Thornton; Eric Belfi
Cc: Damon Chargois Esq.; Christopher J. Keller Esq.; Chiplock, Daniel P.
Subject: State street fee regarding local counsel

Bob,

As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% guaranteed each with the balance to be decided upon at a later date. Obviously this may go up should Labaton receive an amount higher than 20%.

We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), will be paid off the top with the balance of the overall fee 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. 39

From: Chiplock, Daniel P. <DCHIPLOCK@lchb.com>
Sent: Friday, August 28, 2015 3:02 PM
To: 'Sucharow, Lawrence'
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

If the Arkansas and ERISA fees didn't come off the top, I guess the split would look like this:
&
Labaton& - 20%
LCHB – 20%
Thornton – 20%
ERISA – 9%
Arkansas – 5%
Labaton/LCHB/Thornton – 26%
&
&
If the Arkansas and ERISA fees do come off the top, I guess the split looks like this:
&
ERISA – 9%
Arkansas – 5%
Labaton – 17.2%
LCHB – 17.2%
Thornton – 17.2%
Labaton/LCHB/Thornton – 34.4%
&
&
I'm not the math wizard, so please correct me if anyone comes up with different figures.
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 3:27 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
Just my own thinking on this but I think the deal with them would be that their percentage does come off the top (although what the top is is another question). I can't imagine how else it would be calculated since all the other fees are two customer counsel.

Sent from my iPhone

On Aug 28, 2015, at 2:11 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> Actually one wrinkle I'm not sure about is how ERISA and local Arkansas counsel fits in – I had thought that their payments would not come off the top and therefore would not result in a reduction of each customer firm's 20% - do you know what I mean?& You may be saying something different from that below, which may be why it'd be useful to iron it out.
> &

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:59 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
Dan sorry for that last email that I didn't spellcheck.&
Basically what I'm trying to say is I understand the basic agreement to be that after payment of all other counsel, our three firms shall each receive 20%, with the distribution of the balance of 40% to be determined later.
&
If that is the agreement you are referring to, I can confirm it. Let me know.&
Larry

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> Mike, Garrett – Hope you're well – please see below.& If we can figure this out early next week that may help speed the process.
>
> Thanks,
> &
> Dan
> &
>
> **From:** Chiplock, Daniel P.
> **Sent:** Friday, August 28, 2015 1:33 PM
> **To:** 'Sucharow, Lawrence'
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> The purpose of my email was just to get your reaction, Larry, since these are your drafts.& Thank you for responding quickly, and for giving me your reaction.& I would love to include them so we can move forward promptly.& I'll re-send.&
> &
>
> **From:** Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> **Sent:** Friday, August 28, 2015 1:28 PM
> **To:** Chiplock, Daniel P.
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** Re: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore he sensual to any memorialization of that understanding. & If you more willing to resend your email and include them,we can see if there is any disagreement as to what our understanding is/was.
> Larry
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 1:10 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:
>
> > Larry and Nicole:
> > &

Attached are my redlines to the preliminary approval order and final judgment.& These edits are consistent with the Court's January 2012 order concerning leadership structure.&
&
I'm emailing just you (and copying Bob) so as to try not to make a big thing over this, but I do think it's appropriate to memorialize what the fee allocation amongst customer class counsel is going to be (consistent with the understanding that the firms have been operating under for a couple years now) before we proceed much further.& & I think we'd be willing to support Lead Counsel having final authority over fee and expense allocations, etc., for purposes of the settlement stip, and thus present a united front against a perpetual troublemaker like McTigue—which should be in everyone's interest--provided we had some basic written comfort ourselves.& I don't think it's too early for that, given the interest in seeing the funds come in this year.
&
Thanks,
Dan
&

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Friday, August 28, 2015 9:53 AM
To: Chiplock, Daniel P.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Thank you!
&
&
&
&
&
&
&
&<image001.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image002.gif&>& &<image003.gif&>& &<image004.gif&>
&

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
OK, sounds good.& I will also get you whatever edits I have to the settlement docs by noon.
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 9:28 AM
To: Chiplock, Daniel P.

Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
I am speaking to Paine today at around 10 AM to both report to him and get his update.
I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.

Sent from my iPhone

On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> This looks OK to me, thanks.& I'm happy to send it (after you've done the other redline) to Paine, if you like.& Or someone else can, no matter.
> &
> ---
> **From:** Zeiss, Nicole [mailto:NZeiss@labaton.com]
> **Sent:** Thursday, August 27, 2015 3:27 PM
> **To:** Lynn Sarko; 'rlieff@lieff.com'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> **Cc:** Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> Dear all,
> &
> We've had some additional exchanges about the term sheet and, specifically, para 8(n).& I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal.& If you disagree, please let us know asap.
> &
> When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.
> &
> Thanks
> &
> &
> &
> &
> &
> &
> &
> &<image001.jpg&>
> **Nicole M. Zeiss | Partner**
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 |& F: (212) 883-7067
> E: nzeiss@labaton.com& |& W: www.labaton.com

&
&<image002.jpg&>& &<image003.jpg&>& &<image004.jpg&>
&

From: Zeiss, Nicole
Sent: Wednesday, August 26, 2015 5:09 PM
To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.
&
Thanks
&
&
&
&
&
&
&
&<image005.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& &<image007.jpg&>& &<image008.jpg&>
&

From: Sucharow, Lawrence
Sent: Wednesday, August 26, 2015 4:34 PM
To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Then we can probably forget my proposed changes.
&

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 4:26 PM
To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.

Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Sure.& & If it works for them – its fine with me
&
Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Lynn Sarko &<lsarko@KellerRohrback.com&>; Goldsmith, David &<dgoldsmith@labaton.com&>; 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
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'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
David
Thanks for sending this.& Sorry, I had misunderstood what you were saying on our call earlier today.
&
Two things:
&

1.& I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down.& & So—question—can we get rid of the word "fees" in this paragraph—does it still work?
&
What do you think??
&
Lynn
&
Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Wednesday, August 19, 2015 2:59 PM
To: 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; Lynn Sarko &<lsarko@KellerRohrback.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Sucharow, Lawrence &<LSucharow@labaton.com&>; Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: SST--Proposed Revision to Term Sheet for DOL Deal
&
All:& The below reflects our proposed revisions to the Term Sheet (in **red boldface**) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet).& Please comment.& Thanks.
&
&

8(n).& & & & & & & **Plan of Allocation**. & . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement

Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court.& **However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.**

&

12.& & & & & & & & **Plaintiffs' Counsel's Attorneys' Fees and Expenses.**& & & & & Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award.& Plaintiffs' Counsel ~~shall~~ **may** apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, **but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above.** & In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days.& The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees.& Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.

&

&

&

&

&

&
&<image005.jpg&>
David J. Goldsmith | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0879 | F: (212) 883-7079
E: dgoldsmith@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& & &<image006.jpg&>& & &<ima
ge006.jpg&>
&

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.

&

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 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 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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 40

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. 41

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

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.

EX. 42

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
&
 & & & &
&
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.
&

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.

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. 43

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

---

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.

>>
>>
>>
>>
>>
>>
>>
>>
>>
>> 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. 44

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 December 10, 2016, I caused the foregoing Letter to be filed through the ECF system in the above-captioned matter, and caused a true and correct copy to be served upon the following participants identified on the Notice of Electronic Filing:

/s/ David J. Goldsmith
David J. Goldsmith

EX. 45

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.

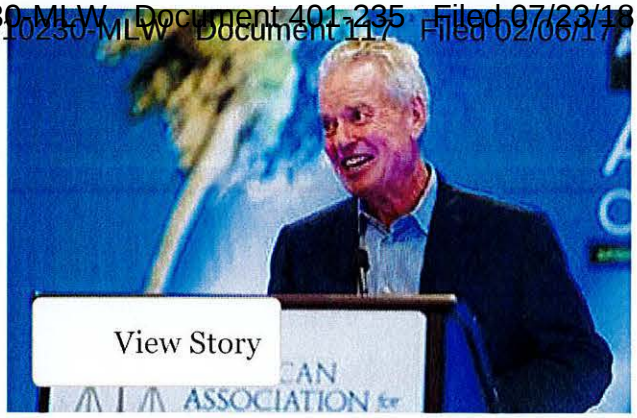
That's when the younger brother of Thornton managing partner Garrett Bradley emerged as a $500-an-hour "staff attorney" at the Boston firm.

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

Comments

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

Comments

$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.

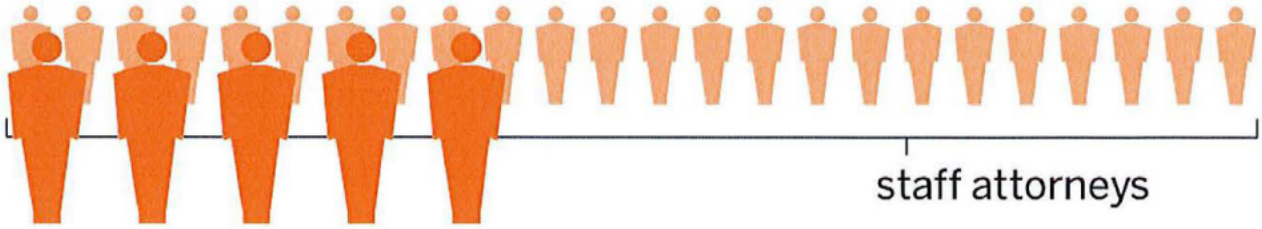
Case 1:11-cv-10230-MLW Document 137 Filed 02/06/17 Page 29 of 37
Comments

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 can rack up big legal bills

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

EX. 46

Labaton Sucharow
11/21/2016 6:45 PM

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. 47

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

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 December 10, 2016, I caused the foregoing Letter to be filed through the Electronic Case Filing system of the United States District Court for the Northern District of Illinois and therefore it has been served on all parties registered to participate in the Electronic Case Filing system.

/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.

Comments

“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 helped Thornton double legal bills

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

EXHIBIT C

T: 313-872-1100
F: 313-872-1101

Case Manager
Donna V nson
JAMS
400 Rena ssance Center
26th F oor
Detro t, MI 48243
313-872-1100 Phone
313-872-1101 Fax
Ema :
dv nson@jamsadr com

"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.) jo ns JAMS fo ow ng 26 years of d st ngu shed serv ce on the federa bench as a Un ted States D str ct Judge for the Eastern D str ct of M ch gan, nc ud ng seven years as that Court s Ch ef Judge.

Wh e on the bench, Judge Rosen had w de exper ence n fac tat ng sett ements between part es n a great many cases, nc ud ng h gh y comp ex Mu t -D str ct L t gat on (MDL) matters and c ass act ons. Most recent y, the Judge served as the Ch ef Jud c a Med ator for the Detro t Bankruptcy case—the argest, most comp ex mun c pa bankruptcy n our nat on s h story—wh ch resu ted n an agreed upon, consensua p an of adjustment n just 17 months.

Pr or to tak ng the bench, the Judge was a Sen or Partner at the aw f rm of M er, Canf e d, Paddock and Stone where he was a tr a awyer spec a z ng n commerc a , emp oyment and const tut ona t gat on.

*Read **counsel comments** about Judge Rosen's skills and style as a neutral.*

ADR Experience and Qualifications
Judge Rosen has extens ve exper ence n the reso ut on of comp ex d sputes n the fo ow ng areas:

- Ant trust
- Bankruptcy (Mun c pa)
- Bus ness/Commerc a
- C ass Act on/Mass Tort
- Emp oyment/FMLA
- C v R ghts/§1983
- Inte ectua Property
- Rea Property
- Secur t es
- Spec a Master/D scovery Referee

Representative Matters

- **Antitrust**
  - *Cason-Merenda v. Detroit Medical Center*, No. 06-15601 (Nurse wage case)
  - *In re Northwest Airlines Corp., et al*., Ant trust L t gat on, No. 96-74711 (H dden-c ty t cket ng case)
- **Arbitration**
  - *Quixtar Inc. v. Brady*, No. 08-14346, and *Amway Global v. Woodward*, No. 09-12946 (Address ng arb trab ty of d sputes and conf rmat on of arb trator's award)
- **Bankruptcy**
  - *In re: City of Detroit* (Chapter 9 mun c pa bankruptcy)
  - *United States v. City of Detroit* (Detro t water and sewer case) (Med ated sett ements)
- **Class Action/Mass Tort**
  - *Tankersley v. Ameritech Publishing, Inc.* (FLSA co ect ve act on and Ru e 23 c ass act on)
  - *Marquis v. Tecumseh Products Co*., No. 99-75971 (C ass act on a eg ng sexua harassment at manufactur ng p ant)
  - *In re Rio Hair Naturalizer Products*, MDL 1055 (Mu t -d str ct product ab ty act on)

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 and 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 and employment 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 Programs 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 T mes, November 7, 2014.
- Judge Rosen s Tough Tack on Cred tors He ped Speed Detro t Bankruptcy Case, Cra n s Detro t Bus ness, November 6, 2014.
- *Mediator in Detroit Bankruptcy Walks Fine Line Between City, Creditors*, The Wa Street Journa , February 14, 2014.
- *How Mediation Has Put Detroit Bankruptcy on the Road to Resolution*, Detro t Free Press, February, 2, 2014.
- *Detroit Emerges From Nation's Largest Municipal Bankruptcy*, Los Ange es T mes, November 10, 2014.

Background and Education

- Un ted States D str ct Judge, Eastern D str ct of M ch gan (Detro t), 1990-2017
  - Ch ef Judge, 2009-2015
  - Judge by Des gnat on, Un ted States Court of Appea s for the S xth C rcu t, Repeated Appo ntments
- Sen or Partner, M er, Canf e d, Paddock and Stone, spec a z ng n commerc a , emp oyment, rea property, and const tut ona t gat on, 1979-1990
- J.D., George Wash ngton Un vers ty Law Schoo , 1979
- Leg s at ve Ass stant, Un ted States Senate, Sen. Robert P. Gr ff n (R-MI), 1974-1979
- B.A., Sen or Fe ow, Po t ca Sc ence Ka amazoo Co ege, 1973

Disclaimer

Th s page s for genera nformat on purposes. JAMS makes no representat ons or warrant es regard ng ts accuracy or comp eteness. Interested persons shou d conduct the r own research regard ng nformat on on th s webs te before dec d ng to use JAMS, nc ud ng nvest gat on and research of JAMS neutra s. See More

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. 48

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. 49

[November 2017]

STEPHEN GILLERS

Elihu Root Professor of Law
(vice dean 1999-2004)
New York University
School of Law
40 Washington Square South
New York, NY 10012

(212) 998-6264 (tel)
(212) 995-4658 (fax)
stephen.gillers@nyu.edu

AREAS OF TEACHING Regulation of Lawyers and Professional Responsibility
Evidence; Law and Literature; Media Law

PRIOR COURSES Civil Procedure, Agency, Advocacy of Civil Claims, Federal Courts

PUBLICATIONS BOOKS AND ANTHOLOGIES:

Regulation of Lawyers: Problems of Law and Ethics (Aspen Law & Business, 11th ed., December 2017). The first edition of this popular casebook was published in 1985. Norman Dorsen was a co-author on the first two editions. Stephen Gillers is the sole author of the third through ninth editions. The first four editions were published by Little, Brown & Co., which then sold its law book publishing operation to Aspen.

Regulation of Lawyers: Statutes and Standards (with Roy Simon and Andrew Perlman) (Aspen Law & Business) This is a compilation with editorial comment. The first volume was published in 1989. Updated versions have been published annually thereafter. As of the 2009 edition, Andrew Perlman has joined as a co-editor.

"The Legal Industry of Tomorrow Arrived Yesterday: How Lawyers Must Respond," in The Relevant Lawyer (ABA 2015).

Regulation of the Legal Profession (Aspen 2009). This is 400+ page book in the Aspen "Essentials" series explains ethics rules and laws governing American lawyers and judges.

PUBLICATIONS (continued)

Investigating the FBI (co-Editor with P. Watters) (Doubleday, 1973; Ballantine, 1974)

None of Your Business: Government Secrecy in America (co-Editor with N. Dorsen) (Viking, 1974; Penguin, 1975).

Getting Justice: The Rights of People (Basic Books, 1971; revised paperback, New American Library, May 1973).

I'd Rather Do It Myself: How to Set Up Your Own Law Firm (Law Journal Press, 1977).

Looking At Law School: A Student Guide From the Society of American Law Teachers (editor and contributor) (Taplinger, 1977; NAL, 1977; revised ed., NAL, 1984; third ed., NAL, 1990).

The Rights of Lawyers and Clients (Avon, 1979).

"Four Policemen in London and Amsterdam," in R. Schrank (ed.) American Workers Abroad (MIT Press, 1979).

"Dispute Resolution in Prison: The California Experience," and "New Faces in the Neighborhood Mediating the Forest Hills Housing Dispute," both in R. Goldmann (ed.) Roundtable Justice: Case Studies in Conflict Resolution (Westview Press, 1980).

"The American Legal Profession," in A. Morrison (ed.), Fundamentals of American Law (Oxford University Press 1996).

The Elsinore Appeal: People v. Hamlet (St. Martin's Press 1996). This book contains the text of Hamlet together with briefs and oral argument for and against affirmance of Prince Hamlet's (imaginary) murder convictions. The book arose out of a symposium sponsored by the Association of the Bar of the City of New York.

“In the Pink Room,” in Legal Ethics: Law Stories (D. Rhode & D. Luban, eds.) (Foundation Press, 2006) (also published as a freestanding monograph).

PUBLICATIONS (continued)

ARTICLES:

Uniform Legal Ethics Rules? No – An Elusive Dream Not Worth the Chase, 22 The Professional Lawyer __ (2014)

The Two-Year Law Degree: Undesireable but Perhaps Unavoidable, 2013 N.Y.U. J. Legis. & Pub. Pol'y Quorum 4 (2013)

How To Make Rules for Lawyers: The Professional Responsibility of the Legal Profession, 40 Pepperdine L. Rev. 365 (2013) (Symposium issue on *The Lawyer of the Future*).

A Profession, If You Can Keep It: How Information Technology and Fading Borders Are Reshaping the Law Marketplace and What We Should Do About It, 63 Hastings L.J. 953 (2012)

Guns, Fruit, Drugs, and Documents: A Criminal Defense Lawyer's Responsibility for Real Evidence, 63 Stan. L. Rev. 813 (2011)

Is Law (Still) An Honorable Profession?, 19 Professional Lawyer 23 (2009)(based on a talk at Central Synagogue in Manhattan).

Professional Identity: 2011 Michael Franck Award Acceptance Speech, 21 Professional Lawyer 6 (2011).

Choosing and Working with Estate and Foundation Counsel to Secure an Artistic and Philanthropic Legacy, in The Artist as Philanthropist, volume 2, page 293 (The Aspen Institute Program on Philanthropy and Social Innovation 2010)

Virtual Clients: An Idea in Search of a Theory (with Limits), 42 Valparaiso L. Rev. 797 (2008) (Tabor lecture).

The "Charles Stimson" Rule and Three Other Proposals to Protect Lawyers From Lawyers, 36 Hofstra L. Rev. 323 (2007)

A Tendency to Deprave and Corrupt: The Transformation of American Obscenity Law from *Hicklin* to *Ulysses II*, 85 Washington U. L. Rev. 215 (2007)

Some Problem with Model Rule 5.6(a), Professional Lawyer (ABA 2007 Symposium Issue).

Monroe Freedman's Solution to the Criminal Defense Lawyer's Trilemma Is Wrong as a Matter of Policy and Constitutional Law, 34 Hofstra L. Rev. 821 (2006)

ARTICLES
(continued)

"In the Pink Room," TriQuarterly 124.

Free the Lawyers: A Proposal to Permit No-Sue Promises in Settlement Agreements, 18 Georgetown J. Legal Ethics 291 (2005) (with Richard W. Painter).

Lessons from the Multijurisdictional Practice Commission: The Art of Making Change, 44 Ariz. L. Rev. 685 (2002).

Speak No Evil: Settlement Agreements Conditioned On Noncooperation Are Illegal and Unethical, 31 Hofstra L. Rev. 1 (2002) (reprinted at 52 Defense L.J. 769 (2003)).

"If Elected, I Promise [_____]"–What Should Judicial Candidates Be Allowed to Say? 35 Ind. L. Rev. 735 (2002).

Legal Ethics: Art or Theory?, 58 Annual Survey Am. L. 49 (2001).

The Anxiety of Influence, 27 Fla. St. L. Rev. 123 (1999) (discussing rules that restrict multidisciplinary practice.

Can a Good Lawyer Be a Bad Person? 2 J. Inst. Study of Legal Ethics 131 (1999) (paper delivered at conference "Legal Ethics: Access to Justice" at Hofstra University School of Law, April 5-7, 1998).

More About Us: Another Take on the Abusive Use of Legal Ethics Rules, 11 Geo. J. Legal Ethics 843 (1998).

Caveat Client: How the Proposed Final Draft of the Restatement of the Law Governing Lawyers Fails to Protect Unsophisticated Consumers in Fee Agreements With Lawyers, 10 Geo. J. Legal Ethics 581 (1997).

Participant, Ethical Issues Arising From Congressional Limitations on Legal Services Lawyers, 25 Fordham Urban Law Journal 357 (1998) (panel discussion).

The Year: 2075, the Product: Law, 1 J. Inst. Study of Legal Ethics 285 (1996) (paper delivered on the future of the legal profession at Hofstra University Law School's conference "Legal Ethics: The Core Issues").

Getting Personal, 58 Law & Contemp. Probs. 61 (Summer/Autumn 1995) (contribution to symposium on teaching legal ethics).

ARTICLES
(continued)

Against the Wall, 43 J. Legal Ed. 405 (1993) (ethical considerations for the scholar as advocate).

Participant, Disqualification of Judges (The Sarokin Matter): Is It a Threat to Judicial Independence?, 58 Brooklyn L. Rev. 1063 (1993) (panel discussion).

The New Old Idea of Professionalism, 47 The Record of the Assoc Bar of the City of N.Y. 147 (March 1992).

The Case of Jane Loring-Kraft: Parent, Lawyer, 4 Geo. J. Legal Ethics 115 (1990).

Taking L.A. Law More Seriously, 98 Yale L.J. 1607 (1989) (contribution to symposium on popular legal culture).

Protecting Lawyers Who Just Say No, 5 Ga. St. L. Rev. 1 (1988) (article based on Henry J. Miller Distinguished Lecture delivered at Georgia State University College of Law).

Model Rule 1.13(c) Gives the Wrong Answer to the Question of Corporate Counsel Disclosure, 1 Geo. J. Legal Ethics 289 (1987).

The Compelling Case Against Robert H. Bork, 9 Cardozo L. Rev. 33 (1987).

Ethics That Bite: Lawyers' Liability to Third Parties, 13 Litigation 8 (Winter 1987).

Can a Good Lawyer Be a Bad Person?, 84 Mich. L. Rev. 1011 (1986).

Proving the Prejudice of Death-Qualified Juries After Adams v. Texas: An Essay Review of Life in the Balance, 47 Pitt. L. Rev. 219 (1985), cited in Lockhart v. McCree, 476 U.S. 162, 197, 201 (1986) (Marshall, J., dissenting).

What We Talked About When We Talked About Ethics: A Critical View of the Model Rules, 46 Ohio St. L.J. 243 (1985).

The Quality of Mercy: Constitutional Accuracy at the Selection Stage of Capital Sentencing, 18 U.C. Davis L. Rev. 1037 (1985).

Berger Redux, 92 Yale L.J. 731 (1983) (Review of Death Penalties by Raoul Berger).

ARTICLES
(continued)

Selective Incapacitation: Does It Offer More or Less?, 38 The Record of the Assoc. Bar City of N.Y. 379 (1983).

Great Expectations: Conceptions of Lawyers at the Angle of Entry, 33 J. Legal Ed. 662 (1983).

Perspectives on the Judicial Function in Criminal Justice (Monograph, Assoc. Bar City of N.Y., 1982).

Deciding Who Dies, 129 U. Pa. L. Rev. 1 (1980) (quoted and cited as "valuable" in Spaziano v. Florida, 468 U.S. 447, 487 n.33 (1984) (Stevens, J., dissenting); also cited in Zant v. Stephens, 462 U.S. 862, 878 n.17, 879 n.19 (1983); Lockhart v. McCree, 476 U.S. 162, 191 (1986) (Marshall, J., dissenting); Callins v. Collins, 114 S.Ct. 1127, 1134 n.4 (1994) (Blackmun, J., dissenting); and Harris v. Alabama, 115 S.Ct. 1031, 1038-39 (1995) (Stevens, J., dissenting).

Numerous articles in various publications, including The New York Times, The Nation, American Lawyer, The New York Law Journal, The National Law Journal, Newsday, and the ABA Journal. See below for selected bibliography.

AWARDS

2015 Recipient of the American Bar Foundation Outstanding Scholar Award for dedication to the regulation of and ethics in the legal profession.

2011 Recipient, Michael Franck Award. Michael Franck Award from the ABA's Center for Professional Responsibility. The Award is given annually for "significant contributions to the work of the organized bar….noteworthy scholarly contributions made in academic settings, [and] creative judicial or legislative initiatives undertaken to advance the professionalism of lawyers…are also given consideration."

DVDS

"Adventures in Legal Ethics and Further Adventures in Legal Ethics": videotape of thirteen dramatic vignettes professionally produced and directed and raising issues of legal ethics. Author, Producer. (1994)

"Dinner at Sharswood's Café," a videotape raising legal ethics issues. Author, Producer. (1996)

"Amanda Kumar's Case," a 38-minute story raising more than two dozen legal ethics issues. Author. (1998)

TRIBUTES

To Honorable Gus J. Solomon, printed at 749 Federal Supplement LXXXI and XCII (1991).

Truth, Justice, and White Paper, 27 Harv. Civ. R. Civ. Lib. L. Rev. 315 (1992) (to Norman Dorsen).

Irving Younger: Scenes from the Public Life, 73 Minn. L. Rev. 797 (1989).

OTHER TEACHING

Visiting Professor of Law, Harvard Law School, Winter 1988 Semester;

Adjunct Professor of Law, Yeshiva University, Cardozo Law School, Spring 1986, Spring 1987, and Fall 1988 Semesters.
Course: The Legal Profession.

Adjunct Associate Professor of Law, Brooklyn Law School, 1976-78.

PRIOR EMPLOYMENT

1973 - 1978
Private practice of law
Warner and Gillers, P.C. (1975-78)

1974 - 1978
Executive Director
Society of American Law Teachers, Inc.

1971 - 1973
Executive Director, Committee for
Public Justice

1969 - 1971
Associate, Paul, Weiss, Rifkind,
Wharton & Garrison

1968 - 1969
Judicial Clerk to Chief Judge
Gus J. Solomon, Federal District Court
for the District of Oregon, Portland, Oregon

SELECTED TESTIMONY

Testimony on "Nomination of Sandra Day O'Connor to the Supreme Court of the United States", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 1st Sess., Sept. 11, 1981.

Testimony on S. 2216, "Habeas Corpus Reform Act of 1982", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 2d Sess., April 1, 1982.

Testimony on H.R. 5679, "Criminal Code Revision Act of 1981", Hearings, before the House of Representatives, Committee on the Judiciary, 97th Congress, 2d Sess., April 22, 1982.

Testimony on S. 653, "Habeas Corpus Procedures Amendment Act of 1981", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 1st Sess., November 13, 1981.

Testimony on S. 8875 and A. 11279, "A Proposed Code of Evidence for the State of New York", before Senate and Assembly Codes and Judiciary Committees, February 25, 1983.

Testimony before A.B.A. Commission on Women in the Profession, Philadelphia, February 6, 1988.

Testimony on the nomination of William Lucas to be Assistant Attorney General for Civil Rights, before the Senate Committee on the Judiciary, 101st Congress, 1st Sess., July 20, 1989.

Testimony on the nomination of Vaughn Walker to be United States District Judge for the Northern District of California, before the Senate Committee on the Judiciary, 101st Congress, 1st Sess., November 9, 1989.

PUBLIC LECTURES (partial list)

Tabor Lecture, Valparaiso University School of Law, April 12, 2007. This event consisted of two lectures. A public lecture was entitled "Here's the Gun: A Lawyer's Responsibility for Real Evidence." The Bench and Bar lecture, which will be published in the school's law review, is entitled "Virtual Clients: An Idea in Search of a Theory (With Limits)."

Paul M. Van Arsdell, Jr., Memorial Lecture, University of Illinois, College of Law, March 7, 2005: "Do Lawyers Share Moral Responsibility for Torture at Guantanamo and Abu Ghraib?"

Howard Lichtenstein Distinguished Professorship of Legal Ethics Lecture Series, "In Praise of Confidentiality (and Its Exceptions)," delivered at Hofstra University School of Law, November 12, 2003.

Henry J. Miller Distinguished Lecture, Georgia State University College of Law, May 11, 1988. "Protecting Lawyers Who Just Say No."

First Annual South Carolina Bar Foundation Lecture, April 9, 1992, University of South Carolina Law School, Columbia, South Carolina. "Is the Legal Profession Dead? Yearning to Be Special in an Ordinary Age."

Philip B. Blank Memorial Forum on Attorney Ethics, Pace University School of Law, April 8, 1992. "The Owl and the Fox: The Transformation of Legal Work in a Commodity Culture."

Speaker on Judicial Ethics, ABA Appellate Judges' Seminar and Flaschner Judicial Institute, September 29, 1993, Boston, Massachusetts.

Baker-McKenzie Ethics Lecture, Loyola University Chicago School of Law, October 13, 1993, Chicago, Illinois ("Bias Issues in Legal Ethics: Two Unfinished Dramas").

The Sibley Lecture, University of Georgia School of Law, Athens, Georgia, November 10, 1993 ("Telling Stories in School: The Pedagogy of Legal Ethics").

Participant, "Ethics in America" series (to be) broadcast on PBS 2007, produced by Columbia University Seminars on Media and Society.

Participant, "Ethics in America" series, broadcast on PBS February and March 1989, produced by Columbia University Seminars on Media and Society.

Participant, "The Constitution: That Delicate Balance, Part II" series, broadcast on PBS February and March 1992, produced by Columbia University Seminars on Media and Society.

Lecturer on legal ethics and allied subjects in the U.S. and abroad at hundreds of seminars, CLE events, and conferences organized by private law firms, corporate law departments, the District of Columbia, Second, Fourth, Sixth, Ninth and Federal Circuit Judicial Conferences; American Bar Association; Federal Bar Council; New York State Judiciary; New York City Corporation Counsel; American Museum of Natural History; Practicing Law Institute; Law Journal Seminars; state, local and specialty bar associations (including in Oregon, Nebraska, Illinois, New York, New Jersey, Pennsylvania, Rhode Island, Vermont, and Georgia); corporate law departments; law schools; and law firms.

LEGAL AND PUBLIC SERVICE ACTIVITIES

Member, ABA 20/20 Commission, 2009- 2013 (appointed by the ABA President to study the future of lawyer regulation).

Chair, American Bar Association Center for Professional Responsibility, Policy Implementation Committee, 2004-2008 (Member 2002-2010).

Member, American Bar Association Commission on Multijurisdictional Practice, 2000-2002.

Consultant, Task Force on Lawyer Advertising of the New York State Bar Association (2005).

Retained by the New Jersey Supreme Court, in connection with the Court's review of the lawyer disciplinary system in New Jersey, to provide an "analysis of the strengths and weaknesses of California's 'centralized' disciplinary system" and to "report on the quality, efficiency, timeliness, and cost effectiveness of the California system...both on its own and compared with the system recommended for New Jersey by the Ethics Commission." Report filed December 1993. Oral presentation to the Court, March 1994.

Reporter, Appellate Judges Conference, Commission on Judicial participation in the American Bar Association, (October 1990-August 1991).

Member, David Dinkins Mayoral Transition Search Committee (Legal and Law Enforcement, 1989).

Member, Committee on the Profession, Association of the Bar of the City of New York (1989-1992)

Member, Executive Committee of Professional Responsibility Section, Association of American Law Schools (1985-1991).

Chair, 1989-90 (organized and moderated Section presentation at 1990 AALS Convention on proposals to change the ABA Code of Judicial Conduct).

Counsel, New York State Blue Ribbon Commission to Review Legislative Practices in Relation to Political Campaign Activities of Legislative Employees (1987-88).

Administrator, Independent Democratic Judicial Screening Panel, New York State Supreme Court (1981).

Member, Departmental Disciplinary Committee, First Judicial Department (1980 - 1983).

Member, Committee on Professional and Judicial Ethics, Association of the Bar of the City of New York (1979 - 1982).

BAR MEMBERSHIPS STATE:

New York (1968)

FEDERAL:

United States Supreme Court (1972);
Second Circuit (1970);
Southern District of New York (1970);
Eastern District of New York (1970)

LEGAL EDUCATION J.D. cum laude, NYU Law School, 1968
Order of the Coif (1968)
Dean's List (1966-68)
University Honors Scholar (1967-68)

PRELEGAL EDUCATION B.A. June 1964, City University of New York (Brooklyn College)

DATE OF BIRTH November 3, 1943

OTHER ARTICLES (Selected Bibliography 1978-present)

1. Carter and the Lawyers, The Nation, July 22-29, 1978.

2. Standing Before the Bar, Bearing Gifts, New York Times, July 30, 1978.

3. Judgeships on the Merits, The Nation, September 22, 1979.

4. Entrapment, Where Is Thy Sting?, The Nation, February 23, 1980.

5. Advice and Consent, New York Times, September 12, 1981.

6. Lawyers' Silence: Wrong . . . , New York Times, February 14, 1983.

7. The Warren Court - It Still Lives, The Nation, September 17, 1983.

8. Burger's Warren Court, New York Times, September 25, 1983.

9. "I Will Never Forget His Face!", New York Times, April 21, 1984.

10. Warren Court's Landmarks Still Stand, Newsday, July 29, 1984.

11. Von Bulow, And Other Soap Operas, New York Times, May 5, 1985.

12. Statewide Study of Sanctions Needed for Lawyers' Misconduct, New York Law Journal, June 6, 1985.

13. Preventing Unethical Behavior - Something New in Model Rules, New York Law Journal, August 30, 1985.

14. Proposed Model Rules Superior to State's Code, New York Law Journal, October 21, 1985.

15. Five Ways Proposed to Improve Lawyer Discipline in New York, New York Law Journal, January 8, 1986.

16. Poor Man, Poor Lawyer, New York Times, February 28, 1986.

17. Proposals To Repair Cracks in Ethical Legal Behavior, New York Law Journal, April 17, 1986.

18. Unethical Conduct: How to Deter It Through Education, Bar Leader (May/June 1986).

19. The New Negotiation Ethics - Or Did Herb's Lawyer Do Wrong? New York Law Journal, June 2, 1986.

20. The Real Stakes in Tort Reform, The Nation, July 19-26, 1986.

21. Bernhardt Goetz: Vigilante Or Victim?, Toronto Star, September 10, 1986.

22. The Message That the Goetz Trial Will Send, Newsday, August 31, 1986.

23. Amending the Ethics Code - Solicitation, Pre-Paid Plans, Fees, New York Law Journal, November 10, 1986.

24. Amending the Ethics Code - Conflicts of Interest, Screening, New York Law Journal, November 12, 1986.

25. Amending the Ethics Code - Confidentiality and Other Matters, New York Law Journal,

November 13, 1986.

26. No-Risk Arbs Meet Risk Justice, New York Times, November 23, 1986.

27. The Meese Lie, The Nation, February 21, 1987.

28. Amending State Ethics Code - Conflicts of Interest Gone Awry, New York Law Journal, May 18, 1987.

29. "The Lawyers Said It Was Legal," New York Times, June 1, 1987.

30. Feminists vs. Civil Libertarians, New York Times, November 8, 1987.

31. Lessons for the Next Round in Picking a Justice, Newsday, November 11, 1987.

32. We've Winked For Too Long, National Law Journal, December 21, 1987 (judicial membership in exclusionary clubs).

33. No More Meeses, New York Times, May 1, 1988.

34. In Search of Roy Cohn, ABA Journal, June 1, 1988 (book review).

35. Do Brawley Lawyers Risk Serious Discipline?, New York Law Journal, June 22, 1988.

36. Have the Brawley Lawyers Broken the Law?, New York Times, July 2, 1988.

37. Report Demonstrates Why Meese is Unfit to Be Attorney General, Atlanta Journal and Constitution, July 24, 1988.

38. Ethical Questions for Prosecutors in Corporate-Crime Investigations, New York Law Journal, September 6, 1988.

39. Restoring Faith at Justice, National Law Journal, November 21, 1988.

40. Is Bush Repeating Rockefeller's Folly?, New York Times, September 11, 1989.

41. Standards Time, The Nation, January 29, 1990 (on the subject of legislative ethics).

42. Abused Children vs. The Bill of Rights, New York Times, August 3, 1990.

43. Words Into Deeds: Counselor, Can You Spare a Buck?, ABA Journal, November 1990.

44. Bad Apples, ABA Journal at 96 (March 1991) (book review).

45. The Gotti Lawyers and the Sixth Amendment, New York Law Journal, August 12, 1991.

46. Justice or Just Us? The Door to Dan Quayle's Courthouse Only Swings One Way, ABA

Journal (June 1992) at 109.

47. Fighting Words (What was once comical is now costly), ABA Journal (August 1992) at 102.

48. Sensitivity Training: A New Way to Sharpen Your Skills At Spotting Ethics Conflicts, ABA Journal (October 1992) at 107.

49. Under Color of Law: Second Circuit Expands Section 1983 Liability for Government Lawyers, ABA Journal (December 1992) at 121.

50. Cleaning Up the S&L Mess: Courts Are Taking the Duty to Investigate Seriously, ABA Journal (February 1993) at 93.

51. All Non-Refundable Fee Agreements Are Not Created Equal, New York Law Journal (February 3, 1993) at 1. (Analyzing appellate decision prohibiting non-refundable fees.)

52. The Packwood Case: The Senate Is Also on Trial, The Nation (March 29, 1993) at 404.

53. Conflict of Laws: Real-World Rules for Interstate Regulation of Practice, ABA Journal (April 1993) at 111.

54. Packwood II, The Nation (May 10, 1993) at 617.

55. Generation Gap, ABA Journal (June 1993) at 101. (On the use of a boycott in response to the Colorado anti-gay initiative.)

56. Future Shocks, ABA Journal (August 1993) at 104. (Looking back on the practice of law in the 21st century from the year 2103.)

57. A Rule Without a Reason, ABA Journal (October 1993) at 118. (Criticism of the prohibition in Rule 5.6(b) against a lawyer agreeing not to restrict future practice in connection with a settlement.)

58. Too Old to Judge?, ABA Journal (December 1993) at 94. (Supreme Court justices have life tenure. Maybe they should not.)

59. Truth or Consequences, ABA Journal (February 1994) at 103. (Discovery obligations.)

60. "Ethical Cannons," in Symposium - Twenty Years of Change, Litigation (Fall 1993).

61. Stretched Beyond the Limit, Legal Times (March 21, 1994) at 37. (Analysis of the office of Counsel to the President in light of Bernard Nussbaum's resignation.) [Same article was reprinted in the Connecticut Law Tribune, the Fulton County (Atlanta) Daily Report, and the Recorder (San Francisco).]

62. Putting Clients First, ABA Journal (April 1994) at 111. (Discussing cases on lawyers' fiduciary duty.)

63. Grisham's Law, The Nation (April 18, 1994) at 509. (The effect of popular culture on Whitewater reporting.)

64. The Elsinore Appeal: "People v. Hamlet", New York Law Journal (October 11, 1994) at 3. (Brief for Appellee, State of Denmark). (This was a mock appeal from Hamlet's conviction for the murder of Claudius, Polonius, Ophelia, Laertes, Rosencrantz & Gildenstern, held at the Association of the Bar of the City of New York on October 11, 1994.)

65. Billing for Costs and Disbursements: What Law Firms Can Charge and Clients Can Expect, monograph published 1995 by Pitney Bowes Management Services.

66. Clinton Has A Right To Privacy, N.Y. Times, 12/21/95, at ____.

67. "'Filegate' Was Bad Enough. Now This?," N.Y. Times, 7/5/96, at A23. (Article criticizing proposal to privatize certain security investigations of government personnel.)

68. "Whitewater: How to Build a Case Using a Tainted Witness," Los Angeles Times, 2/16/97, at M1.

69. "Hillary Clinton Loses Her Rights," New York Times, 5/4/97, at E15.

70. "Shakespeare on Trials," IV Federal Bar Council News 16 (June 1997).

71. "Florida Backs Out On a Deal," New York Times, 10/10/97, at A23.

72. "The Perjury Loophole," New York Times, 2/18/98, at A21 (discussion of perjury in connection with Kenneth Starr's investigation of President Clinton).

73. "Any Method to Ginsburg's Madness?" Los Angeles Times, 3/15/98, at M1 (discussion of William Ginsburg's public defense of Monica Lewinsky).

74. "Whitewater Made Easy," The Nation, 6/1/98, at 8.

75. "A Highly Strategic Legal Chess Game," Los Angeles Times, June 7, 1998, at M1 (Starr-Clinton legal maneuvers).

76. "To Sleep . . . Perchance, to Dream," New York Law Journal, July 8, 1998, at 2. (Humorous article about bored jurors.)

77. "Clinton Is No Ordinary Witness," New York Times, 7/28/98, at A15.

78. "The High Cost of an Ethical Bar," The American Lawyer, July/August 1998, at 87.

79. "Clinton's Choice: Tell Truth or Dare to Gamble," Los Angeles Times, August 2, 1998, at M1.

80. "Accurate Lies: The Legal World of Oxymorons," Los Angeles Times, August 30, 1998, at M1.

81. "A Fool For a Client?" The American Lawyer, October 1998, at 74. (President Clinton's legal representation in the Lewinsky representation.)

82. "The Presidency: Out to End Clinton's Mess and Be Happy," Los Angeles Times, October 4, 1998, at M1.

83. "Protecting Their Own," The American Lawyer, November 1998, at 118.

84. "Can't We All Just Practice Together: Taking Down 'Trade Barriers' on Lawyers Here and Abroad," Legal Times, November 9, 1998, at 32.

85. "Beyond the Impeachment Spectacle," Los Angeles Times, November 22, 1998, at M1.

86. "The Perjury Precedent," New York Times, December 28, 1998, at A27.

87. "From the Same Set of Facts: A Tale of Two Stories," Los Angeles Times, January 17, 1999, at M1 (about the Clinton impeachment trial).

88. "The Decline and Fall of Kenneth Starr," Los Angeles Times, February 7, 1999, at M1.

89. "The Truth About Impeachment," The American Lawyer, March 1999, p. 131.

90. "The Double Standard," New York Times Book Review, March 21, 1999, at 13 (review of *No Equal Justice* by David Cole).

91. "Four Officers, One Likely Strategy," New York Times, Saturday, April 3, 1999, at A15.

92. "The Man in the Middle: Did George Ventura Step Over the Ethical Line?" The American Lawyer, May 1999, p. 80 (discussion of lawyer whistleblowing in light of *State v. George Ventura*). (Reprinted as "Whistleblower, Esq." in New York Law Journal, May 26, 1999 at page 2.)

93. "Your Client Is A Corporation – Are Its Affiliates Clients Too?" The New York Professional Responsibility Report, May 1999 , at 1.

94. "Job Talk (Scenes from the Academic Life)," The American Lawyer, July 1999, at 161. (Satire about law school hiring.)

95. "The Other Y2K Crisis," The Nation, July 26/August 2, 1999, at 4 (editorial about the year 2000 electoral races).

96. "Walking the Confidentiality Tightrope," ACCA Docket 20 (September/October 1999) (remarks at ACCA's national conference in 1998).

97. "Things Old & New – The Code Amendments," New York Professional Responsibility Report (September 1999), at 1.

98. "Clinton's Chance to Play the King," New York Times, Sept. 20, 1999 at A17.

99. "Overprivileged," American Lawyer, October 1999 at 37. (Discussion of First Amendment protection for journalists.)

100. "Controlling Conflicts Between Old and New Clients," New York Professional Responsibility Report, January 2000 at 3.

101. "How To Spank Bad Lawyers," American Lawyer, February 2000 at 41.

102. "A Weak Case, But a Brave Prosecution," New York Times, Wednesday, March 1, 2000 at A23 (the Diallo case).

103. "Conflicts of Interest in Malpractice Cases," New York Professional Responsibility Report, March 2000 at 1.

104. "The Court's Picayune Power," New York Times, Thursday, April 20, 2000 at A29.

105. "Some Misrepresentations Among Corporate Lawyers," New York Professional Responsibility Report, June 2000 at 1.

106. "Was Hubbell Case About Getting Justice or Getting Even?" Los Angeles Times, June 18, 2000 at M2 (comment on the U.S. Supreme Court's decision in *United States v. Hubbell*, decided June 5, 2000).

107. "Who Owns the Privilege After a Merger?" New York Professional Responsibility Report, July 2000 at 1.

108. "Fighting the Future," The American Lawyer, July 2000 at 55.

109. "Campus Visits Deconstructed," Newsweek: How To Get Into College, 2001 Edition at 46.

110. "The Court Should Boldly Take Charge," New York Times, Tuesday, November 21, 2000 at A25 (Florida's presidential election recount).

111. "Who Says the Election Has a Dec. 12 Deadline?" New York Times, Saturday, December 2, 2000 at A19.

112. "Motive Is Everything in the Marc Rich Pardon," New York Times, Saturday, February 17, 2001.

113. "For Justice To Be Blind, Must Judges Be Mute?" New York Times, Sunday, March 4, 2001 at Section 4, page 3.

114. "Should Supreme Court Justices Have Life Tenure?" Reprinted in *The Supreme Court and Its Justices* (Choper J., ed.) (ABA 2001).

115. Professionalism Symposium, 52 South Carolina L. Rev. 55 (2001) (closing remarks).

116. "No Lawyers To Call," New York Times, Monday, December 3, 2001 at A19 (ethical and constitutional obligations that will prevent lawyers from participating in military tribunals).

117. "Let Judicial Candidates Speak," New York Times, Thursday, March 28, 2002 at A31.

118. "The Flaw in the Andersen Verdict," New York Times, Tuesday, June 18, 2002 at A23.

119. "Why Judges Should Make Court Documents Public," New York Times, Saturday, November 30, 2002 at A17.

120. "It's an MJP World," ABA Journal, December 2002 at 51.

121. "Upholding the Law as Pretrial Publicity Goes Global," New York Times, Sunday, April 27, 2003, Sec. 4 at 14.

122. "Court-Sanctioned Secrets Can Kill," Los Angeles Times, Wednesday, May 14, 2003 (reprinted May 15, 2003 in Newsday).

123. "Make a List," New York Times, June 11, 2003 at 31 (advocating changes in the methods of judicial selection).

124. "Conflicted About Martha?" American Lawyer (September 2003) (analysis of Martha Stewart indictment).

125. "The Prudent Jurist," Legal Affairs, January/February 2004.

126. "On Knowing the Basic Rules of Advocacy," New York Times, February 8, 2004, Sec. 4 at 2 (cross-examination in the Martha Stewart trial).

127. "The Prudent Jurist," Legal Affairs, March/April 2004.

128. "Scalia's Flawed Judgment," The Nation, April 19, 2004 at 21.

129. "Scholars, Hucksters, Copycats, Frauds," Washington Post, April 25, 2004 at B3 (Outlook) (discussion of ethics of academics who put their names on newspaper opinion pieces written by industry).

130. "The Prudent Jurist," Legal Affairs, May/June 2004 at 17.

131. "Multijurisdictional Practice of Law: Merging Theory With Practice," 73 The Bar Examiner 28 (May 2004).

132. "Tortured Reasoning," American Lawyer (July 2004) (analysis of government lawyer memos addressing the application of various treaties and laws to the treatment of Afghan prisoners).

133. "Paying the Price of a Good Defense," New York Times, August 13, 2004.

134. "Improper Advances: Talking Dream Jobs with the Judge Out of Court," Slate.com, August17, 2005 (with D. Luban and S. Lubet).

135. "Roberts' Bad Decision," Los Angeles Times, September. 13, 2005 (with D. Luban and S. Lubet).

136. "No Privilege for Miers," The Nation, November 7, 2005

137. "Senators, Don't Rubber-Stamp," USA Today, January 5, 2006 at 13A (discussing the Senate's advise and consent responsibility in connection with Alito nomination).

138. Ethics Column, American Lawyer, page 61 (January 2006) (with Deborah Rhode).

139. Ethics Column, American Lawyer, page 63 (April 2006) (with Deborah Rhode).

140. "Bush Postpones 2008 Election," The Nation, August 14/21, 2006 (satire).

141. "Free the Ulysses Two: Joyce's First U.S. Publishers Were Convicted of Obscenity. It's Time to Clear Them." The Nation, February 19, 2007.

142. "Twenty Years of Legal Ethics: Past, Present, and Future," 20 Georgetown J. Legal Ethics 321 (2007) (symposium celebrating the 20th anniversary of the journal).

143. "The Torture Memos," The Nation, April 28, 2008.

144. "Bar None," American Lawyer (October 2008) (globalization of law practice and how it will effect regulation of the bar).

145. 2011 Michael Franck Award Acceptance Speech, 21 Professional Lawyer 6 (2011).

146. "Time to Adapt to a Different Marketplace," New York Law Journal, March 27, 2012.

147. "The Supreme Court Needs a Code of Ethics," Politico (Aug. 8, 2013) (with Charles Geyh).

EX. 50

Message

From: Zeiss, Nicole [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ZEISSN]
Sent: 12/7/2016 5:01:27 PM
To: Ng, Cindy [CNg@labaton.com]
CC: Goldsmith, David [dgoldsmith@labaton.com]
Subject: final work on letter to Citibank

Damon's allocation should come out of our IOLA. It is fine for that to happen on Friday.

Thanks

From: Zeiss, Nicole
Sent: Wednesday, December 07, 2016 11:30 AM
To: Ng, Cindy
Cc: Goldsmith, David
Subject: Chargois wire instructions are below

Below are his wire instructions, looks like they match the W-9 and undertaking. Sorry to be all over the place but I have to ask Larry something about whether Damon should be paid out of the Citibank escrow account

From: Belfi, Eric J.
Sent: Wednesday, December 07, 2016 8:58 AM
To: Zeiss, Nicole
Subject: Re: Damon

Please use this:

Wells Fargo Bank NA

121000248

Damon J. Chargois

ss#[redacted]

Routing [redacted]

Acct. [redacted]

Wells Fargo

420 Montgomery Street

San Francisco, CA 94104

He needs a new undertaking for Damon Chargois, Esq.

Eric Belfi

Partner

Labaton Sucharow LLP

140 Broadway

New York, N.Y. 10005

o: 1.212.907.0878

c: 1.516.509.5236

On Dec 7, 2016, at 5:01 AM, Zeiss, Nicole <NZeiss@labaton.com> wrote:

Hi again, we have to pull the trigger on this this am so Cindy can finalize the bank letter. Thanks

Sent from my BlackBerry 10 smartphone.

From: Zeiss, Nicole

Sent: Tuesday, December 6, 2016 11:18 AM

To: Belfi, Eric J.

Subject: Damon

I spoke with David. Do you think we will have time to process his allocation once he wants it, or will it be a rush? If it will be a rush, then I want to tell accounting to bring the money into our IOLA. Otherwise, it can stay in the settlement fund, but it will take some hoops to get it out (Keller AND Larry signature).

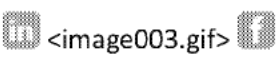
Labaton Sucharow

Nicole M. Zeiss | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0867 | F: (212) 883-7067

E: nzeiss@labaton.com | W: www.labaton.com



EX. 51

From: Bradley, Garrett J.
Sent: Friday, August 28, 2015 5:53 PM
To: Keller, Christopher J.
Cc: Sucharow, Lawrence
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I agree. They will threaten their own fee app which I say would invalidate the agreement we have.

Garrett

On Aug 28, 2015, at 4:42 PM, Keller, Christopher J. <ckeller@labaton.com> wrote:

> We should talk this through. The court absolutely need not understand what the allocation of fees is amongst counsel so that should not be included in any document to be filed with the court. I have to say, I am quite overwhelmed with the size genitals lief has in this case in which they have a no client or title. That said, an agreement on allocation will not happen until the fees are actually in and need to be distributed.
>
> Christopher Keller
> Partner || Labaton Sucharow LLP
> 140 Broadway
> New York, NY 10005
> 212-907-0853
>
> On Aug 28, 2015, at 2:49 PM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>
> > See entire email stream
> >
> > Sent from my iPhone
> >
> > Begin forwarded message:
> >
> > **From:** "Sucharow, Lawrence" <LSucharow@labaton.com>
> > **Date:** August 28, 2015 at 2:39:27 PM EDT
> > **To:** "Daniel P. Chiplock" <DCHIPLOCK@lchb.com>
> > **Cc:** "Garrett J. Bradley" <gbradley@tenlaw.com>, Michael Thornton <MThornton@tenlaw.com>, "Robert L. Lieff" <RLIEFF@lchb.com>
> > **Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal**
> >
> > Also, I believe that there are other cases and other agreements which are influencing people's desire to either reach agreement now or later.
> >
> > I don't have a dog in the hunt and don't want to be drawn into it.
> >
> > I apologize for any mistakes but I am not in a place where I can edit my emails so I'm just dictating them I'm hoping that spell correct doesn't fuck me up too much.

EX. 233

SUPPLEMENTAL ETHICAL REPORT FOR SPECIAL MASTER GERALD E. ROSEN

Professor Stephen Gillers
Elihu Root Professor of Law
New York University School of Law
May 8, 2018

TABLE OF CONTENTS

Page

Page

I. INTRODUCTION TO OPINION

Special Master Gerald Rosen has retained me to answer certain questions regarding the professional conduct of lawyers in the captioned case. I briefly state my qualifications to offer my opinions. A current resume is attached to this Report. [EX. 68]. I agreed to an hourly rate of $900 for my work in this matter.

I was initially retained to advise the Special Master and his counsel on the rules and laws governing lawyers. One or more customer class counsel asked to depose me. That changed my role. I submitted a Report on February 23, 2018 based on facts prepared by Judge Rosen and his counsel and which I was asked to assume were true for purposes of my Report. I was deposed on March 20, 2018. The three customer counsel firms then submitted Reports from a total of seven experts, all of whom testified after I did. An eighth customer counsel expert submitted a Report before I drafted my Report, which responds to it. He then testified after I did but I continued my testimony after he concluded.

I sat through or listened on the telephone to the testimony of all customer class experts with the exception of a few hours of Professor Joy's testimony due to my class schedule. I also attended the oral argument before Judge Rosen on April 13, 2018. I have read the memoranda submitted by customer counsel after the close of testimony. I have been asked to augment my Report to consider positions of the other experts.[1]

[1] For example, Professor Joy stated globally in his Declaration: "There Was Not an Ethical Duty or Legal Requirement for Labaton to Provide Notice to the Court of Its Fee Sharing Arrangement with Chargois & Herron in the Case of Arkansas Teacher Retirement System v. State Street Corp." Declaration of Peter A. Joy, p. 31. But his declaration omits reference to Rule 3.3(d), Cmt. 14A to Rule 3.3, the duty of candor to the Court, and Rule 11, so he does not explain why those sources did not create an "ethical duty" or "requirement" to disclose the Chargois Arrangement to the Court. Asked about that at his deposition, Professor Joy denied that Rule 3.3(d), Cmt. 14A, and the duty of candor required disclosure of the Chargois Arrangement to the Court. *See, e.g.*:

> **THE SPECIAL MASTER:** So to put a cap on it, in those instances in which there's not a court rule and not a standing order, the lawyers has not obligation, the lawyer, here, lead counsel, has no obligation to inform the court whatsoever, either under any Rule of Civil Procedure or under the rules of

The facts that I am asked to assume for purposes of my opinion have now been revised in light of the testimony, oral argument, and the Special Master's Review and Recommendations. These facts were prepared by Judge Rosen and his counsel. The opinions that follow are based on them. I understand that I am the equivalent of a court appointed expert. FRE 706.

In response to Labaton's arguments about the opinions I am qualified to give, I take note that the District Court in Massachusetts has recognized legal ethics experts under FRE 702. *Weber v. Sanborn*, 526 F. Supp. 2d 135 (D. Mass. 2007), allowed the expert testimony Andrew Perlman, then a professor at Suffolk University Law School, now its dean. Dean Perlman was allowed to testify about the professional conduct rules in both Massachusetts and New Hampshire, although he was not a member of the New Hampshire bar. The Court permitted his testimony on the following topics:

> Based on his credentials, specifically his teaching experience, Perlman is qualified to offer an expert opinion about: (1) whether an attorney-client relationship existed between Weber and PL & P; (2) whether PL & P engaged in conduct that failed to conform with the governing Rules of Professional Conduct and fell below the standard of care of the average and ordinary qualified practitioner; and (3) whether this conduct proximately caused damages to Weber. *Id.* at 147.

---

candor to the court and, particularly in light comment 14A and the nature of a settlement brought to the court in a non-adversary context.

MS, LUKEY: Objection.

THE WITNESS: That's correct, no obligation.

Joy Deposition at 119. *See also* Joy Deposition at 154 ("The duty of candor to the Court did not require disclosure of the fee-sharing arrangement").

While Timothy Dacey, unlike Professor Joy, cited Rule 3.3(d) and Cmt. 14A in his Declaration, Expert Report of Timothy Dacey, p.12, the Declaration did not connect these authorities to the facts of this case. At his deposition, he did not take a firm position on either provision ("I haven't really completely thought through that issue" and "Let me put it this way: I have not thought through all the permutations of where this could come up" Dacey 4/9/18 Dep., pp. 27: 10-11, 33: 13-15), except that as regards Lieff Cabraser, he "concluded…that they did not know any material facts that would have required them to speak up without a specific request." Asked if a firm that did know those facts would have such a duty, he replied over an objection from Ms. Lukey: "That was my – I assume that for purposes of my opinion." *Id*., p. 33:24 -34:5.

The Court also allowed Dean Perlman, who had not before been an expert witness in the area, to testify to "principles of substantive law."

> PL & P argues that the Preamble to the Rules from both New Hampshire and Massachusetts state that legal rules or *principles of substantive law* external to the Rules determine whether a client-lawyer relationship exists. Though Perlman referred to the Rules, his conclusion was further supported by an American Bar Association Formal Opinion and the Restatement (Third) of the Law Governing Lawyers….
>
> Perlman's use of the Rules was as a threshold affirmation that dual representation is ethically permissible. Rule 1.13(e) expressly states that a lawyer representing an entity "may also represent any of its directors, officers, employees, members, shareholders, or other constituents." N.H. R. Prof. Conduct 1.13(e); Mass. R. Prof. Conduct 1.13(e). To explain *when* such dual representation exists, Perlman relied on *principles of substantive law* external to the Rules, namely, the ABA Formal Opinion and the Restatement (Third) of the Law Governing Lawyers. *Id.* (emphasis added).[2]

Labaton has argued that I am (admittedly) not an expert on Rules 23 and 54 of the Federal Rules of Civil Procedure. Although those rules necessarily form part of the background for my opinions, none of my opinions relies on them.

My Qualifications

I am Elihu Root Professor of Law at New York University School of Law, where I have taught since 1978. My major area of research and teaching are the ethical rules and laws governing American lawyers. I am the author of *Regulation of Lawyers: Problems of Law and Ethics,* a widely used law school casebook first published by Little, Brown (now Aspen) in 1985 with an 11th edition in 2018. With Roy Simon (and Andrew Perlman as of 2008), I have edited *Regulation of Lawyers: Statutes and Standards*, published annually by Little, Brown, then

[2] *See also Fishman v. Brooks*, 396 Mass. 643, 650 (1986) (while "violation of a canon of ethics or a disciplinary rule…is not itself an actionable breach of duty to a client…if a plaintiff can demonstrate that a disciplinary rule was intended to protect one in his position, a violation of that rule may be some evidence of the attorney's negligence." The Court added: "Of course, an expert on the duty of care of an attorney properly could base his opinion on an attorney's failure to conform to a disciplinary rule." *Id*.

Aspen, since 1989. From 2000-2002, I was a member of the ABA's Multijurisdictional Practice Commission, which proposed rule changes (all of them accepted by the ABA House) to recognize the cross-border nature of legal practice. I was a member of the ABA 20/20 Commission (2010-2013), which studied the effects of technology and globalization on the regulation of lawyers and recommended Model Rules amendments, all of which were accepted by the ABA House. In 2011, I received the Michael Franck Award from the ABA's Center for Professional Responsibility. I received The American Bar Foundation's Outstanding Scholar Award in 2015.

I have testified as a legal ethics expert in court, by deposition, or by written submission many dozens of times in the last thirty years and in several states. I am admitted only in New York. In the last four years, I have testified at a deposition in *Ruby v. Allen Matkins*, a JAMS arbitration in Los Angeles. I was retained by Dale Kinsella of Kinsella Weitzman (Santa Monica, CA), counsel for Mr. Ruby.

II. FACTUAL BACKGROUND

A. THE *STATE STREET* LITIGATION

i. ORIGINS

This case had its genesis in a California *qui tam* action filed under seal on April 14, 2008 by "Associates Against FX Insider Trading" -- relators represented by the Thornton Law Firm ("TLF") and Lieff Cabraser Heimann & Bernstein, LLP ("Lieff") -- on behalf of California public pension funds. *See* 9/15/16 Declaration of Lawrence Sucharow of Labaton Sucharow LLP in Support of Motion for Final Approval of Class Settlement, MAD No. 11-cv-10230, Dkt. No. 104, ¶ 24; *see also* Thornton 6/19/17 Dep., pp. 35:22 – 36:14. The *qui tam* lawsuit was unsealed and became public on October 20, 2009, when the California Attorney General filed a

Complaint-in-Intervention charging State Street with misappropriating more than $56 million from California's two largest public pension funds: the California Public Employees' Retirement System ("CalPERS") and the California State Teachers' Retirement System ("CalSTRS"). *See People of the State of California, ex rel. Edmund G. Brown, Jr. v. State Street Corporation, et al.,* Cal. Super. Ct. No. 34-2008-00008457-CU-MC-GDS; *see also* Sucharow Decl., ¶ 25; Thornton 6/19/17 Dep., p. 40:1-9. The Complaint-in-Intervention was the first public indication of State Street's allegedly unfair and deceptive practices concerning indirect FX and the first largescale action concerning FX practices. Sucharow Decl., ¶ 25; Thornton 6/19/17 Dep., p. 41:11-17.

ii. FILING OF THE ATRS "CUSTOMER CLASS" COMPLAINT

After the allegations against State Street became public, George Hopkins, Executive Director of the Arkansas Teacher Retirement System ("ATRS"), became interested in the issue since State Street was ATRS's custodial bank. Hopkins 6/14/17 Dep., pp. 37:11 – 38:15. ATRS then retained Labaton Sucharow LLP ("Labaton"), which was serving as one of its "monitoring counsel,"[3] to investigate potential class and individual claims that could be brought against State Street on behalf of ATRS and its members. This was Labaton's first foray into FX litigation. Therefore, with ATRS's approval, Labaton teamed with TLF and Lieff, as those firms had gained knowledge of the area from their representation of the relators in the California *qui tam* action, and began an investigation. *Id*. *See also* George Hopkins Declaration, Dkt. No. 104-1, ¶ 8; Thornton 6/19/17 Dep., pp. 43:13 – 44:4.

[3] "Monitoring counsel" refers to lawyers who review the performance of institutional investors to ensure the investments are handled appropriately and are not the subject of fraud or other illegal activity. *See* Eisenberg, Jonathan, *Litigating Securities Class Actions,* § 1.02(1)(d), "Portfolio Monitoring" (Lexis/Nexis 2017).

After investigating and researching the matter, on February 10, 2011, a class action complaint was filed on behalf of ATRS (superseded by an Amended Complaint on April 15, 2011) alleging violations of the Massachusetts Consumer Protections Act and several common law claims. *See Arkansas Teacher Retirement System v. State Street Corp., et al.*, MAD No. 11-cv-10230, Dkt. Nos. 1, 10 [EX. 1].[4] As Lead Plaintiff in the action, ATRS purported to represent a class encompassing

> all institutional investors in foreign securities, including but not limited to public and private pension funds, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on a "standing-instruction" or "non-negotiated" basis between January 2, 1998 and December 31, 2009, inclusive (the "Class Period"), and which suffered damages as a result of the deceptive acts and practices and other misconduct alleged herein.

Customer Class Amended Compl., Dkt. No. 10, ¶ 22. [5]

Thereafter, on January 12, 2012, Labaton was appointed "Interim Lead Counsel" for the proposed Customer Class; the Thornton Law Firm was designated as liaison counsel, and Lieff Cabraser was designated as additional counsel for the proposed class. *See* Dkt. Nos. 7-8; 28.[6] In making this tri-partite appointment, the Court reasoned that "[e]ach of the firms, including Labaton Sucharow, have extensive experience with complex commercial litigation and class

[4] The complaints also originally named State Street Corporation ("SSC"), State Street's parent corporation, and the separate subsidiary State Street Global Markets LLC ("SSGM LLC") as party-defendants. On May 8, 2012, the Court entered an Order dismissing all claims asserted against SSC and SSGM LLC.

[5] The ATRS complaint is referred to by the parties in this action as the "Customer Class Complaint."

[6] "Plaintiff's Assented to Motion for the Appointment of Interim Lead Counsel for the Proposed Class" and supporting brief were filed on April 7, 2011 [Dkt. Nos. 7 and 8] but not ruled upon by the Court until January 12, 2012 [Dkt. No. 28].

action lawsuits involving financial and securities fraud," and "are knowledgeable [in] the applicable areas of law." 1/12/12 Memorandum and Order, p. 4, Dkt. No. 28. [7]

iii. THE ERISA COMPLAINTS

On the heels of the filing of the Customer Class Complaint, two separate complaints alleging ERISA violations were filed.[8] The two sets of plaintiffs in these actions represented institutional private ERISA plans whose accounts were invested by State Street (the "ERISA Class").[9] *See Henriquez, et al. v. State Street Bank and Trust Co.*, MAD No. 11-12049, Dkt. Nos. 1, 24 (the "*Henriquez* complaint") [EX. 2],[10] and *The Andover Companies Savings and*

---

[7] No similar appointment was made with respect to ERISA Counsel. However, Labaton, Lieff and Thornton also viewed the ERISA plaintiffs as their clients and Labaton as lead counsel for all class members, including ERISA class members. *See* Chiplock 9/8/17 Dep. pp. 93:24 – 94:2 ("We had a responsibility as class counsel to the class. And that included ERISA plans."); 97:3- 10 ("I felt that customer class counsel had a responsibility to the entire customer class with no distinctions. We didn't discriminate in our class definition. We didn't see the need to when we filed our case.") Goldsmith 9/20/17 Dep., pp. 42:11-14 ("[W] did not assert an ERISA claim in our complaint, but we did allege a class which was broad enough to encompass ERISA governed assets."); 61:11-14 (How much of the settlement would go to ERISA clients "was something that [DOL] were focused on. Of course, we were focused on it as well because they were our clients.") *See also* colloquy at 11/15/12 Lobby Conference:

> MICHAEL THORNTON: I just want to clarify one thing of Mr. Rudman's [State Street's attorney's] excellent summary that we might differ on. There are two clear ERISA cases, Henriquez and Andover, and in the third case, Arkansas, um, the ERISA claims are included in the class definition. So we also have a claim.
> ***
> ROBERT LIEFF: . . . There is an overlap, that's all we're trying to say. We represent the same people.
>
> THE COURT: You do represent the same people?
>
> MR. LIEFF: Yes.

[11/15/12 Lobby Conf. Tr., Dkt. No. 87, pp. 16-17]

[8] "ERISA" refers to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq*.

[9] The ERISA Class was represented by Keller Rohrback L.L.P., Zuckerman Spaeder LLP, McTigue Law LLP, and Beins Axelrod LLP (collectively, "ERISA Counsel"). However, none of these firms was ever appointed "lead counsel" or other official capacity by the Court. (Although, later, Brian McTigue of McTigue Law, attempted, albeit unsuccessfully, to secure appointment as lead counsel for the ERISA class members. *See* TLF-SST-052975 – 052980 [EX. 4]; TLF-SST-054020 – 54022 [EX. 5]; Sarko 9/8/17 Dep., p. 97:12-21; Sucharow 9/1/17 Dep., p. 93:17-23.)

[10] The *Henriquez* complaint was originally filed in the United States District Court for the District of Maryland, *see Henriquez v. State Street Bank and Trust Co., et. al.*, MDD No. 11-cv-02920, Dkt. No. 1. The Maryland complaint,

Profit Sharing Plan, et al. v. State Street Bank and Trust Co., MAD No. 12-11698, Dkt. Nos. 1, 9 (the "*Andover* complaint") [EX. 3].

The named plaintiffs in the *Henriquez* complaint were Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland, all participants in different ERISA plans: Henriquez was a participant in the Waste Management Retirement Savings Plan; Cohn was a participant in the Citigroup 401(k) Plan; Taylor and Sutherland were participants in the Johnson & Johnson Pension Plan (Sutherland also was a participant in the J&J 401(k) plan). All of these individually named plaintiffs purported to "bring[] this action pursuant to ERISA on behalf of [their respective retirement plans] and [their] participants and beneficiaries...as a class action on behalf of a class of similarly-situated ERISA retirement plans (collectively, the "Plans") and their participants and beneficiaries...." [Henriquez Amended Compl., ¶ 1] [EX. 2]. Two plaintiffs are named in the *Andover* Complaint -- one an institutional plaintiff, The Andover Companies Savings and Profit Sharing Plan, and the other an individual, James Pehoushek-Stangeland. The complaint alleges that as "a participant in The Boeing Company Voluntary Investment Plan ("the Boeing Plan") ..., Plaintiff Pehoushek-Stangeland has standing to bring suit on behalf of the Boeing Plan for losses to the Plan due to breaches of fiduciary duty pursuant to ERISA sections 409 and 502(a)(2)." [Andover Amended Compl., ¶ 22] [EX. 3].

Like the Customer Class Complaint, each ERISA complaint alleged that State Street, as the custodian to individual institutional investors and pension fund accounts, engaged in unfair and deceptive practices in conducting "indirect" or "standing instruction" foreign currency exchange ("FX") transactions on behalf of its clients, without disclosure to its clients that these trades generated mark-ups that inured to the benefit of State Street. *See* Customer Class

---

however, was voluntarily dismissed shortly after it was filed, *see id*., Dkt. Nos. 7-8; it was later re-filed in the U.S. District Court for the District of Massachusetts as a "related case" to the ATRS case.

Amended Compl., ¶¶ 8, 62-63 [EX. 1]; *Henriquez* Amended Compl., ¶¶ 80-82 [EX. 2]; *Andover* Amended Compl., ¶¶ 10, 63-64 [EX. 3].

iv. THE BONY MELLON MDL

While the State Street action proceeded in the District Court for the District of Massachusetts, a multi-district FX case brought against another custodian bank, the Bank of New York Mellon, was being litigated in the Southern District of New York. *In re The Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, SDNY No. 12-MD-2335 ("*BONY Mellon*").[11] Lieff Cabraser was co-lead counsel for the nation-wide consumer class in the case. Chiplock 6/16/17 Dep., pp. 23:25 – 24:4; 25:12-22. TLF, as well as McTigue Law and Keller Rohrback, ERISA counsel here, also were involved in the case. Thornton 6/19/17 Dep., 85:18-21; McTigue 7/7/17 Dep., 9:23 – 10:11; 12:22 – 13:4.

BONY Mellon was vigorously litigated for three years, during which intense discovery took place: more than 120 depositions were taken and more than 20 million documents were produced and reviewed. Chiplock 6/16/17 Dep., pp. 29:23 – 30:15. To assist in the document review, Lieff Cabraser enlisted the help of the firm's staff attorneys ("SAs"),[12] thirteen of whom later worked on the *State Street* case. The case finally settled for $335 million in recovery to the class of custodial clients in September 2015. *See* 9/24/15 Order and Final Judgment, SDNY No. 12-MD-2335, Dkt. No. 638; Chiplock 6/16/17 Dep., pp. 29:23 – 30:15.[13] The attorneys' experience in *BONY Mellon* allowed counsel to develop a baseline of familiarity and expertise

[11] The first of the various underlying complaints comprising the *BONY Mellon* MDL was filed in 2011, shortly after the *ATRS* complaint was filed.

[12] "Staff attorneys" here were licensed attorneys with relevant experience hired specifically to perform large-scale document review.

[13] Of the $335 million settlement, the attorneys in *BONY Mellon* were awarded $83,750,000 in fees and $2,901,734.19 in total expenses. SDNY No. 12-MD-2335, Dkt. No. 638.

that they brought to the *State Street* case. Chiplock 6/16/17 Dep., p. 27:11-17. BONY Mellon also provided Lieff's SAs hands-on experience in reviewing and analyzing complex, FX-related documents. *See* Lieff Cabraser's Responses to First Set of Interrogatories Due on June 1, 2017, Response No. 3.

v. CONSOLIDATION OF THE STATE STREET CASES

During most of 2011-2012, the *State Street* action principally involved motion practice, and, in particular, briefing and argument of Rule 12(b)(1) and Rule 12(b)(6) motions to dismiss filed by State Street in the *ATRS* and the *Henriquez* cases. State Street's motion to dismiss the *ATRS* complaint was fully briefed by both parties and the Court heard arguments on the motion on May 8, 2012. At the conclusion of the May 8 hearing, the Court entered an Order dismissing ATRS's claims against State Street Corporation ("SSC"), the parent corporation, and the separate State Street subsidiary, State Street Global Market, LLC ("SSGM LLC"), but denied Defendant's motion in all other respects. *See* 5/8/12 Order, Dkt. No. 33. The Court further directed counsel to meet to discuss the possibility of settlement and whether they wished to pursue mediation, either privately or before a magistrate judge. *Id.*

In the meantime, on August 8, 2012, State Street also moved to dismiss the *Henriquez* Amended Class Action Complaint. However, no substantive decision was ever rendered on that motion. Instead, on November 15, 2012, shortly after the *Andover* complaint was filed, at the request of counsel, the Court conducted a Lobby Conference to discuss further proceedings. *See* 11/15/12 Lobby Conference Tr., Dkt. No. 64. Counsel proposed, and the Court agreed, that the three cases -- *ATRS, Henriquez* and *Andover* -- proceed in tandem in a "hybrid" mediation during which the parties and counsel could continue to pursue a mediated global settlement, while at the same time delaying a decision on pending motions and engaging in a simultaneous track of

"informal" document discovery. 11/15/12 Lobby Conference Tr., pp. 10:15-18; 15:6-7, 19-25, 22:2-10. The Court granted the parties' joint motion to stay the case and ordered that the three actions be consolidated for pre-trial purposes.[14] *Id.*, Tr. at pp. 10, 22, 24; Order to Stay, Dkt. No. 62; Electronic Order Consolidating Cases, Dkt. No. 63.

vi. HYBRID MEDIATION-DISCOVERY PROCESS

Prior to the Court's endorsement of the hybrid mediation, the parties had selected a mediator, Jonathan Marks, and participated in a few preliminary mediation sessions, developing the framework for exchanging discovery. Sucharow Decl., ¶¶ 89-92; Marks Decl., ¶ 14; 11/15/12 Lobby Conference Tr., Dkt. No. 87, p. 22. In the approximately eighteen months following the November 12, 2012 Lobby Conference, between January 2013 and June 2015, the parties participated in 14 additional in-person mediation sessions with Mediator Marks in Boston, New York City, and Washington, D.C., each of which involved extensive exchanges of legal theories and damages calculations by both sides. Sucharow Decl., ¶ 94; *see also* Marks Decl., ¶¶ 23-24.

The mediation sessions were informed by substantial discovery exchanged by the parties. Notably, State Street produced more than nine million pages of documents at the request of the ERISA and Customer classes. Sucharow Decl., ¶ 96. All parties agree that document review was essential to the mediation process. Chiplock 6/16/17 Dep., pp. 116:15 – 117:6; Goldsmith 7/17/17 Dep., pp. 84:15-23, 85:24 – 86:5; Rogers 6/16/17 Dep., pp. 80:4-7, 82:7-13.

vii. ERISA FEE ALLOCATION

While the hybrid mediation-discovery process was ongoing, in mid-2013, Customer Class Counsel and ERISA Counsel negotiated amongst themselves an agreement for the allocation of attorneys' fees. Sarko 7/6/17 Dep. p. 57:18-23. That agreement -- to allocate 9%

[14] The Court set an initial deadline of December 1, 2013, at which time the parties would update the Court on the status of the mediation. *See* Dkt. No. 62. At the request of the parties, the Court extended this deadline on several occasions. *See* Dkt. Nos. 66, 71, 75.

of the total fee awarded (if successful) to ERISA Counsel -- was based largely on ERISA Counsel's understanding that the total ERISA case volume comprised five to nine percent of the total FX trading volume. Sarko 7/6/17 Dep., pp. 26:15-16; 59:14-22; Kravitz 7/6/17 Dep., p. 50:10-16.

As the case progressed -- and particularly toward the end of the case -- ERISA Counsel did not view 9% as commensurate with the ERISA trading volume, which was later learned to actually be about 12-15% of the total trading volume, or the value they added to the *State Street* case. Sarko 7/6/17 Dep., p. 64:3-11; Kravitz 7/6/17 Dep., p. 54:7-11. Nonetheless, rather than create friction with Customer Class Counsel over fees,[15] Lynn Sarko, principal counsel for the ERISA Class, advocated for, and all other ERISA Counsel ultimately agreed to make, a "practical decision" to accept 9% of the fee total. *See* Sarko 7/6/17 Dep., p. 59:18-25. The decision was made, in part, to promote cooperation between counsel, "make the pie bigger" for the class members, and ensure that counsel worked together on the same "team." Sarko 7/6/17 Dep., p. 59:18-25; *see also* Kravitz 7/6/17 Dep., p. 61:18-24.

From August to December 2013, Customer Class and ERISA Counsel exchanged drafts in an attempt to memorialize their agreement to respectively share the fee award 91/9 percent. *See* KR00000006 – 09 (8/30/13 Sarko email to Lieff (proposing draft agreement to capture the 91/9% split)) [EX. 6]; KR00000010 – 18 (9/11/13 Chiplock email to Sarko and Gerber (circulating redlined edits to proposed agreement)) [EX. 7]. While there were several iterations

[15] From the beginning of the mediation, there was already fair degree of tension between and among Customer Class Counsel and ERISA Counsel. As ERISA Counsel Carl Kravitz testified, "There was definitely a faction on the consumer side that said 'we represent these people, what are you doing in the case?'" Kravitz 7/6/17 Dep., pp. 28:21-24. Kravitz explained, "Consumer people did not want us coming in and taking a chunk of their case." *See id*., pp. 32:16-17; 45:6-17. "Every extra dollar that went to ERISA came out of the Consumer side." *Id*., at p. 51:18-20. The tension between the Customer Class and the ERISA Class further was manifested during the discovery process: ERISA Counsel were not provided with access to documents State Street had provided to the Customer Class. Sarko 7/6/17 Dep., p. 44:2-25. Nor were ERISA Counsel allowed access to the Customer Class's database. *Id*., at 45:1-23. Compounding the tension was the fact that there was never an order appointing leadership in the ERISA cases. *Id*., p. 42:24 – 43:3.

of the agreement, each draft described the ATRS complaint filed by Customer Class Counsel as brought on behalf of "all institutional investors in foreign securities, including public and private pension funds, *ERISA-qualified plans*, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank" (emphasis added). *See* KR00000003 – 05 (8/29/13 Draft, *Agreement Between Counsel for Consumer and ERISA Plaintiffs Regarding Division of Attorneys' Fees* (the "Fee Allocation Agreement") [EX. 8]. Early drafts of the fee allocation agreement included a provision nullifying the 91/9 allocation if either the *ATRS*, *Andover* or *Henriquez* cases resulted in no recovery; that provision was later struck. *See* KR00000024 – 28 (8/30/13 Draft, Fee Allocation Agreement). [EX. 9]. Also removed was a proposed provision that counsels' division of fees was "consistent with the relative volume of FX trading by ERISA and non-ERISA plans as reflected in the data produced by State Street and the prospects of recovery on the various claims alleged, and is therefore reasonable and appropriate." *Id*.

On December 11, 2013, Counsel finally memorialized this agreement in writing. Sarko 7/6/17 Dep., p. 60:4-14; s*ee also* KR00000045 – 50 (Final Fee Allocation Agreement) [EX. 10], Settlement Agreement, Dkt. No. 89, ¶ 21; McTigue, 7/7/17 Dep., pp. 44:23 – 46:18; Thornton 6/19/17 Dep., p. 57:12-16. As part of that written agreement, ERISA and Customer Class Counsel represented that they had "disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein." *See* Fee Allocation Agreement at ¶ 5 [EX. 10].

The percentage allocated to ERISA Counsel later was increased to 10%, at the suggestion of Customer Class Counsel. Thornton 6/19/17 Dep., pp. 57:17 – 58:1; Sarko 7/6/17 Dep., p. 60:15-17, 60:24-61:12; Kravitz 7/6/17 Dep., p. 59:17-19. While counsel did not amend the

original agreement, the 10% increase was memorialized in an email circulated by Nicole Zeiss, Settlement Counsel for Labaton, itemizing the allocation of fees and expenses to the ERISA and Customer Class attorneys. *See* ZS000027 – 28 (11/23/16 Sarko email to Kravitz ("I spoke with Labaton folks yesterday. They didn't want to put it in the formal letter but agreed to send us an email putting the numbers in and confirming the 10 percent.")). [EX. 11]. ERISA Counsel welcomed the increase in percentage. *See* ZS000029 – 30 (11/23/16 Kravitz email to McTigue). [EX. 12].

viii. STAFF ATTORNEY COST-SHARING AGREEMENT

Staff attorney-based document review performed throughout the course of the hybrid mediation-discovery process ramped up significantly in January 2015. Chiplock 6/16/17 Dep., pp. 87:22 – 88:24. While the *BONY Mellon* case was being actively litigated in 2013-2014, Lieff assigned at most five SAs to review documents produced by State Street. Chiplock 6/16/17 Dep., pp. 107:15 – 108:12. During that time, Labaton also allocated no more than five SAs to review and analyze documents for the *State Street* case. Rogers 6/16/17 Dep., p. 57:7-10. [16] As the hybrid mediation progressed, State Street produced discovery related to the *Hill* case,[17] a significant production consisting of approximately 10 million pages. Rogers 6/16/17 Dep., pp. 68:25 – 69:11; Chiplock 6/16/17 Dep., p. 88:2-21. The *Hill* production added considerably to the total volume of unreviewed documents.

By January 2015, the Customer Class began to view discovery with greater urgency, informed in part by the favorable resolution in the *BONY Mellon* case and also by the fact that the parties had been mediating for over two years without reaching an agreement to resolve the

[16] Michael Rogers recalls that, in 2013, Labaton assigned Todd Kussin, the SA "team leader" in the *State Street* case, and four SAs to perform document review during 2013 and 2014. Rogers 6/16/17 Dep., p. 57:7-10.

[17] *Hill v. State Street Corp., et. al.*, MAD No.1:09-cv-12146-GAO.

case. Chiplock 6/16/17 Dep., p. 111:8-13; Dugar 6/16/17 Dep., p. 85:9-16. As a result, Labaton and Lieff, which had recently freed up thirteen SAs as fact discovery in the *BONY Mellon* case came to a close, expanded their respective document review teams by adding additional SAs to review and analyze the database of unreviewed material accumulated during the *State Street* case. *See* Chiplock 6/16/17 Dep., pp. 109:16 – 110:2; Rogers 6/16/17 Dep., pp. 69:8-14; 74:11-13. Between January and March 2015, Labaton bolstered their document review team, maintaining more than fifteen to twenty different SAs on the *State Street* case at any given time. Lieff did the same, assigning fifteen SAs (thirteen of whom transitioned directly from the *BONY Mellon* review) and two "contract" attorneys to complete the review.[18] Kussin 6/5/17 Dep., p. 17:6-13, 70:8-9; Dugar 6/16/17 Dep., p. 87:16 – 88:11, 23-24; Lieff Cabraser Response to June 1 Interrogatories, No.19.

All SAs reviewing documents in the *State Street* case received a binder of documents providing an overview of the case; the binder contained the complaint and related pleadings, an outline of the case theory, and a list of key terms, search criteria, topics and categories to guide the SA review. Goldsmith 7/17/17 Dep., pp.77:23 – 78:8; Rogers 6/16/17 Dep., p. 63:3-7; Lesser 6/19/17 Dep., p. 40:12-13. Michael Lesser also drafted emails outlining important information for the SAs to consider during their review. Lesser 6/19/17 Dep., pp. 40:10 – 41:4.

The Labaton and Lieff SAs were well-qualified and equipped to analyze the documents, which related to complex FX trading patterns and other financial issues raised in the case. *See* Rogers 6/16/17 Dep, pp. 58:12 – 59:7 (SAs hired by Labaton had experience in "complex litigation, [the] financial industry, . . . banking, mutual funds, certainly currency trading, or experience legally on what I would call a financial industry case.") Several of the Lieff SAs had,

[18] In March 2015, Lieff Cabraser hired two additional attorneys, employed by an outside staffing agency rather than the firm. *See* Lieff Cabraser Response to Interrogatory No. 19.

in the words of Dan Chiplock of Lieff Cabraser, "been through war in *Bank of New York Mellon*, and [] [we]re extremely well-versed in the issues." Chiplock 6/16/17 Dep., pp. 109:20-25; 117:16-25. These SAs not only performed sophisticated document review; they also prepared substantive subject matter memoranda and deposition notebooks. Chiplock 6/16/17 Dep. p. 32:12-20; Zaul 6/6/17 Dep., pp. 24:4 – 25:5; Alper 6/5/17 Dep., p. 17:14-16; Oh 6/6/17 Dep., p. 21:20-25; *see also* TLF-SST-005245 – 5270 (Memorandum authored by SA Maritza Bolano) [EX. 13].

Because TLF did not have SAs, or non-permanent attorneys, of its own, or the facilities to hire and house new attorneys solely to work on the *State Street* document review, Labaton, Lieff and TLF entered into an agreement to "allocate" certain SAs employed by and working at Labaton and Lieff's offices to TLF. At times, this was referred to as the "10/10/10 agreement[19] -- designating an equal number of SAs to each firm. The purpose of the cost-sharing agreement was to share the cost and risk burdens of the litigation among the three Customer Class law firms. Chiplock 6/16/17 Dep., pp. 127:23 – 128:5; 131:23 – 133:15; Belfi 6/14/17 Dep, pp. 51:8 – 53:12. [20] While the exact number of SAs fluctuated over the course of the agreement, TLF, in essence, agreed to pay Labaton and Lieff each for five SAs. G. Bradley 6/19/17 Dep., p. 43:10-13. TLF did not meet, interview, select, house or supervise the SAs allocated by Labaton or Lieff. *See* Hoffman 6/6/17 Dep., pp. 62:21, 63:7-17, 64:6-9, 65:3-6; *see also* Chiplock 6/16/17

[19] The concept of the "10/10/10 agreement" was introduced at the beginning of the Special Master's discovery, and while not all Class Counsel were familiar with that exact terminology, they affirmed that the purpose of the cost-sharing agreements between Labaton and TLF, and between Lieff and TLF, was to allocate costs and risks equally among all firms by Labaton and Lieff each assigning approximately five SAs to TLF, so that each firm ending up bearing the cost of ten SAs. *See* G. Bradley 6/19/17 Dep., p. 42:5-13; Chiplock 6/16/17 Dep., p. 133:12-15.

[20] Allocating the SAs was not only a means of equalizing the costs and burdens, but also as Garrett Bradley of TLF admitted, it was "the best way to jack up the load star [sic]…the best way for us [TLF] to increase our load star [sic] and make it comparable to the other two firms…. I was absolutely concerned about Thornton's load star [sic] vis-a-vis the other two firms." G. Bradley 6/19/17 Dep. p. 67:4-13; TLF-011124 – 11126 (2/6/15 G. Bradley Email to Thornton cc'd Lesser) [EX. 14].

Dep., pp. 134:17 – 135:19. And, it did not matter to TLF which SAs it paid for. *See* G. Bradley 6/19/17 Dep., p. 43:10-13. Pursuant to this cost-sharing arrangement, Labaton and Lieff designated certain SAs as "TLF," and then billed TLF periodically for the actual costs of the SAs and, in Lieff's case, for the contract attorneys "allocated" to TLF. *Id.*; *see also* Hoffman 6/6/17 Dep., p. 63:2-7.

TLF's collection of SA hours was conducted piecemeal and largely through administrative staff rather than directly between the attorneys privy to the SA cost-sharing agreement. Evan Hoffman, the most junior member of TLF's litigation team, was tasked with collecting the names and hours of the Lieff SAs allocated to TLF. Hoffman 6/5/17 Dep., p. 57: 11–18. The staffing agency employing the agency attorneys working at Lieff invoiced TLF directly for the hours performed by those individuals. Hoffman 6/5/17 Dep., p. 62: 6-9. Michael Bradley, the brother of TLF partner Garrett Bradley, neither worked for a firm or a staffing agency, and reported his hours to Hoffman by email on a weekly or biweekly basis. Hoffman 6/5/17 Dep., pp. 107: 24-108:7.

For those SAs employed by Lieff, Lieff's accounting department prepared and forwarded invoices to Hoffman on a regular basis. LCHB Response to Interrogatory No. 38; Hoffman 6/5/17 Dep., pp. 61: 21-62:5. Similarly, Labaton's accounting office prepared and forwarded invoices reporting the hours performed by Labaton SAs to Garrett Bradley's attention, copying TLF administrators, on a monthly basis. Labaton Response to Interrogatory No. 37; *see* LBS – 003775-3776 (4/9/15 Ng Email to G. Bradley attaching April 2015 Invoice) [EX. 15].

At the time Labaton and Lieff agreed to this arrangement, both firms were concerned primarily with spreading the risks -- and costs -- of the litigation; neither firm focused on what information would be reported in a potential fee petition. Belfi 6/14/17 Dep., p. 53:10-12. TLF

later claimed all of the SAs allocated to TLF on its lodestar fee petition, accounting for 71.5% of all TLF hours reported. *See* Dkt. No. 104-16.[21] In its fee petition, TLF billed all SA time at an hourly rate of $425 (a rate approved by the Court for Lieff SAs in *BONY Mellon*). Except for three SAs, the $425 per hour rate charged by TLF was greater than the rates requested by Lieff or Labaton for the same individuals in their lodestar petitions.[22] Hoffman 6/6/17 Dep., p. 59:5-12. No explicit agreement to allow TLF to claim the Labaton and Lieff SAs on TLF's lodestar has been disclosed during the Special Master's investigation.[23]

ix. SETTLEMENT AND NOTICE TO CLASS MEMBERS

a. Involvement of Government Agencies

The hybrid mediation spanned a period of two and a half years. During this time, while discovery continued, settlement discussions were ongoing. In addition to State Street and

[21] TLF also claimed 406.4 hours of SA time for Michael Bradley, a Massachusetts-licensed attorney and the brother of TLF Managing Partner, Garrett Bradley, who was not affiliated with the firm but performed document review on a contingent basis during the *State Street* case. M. Bradley 6/19/17 Dep., pp. 28:20-23; 70:13-15. Bradley worked from his own office and did his document review in his free time; he was not supervised by Labaton or Lieff lawyers. M. Bradley 6/19/17 Dep., pp. 49:7-16; 52:3-18, 54:15 – 55:3. Unlike the Labaton and Lieff SAs, Bradley did not prepare any memoranda or deposition notebooks. *Id*, at p. 46:21-23. And, the record reveals no written work product created by Michael Bradley.

Bradley worked on a contingent basis; he would only be paid if the class recovered a settlement entitling counsel to fees. M. Bradley 6/19/17 Dep., p. 70:13-15. After the Court approved the request for attorneys' fees, Bradley received a payment of $203,200, equal to the numbers reported at $500 per hour. *Id.*, p. 70:18-23.

[22] Rachael Wintterle, a contract attorney housed at Lieff's office, was billed by Lieff at $515 per hour. *See* Dkt. No. 104-17, Exhibit A. David Alper and Dorothy Hong were billed by Labaton at the same rate as TLF, $425 per hour. *See* Dkt. No. 104-15, Exhibit A. Alper had a background in FX training and was a resource for SAs during the *State Street* case. Alper 6/5/17 Dep., pp. 20: 8-11; 22: 3-8.

[23] Some of the attorneys from Labaton, Lieff and TLF, however, independently made assumptions based on the circumstances that TLF would claim the SA time on its lodestar. *See e.g.*, G. Bradley 6/19/17 Dep., p. 48:1-5 ("We just assumed -- I just assumed where the local counsel were on the papers, we're litigating the case, we're putting the fee up, why wouldn't we put the people up that we were paying for?"); Chiplock 6/16/17 Dep., p. 136:10-19 ("I would say it was completely understood by me when I talked with Garrett that that would be how it worked, because it was obvious to me that if you pay for the work that is being done, then, just as with any other employee when you're paying them, that you include their hours in your lodestar when you report it at the end of the day."); Rogers 6/16/17 Dep., pp. 91:18 – 92:16 ("I certainly assumed [TLF] would [claim the SA time on their fee petition]. . . . They were paying for it up-front, I assume they wanted to get paid on the back end."); Hoffman Dep., p. 58:12-16 ("My understanding was that for attorneys who Thornton was financially responsible for, they would be included on whatever the ultimate fee petition that Thornton would submit."); *see also* TLF-SST-011206 (6/29/15 email from Mike Lesser of TLF to Dan Chiplock of Lieff Cabraser) [EX. 52].

plaintiffs' counsel, three government agencies -- the Department of Labor ("DOL"), the Securities and Exchange Commission ("SEC"), and the Department of Justice ("DOJ") -- were involved in the negotiations. Each agency independently investigated State Street's alleged misconduct, and each agency reached its own settlement with State Street in furtherance of their respective enforcement goals. *See* Dkt. No. 104, ¶¶ 8, 38; *see also* Sarko 7/6/17 Dep., p. 41:9-14; Kravitz 7/6/17 Dep., pp. 56:25 – 57:4. The DOL -- charged with overseeing administration of the ERISA statute -- paid particular attention to the settlement of the claims of the ERISA plan participants, ensuring that the settlement recovery amount was adequate and commensurate with the agency's own evaluation of the case. Sarko 7/6/17 Dep., p. 79:6-15. Keller Rohrback's Lynn Sarko was the lawyer principally responsible for negotiating with the DOL. State Street, in turn, made it clear that a global settlement with all private class members and all government agencies was a necessary condition to its willingness to reach a settlement. Sarko 7/6/17 Dep., pp. 36:24 – 37:11; *see also* 11/2/16 Hearing Tr., p. 17:8-23.

b. Preparation and Filing of Settlement Documents

After two and a half years of mediation and negotiation, on June 30, 2015, the parties reached an agreement-in-principle to settle the consolidated class actions for $300,000,000.00. Sucharow Decl., ¶ 101. The terms of a final Term Sheet were negotiated and signed on September 11, 2015. *Id.* at ¶ 104. *See also*, Zeiss 6/14/17 Dep., p. 13:10-22.

Over the ensuing 10 ½ months, Labaton, as Lead Settlement Counsel, undertook the preparation of the formal settlement documentation. Nicole Zeiss, Labaton's Settlement Counsel, had primary responsibility for drafting the settlement agreement and the exhibits for the settlement agreement, including the preliminary approval motion, brief and order, the plan of allocation, the judgment, the long-form Notice of Pendency of Class Actions and the Summary

Notice ("Notice"). Zeiss 6/14/17 Dep., pp. 13:10-22; 15:5-6.[24] Draft versions of the Notice were circulating among, and reviewed by, Customer Class Counsel and ERISA Counsel.[25]

Zeiss also had the responsibility of preparing the Omnibus Declaration and Brief in support of Lead Counsel's motion for attorneys' fees and expenses, and for payment of service awards. Zeiss 6/14/17 Dep., p. 16:2-6. This included reviewing and assembling the exhibits to the brief which consisted of the individual firms' fee declarations and lodestar reports. *Id*., p. 16:10-14. Zeiss drafted the template for the individual fee declarations, circulated it to the other firms, and worked with them on completing their declarations and exhibits. *Id*., pp. 16:14-16, 20:18-19.

The Settlement and Fee Petition documents made clear that Labaton was representing both the Customer Class and the ERISA Class with respect to the settlement of the case. 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," which Labaton drafted, bears the case names and numbers of all three class actions, including the ERISA actions, and provides notice to members of the "Settlement Class" that a Class Settlement of $300,000,000 has been entered into "by and among (i) plaintiffs Arkansas Teacher Retirement System ("ARTRS"), Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan and

[24] Rather than have a litigation team member handle settlement, Labaton has compartmentalized its practice, and in that compartmentalization, it created a separate "settlement counsel" position who negotiates and documents all settlements. Zeiss 6/14/17 Dep., pp. 10:24 – 11:12; Keller 10/13/17 Dep., p. 79:18-20. With respect to the *State Street* case, this compartmentalization contributed to some of the problems giving rise to the Special Master's investigation, in particular, the failure to discover the "double-counting" of SAs allocated to TLF and the failure to disclose to the Court Labaton's fee arrangement with Texas attorney Damon Chargois. These matters are discussed *infra.*

[25] In March 2017, at the request of the Special Master, the Customer Class and ERISA firms each produced a complete record of time entries performed in the *State Street* matter. These time records indicate that Class Counsel reviewed the Notice and other settlement documents circulated by Zeiss.

James Pehoushek-Stangeland (collectively "Plaintiffs"), on behalf of themselves and each Settlement Class Member, by and through their counsel, and (ii) State Street Bank and Trust Company (the "Settling Defendant" or "SSBT")." *See* Notice of Pendency of Class Actions, MAD No. 11-cv-10230, Dkt. No. 95-3, filed on August 10, 2016. The Notice further defines the "Settlement Class" as

> All custody and trust customers of SSBT (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT's records as having a United States tax address at any time during the period from January 2, 1998 through December 31, 2009, inclusive, and that executed one or more Indirect FX Transactions with SSBT and/or its subcustodians during the period from January 2l 1998 through December 31, 2009, inclusive. *Id.*

The Notice was widely circulated.

x. FEE PETITION REQUESTING ATTORNEYS' FEES

a. Fee Negotiations Among Customer Class Counsel

Around the time the parties reached an agreement-in-principle, Customer Class Counsel engaged in discussions about how to allocate the anticipated fee award among themselves. It is apparent from these discussions that with regard to balancing fees, Lieff and TLF considered their respective roles in the *BONY Mellon* litigation, a fact wholly unrelated to the value added in this case. Dan Chiplock conceded at deposition, as did Garrett Bradley, that the *State Street* and *BONY Mellon* fee discussions became intertwined. Chiplock 9/8/17 Dep., pp. 22:7 – 23:13; Garrett Bradley 9/14/17 Dep., pp. 114:23 – 125:16. Contemporaneous emails also reflect the intertwining of the fee negotiations in the two cases. *See* discussion, *infra*.

At the inception of the case, Customer Class Counsel had agreed to a fee sharing arrangement when Labaton teamed with Lieff and TLF, pursuant to which Labaton, Lieff and TLF understood each firm would be entitled to a minimum of 20% of the fee award, with the remaining 40% to be distributed at the end of the litigation, commensurate with each firm's

respective contributions to the case. *See* TLF-SST-033911 – 33913 (5/4/11 letter agreement, p. 2) [EX. 16]; Keller 10/25/17 Dep., pp. 414:14 – 420:10. *See also*, TLF-SST-040631 (8/28/15 email exchange among Larry Sucharow, Dan Chiplock, Garrett Bradley, M. Thornton, and Bob Lieff regarding the 20-20-20/40 agreement) [EX. 17].

In August 2015, Dan Chiplock expressed an interest in determining the appropriate allocation of the remaining 40%. *Id.* Garrett Bradley of TLF resisted, opining that the final distribution should wait until the Court made a total fee award. *Id.* What became apparent to Chiplock was that TLF viewed any allocation of *State Street* fees as tied to the then yet undecided *BONY Mellon* fee award. *Id.*[26] ("Not to be difficult but [this is a] very different situation, in other words, from BNYM, (which I know doesn't involve you Larry, but seems to be coloring this discussion.") *See also*TLF-SST-053087 (8/28/15 email from Sucharow to Chiplock ("I believe there are other cases and other agreements which are influencing people's desire to either reach agreement now or later.")) [EX. 18].

Garrett Bradley pressed for an agreement that Lieff share some portion of its allotment in *BONY Mellon* with TLF in recognition of the fact that Thornton had developed the initial FX concept, and refused to settle on an allocation in *State Street* until he saw that TLF was treated "fairly" in *BONY Mellon.* Chiplock 9/8/17 Dep. pp. 22:8 – 23:13; TLF-SST-031166 - 31173 (G. Bradley 8/28/15 email to Bob Lieff ("…I have not agreed that it would be equitable to split the balance of the forty percent the way you described below. What I have said is that may be a fair approach depending on the outcome of our fee in the Mellon matter. If we are treated fairly there, then we will do all we can to treat you fairly in the state street matter…) [EX. 19]; *see also* Bradley to Chiplock email of the same date, *id.* ("What I am pointing out is the inequities of our different positions…. In Mellon … we had created the fx case all we got was some work that

[26] The settlement in BONY Mellon would be finalized the following month, September 2015.

resulted in $1.5 million in time. Now contrast that the State Street where you had no client and no concept…. Once we have an idea of what our Mellon numbers look like, we can discuss how to approach the balance of the 40% with Labaton.") [EX. 19].

Dan Chiplock, the lead attorney in *BONY Mellon*, took exception with the implication that Lieff was not treating TLF fairly in that case. He pushed back, reminding Bradley in an email two days later that Lieff's role in creating the result in *BONY Mellon* "doubled the value of State Street." *Id.* (8/30/15 email from Chiplock to Bradley). He further reminded Bradley, "I also gave your firm more assignments than others at the outset in BNYM until it became clear that the work simply wasn't getting done." *Id.* Bradley asked what Chiplock meant when he said TLF did not "get the work done." *Id.* "That has never been specified and really should be to be deemed credible." *Id.* Chiplock agreed to provide Bradley with emails showing the assignments given to TLF. *Id.*

The discussion turned to lodestar reporting in *State Street* with Chiplock warning Bradley not to include unwarranted hours in TLF's fee petition:

> In the meantime, while we're on the subject of credibility, I want to point out that we need to be consistent and credible with our lodestar reporting in State Street. We are gathering final lodestar reports now, but I heard third-hand that Mike [Thornton]recently said on a call (that I wasn't on) that Thornton Law Firm was showing $14 million. That number does not comport with the hours Mike Lesser told me for Thornton as of June 29 (around 12,750), which makes more sense given what we know about the work that was done. I am hopeful that Mike T simply misspoke or was guessing when he said $14 million and that we are not going to suddenly see an additional 12,000 hours mysteriously appear on Thornton Law Firm's behalf…Also recognize that your [document] reviewers were all housed outside your firm ad their respective overhead and facilities expenses were paid for by others, which we were happy to do as a courtesy. Thanks.

Id.

b. Submission of the Fee Petition

Customer Class Counsel's discussions about fee sharing were put on hold as *State Street* settlement negotiations wrapped up, and in advance of the hearing on final approval of the settlement, Plaintiffs' Counsel submitted to the Court a joint Fee Petition in support of their request for attorneys' fees in the amount of $74,541,250.00. *See* Dkt. No. 104. The Fee Petition consisted of the Omnibus Declaration[27] signed by Lawrence Sucharow of Labaton, and nine individual declarations submitted by each law firm that had filed an appearance in the case.[28] Labaton posted the Omnibus Declaration, complete with exhibits, to the settlement website making relevant case information available to the class members.[29] The individual declarations described the work performed by each firm and the basis for its fee request. Attached to each declaration was a chart ("Exhibit A") summarizing each firm's respective lodestar through August 30, 2016. *See* Exhibit A to Dkt. Nos. 104-15, 104-16, 104-17, 104-18, 104-19, 104-20, 104-21, 104-22, 104-23. The narrative descriptions and chart outlines were taken verbatim from the template provided by Labaton. *See* Zeiss 6/14/17 Dep., pp. 16:10-16; 21-24.

c. The Labaton Template and Inaccuracies in Declaration Language

The Labaton template included several paragraphs describing the source of the lodestar calculations and billing rates. In particular, it included a generic description of the basis for the

[27] "Declaration of Lawrence A. Sucharow In Support of (A) Plaintiffs' Assented-To Motion For Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion For An Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs." Dkt. No. 104.

[28] The Omnibus Fee Petition listed ten firms, each of which submitted a lodestar calculation identifying the names and rates of individual attorneys and staff at their respective firms. *See* Labaton Sucharow (Dkt. No. 104-15); the Thornton Law Firm (Dkt. No. 104-16); Lieff Cabraser Heimann and Bernstein (Dkt. No. 104-17); Keller Rohrback, LLC (Dkt. No. 104-18); Hutchings, Barsamiam Mandelcorn, LLP (Dkt. No. 104-18); the McTigue Law Firm (Dkt. No. 104-19); Zuckerman Spaeder, LLP (Dkt. No. 104-20); Feingberg, Campbell & Zack, P.C. (Dkt. No. 104-21); Beins, Axelrod, P.C. (Dkt. No. 104-22); and Richardson, Patrick, Westbrook, and Brickman, LLC (Dkt. No. 104-23).

[29] Available at http://www.labaton.com/en/cases/State-Street-Corp.cfm (Last visited on April 17, 2018).

hourly rates listed in the lodestar calculation. With the exception of three ERISA firms -- McTigue Law,[30] Zuckerman Spaeder,[31] and Beins Axelrod[32] -- the Customer Class Counsel and the other ERISA Class Counsel adopted the template language in its entirety. Specifically, Labaton provided counsel with the following language:

- "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." (Dkt. Nos. 104-15, ¶ 6; 104-16, ¶ 3; 104-17, ¶ 4; 104-18, ¶ 3; 104-21, ¶ 3; 104-23, ¶ 3).

- 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 service, which have been accepted in other complex class actions." Dkt. Nos. 104-15, ¶ 7; 104-16, ¶ 4; 104-17, ¶ 5; 104-18, ¶ 4; 104-21, ¶ 4; 104-23, ¶ 4).

TLF adopted the preceding paragraphs verbatim in Garrett Bradley's Declaration, summarizing the basis for TLF's fee request. *See* Dkt. No.104-16. Several representations contained within these paragraphs are inaccurate:

[30] The McTigue Law Firm's individual fee declaration states that "[t]he 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 otherwise charged for their services, which have been accepted in other complex class actions my firm has been involved in." Dkt. No. 104-18, ¶ 20.

[31] Zuckerman Spaeder's individual fee declaration states that "[t]he 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 and are charged to clients paying us currently by the hour." Dkt. No. 104-20, ¶ 4.

[32] Beins Axelrod's individual fee declaration states that "[t]he 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. Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in Washington, D.C. by attorneys of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements. The Firm has charged, and received, an hourly rate of $525.00 in litigation involving fiduciary breach 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 Union clients. To serve the public interest, the Firm has also charged reduced rates to individual employees with employment discrimination claims. Dkt. No. 104-22, ¶ 8.

- *Exhibit A is a summary of time spent by attorneys and professional support staff members "of my firm."* None of the SAs were employed by TLF. 3/7/17 Hearing Tr., p. 87:8-10; G. Bradley 6/19/17 Dep., pp. 82:12-21; 83:4-7.

- *The billing rates for the SAs are "based on my firm's current billing rates."* TLF did not maintain "current billing rates" for SAs listed on its lodestar calculation in Exhibit A. 3/7/17 Hearing Tr., p. 87:14-19; G. Bradley 6/19/17 Dep., pp. 48:24 – 49:4; *see also* Exhibit A to Dkt. No. 104-16.

- *For personnel "who are no longer employed," the lodestar is based on their rates for the "final year of employment."* Again, none of the SAs were employed by TLF. 3/7/17 Hearing Tr., p. 87:8-10.

- *The schedule was prepared from "contemporaneous daily time records regularly prepared and maintained by my firm.*" TLF did not prepare or maintain daily time records of the hours worked by the SAs listed on its lodestar. Hoffman 6/6/17 Dep., pp. 63:2-7; 69:19-25; 70:12-16; 79:19-23; Kussin 6/5/17 Dep., p. 69:4-17. Nor did Garrett Bradley and Michael Thornton maintain sufficiently reliable contemporaneous daily time records. TLF-SST-011246 – 11249 (5/21/14 email from Hoffman to Lesser)("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/or MPT, GJB." [EX. 20].[33]

- *The hourly rates "are the same as my firm's regular rates charged for their services."* TLF did not maintain "regular rates" for the SAs listed on its lodestar report. 3/7/17 Hearing Tr., p. 88:2-5.

- *These rates "have been accepted in other complex class actions."* With the exception of 4 SAs, the $425 rate charged for the remaining SAs listed on the lodestar, including Michael Bradley, had not been accepted in other complex class actions. G. Bradley 6/19/17 Dep., p. 54:1-7.

Garrett Bradley acknowledged -- both in deposition and during the March 7, 2017 hearing before Judge Wolf -- that TLF's declaration was inaccurate and "should have been clearer." 3/7/17 Hearing Tr., p. 91:4-6; G. Bradley 6/19/17 Dep., p. 82:12-21. At the March 7

[33] Garrett Bradley and Michael Thornton were asked for contemporaneous records. TLF produced calendar entries as well as several documents bearing handwritten notations purporting to be Bradley's and Thornton's contemporaneous daily time records. TLF also, at the Special Master's request, provided an excel spreadsheet containing time entries recreated after the fact based on records received from other firms, mainly Lieff, working on the State Street case.

hearing, Bradley conceded that the language described above "should have been clarified by me at that time," but was not. 3/7/17 Hearing Tr., p. 88:18-19. There is ample evidence in the record that Garrett Bradley actually knew the Declaration contained inaccurate information but signed it anyway. *See, e.g.,* 3/7/17 Hearing Tr., p. 87:13-14; 88:2-9, 14-18; 91:5-7; 92:3-8.

d. Staff Attorney Time

Customer Class Counsel's individual fee petitions also included requests for fees for the SAs. On the lodestar summary charts (Exhibit A to the declarations), Labaton listed 25 SAs ("SAs"); Lieff listed 20 SAs; TLF listed 24 SAs. *See* Sucharow Decl., Dkt. No. 104-15, Ex. A; Chiplock Decl., Dkt. No. 104-17, Ex. A; G. Bradley Decl., Dkt. No. 104-16, Ex. A. In total, Customer Class Counsel reported 59,129.4 hours performed by SAs during the *State Street* case, accounting for nearly 70% of the Customer Class Counsel's total lodestar. *See* Labaton's, Lieff's and TLF's Lodestar Reports, Dkt. Nos. 104-15, Ex. A; 104-16, Ex. A; and 104-17, Ex. A; *see also* Master Chart of Lodestars & Expenses, Dkt. No. 104-24. As the chart below reflects, of TLF's total of 14,731 claimed hours, 10,537.9 hours (71.5%) were hours worked by "loaned" Labaton and Lieff SAs. Specifically, the Customer Class firms' lodestar Reports reflected the hours and lodestar of partners, associates and SAs in the following amounts:

FIRM	PARTNERS & ASSOCIATES	STAFF ATTORNEYS
LABATON	5,783.6 hours	31,526.4 hours
	$4,784,915.50	$11,684,111.00
LIEFF	2,025.1 hours	17,065.1 hours
	$1,391,346.50	$7,474,896.50
TLF	4,193.1 hours	10,537.9 hours

	$2,831,287.00	$4,508,837.00

xi. COURT APPROVAL OF THE SETTLEMENT AND FEE AWARD

a. Preliminary Approval

On August 8, 2016, the Court conducted a Preliminary Class Settlement Hearing, after which it granted preliminary approval of the class settlement,[34] provisionally certified the Settlement Class (as defined in the Notice of Pendency of Class Actions), approved the long-form Notice of Pendency of Class Action and Summary Notice, and appointed Labaton Sucharow LLP as Lead Counsel for the Settlement Class. *See* MAD No. 11-cv-10230, Dkt. No. 97.

David Goldsmith of Labaton appeared on behalf of the Settlement Class at the hearing. 8/8/16 Hearing Tr., pp. 4-6. Michael Thornton of TLF and Dan Chiplock of Lieff Cabraser, as well as attorneys from the three ERISA firms, also attended the hearing. *Id.*, pp. 2-4. On behalf of all counsel, Goldsmith addressed plaintiffs' request for preliminary class certification for settlement purposes, which involved meeting a two-prong test to show that class representatives and class counsel adequately represent the class members. 8/8/16 Hearing Tran., pp. 7:24-8:7. In response to the Court's inquiry whether Labaton could adequately represent both the ERISA and Customer classes, Goldsmith responded that Labaton was "adequate"; he argued that the Court had "no reason to depart" from its initial adequacy findings in the January 12, 2012 Memorandum and Order appointing Labaton as interim class counsel. *Id.*, p. 8:18-22. The Court acknowledged, and Goldsmith agreed, that a class member may opt out of the settlement if he or she "feels that its [sic] interests justify a different path." *Id.*, p. 11:6-13.

[34] As explained by Goldsmith during the August 8 hearing, "the reason why [class certification is] preliminary and not final is because class members do have a constitutional right to object to class certification if they see fit to do so." 8/8/16 Hearing Tr., p. 6:11-15.

The Court further asked Goldsmith to explain why the $300 million private settlement was reasonable, and specifically addressed the role of the DOJ, SEC, and DOL in the settlement process. *Id.*, p. 13:2-7. The Court showed a genuine interest in ensuring that the global settlement was fair to all participants: "if what I'm being asked to approve is going to affect something you've negotiated at arm's length with the [DOJ] and something you've negotiated with the SEC and something you've negotiated with the [DOL], I think that goes into both the reasonableness of the settlement and the fairness of the settlement." *Id*., p. 18:13-22. Goldsmith affirmed that the reasonableness of the settlement is evidenced, in part, by the fact that DOL signed off on it. *Id*., p. 18:2-6.

b. Final Approval

On November 2, 2016, a hearing was held on Plaintiffs' Assented to Motion for Final Approval of Settlement and Lead Counsel's Motion for an Award of Attorneys' Fees and for Payment of Service Awards. Goldsmith, accompanied in the courtroom by Zeiss, again represented the "plaintiffs and settlement class." 11/2/16 Hearing Tr., pp. 3:7-9, 10-11. Dan Chiplock of Lieff Cabraser and Carl Kravitz of Zuckerman Spaeder also attended the hearing. *See id*., pp. 2-3. Garrett Bradley and Mike Thornton of TLF also were in attendance. *See* G. Bradley 9/14/17 Dep., pp. 152:19 – 153:11. [35] During the hearing, the Court approved the settlement, explaining that its approval was based, in part, on its finding that counsel on both sides "vigorously represented their clients' interest." 11/2/16 Hearing Tr., p. 21:1-5. The Court also found the proposed Plan of Allocation to be fair. *See id.,* p. 22:16-21. The Court further noted the importance of the parties having reached a global settlement, including settlement with the federal regulators, in particular the DOL and SEC. *Id.* at pp. 17:8-23, 38:12-20.

[35] There is nothing in the record evidence indicating that any other attorneys from Labaton, Lieff, TLF, or any of the ERISA firms were in attendance at the final approval hearing.

In considering the reasonableness of the attorneys' fees requested, the Court inquired whether the plaintiffs' fee agreement was disclosed to the class members "at the outset" of the case, to which Goldsmith responded only that the fee agreement was "consistent with the fee [plaintiffs were] seeking here." *Id.* p. 26:12-13. In a colloquy with the Court, Goldsmith argued, "[W]e produced a $300 million settlement…. So I think … a fee of some substance would be in order, frankly." *Id.*, p. 28:16-20. The Court acknowledged that the $74 million in fees requested by counsel "is of some substance," *id*, p. 28:21-25, but noted that none of the class representatives had objected to that fee request. *Id*., p. 34-8-9.

At the conclusion of the hearing, stating that he was "relying heavily on the submissions and what's been said today," Judge Wolf approved a 25% award of attorneys' fees in the amount of $74,541,250.00, plus expenses in the amount of $1,257,699.94. *See id.* p. 35:4-8. The Court also approved service awards totaling $85,000 -- $25,000 for ATRS and $10,000 for each of the six ERISA plaintiffs. *Id*. at pp. 33:4-6, 35:9-12. Judgment was entered accordingly. *See* Order and Final Judgment, Dkt. No. 110. The Judgment became final on December 2, 2016.

xii. DISTRIBUTION OF SETTLEMENT AND ATTORNEYS' FEES

As provided in the Plan of Allocation approved by the Court at the Final Settlement Hearing, $60 million of the $300 million gross settlement was allocated to the ERISA class plaintiffs, providing ERISA plan participants with a recovery ratio of roughly $2 to every $1 of loss to the class. *See* Sucharow Decl., Dkt. No. 104, ¶ 134. The Plan of Allocation further provided that a maximum of $10.9 million of the approximately $75 million in total attorneys' fees could be paid out of the ERISA Class' recovery for attorneys' fees.[36] This allocation was

[36] The $10.9 million cap in attorneys' fees from the ERISA class recovery was negotiated by DOL. Sarko 9/8/17 Dep., p. 66:1-8; Kravitz 9/11/17 Dep., p. 66:8-23; *see also* TLF-SST-052694 – 52696 (8/21/15 email correspondence between Customer Class counsel and ERISA counsel related to negotiations with DOL regarding

negotiated and agreed to by Customer Class Counsel and ERISA Counsel after the parties reached the agreement-in-principle on the $300 million settlement, *See* Sucharow Decl., ¶ 139; *see also* Kravitz 7/6/17 Dep., pp. 54:25 – 55:1; 59:11-12; Sarko 7/6/17 Dep., p. 48:19; McTigue 7/7/17 Dep., p. 43:10-11. In accordance with the Plan of Allocation and the ERISA fee allocation previously agreed upon among the Customer Class Counsel and ERISA Counsel, ERISA Counsel collectively received 10% of the total fee award -- a sum of $7.5 million -- with the remaining $3.4 million under the agreed-upon $10.9 million ERISA fee cap being paid back to Customer Class Counsel instead of to ERISA Counsel. *See* Sucharow Decl., ¶¶ 134-139.

a. Payment of Fees and Expenses

On September 2, 2016, State Street paid the gross settlement sum of $300 million into a Class Settlement Fund Escrow Account -- an escrow account maintained by Labaton, as Lead Settlement Counsel, with Citibank -- where the funds remained pending entry of Judgment. *See* Stipulation and Agreement of Settlement, Dkt. No. 89; Zeiss 9/14/17 Dep., pp. 122:15, 124:9-11, 130:21-23; *see also* LBS041692 (Citibank Escrow Account Statement). Under the terms of the Stipulation, Labaton agreed that, once Judgment became final it would "in good faith promptly distribute any award of attorneys' fees and/or payments of litigation expenses among *plaintiffs' counsel.*" Dkt. No. 89 ¶ 21 (emphasis added).

After the Court issued its Order awarding fees, the total sum of the fee award was transferred by Labaton into a Lead Counsel Escrow Fund, also held by Citibank. Zeiss 9/14/17 Dep., pp. 124:16-23; 125: 3-4. On December 8, 2016, after Judgment became final, Labaton instructed the bank to disburse the fees, expenses, and service awards approved by the Court. *Id*., p. 125:13-21. The fees and expenses were disbursed by the bank directly to Lieff, TLF,

fees) [EX. 21]; TLF-SST-052697 – 52698 (8/26/15 email from Lynn Sarko to Customer Class counsel and ERISA counsel regarding negotiated deal with DOL) [EX. 22].

McTigue, Keller Rohrback and Zuckerman Spaeder. Zeiss 9/14/17 Dep., p. 125:13-21. Labaton also instructed the bank to transfer approximately $34 million to its firm's IOLA account, out of which Labaton paid the service awards, obligations to "of counsel" attorneys,[37] and approximately $4.1 million to Texas attorney, Damon Chargois, that same date. *Id.*, pp. 140:21 – 141; 143:4-8.[38]

The $4.1 million payment to Chargois was the fourth largest payment made from the total fee award, and more money than was paid to any ERISA firm. *See* Master Chart of Lodestars, Litigation Expenses and Plaintiffs' Service awards, Dkt. No. 104-24. In coordinating the payment to Chargois, Zeiss instructed Labaton's accounting department to remit payment from the firm's IOLA if "it will be a rush" to pay Chargois. 12/7/16 Zeiss Email to Ng, LBS 032881 – 32883 [EX. 50]. Unlike payments from settlement escrow funds -- governed by escrow agreements -- payments made from Labaton's IOLA account did not require two additional signatures for disbursement. *See* Zeiss 9/14/17 Dep., p. 120:9-23. Chargois testified that it did not matter to him when, or from which account, the payment was made. Chargois 10/2/17 Dep. pp. 304:9-10; 305:3-10.

The $4.1 million payment to Chargois was uncovered during the course of the Special Master's investigation.[39] Chargois never filed an appearance in the *State Street* case, nor did he,

[37] "Of counsel" here refers to Goldman Scarlato & Penny. Goldman Scarlato & Penny performed work on the case, and is reflected in the lodestar report Labaton submitted to the Court. Zeiss 9/14/17 Dep., pp., 143:17-20; 144:6-7.

[38] Labaton has not yet distributed money to the class members. Zeiss 9/14/17 Dep., p. 133: 2-5, 9-12. As of July 2017, the Class Settlement Account contained $224,978,733.34. *Id*., p. 132:6-10.

[39] This payment of fees to Chargois first came to light in a batch of emails produced by TLF on August 8, 2017 and gave rise to several additional months of depositions and written discovery. Neither Labaton nor Lieff produced any emails related to Chargois in response to the Special Master's initial requests for production of documents. *See*, *e.g.*, Special Master's First Set of Interrogatories to LCHB (Revised) Nos. 5, 10, 62, 74; Special Master's First Set of Interrogatories to LBS (Revised) Nos. 4, 9, 60, 72; Special Master's First Set of RFPs to LCHB (Revised) 3, 16, 40. After the Chargois relationship was disclosed by the TLF-produced emails in response to the Special Master's initial document requests, both Labaton and Lieff produced a significant number of emails and documents pertaining to the

or his firm, Chargois & Herron, submit any declaration or lodestar report as part of the *State Street* Fee Petition. *See* Dkt. Nos. 104, 104-15, 104-16, 104-17, 104-19.

All parties concede Chargois performed no work on the case.

The names Chargois and/or Chargois & Herron appear nowhere in the Fee Petition or any of its exhibits. *See id.* All parties concede that the Court was never informed about Chargois or the payment of $4.1 million to his firm. *See* Belfi 9/5/17 Dep., pp. 87:24-88:11; 89:1-17; 90:7-12; 122:23-123:5; Goldsmith 9/20/17 Dep., p. 112:10-14; G. Bradley 9/14/17 Dep., pp. 152:19-153:16.[40] Failure to include payment to Chargois in the fee petition was a material omission.

B. INVOLVEMENT OF LABATON AND CHARGOIS IN THE STATE STREET CASE

i. LABATON'S INTRODUCTION TO ATRS

Labaton represented ATRS throughout the *State Street* case, serving as Lead Counsel throughout the litigation. ATRS was headed by Executive Director George Hopkins. Hopkins had succeeded Paul Doane, the previous Executive Director, on December 29, 2008. Hopkins 9/5/17 Dep. p. 14:10-22. [41]

Labaton's relationship with ATRS began in or about 2007. Around that time, Labaton -- which frequently acts as monitoring counsel[42] for its clients --was looking to expand its securities

---

Chargois relationship and payment in response to subsequent document requests by the Special Master specifically related to Chargois.

[40] In fact, Sucharow testified that the only impact a fee award has on a class is the "total amount" of attorney's fees awarded. *See* Sucharow 9/1/17 Dep., p. 35: 14-19.

[41] After Paul Doane resigned, for a brief period of time ("three or four months") ATRS was headed by an interim director, Gail Bolden, Doane's deputy director. Hopkins 9/5/17 Dep., p. 14:14-22. Hopkins succeeded Gail Bolden. *Id.*, p. 14:18-20.

[42] *See* note 3, *supra*. As monitoring counsel, Labaton uses sophisticated in-house investigators and analysts to oversee a client's portfolio of securities investments for signs of possible securities law violations. If Labaton believes a client's portfolio may have been involved in a securities violation that could lead to a viable case, Labaton may ask the client whether it would be interested in serving as lead plaintiff in a potential class action litigation based on those violations. *See* Available at http://www.labaton.com/en/practiceareas/Institutional-Investor-

monitoring practice and form new relationships with potential pension fund clients in the Southwest. Keller 10/13/17 Dep., p. 21:1-22; Sucharow 9/1/17 Dep. pp. 15:3-16:19; Chargois 10/2/17 Dep., p. 32:3-22. In an effort to "mak[e] inroads" in the Arkansas community, Labaton sought the assistance of Damon Chargois, a lawyer admitted to practice law in Arkansas and Texas (and who, in 2007, maintained law firms under the name Chargois & Herron in each state.)[43] Labaton had previously retained Chargois to serve as its local counsel in *HCC Holdings,*[44] a securities fraud class action case filed in federal court in Houston.[45] In September 2007, Chargois introduced Labaton partners Eric Belfi and Christopher Keller to Paul Doane, Executive Director of ATRS, at that time. Chargois 10/2/17 Dep., pp. 33:24-35:22.

Chargois recalled Belfi asking him in 2007 to introduce him and his partner Chris Keller to institutional investors in Arkansas, as Labaton was interested in creating client relationships with institutional investors in that region. *Id*., p. 20:4-17. Chargois readily admitted that at the time he had no knowledge of any "institutional investors." *Id.* at p. 20:20. Chargois' then partner, Tim Herron, did not have any relationships with institutional investors, either. *Id.*, p. 27:16-19. However, Herron was friends with an Arkansas state senator, Steve Farris, who at the time, served on the Arkansas legislature's Joint Committee on Public Retirement and Social Security which had an oversight role with respect to ATRS. Hopkins 9/5/17 Dep., pp. 35:6 – 36:8.

Protection-Services.cfm (last visited April __, 2018). Because Labaton's representation is contingent on the occurrence and detection of securities violations, it "takes a while for people… to understand [Labaton's work] to the point where it can be useful to them." Keller 10/13/17 Dep., p. 24: 20-23.

[43] Chargois & Herron's Arkansas office was closed in late 2009 or early 2010. Chargois 10/2/17 Dep., p. 31:15-17.

[44] *In re HCC Insurance Holdings, Inc. Securities Litig.*, SDTX No. 07-00801.

[45] In contrast to this case, in *HCC Holdings,* Chargois filed an Affidavit in support of the Application for an Award of Attorneys' Fees and Reimbursement of Expenses, which included a lodestar report of his firm, Chargois & Herron LLP. *See In re HCC Insurance Holdings, Inc.*, SDTX No. 07-00801, Dkt. No. 71-3.

Farris suggested to Herron that they might want to try to contact Paul Doane who had then just recently taken over as Executive Director of the Arkansas Teacher Retirement System. Chargois 10/2/17 Dep., pp. 33:16-21. Herron told Chargois, and Chargois called Doane. *Id.*, p. 33:24-34:1.

Chargois explained to Doane that he was working with a New York law firm that specialized in institutional investors and asked if Doane would meet with him, Belfi and Keller, and Doane agreed. *Id.*, p. 34:1-35:3. Within a week or so, a meeting took place in Little Rock. Chargois 10/2/17 Dep., p. 35:8-16. At that initial meeting, "Eric Belfi presented all the services that Labaton has available and what their -- what they could do and presented as a courtesy that they could do this monitoring of the portfolio." Chargois 10/2/17 Dep., p. 36:13-16. Doane later came to New York for another meeting with Belfi and Keller at Labaton's offices; Chargois was not present. Belfi 9/5/17 Dep., p. 38:2-6. At this meeting, Labaton did a presentation for Doane as to what services the firm could provide. According to Belfi, "[O]nce we did the presentation, we were kind of put on their radar. So, at some point later when they did the RFQ [of prospective monitoring counsel], they sent an RFQ for us to respond to." Belfi 9/5/17 Dep., p. 37:17-22.

ii. THE CHARGOIS "ARRANGEMENT"

As consideration for Chargois' efforts, Belfi and Keller agreed to pay Chargois' firm, Chargois & Herron, a maximum 20% of any attorney's fees received by Labaton in any litigation involving an institutional investor for whom Chargois had facilitated the introduction, including ATRS (hereinafter "the Chargois Arrangement"). Chargois 10/2/17 Dep., pp. 50:18-25; 53:10-

17; Keller 10/25/17 Dep., pp. 315:21-24, 316:11-14.[46] Both Chargois and Belfi understood that it was the mere introduction by Chargois to potential institutional investors or potential antitrust clients that was the basis of the agreement to pay Chargois 20% of any legal fee Labaton earned on any cases in which Labaton was lead counsel or co-lead counsel and the client was lead or co-lead plaintiff.[47] Chargois 10/2/17 Dep., p. 50:18-24; Belfi 9/5/17 Dep., pp. 19:6-21:21. Under this arrangement, Chargois was not expected to file an appearance or assume a substantive role in any of the resulting litigation, or even interface with the client. Chargois 10/2/17 Dep., pp. 56:19-24; 57:1-6; Keller 10/25/17 Dep., p. 323:2-4.

While Chargois and Keller attempted on numerous occasions over the years to reduce this agreement to writing, and exchanged several drafts to which they both agreed in large measure, no formal agreement was ever put together; it was wholly "an email relationship." Chargois 10/2/17 Dep., p. 59:8-10 ("Only e-mails. There's no four-corner document that -- in

---

[46] Labaton had previously entered into an agreement to pay TLF approximately 20% of its total fee to in cases where TLF (and in particular, TLF partner, Garrett Bradley) interacted with local, pension fund clients. As Christopher Keller of Labaton explained:

> [W]e had a very, sort of, good, productive relationship with the Thornton Law Firm and -- where, you know, we would -- we would jointly get retained by, you know, funds in the Northeast area, which was their sort of area of -- they had lots of relationships within the area. And we, you know, had an understanding they would get, sort of, let's say, up to 20 percent. And the understanding was that, it was going to be somewhat of a, I call it, a turnkey, but I'm using a -- what I mean is we didn't have to do any heavy lifting up in the -- up in the area, because there's a lot -- I mean, we're a national firm. Think about this, so we have over 200 pension fund clients, we may have one within driving distance of our office okay. So we maintain a national practice and -- but without offices all over the nation. So it's very important, any time that we can leverage others who -- who are ready and willing and able to do the heavy lifting locally, we're happy to sort of let that happen, and, of course, pension funds feel much more comfortable with people they know or people who are close by or were introduced through someone they know, so we made that a -- a -- this is how Labaton was going to build more business.

Keller 10/13/17 Dep., pp. 43:3-44:19

[47] While Chargois understood that he would receive 20%, as Keller testified, Labaton believed that it was only obligated to pay Chargois a percentage of fees proportional to ATRS's share of the contributory losses incurred by all lead plaintiffs. By way of example, if ATRS was named co-lead counsel with another plaintiff in a successful litigation, Chargois' payment would not be 20% of Labaton's fee, but would reflect ATRS's pro rata portion of the total loss amount, offsetting the full 20% figure

ceremony and signed or anything. It's just an e-mail relationship." *Id*.) Chargois was very clear that his understanding was that this was not a "referral fee" arrangement, nor was he "local counsel"; it was just an "agreement":

> THE SPECIAL MASTER: What is your understanding of the relationship? And if it evolved from something to something else --
>
> THE WITNESS [Mr. Chargois]: Right.
>
> THE SPECIAL MASTER: -- we'd be very interested in that.
>
> THE WITNESS: At the very beginning I thought I would be local counsel. I was not.
> . . . .
> When Eric informed me that [the joint RFQ] had been kicked back, I needed to withdraw, ever since then I've only referred to this as an agreement. I don't have a client so...
>
> THE SPECIAL MASTER: Just an agreement?
>
> THE WITNESS: Just an agreement.
>
> THE SPECIAL MASTER: Not a referral fee arrangement?
>
> THE WITNESS: No, sir.
>
> THE SPECIAL MASTER: Not a local counsel arrangement?
>
> THE WITNESS: No, sir.
>
> THE SPECIAL MASTER: Not a forwarding fee arrangement?
>
> THE WITNESS: I'm not sure what forwarding fee means.
>
> MR. SINNOTT: Neither are we.
>
> THE SPECIAL MASTER: We weren't either. I was going to follow up on that and ask you if you've ever heard the term.
>
> THE WITNESS: I have not.
>
> THE SPECIAL MASTER: So just a fee arrangement or just an arrangement?
>
> THE WITNESS: I've always referred to it as our agreement.

Chargois 10/2/17 Dep. pp. 62:10-64:5.

While Labaton's relationship with Chargois began with Chargois & Herron serving as "local counsel" in the *HCC Holdings* Texas class action, it is clear that the relationship evolved over time. *See* Chargois 10/2/17 Dep., pp. 17:19-21; 38:23-24, 39:1; Sucharow 9/1/17 Dep., p. 81:16-20. As a result, the terminology used to describe the Chargois Arrangement varies greatly between individuals. Counsel has labeled Chargois as "local counsel," or "the local," while on other occasions describing the Chargois Arrangement as based in "referral" or a "referral obligation." *See, e.g.,* LBS027776 (4/24/13 Bradley email to others) [EX. 23]; M. Thornton 9/1/17 Dep., p. 38:13-15; Chiplock 9/8/17 Dep., pp. 68:4-7, 102:3-8; Keller 10/13/17 Dep., pp. 45:11-16; 71:24-72: 4; 96:16-18; 212:5-12. In yet other instances, the Chargois Arrangement is characterized as a "forwarding obligation." Sucharow 9/1/17 Dep., pp. 59:13-19; 86:8-12. Finally, Sucharow testified that he considered Chargois a "joint venturer" working with Labaton to find pension clients. Sucharow. 9/1/17 Dep., p. 16:1-3. Regardless of the title used, it is undisputed that Chargois' sole contribution to -- and only role in -- the *State Street* case was facilitating an introduction between Labaton and ATRS -- years before the *State Street* case was even contemplated. Sucharow 9/1/17 Dep., p. 82:7-10.

a. Labaton's Compartmentalization of Knowledge of the Chargois Arrangement

While the initial discussions to partner with Chargois included only Keller and Belfi of the Labaton firm, Larry Sucharow -- Co-Chairman and, in effect, managing partner of Labaton[48] -- learned of the firm's obligation to pay Chargois (a "referring attorney") a portion of the total

[48] In 1982, Sucharow was named partner of the firm. Sometime thereafter, he became managing partner. He served in that role for "many years" until his appointment as Chairman of the firm. As Chairman, Sucharow assumed duties of both the Chairman and managing partner. Sucharow 6/14/17 Dep., p. 10:18-11:4. Sucharow currently is Co-Chairman of the firm. *See* http://www.labaton.com/en/ourpeople/Lawrence-Sucharow.cfm (Last visited April 16, 2018).

attorney's fees by 2015.[49] Sucharow 9/1/17 Dep., p.18:2-11; 20-13. Sucharow, who acted as the "lead negotiator and lead strategist" in the *State Street* case, knew of Chargois' entitlement for which he did not perform any substantive work or bill any time on the case. Sucharow 9/1/17 Dep., p. 86:18- 87:1. At least as of 2015, Sucharow knew that Chargois had no role in the *State Street* case beyond the initial introduction to ATRS. *See id*.

Much of Sucharow's lack of knowledge of the Chargois Arrangement can be attributed to Labaton's compartmentalization of its practice. Christopher Keller, who is Co-Chairman of the firm and a member of the firm's Executive Committee,[50] testified the decision to compartmentalize the practice was done in an effort to modernize and improve efficiency. *See* Keller 10/13/17 Dep., p. 79:18-20. The end result of compartmentalization, however, was that often attorneys in one department were generally unaware of decisions made or work done by attorneys in another department, even where the same client or lawsuit is involved. *See* notes 24, *supra* & 62, 68 *infra*. For example, Nicole Zeiss, who worked exclusively in Settlements, was not privy to decisions made by attorneys in the Litigation department or by the Relationship attorneys. Zeiss 6/14/17 Dep., p. 79:5 - 80: 24. Her involvement in the *State Street* case was "strictly as settlement counsel." *Id*., at p. 79:5-9. Similarly, litigators, such as David Goldsmith, was not privy to client agreements entered into by the firms Relationship attorneys. *See* Goldsmith 9/29/17 Dep., pp. 112:10 – 113:9; *see also* Keller 10/13/17 Dep., p. 77:13-17

[49] Sucharow testifies that "[it] may be that I *should have known* [prior to 2015] because I know we had some ongoing relationship with him, but it was nothing that was in the forefront of my mind." Sucharow 9/1/17 Dep., p.18:3-6. While the full nature of the Chargois Arrangement -- payment for performing no work on the case -- was not initially disclosed to Sucharow, he learned first-hand that Chargois did not work on the case after becoming involved in the settlement process. Sucharow 9/1/17 Dep., 18:24-19:1.

[50] *See* http://www.labaton.com/en/ourpeople/Christopher-Keller.cfm (last visited on 4/18/17). In addition to his management duties as Labaton's Co-Chairman and as a member of the firm's Executive Committee, Keller currently leads, the Case Development Group, which is composed of attorneys, in-house investigators, financial analysts, and forensic accountants. The group is responsible for evaluating clients' financial losses and analyzing their potential legal claims both in and outside of the U.S. and tracking trends that are of potential concern to investors. *See id.*

(Labaton's Relationship attorneys perform client development duties and "[t]he client -- the client, you know, development, is a very kind of a siloed thing within the firm. They -- they -they operate, you know, a lot on the road, amongst themselves.")

As a consequence, the fee arrangement Eric Belfi, Labaton's "Relationship" partner, and Christopher Keller agreed to with Damon Chargois was not shared with the Labaton attorneys who were involved with the litigation and settlement of the *State Street* case.

David Goldsmith, who was Labaton's principal litigator in *State Street*, never knew about Damon Chargois or his fee arrangement until November 21, 2016 -- several weeks after the *State Street* settlement had been approved by the Court. 111:13 – 113:9. Nicole Zeiss, Labaton's "Settlement Counsel," who appeared with Goldsmith at the Final Approval Hearing before Judge Wolf, testified that in her role as settlement counsel, she had a "general understanding" that Chargois and his firm had worked with Labaton "to develop relationships with clients in different cases," but she did not have any knowledge of the details of the firm's relationship with him. Zeiss 9/14/17 Dep., p. 19:17-21.

iii. THE ATRS REQUEST FOR QUALIFICATIONS (RFQ)

Chargois' efforts got Labaton the "foot in the door" it wanted and needed with ATRS. In mid-2008, ATRS issued a Request for Qualifications ("RFQ") to Labaton, among other firms. Chargois 10/2/17 Dep., p. 37:19-22. On July 30, 2008, Labaton responded by submitting a "joint proposal" on behalf of Labaton and Chargois & Herron. LBS017738 – 17755 **(**7/30/08 Joint Response by Labaton Sucharow LLP & Chargois & Herron, LLP) [EX. 24]; *see also* Belfi 9/5/17 Dep., p. 37:20-23. Labaton, through Belfi, received ATRS's response to the RFQ on October 13, 2008 by email from ATRS Chief Counsel, Christa Clark. *See* LBS 017455 - 17456 (10/13/08 email from C. Clark) [EX. 25]. Clark advised Belfi that Labaton had been selected as

an additional monitoring counsel for ATRS, but that Chargois & Herron was *not* approved as part of the proposal. *Id.* Clark indicated that while there was no requirement to use Chargois & Herron, Labaton could use Chargois & Herron on a "case by case basis," if they were "a necessary and appropriate expense." *Id.* Specifically, Clark's email to Belfi stated in relevant part:

> I am pleased to inform you that subject to final approval of the Attorney General's ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system.
>
> I would like to speak to you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.
>
> If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm *may affiliate that firm or use them as independent contractors, if you deem is* [sic] *appropriate on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case.* I don't know how to best handle this point but the state procurement process is not conducive to a joint proposal.

See LBS 017456 (10/13/08 email from C. Clark) (emphasis added) [EX. 25].

Chargois understood that his firm was not accepted as part of the RFQ process. Chargois 10/2/17 Dep., pp. 48:15-49:1.

At no point after receiving Clark's email did Labaton inform Ms. Clark, Mr. Doane (or his successor, George Hopkins) of the pre-existing Chargois Arrangement generally, or that it was obligated to pay Chargois a portion of any fees that might be awarded in its representation of ATRS in the *State Street* matter. Belfi, 9/5/17 Dep. pp., 23:5-16; 115:17-21; 118:16-19; Keller 10/25/17 Dep., p. 297:14-16.

iv. ATRS' LACK OF KNOWLEDGE OF THE CHARGOIS ARRANGEMENT

Beginning in 2008, Labaton went on to serve as monitoring counsel for ATRS.[51] Belfi 9/5/17 Dep., p. 18:6-7. Shortly thereafter, George Hopkins replaced Paul Doane as Executive Director of ATRS. *Id*., at 27:16-18. Belfi explained that Hopkins was a much more direct person, who only wanted to deal with Belfi. Belfi 9/5/17 Dep., pp. 27:18-28:7, 56:22-57:10. Hence, the relationship between Chargois and ATRS shifted with Hopkins' appointment. Belfi 9/5/17 Dep., p. 57:11-24. Labaton no longer needed Chargois to facilitate communications with ATRS. Nevertheless, Labaton continued to remit payments to Chargois under their previous arrangement to avoid litigation by Chargois that would likely be filed in Chargois' home state, Texas. Belfi 9/5/17 Dep., 58:1-7, 10-15.

George Hopkins worked closely with Labaton in deciding to file the *State Street* lawsuit, and he remained very involved in the case, including in the mediation process, spending "hundreds of hours" working on the case during its five-year history. Hopkins 6/14/17, p. 102:35.

Labaton sought Hopkins' approval before partnering with Lieff and TLF in the class action litigation. However, Labaton did not seek Hopkins' approval to share information with or remit payment to Chargois. Hopkins, in fact, was never informed of the existence of Damon Chargois nor of any agreement between Labaton and Chargois, much less one that entitled Chargois to 20 % of any attorney fee recovered by Labaton on behalf of ATRS. *See* Hopkins 9/5/17 Dep., pp. 21:5-10, 64:4-67:11; Belfi 9/5/17 Dep., pp. 18:9-20:17; 24:6-20. [52]

[51] Labaton continues to serve as one of five firms "on retainer" to ATRS, responsible for monitoring ATRS' investment portfolio and alerting ATRS to potential misappropriation or unexpected monetary loss. Hopkins 6/14/17 Dep., pp. 29:9-22; 30:3-5.

[52] Hopkins testified that he "had no idea" that Chargois had introduced Belfi and Keller to ATRS before his tenure. In fact, Hopkins had never even heard of Damon Chargois or Chargois & Herron prior to their disclosure during the Special Master's investigation in August 2017. Hopkins 9/5/17 Dep, pp. 20:22-21:10; 64:4-65:24.

Hopkins testified regarding his knowledge of Chargois:

It is apparent from Labaton's email correspondence with George Hopkins that Labaton took pains at every turn not to reveal Damon Chargois, Chargois & Herron, or their 20% interest in ATRS cases to Hopkins. Rather than include Chargois as a co-addressee or cc him on email correspondence concerning ATRS cases in which Chargois & Herron had an interest, Eric Belfi of Labaton either blind-copied Chargois or Herron, or separately forwarded the emails to them, the effect of both being the same -- to not reveal Chargois & Herron to Hopkins *See, e.g.,*

- LBS 018439 (Chargois and Herron bcc'd on 5/10/10 email from Belfi to Hopkins re: "Blue Ribbon" report for *Goldman Sachs* litigation) [EX. 26];
- LBS 017505 (Tim Herron bcc'd on 5/6/10 email from Belfi to Hopkins updating status of The Hartford securities litigation) [EX. 27];
- LBS 018437 – 18438 (5/15-16/10 email chain from Hopkins to Belfi re: potential joint filing of a case with Nix Patterson, forwarded by Belfi to Chargois) [EX. 28];
- LBS 020417 – 20418 (5/14/10 letter from Belfi to Hopkins re: *Colonial BancGroup* case, forwarded to Chargois on 5/17/10) [EX. 29];
- LBS 017822 (Chargois bcc'd on 5/2/13 email from Belfi to Hopkins re: motion to dismiss filed in the *Facebook* case) [EX. 30];
- LBS 017824 (10/23/13 email from Belfi to Hopkins re: *Facebook* securities litigation, w/attachments, forwarded to Chargois) [EX. 31];

Q. Were you aware that members of a law firm with a Little Rock office had introduced individuals that you would later come to know as Eric Belfi and Chris Keller to influential Arkansas officials in an effort to secure legal work with the state?
A. I had no idea.
Q. Are you familiar with the firm name Chargois & Herron?
A. As of about two weeks, ten days ago.
Q. But you never encountered them to the best of your recollection years ago?
A. I had never heard of that firm before.

Hopkins 9/5/17 Dep, pp. 20:22-21:10.

In a Declaration sent to the Special Master on March 17, 2018 -- five weeks before the filing of this R&R -- George Hopkins confirms that he had no knowledge of the Chargois agreement, but states that he "did not want to know the specifics of fee allocations between Labaton and other attorneys," and purports to "ratify that [the Chargois] agreement." Hopkins 3/15/18 Declaration, ¶¶ 7, 10, 16. [EX. 53].

- LBS 017825 – 17826 (Chargois bcc'd on 7/24/13 email from Belfi to Hopkins re: *Goldman Sachs* trial) [EX. 32].

See also Belfi 9/5/17 Dep., pp. 110:5 – 113:5; Keller 10/25/17 Dep., pp. 353:14-354:17; 358:1-24; 463:2-464:2.

Nor did the Retainer Agreement in *State Street* signed by Hopkins disclose the Chargois Arrangement. The Retainer Agreement provided, in relevant part, that ATRS agrees that Labaton "may divide fees with other attorneys for serving as local, as referral fees, or for other services performed in connection with the Litigation." LBS019948 – 19950 (9/24/10 Retainer Agreement, p. 2) [EX. 33]; *see also* LBS005362 – 5364 (2/8/11 Engagement Letter from Eric Belfi to George Hopkins).[53] [EX. 34]. It further provided that "[t]he division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting with the prosecution of the Litigation." *Id*. The Retainer Agreement did not name any individual attorney nor specify which, if any, of these "services" it would seek as part of the litigation. *See id.* It contains only a vague reference to "referral fees," but it does not name Chargois, or Chargois & Herron, and makes no reference to the obligation to Chargois the ATRS lawsuit would trigger or how the payment would be made. Chargois acknowledged he played no role whatsoever in ATRS's *State Street* lawsuit, and only met George Hopkins once, when he happened to be in San Francisco visiting his sister and attended an unrelated court hearing. Chargois 10/2/17 Dep., pp. 54:18-23, 74:21-75:3.

[53] Specifically, the Retainer Agreement provides:

> Arkansas Teacher agrees that Labaton Sucharow *may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation.* The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent assisting with the prosecution of the Litigation. Any division of fees among counsel will be Labaton Sucharow's sole responsibility and will not increase the fees payable by Arkansas Teacher or the class upon a successful resolution of the Litigation.

LBS 011060 – 11062 (9/24/10 Retainer Agreement) (emphasis added). [EX. 35].

Labaton's purported reason for not informing Hopkins of the Chargois Arrangement is because Hopkins "did not want to know." *See* Hopkins 3/15/18 Declaration [EXH 53]; Belfi 9/5/17 Dep., pp. 23:17 – 24:5. This was a unilateral decision by Belfi, however, who concluded after meeting Hopkins that Hopkins would appreciate a more direct relationship. Belfi 9/5/17 Dep., pp. 27-28; 56-57. According to Belfi, the subject of Chargois "did not come up," and admittedly, Belfi did not want to bring another attorney not from Labaton into the case, Belfi 9/5/17 Dep., pp. 110, 122.

a. Agreement Among Labaton, Lieff and Thornton to Share in the Payment of Labaton's Obligation to Chargois

Labaton's obligation to pay Chargois 20% of any fee it might be awarded in State Street was disclosed to Lieff and TLF in or about April 2013. The subject was first raised at a meeting during a Global Justice Network conference, an event organized by Bob Lieff and attended by Michael Thornton, Garrett Bradley, and Lynn Sarko.[54] Lieff 9/11/17 Dep., p. 63:10-22. In an April 26, 2013 email from Garrett Bradley to Robert Lieff, Michael Thornton, Eric Belfi, Christopher Keller and Dan Chiplock, and copied to Chargois (referred to by the parties as the "Dublin email"), Chargois was referred to as "the local counsel who assists Labaton in matters involving Arkansas Teachers Retirement System." LBS 025771. In that email, Garrett Bradley memorialized an agreement reached earlier among the three Customer Class law firms to share in the payment of Labaton's 20% obligation to Chargois.[55] In relevant part, Bradley's email stated as follows:

[54] Bob Lieff testified that he does not have a specific recollection of a conversation with Bradley and Michael Thornton regarding Chargois. Lieff 9/11/17 Dep., p. 66:2-5. Although Lynn Sarko attended the Global Justice Network meeting, there is no evidence that he was party to any discussion with Bob Lieff, Michael Thornton or Garrett Bradley concerning Chargois and Sarko testified that he did not learn about the Chargois arrangement until it was disclosed in the Special Master's investigation in August 2017.

[55] During the *State Street* litigation, Garrett Bradley had substantial contact with Belfi and Keller of Labaton, and Chargois. Bradley attended annual marketing conferences hosted by Labaton and attended by Keller, Belfi, and

> Bob, as you, Mike and I 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. Labaton has an obligation to this counsel, Damon Chargois, copied on this e-mail, of 20 percent of the net fee to Labaton in the State Street FX cases before Judge Wolf. Currently this amount will be 4 percent because of the agreement between Labaton, Thornton and Lieff of a division of 20 percent guaranteed, each with the balance to be decided on at a later date. Obviously, this may go up should Labaton receive an amount higher than 20 percent. We have agreed that the amount due to the local, whatever it turns out to be, 4 or 5, will be paid off the top with the balance fee split between Lieff, Labaton, Thornton pursuant to our agreement. The local asks that I copy him on this e-mail so he will have confirmation of this agreement. When we spoke to him, he was agreeable to this as well. Garrett.

LBS 025771 (4/25/13 G.Bradley email to R. Lieff, M. Thornton, E. Belfi, C.Keller and D. Chiplock, copied to Chargois)). [EX. 37].

Discussions concerning the specific percentage to be paid Chargois were ongoing while the parties continued with their hybrid mediation in 2013 and 2014. Later, in late 2015, after the settlement had initially been agreed to by the parties, Customer Class Counsel all agreed to allocate 5.5% of their collective fee award to Chargois. Chiplock 9/8/17 Dep., pp. 106:18-107:1. Labaton, Lieff, and TLF contributed equally to satisfy this obligation. Labaton Sucharow's 8/11/16 Responses to Special Master's Supplemental Interrogatories, Response No. 1(b).

v. LIEFF'S AND THORNTON'S[56] LIMITED KNOWLEDGE OF THE CHARGOIS ARRANGEMENT

Lieff and TLF were not privy to the origins of the Chargois Arrangement or the details of Labaton's obligation to pay Chargois in all cases in which ATRS is a co-lead counsel. Lieff 9/11/17 Dep., p. 92:2-12; Thornton 9/1/17 Dep., pp. 19-21, 35:12-24. The original cost-sharing agreement circulated -- but never executed -- among Customer Class Counsel in 2011 shortly

---

Chargois. Then, effective January 1, 2015, through late 2016, Garrett Bradley held a dual role as partner at TLF and "of counsel" to Labaton. *See* LBS007086 – 7090 (Bradley's Of Counsel Agreement). [EX. 36]. In this role, Bradley agreed to "assist Labaton partners in identifying and seeking retention by clients for securities." *Id*.

[56] As discussed *infra*, Garrett Bradley stood in a unique position vis-à-vis Labaton (see note 55, *supra*), and specifically, the Chargois Arrangement. Thus, Bradley's knowledge must be considered separately from that of the other Thornton attorneys.

after the *ATRS* complaint was filed, referenced only that the firms acknowledged that "[t]here is an 'off the top' obligation to referring counsel of 6% of the fees awarded," without any specifics. *See* TLF-SST-033911 – 33913 (5/4/11 letter agreement).[57]

The arrangement was next addressed amongst the three Customer Class firms in the April 24, 2013, "Dublin" email in which Garrett Bradley described a financial obligation owed to Chargois. Bradley characterized Chargois as "local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System." LBS 025771 [EX. 37]. The Labaton attorneys addressed on the email, Chris Keller and Eric Belfi, did not offer any additional explanation. Nor did either attorney inform their co-counsel that Chargois was not performing any work in the matter. Bob Lieff responded to the email on April 23, 2013, stating "I am in full agreement." LBS030997 – 30998, (4/24/13 Lieff Email to G. Bradley, et al.). [EX. 38]. Eric Belfi responded to the email on May 6, 2013, stating "[w]e are in full agreement." *Id*.

While members of the Lieff and TLF firms were generally aware of Labaton's obligation -- to be shared by Customer Class Counsel -- to pay Chargois a percentage of Labaton's total fee in the *State Street* case, the exact percentage or details of that arrangement were not discussed until settlement discussions were well underway years into the litigation. Thornton 9/1/17 Dep., pp. 36:16-17, 22-24; 37:1-7.

a. Thornton's Knowledge of the Chargois Arrangement

Garrett Bradley of TLF received an initial draft of the proposed cost-sharing agreement on May 23, 2011. TLF-SST-033910 (5/23/11 Keller to Bradley). [EX. 54]. Although the "referring counsel" was not identified in the proposed cost-sharing agreement, Bradley testified

[57] Christopher Keller, who drafted the letter agreement, testified that the "off the top" percentage to referring counsel -- 6% -- reflected 20% of Labaton's 1/3 share of the fees: "20 percent of a third is 6 point something so we probably just went with 6 percent." Keller 10/25/17 Dep., p. 419:8-9.

that he had never heard anyone other than Damon Chargois referred to as "referring counsel" by Labaton in connection with the *State Street* litigation, G. Bradley 9/14/17 Dep., p. 43:1-20, and his deposition testimony indicates that he was aware that Labaton had an obligation to pay Chargois a percentage of the fees at least as early as "around the time the complaint was filed or shortly." *Id*., p. 44:7-12.[58] Bradley testified, however, that he did not know that Chargois would not have to do any work for a share of the fees, nor did he know the details of the arrangement. ("I thought his role was similar to ours; that he did substantive work, corresponded with the client, dealt with the client, got authority. That's what I thought his role was." *Id.*, at p. 45:10-13; *see also* p. 47:7-8).[59]

Michael Thornton was included as an addressee of the May 4, 2011 draft letter, but testified that he never received or reviewed that letter at the time. Thornton 9/1/18 Dep., p. 148:6. Mr. Thornton testified that he was unaware of Chargois until Garrett Bradley told him of an obligation to pay "local/referring counsel" in or about 2013, and even then, did not know Chargois by name. *Id*., p. 148:7-13; p. 20: 14-17; p. 35: 14-24. While it is clear that Mr. Thornton understood that Chargois was entitled to receive a portion of the fees awarded in the

---

[58] Bradley testified:

> I believe as early as -- just prior to or right around the time of filing in 2011, I raised with Chris [Keller] how are we going to deal with your obligation to Damon 'cause I was very concerned that he would try to apply for 20 percent of this entire case.
>
> And I asked them to deal with it.

G. Bradley 9/14/17 Dep. p. 44:7-13.

[59] Other evidence in the record suggests that Bradley likely knew more about Chargois than this testimony might indicate. Record evidence shows that Bradley, Chargois, Belfi and Keller spent a considerable amount of time together during Labaton's "marketing" conferences during this period. In addition, Bradley held a dual role from January 1, 2015 through late 2016 as TLF's Managing Partner and as "Of Counsel" to Labaton with the sole responsibility of client development. Further, Labaton's General Counsel, Mike Stocker, asked Bradley -- and not Labaton's own lawyers, Eric Belfi or Chris Keller -- to intervene with Chargois in handling negotiations with Chargois when negotiations over Chargois' fee in the case became more pointed. *See* 6/21/16 email, TLF-SST-012527 – 012528. [EX. 55]. Beyond this, TLF, through Bradley, had arrangements with Labaton similar to its arrangement with Chargois.

State Street case due to his role in securing Labaton a position on the monitoring panel, *id*. at pp. 44: 8-22; 36: 16-19, Mr. Thornton did not know that Chargois was entitled to receive 20% payment in every case in which ATRS served as a lead or co-lead counsel. *Id*., at p. 44: 16-24. And while Chargois did not serve as forum local counsel in the case, Mr. Thornton understood that Chargois was a referring attorney, i.e. an attorney who referred the matter to ATRS because he was either not competent or it was not his role to bring action on behalf of ATRS against State Street. *Id*. at p. 38: 4-11; p. 42:2-16.

b. Lieff's Knowledge of the Chargois Arrangement

Bob Lieff and Dan Chiplock, both recipients of the "Dublin" email, testified that they understood Damon Chargois to be performing some substantive role as local counsel for Labaton in the State Street litigation, serving the class by assisting the ATRS client locally in Arkansas. Lieff 9/11/17 Dep., pp. 58-80; Chiplock 9/8/17 Dep., pp. 101-116. In arriving at that understanding of the Chargois role, each relied both upon their understanding of Labaton's role as lead counsel and the representations made by Garrett Bradley in relation to Chargois. *See* 4/5/18 Declaration of Daniel Chiplock, ¶¶5-6; LBS 025771 [EX. 56], LCHB-0053483 (4/24/13 "Dublin email," in which Garrett Bradley referred to Chargois as "the local counsel who assists Labaton in matters involving Arkansas Teachers Retirement System" and to which Bob Lieff replied that he was in full agreement as to the proposed allocation) [EX. 57].

Bob Lieff testified that he thought Chargois was local counsel for Labaton dealing with the client in Arkansas. *See* Lieff 9/11/17 Dep., p. 67:9-13 ("I thought he was local counsel for Labaton in this particular case I assumed dealing with the Arkansas fund because that's what local counsel will do. That was my understanding.") He further testified that had he known that

Chargois had done no work on the case, he would not have agreed to the allocation of part of his firm's fee award to Chargois. Lieff 9/11/17 Dep., p. 97:13-16.

Informing both Lieff and Chiplock's belief that Chargois played a local role was their recent experience in *BONY Mellon*, in which LCHB's local counsel interfaced with their Ohio pension fund client but otherwise had little contact with co-lead counsel and non-lead counsel participating in the New York litigation. *See* Lieff 9/11/17 Dep., pp. 58-80; Chiplock 9/8/17 Dep., pp. 101-116; 4/5/18 Declaration of Daniel Chiplock, ¶6. Subsequent email communications between Labaton, TLF and LCHB in 2015 describing a financial obligation to a local Arkansas attorney reinforced LCHB's belief that Chargois fulfilled some local role in the case. *See*, *e.g.*, TLF-SST-040617-40618 [EX. 58], LCHB-0053491-53492 (8/6/2015 Bradley email to Lieff and Thornton regarding "Fee discussions" related to BONY Mellon and State Street, with reference to "arkansas local") [EX. 59]; LCHB-0053493 [EX. 60], TLF-SST-038574-38579 (8/28/15 Lieff email to Bradley and Thornton regarding State Street and referring to Arkansas local counsel; Bradley response to same) [EX. 61]; TLF-SST-053117-53126 (8/28/15 Chiplock email to Sucharow, Bradley and Thornton regarding memorialization of the fee allocation agreement amongst the firms, and referencing payments to ERISA counsel and "local Arkansas counsel" in relation to the distribution of Customer Class Counsel fees;) [EX. 62]; LCHB0053513-53521 (continuation of correspondence amongst counsel regarding same) [EX. 63]; LCHB-0053507-53512 (8/28/15 separate correspondence between Chiplock and Lieff regarding same) [EX. 64]; LCHB-0053531-53532 (8/30/15 further response from Bradley to Chiplock, Lieff, and Sucharow referring to the "Arkansas firm" and the prior April 2013 correspondence, noting that there was already a "written agreement between all the parties that the Arkansas component would come off the top") [EX. 65]. Neither Labaton or Bradley

corrected these characterizations of the Chargois role as local counsel. Related communications from Chiplock to Lieff in mid-2016 demonstrate that Chiplock still believed that Chargois occupied this role during the finalization of the Fee Petition. LCHB-0053538-53540 (forwarding 2013 and 2015 email correspondence) [EX. 66]; LCHB-0053541 (forwarding 2013 correspondence and referencing calculation of "local counsel's" fee) [EX. 67].

Attorneys from the firms exchanged emails related to the Arrangement again in 2015. On August 28, 2015, Dan Chiplock corresponded with Larry Sucharow, Garrett Bradley and Michael Thornton regarding memorialization of the fee allocation agreement amongst the firms; Chiplock referred to payments to ERISA counsel and "local Arkansas counsel" in relation to the distribution of Customer Class Counsel fees. TLF-SST-053117-53126 (8/28/15 Chiplock Email to Sucharow, G. Bradley, Thornton, and Lieff) [EX. 39]. Garrett Bradley, referencing the prior emails in 2013, replied that there was already "a written agreement between all the parties that the Arkansas component would come off the top" and stated that the "ERISA piece" should be handled the same way. *Id*. As Chris Keller and Eric Belfi were not included on this email exchange, and Larry Sucharow was at that point unaware that Chargois was not performing any work as the local Arkansas counsel, the 2013 characterization of the Chargois role remained uncorrected.

The Chargois Arrangement was the subject of another email correspondence between the three firms on July 8, 2016, this time referencing Chargois as a "local attorney in this matter who has played an important role:

> 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 down to this number with a guarantee that it will be off the court awarded fee number. Please reply all if you agree. Given that it is off the total number their [sic] is no need to add the ERISA counsel to this email chain.

LBS039936 – 39937 (7/8/16 G. Bradley Email to Lieff, Thornton, Sucharow, Chiplock, Keller, Belfi, and Chargois). [EX. 40].

At no time in this multi-year correspondence was the nature of Chargois' role -- *i.e.,* as a referring attorney -- made clear. None of the Labaton attorneys followed up on the July 2016 correspondence in writing. Nor does the record contain any evidence that any of the Labaton attorneys informed their co-counsel, either before or after this email, that Chargois had played no role at all in the *State Street* case, nor did the Labaton attorneys attempt to explain what "important role" Chargois played. Bob Lieff and Mike Thornton replied to Bradley's July 8 email expressing their firms' respective agreement to these terms. *Id.*; LBS031152 – 31153 (7/8/16 Thornton Email to G. Bradley & 7/8/16 Lieff Email to G. Bradley, et al.) [EX. 41]. Separately, Chris Keller wrote to Garrett Bradley, "great work getting this done." LBS039936 [EX. 40].

c. Inconsistency of Information Regarding the Chargois Arrangement

Even among Labaton attorneys, full knowledge of the Chargois Arrangement was limited to Belfi and Keller. *See* Sucharow 9/1/17 Dep., p. 17:10-13 ("I'm not sure I ever knew in the sense that I didn't hear 'til later on that there was an obligation to [Chargois].") For example, Larry Sucharow, who described himself as the "lead negotiator and lead strategist" for plaintiffs in the *State Street* case, only learned of Labaton's financial obligation to Chargois in 2015. *Id.,*

pp. 18:20-23; 87:1.[60] Similarly, David Goldsmith, the lead Labaton litigator who appeared on behalf of the purported Settlement Class in the Preliminary and Final Settlement approval hearings before Judge Wolf, did not learn of the Chargois Arrangement until November 21, 2016, several weeks after the Final Approval Hearing**.** Goldsmith 9/20/17 Dep., pp. 108:20-109:2.[61]Even those who were aware of the Arrangement, were unfamiliar with Chargois' full name. Sucharow 9/1/17 Dep., pp. 7-9; 35:17-24.[62]

Outside of Labaton attorneys, the terms "forwarding fee" and "referral fee" have no significance in a class action context. 9/11/17 Lieff Dep., p. 79:20-22. Robert Lieff testified that the term local counsel is also not descriptive of Chargois' role, as it is a term of art used to describe an attorney who works for a client on a case-by-case basis and submits a fee petition for services performed in a particular case, an understanding shared by Chargois himself. Lieff 9/11/17 Dep., p. 80:9-17. Although they now seek to cast Chargois in the role of "referring" counsel, Labaton attorneys never used the phrase "referring counsel" in discussions with Chargois. Chargois 10/2/17 Dep., p. 64:15-19. And when asked, Chargois did not view his role as either a "referring counsel," "liaison counsel" or "local counsel" in the *State Street* case or any

[60] Though he testified that he learned of his firm's obligation to Chargois in 2015, Sucharow signed the Omnibus Declaration, which was filed with the Court in September 2016; the Declaration did not disclose the Chargois Arrangement or reference the intended payment to Chargois. *See* Dkt # 104-1, 104-15.

[61] David Goldsmith testified that he first learned of Chargois and his fee arrangement with Labaton on November 21, 2016. Goldsmith 9/20/17 Dep., pp.111:13 -112:9. He further testified that he had no idea that a payment was going to be made to Chargois out of the class funds or that Chargois payment was going to be 5.5 % of the total $75 million fee award. *Id.,* pp. 112:10 – 113:9. Goldsmith admitted that this was important information and that he would have liked to have known about it before he went before Judge Wolf at the Fairness Hearing. *Id.* Goldsmith further admitted he knew of no work done by Chargois on the *State Street* case, nor had any other Labaton lawyer told him that Chargois did any work on the matter. *Id.* at pp. 114:11 – 115:13.

[62] Sucharow and Goldsmith's ignorance of the Chargois is another result of Labaton's compartmentalization. *See* note 24, *supra.* Only the client relationship partner, Eric Belfi, and Christopher Keller knew the details of the Chargois Arrangement.

case involving ATRS. Chargois 10/2/17 Dep., pp. 55: 8-13, 20-24; 63:11 – 64:6**;** this was just "an agreement." *Id.*, p. 63:5-21.

vi. ERISA COUNSEL'S LACK KNOWLEDGE OF CHARGOIS ARRANGEMENT

Neither Labaton nor any other Customer Class Counsel ever informed ERISA Counsel of Labaton's obligation to Chargois, or Chargois' role in connection with this case. Sarko 9/8/17 Dep., pp. 56:18 – 57:9, 71:14-23; Kravtiz 9/11/17 Dep. p. 70:8-10; McTigue, 9/8/17 Dep., p. 17:14-21. Like Hopkins, ERISA Counsel only learned of the Chargois Arrangement as a result of the Special Master's investigation in or about August 2017. Sarko 9/8/17 Dep., 71:14-23; Kravitz 9/11/17 Dep. 70:8-10; McTigue 9/8/17 Dep., p. 17:14-21. One effect of the Customer Class Counsel's failure to disclose the Chargois Arrangement to ERISA Counsel was the nondisclosure to the ERISA class representatives and members themselves.

As with Hopkins, Labaton was at pains to keep ERISA Counsel from learning about Chargois or the Chargois Arrangement. *See e.g.,* Sucharow response to G. Bradley email regarding proposed Claw Back letter addressed only to Customer Class Counsel advising "no reason for ERISA to see Damon's split." TLF-SST-012272 – 12274 (11/22/16 Sucharow Email to Goldsmith, G. Bradley, Keller, Belfi) [EX. 42]; LBS039936 – 39937 ("Given that it is off the total number their [sic] is no need to add the ERISA counsel to this email chain.") [EX. 40]; TLF-SST-053117-53126 [EX. 39].

ERISA Counsel testified that had they known of the Chargois Arrangement during the *State Street* case, they would have proceeded differently in several material respects. Lynn Sarko testified that had he known of the Chargois Arrangement, he "absolutely" would have felt an obligation to disclose [the Arrangement] to the ERISA class representatives and get their informed consent. Sarko 9/8/17 Dep., p. 91:4-15. Moreover, had he become aware that an

attorney who did no work on the case would receive in excess of $4 million prior to signing the ERISA Fee Allocation in 2013, Sarko would not have agreed to the award of only 9% (which became 10%) of the total fee award to ERISA Counsel. *Id.* pp.75:2-22, 78:19-79:4. The other ERISA counsel, Brian McTigue and Carl Kravitz of Zuckerman Spaeder, testified that they would not have agreed to it, either. *See* McTigue 9/8/17 Dep. p. 21:15-24; Kravitz 9/11/17 Dep., pp. 83:3-84:22. In fact, the purported purpose of the Fee Allocation was to align interest "on the same team" and develop a level of trust between the ERISA lawyers and Customer Class lawyers. Sarko 9/8/17 Dep., p. 82:8-15.

Sarko testified further that he would not have agreed to file a joint fee petition with the Court had he known of the intended payment to Chargois, which, in his opinion, should have disclosed. Sarko 9 /8/17 Dep., pp. 75:2-7, 78:24-79:3. Nor would he have signed the Claw Back Agreement (*see* Section C (iii), *infra*) agreeing to reimburse Labaton for any reduction in the fee award imposed by the Court as a result of the November 10, 2016 letter to the Court admitting the overstatement of the *State Street* lodestar (discussed *infra*). Sarko 9/8/17 Dep., pp. 75:2-22, 78:19 – 79:4.

Sarko also was the chief liaison with the DOL during the mediation, and he testified he would have been obligated to tell the DOL about Chargois and his arrangement with Labaton for a cut of the fees. Sarko 9/8/17 Dep. p. 76:14-22. In Sarko's opinion, if the DOL had the information about Chargois, the Department would have had questions, and the settlement would have "blown up" because State Street was insisting on a global settlement which could not be achieved without the DOL's approval. *Id.*, p. 84:3-5.

vii. PAYMENTS TO CHARGOIS PURSUANT TO THE CHARGOIS ARRANGEMENT

Since the Chargois Arrangement began in 2008, Labaton has represented ATRS in at least nine cases for which it has paid Chargois a percentage of the Labaton's total fee award:

- *In re A10 Networks, Inc. Shareholder Litigation,* No. 2015-1-CV-276207 (Cal. Super. Ct. Jan 29, 2015)
- *Brado v. Vocera Communications, Inc.* No. 13-CV-3567 (N.D. Cal. Aug.1, 2013)
- *Perry v. Spectrum Pharmaceuticals, Inc.*, No. 13-CV- 0433 (D. Nev. Mar.14, 2013)
- *Hoppaugh v. K12 Inc.,* No. 12-CV-0103 (E.D. Va. Jan. 30, 2012)
- *In re Hewlett –Packard Company Securities Litigation,* No. 11-CV-1404 (C.D. Cal. Sept. 13, 2011)
- *Arkansas Teacher Retirement System v. State Street Corporation,* No. 11-CV-10230 (D. Mass. Feb 10, 2011)
- *In re Beckman Coulter, Inc. Securities Litigation,* No. 10-CV-1327 (C.D. Cal. Sept. 3, 2010)
- *In re Colonial BancGroup, Inc. Securities Litigation*, No. 09-CV-0104 (M.D. Ala. Feb. 9, 2009)
- *In re Capacitors Antitrust Litigation*, No. 14-CV-3264-JD (N.D. Cal.) [63]

Labaton Response to Special Master's Supplemental Interrogatory, 1(a); Chargois 10/2/17 Dep., pp. 54:2-3; 65:1-71:13.[64] In each of these cases, Labaton paid Chargois a percentage -- more often amounting to 10 - 15% than the originally agreed-upon 20% -- of Labaton's total fee

[63] Chargois testified that *In re Capacitors* was not an ATRS case, and, hence, not covered by the agreement. *See* Chargois 10/2/17 Dep., p.65:4-7.

[64] While not identified in response to discovery, media reports also identify Labaton filing on behalf of ATRS, and being named co-lead counsel in a multi-trillion-dollar action alleging that many of the country's leading banks harmed both the United States government and private investors by rigging the management of 13 trillion dollars in securities sold by the U.S. Department of Treasury in *In Re: Treasury Securities Auction Antitrust Litigation,* (S.D.N.Y. 2017). Potentially, the Chargois Arrangement would cover this case, as well

award. Chargois 10/2/17 Dep., p. 60:17-20.[65] Neither Chargois nor any Chargois & Herron attorneys entered an appearance or did any work in any of these actions.

C. SCRUTINY OF THE STATE STREET SETTLEMENT AND SPECIAL MASTER'S APPOINTMENT

i. THE BOSTON GLOBE INQUIRY

By all accounts, the $300 million settlement reflected an excellent result for the class members and was the product of the highly professional and skilled work of the class's law firms. Sarko 7/6/17 Dep., p. 109:22-23; Kravtiz 7/6/17 Dep., pp. 105:23-106:7; Hopkins 6/14/17 Dep., p. 100:1-10**.** However, on November 8, 2016 -- less than a week after the Court had approved the Settlement and entered Judgment -- the *Boston Globe* contacted counsel for TLF to inquire about the apparent duplication of certain SA names listed on the individual firm lodestar reports of Customer Class Counsel submitted as part of the Joint Fee Petition. Garrett Bradley 6/19/17 Dep., pp. 85:23-86:11; David Goldsmith 7/17/17 Dep., p. 132:16-24. Following this inquiry, attorneys from Labaton, Lieff, and TLF immediately conducted internal reviews to determine what, if any, information in their fee petitions may have been incorrect. *See* Goldsmith 7/17/17 Dep., p. 137:11-19; G. Bradley 6/19/17 Dep., pp. 86:15 – 87:12**.**

---

[65] Chargois was not happy with the frequent reductions in the amounts Labaton paid his firm. He expressed his frustration in an October 18, 2014 email to Labaton:

> "…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 okay with the fee split in this instance. We are not changing our fee split agreement for all 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 that going forward."

LBS017593 - 17594 (10/18/14 Chargois email to Belfi) [EX. 43]; *see also* Chargois 10/2/17 Dep., pp. 253:2-255:4.

After conducting their internal reviews, Labaton, Lieff and TLF unanimously conceded that the *State Street* Fee Petition overstated hours worked by Customer Class Counsel by 9,322.9 hours due to the double-counting of certain lawyers' hours, resulting in a lodestar overstatement of $4,058,654.50.[66] Specifically, the Fee Petition attributed hours of staff (and contract) attorneys allocated by Lieff and Labaton to TLF for purposes of cost-sharing not only to the lodestar petitions of Lieff and Labaton -- the SA host firms -- but also to TLF's lodestar. This dramatically inflated the lodestar of TLF. *See* 11/10/16 Letter from David J. Goldsmith to Hon. Mark L. Wolf, Dkt. No. 116. [EX. 44].

ii. NOVEMBER 10, 2016 LETTER TO THE COURT

After Labaton, TLF, and Lieff confirmed that the double-counting alleged by the *Globe* had, in fact, occurred, David Goldsmith of Labaton took the lead in writing a letter to the Court to explain what had happened. *See* 11/10/16 Letter from David J. Goldsmith ("Goldsmith Letter"), Dkt. No.116 [EX. 44]; G. Bradley 6/1917 Dep., p. 87:15-17; Goldsmith 7/17/17 Dep., pp. 143:25-144:5. Various iterations of the letter were circulated among Customer Class Counsel and ERISA Counsel, and ultimately approved by all, before the letter was filed with the Court. *Id.*, p. 144:5-9. The Goldsmith Letter explained that due to "inadvertent errors," Plaintiffs' Counsel's reported combined time and lodestar were incorrect. Of the reported 86,113.7 hours, 9,322.9 hours were overstated. Of the reported lodestar of $ 41,323,895.75, $ 4,058,654.5 was overstated. 11/10/16 Goldsmith Letter, p. 2. [EX. 44]. The internal review revealed that 17 SAs had been listed on both the TLF and Labaton lodestar reports, and for these SAs, the billing rates on the TLF report were in most instances higher. Goldsmith 7/17/17 Dep., p. 142:12-19. Lieff also confirmed that six SAs on TLF's lodestar report also appeared on Lieff's report. Chiplock

[66] The ERISA Counsel's lodestar reports were unaffected by the double-counting.

6/16/17 Dep., p. 164:9-17; *see also* Goldsmith 11/10/16 Letter to the Court, Dkt. No. 116. [EX. 44].

Shortly thereafter, the *Boston Globe* published a report detailing the "double-counting" issue addressed by the Goldsmith Letter and raising additional questions about the accuracy and reliability of the attorneys' fees, including questions concerning the billing rates charged for the SAs and contract attorneys, and for the work in the case done by the Garrett Bradley's brother, Michael Bradley -- who was not employed by TLF -- including the $500 per hour rate at which Michael Bradley's work was included in Thornton's lodestar.[67]

The Goldsmith Letter did not attempt to explain how or why the double-counting occurred. Nor did Labaton take this opportunity to disclose the Chargois Arrangement. (Of course, Goldsmith, himself, did not know about Chargois at the time he wrote the letter to the Court.)[68]

[67] *See* Andrea Estes, *Critics hit law firms' bills after class-action lawsuits*, BOSTON GLOBE, December 17, 2016, https://www.bostonglobe.com/metro/2016/12/17/lawyers-overstated-legal-costs-millions-state-street-case-opening-window-questionable-billing-practices/tmeeuAaEaa4Ki6VhBpQHQM/story html. [EX. 45].

[68] This is another instance of problems created at Labaton as a result of its compartmentalization of its practice. *See* notes 24 and 62, *supra*.

iii. THE "CLAW BACK" LETTER

After the November 10, 2016 letter was delivered, Plaintiffs' Counsel awaited a response from the Court. Recognizing that the Court might respond adversely and ultimately decide to reduce the fee award, on November 21, 2016, at the direction of Labaton's Chairman, Lawrence Sucharow, David Goldsmith drafted a letter which Sucharow then sent to all counsel -- including ERISA Counsel -- for their signature, asking all counsel to agree to refund to Labaton, for re-deposit into the State Street escrow account, their respective pro-rata share of any court-ordered reduction of fees, expenses and/or service awards ("Claw Back Letter"). *See* Goldsmith 7/17/17 Dep., pp. 152:17-155:13; *see also* TLF-SST-012264 – 12266 (11/21/16 Sucharow Draft Letter to Counsel) [EX. 46].

Bob Lieff and Sarko agreed, pending a breakdown of the fees to be paid out on December 8. The issue of whether to send a similar letter to Chargois was raised in an email addressed only to Customer Class Counsel by Garrett Bradley, to which Sucharow responded:

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

TLF-SST-012272 – 12274 (11/22/16 Sucharow Email to Goldsmith, G. Bradley, Keller, Belfi) (emphasis added). [EX. 42].

Larry Sucharow then also directed Goldsmith to send a separate claw-back letter to Damon Chargois for his signature, as well. Goldsmith 9/20/17 Dep., p. 171:14-23. Accordingly,

Goldsmith drafted a letter for Eric Belfi, the "ATRS relationship partner" with Labaton to send to Chargois. *Id*, p. 172:10-15. *See also* Belfi 9/5/17 Dep. p. 93:13-16.

iv. APPOINTMENT OF SPECIAL MASTER

With questions having been raised as to the accuracy and reliability of the lodestar reports which had been submitted by Plaintiffs' counsel and relied upon by the Court in awarding fees, the Court proposed the appointment of a Special Master to investigate these issues and prepare a Report and Recommendation concerning them. *See* 2/6/17 Memorandum and Order, Dkt. No. 117. [EX. 47]. The Court thereafter held a hearing on March 7, 2017 to discuss, among other issues, the appointment of Hon. Gerald E. Rosen (Ret.) as the Special Master.[69] The following day, on March 8, 2017, the Court appointed Hon. Gerald E. Rosen, ret., as Special Master to investigate and prepare a Report and Recommendation as to:

> (1) the accuracy and reliability of counsels' fee petitions; (2) the accuracy and reliability of representations made in David Goldsmith November 10, 2016 letter to the Court; (3) the accuracy and reliability of representations made by parties requesting service awards; (4) the reasonableness of attorneys' fees, expenses, service awards previously ordered and whether any of them should be reduced; and (5) whether any misconduct occurred in connection with the award of attorneys' fees, and if so, whether such misconduct should be sanctioned.

3/8/17 Memorandum and Order, Dkt. No. 173 (footnotes omitted). [EX. 48].

The Special Master retained William F. Sinnott, Esq. of the law firm Donoghue, Barrett & Singal, P.C. (now "Barrett & Singal, P.C.") to assist in the investigation. The Special Master also retained John Toothman as a technical adviser, and later, Professor Stephen Gillers as an expert on the ethical and professional conduct issues raised in this case.

[69] Prior to the hearing, all of the law firms agreed to the appointment of Judge Rosen, except McTigue Law. McTigue initially filed a written objection to the appointment of Judge Rosen, *see* McTigue Law's Response to 2/6/17 Order, Dkt. No. 138, but on the record at the hearing, withdrew that objection. *See* 3/7/17 Hearing Tr., Dkt. No. 176, p. 55:3-4.

III. QUESTIONS PRESENTED

I have been asked to address the following questions:

I. Whose professional conduct rules and what law governed the obligations of class counsel in this matter?

Answer: The Massachusetts Rules of Professional Conduct. Federal law also governs issues raised here.

II. Was the arrangement with Chargois ("the Chargois Arrangement"[70]) a valid division of fee agreement under Massachusetts Rule 1.5(e)?

Answer: No. The Chargois Arrangement does not comply with Rule 1.5(e) of the Massachusetts Rules of Profession Conduct. It is, therefore, within the prohibition in Rule 7.2(b) against paying a "person" to recommend a lawyer.

III. Should the Chargois Arrangement have been disclosed to the Court before the Court awarded fees in this matter?

Answer: Yes. Federal law and the Massachusetts Rules of Professional Conduct required that counsel who knew the terms of the Chargois Arrangement inform the Court before it awarded fees in this matter.

IV. Should the Chargois Arrangement have been disclosed to the members of the certified settlement class?

Answer: Yes. Fiduciary duty and the Massachusetts Rules of Professional Conduct required that counsel who knew the terms of the Chargois Arrangement inform the certified settlement class.

V. Did Garrett Bradley's lodestar declaration comply with the Massachusetts Rules of Professional Conduct and Rule 11, Fed. R. Civ. P.?

Answer: No. The Declaration violated Rule 3.3(a) because, as I have been asked to assume, Bradley knew that it contained false statements when he filed it. Separately, the Declaration violated Rule 11 because Bradley filed it without conducting "an inquiry reasonable under the circumstances" to establish that there was "evidentiary support" for the facts in it.

[70] I will use the term "Chargois Arrangement" to refer to the puported agreement by Labaton Sucharow to pay Chargois or Chargois & Herron twenty percent of the fees Labaton earned from its work for ATRS. The payment, as I am asked to assume, was meant to compensate Chargois for recommending Labaton to ATRS in 2008. The Arrangement did not require Chargois to do any work on ATRS matters or to accept responsibility for any work Labaton did for ATRS. *See* pp. 35-38.

IV. OPINION

A. WHERE THE COURT IS CALLED ON TO APPLY A RULE OF PROFESSIONAL CONDUCT, IT SHOULD APPLY THE MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT RATHER THAN THE RULES OF ANOTHER JURISDICTION. FEDERAL COMMON LAW ALSO GOVERNS ISSUES BEFORE THE COURT

Weber and *Fishman (supra* pages 2-3) were not disciplinary cases. They recognized, however, that the violation of professional conduct rules may be relevant in deciding whether a law firm or lawyer has violated a duty to a client. Similarly, I cite these rules because they are relevant to the law firms' duties to ATRS, the class, and the Court. I offer no opinion on what, if any, remedy or sanction is appropriate.

i. APPLICATION OF MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT

Counsel's duties in this case are governed by two bodies of authority: the rules of professional conduct *and* federal law.[71] The determination of whose professional conduct rules govern counsel's conduct is straightforward. The United States District Court for the District of Massachusetts, the jurisdiction in which the State Street case was pending, expressly adopts the Massachusetts Rules of Professional Conduct. *See* L.R., D. Mass. 83.6.1 (incorporating rules promulgated by the Supreme Judicial Court). The Massachusetts Rules of Professional Conduct themselves -- in particular Rule 8.5(b)(1) -- reaffirm that Massachusetts ethical rules govern all conduct in matters pending before a "governmental tribunal [i.e. a court] …unless the rules of the tribunal provide otherwise." *See* Rule 8.5(b)(1); *see also* Rule 1.0(p).

Admissions for *pro hac vice* status in the District Court in Massachusetts, such as those obtained by out-of-state counsel in the State Street case, requires an express acknowledgement

[71] Unless otherwise noted, all references to a rule of professional conduct are to the Massachusetts Rules of Professional Conduct.

that the Massachusetts Rules of Professional Conduct govern the applicant's behavior. To gain admission *pro hac vice* in this Court, each attorney was required to certify, under oath, that he or she "has read and agrees to comply with the Local Rules of the United States District Court for the District of Massachusetts." Local Rule 83.5.1(b)(1)(C).[72] The Local Rules, in turn, incorporate the Massachusetts Rules of Professional Conduct.

Massachusetts Rule 8.5 cmt. [4] provides that a Court's "choice of law rule" might lead to application of another jurisdiction's rule. But that would not be so on the facts before the Special Master. The District Court addressed the choice of law issue in *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 188 F.Supp.2d 115 (D. Mass. 2002), where "a law professor" who was "putatively an expert on tobacco litigation," sought to enforce an oral fee-splitting arrangement with the law firm for whom he consulted. In weighing several different factors, the Court relied heavily on the place of performance, deeming bar admissions not dispositive of the inquiry. *See id*. at 119, 121, 122-123. Thus, the Massachusetts Rules of Professional Conduct governed the dispute between the expert -- admitted to practice only in New York -- and the defendant, a South Carolina law firm -- where the expert had performed the bulk of his legal work in Massachusetts. *Id.* at 123. Application of Massachusetts law would not, however, prevent other states with an interest in the litigation from disciplining attorneys over whom it had authority. *Id.*

Applying the *Daynard* Court's analysis to the conduct of counsel in the *State Street* case, Massachusetts Rules of Professional Conduct should, again, apply. The ethical issues here predominantly arise out of counsel's conduct *before the Court* as well as written submissions to

[72] The previous version of this rule in effect in 2011, L.R., D. Mass 83.5.1(a)(1) (amended Jan. 1, 2015), required that attorneys seeking admission to the District Court "(ii) ha[ve] satisfied the examination requirements as defined by the District Committee on Admissions relating to familiarity with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, principles of federal jurisdiction and venue, and rules relating to professional responsibility; and (iii) ha[ve] filed a certificate …. attesting to familiarity with the local rules of this district."

the Court and duties to disclose information to the class representatives and class members, whom the Court had an obligation to protect. Unlike Attorney Daynard, counsel here actually appeared before the Court on more than one occasion.

ii. ADDITIONAL REASONS TO APPLY THE MASSACHUSETTS PROFESSIONAL CONDUCT RULES IN THIS CASE

For three other reasons, the Court should apply the Massachusetts professional conduct rules. First, applying to each lawyer the rules of the particular jurisdiction in which that lawyer is admitted could subject different lawyers to different rules and possibly different outcomes for their work in the same litigation. Second, among the rules relevant here are rules that describe duties to the Court itself. The Court has a strong interest in assuring that the behavior of lawyers practicing before it is governed by its own rules, not the rules elsewhere. Third, the relevant rules also describe duties to members of the certified class who reside in many jurisdictions, whose rules may vary. As in *Daynard,* other jurisdictions in which these questions may arise can apply their own rules.[73] *See id*. at 123.

iii. FEDERAL LAW ALSO GOVERNS ISSUES BEFORE THE COURT

As stated, federal law also governs issues discussed here and, in particular, the obligation of class counsel to disclose the Chargois Arrangement. *See* Section C (ii), *infra.*

[73] Application of Massachusetts law will not prevent courts elsewhere from enforcing their own rules of professional responsibility. *Daynard*, 188 F. Supp. 2d at 123. Similarly, application of Massachusetts law will not prevent courts in other jurisdictions from analyzing and applying the relevant principles of contract enforcement or public policy considerations recognized in other states, if called upon to do so.

B. THE CHARGOIS ARRANGEMENT IS AN UNETHICAL PAYMENT FOR THE RECOMMENDATION OF A CLIENT UNDER RULE 7.2(b) UNLESS IT SATISFIES THE REQUIREMENTS OF RULE 1.5(e) AS A VALID DIVISION OF FEE AGREEMENT.

i. RULE 7.2(b)

Rule 7.2(b) forbids a lawyer to "give anything of value to a person for recommending the lawyer's services."[74] Mass. R. Prof. C. 7.2(b). This was the language of Rule 7.2(b) in February 2011, when ATRS retained Labaton in this case, and it still is.[75] *See* Mass. R. Prof. C. 7.2(b) (last amended March 26, 2015). As explained below, "person" includes Chargois, who was paid for recommending Labaton to ATRS. In 2011 and today, an exception in Rule 7.2(b)(5), or its predecessor, Rule 7.2(c)(4), provides that a lawyer "may pay fees permitted by Rule 1.5(e)." If a payment is within the exception, it is removed from the prohibition in Rule 7.2(b). Until March 2011, Rule 1.5(e) provided:

> 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 participation and the total fee is reasonable.
>
> Mass. R. Prof. C. 1.5(e) (amended Dec. 22, 2010, eff. March 15, 2011).

In 2005, the Supreme Judicial Court remedied three defects that it identified in Rule 1.5(e). *Saggese v. Kelley*, 445 Mass. 434, 442-443 (2005). First: The rule did not have a writing requirement. Second: It did not say *who* should obtain client consent. Third: It did not say *when* the client must be notified of the fee division. *Id*. The Court's opinion corrected these omissions by declaring how the rule "will be construed" thereafter. *Id*. at 443.

---

[74] Labaton and Chargois exchanged emails and two drafts but never finalized an agreement. *See* p. 36, *supra*.

[75] The version of Rule 7.2 in effect in 2011 differed slightly from current wording of the Rule. Rule 7.2(c), as it then appeared, contained substantially similar language to the current Rule 7.2(b), though the format of the rule changed. It read: "A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may … (4) pay referral fees permitted by Rule 1.5(e)." *See* 7.2(c)(eff. 2011). Rule 7.2 was later amended to its current form on March 26, 2015, effective July 1, 2015.

> These problems are avoidable in fee-sharing situations if the referring lawyer, who usually is in the best position to secure compliance with rule 1.5(e), is required to disclose the fee-sharing agreement to the client before the referral is made and secures the client's consent *in writing.* The rule will be construed to require this in fee-sharing agreements that are formed after the issuance of the rescript in this decision. Although the primary responsibility for compliance will fall on referring lawyers, lawyers to whom referrals are made are not absolved of all responsibility, and should confirm, before undertaking such representations, that there has been compliance with Rule 1.5(e).

Id. at 443 (emphasis in original).[76] A Westlaw search for

"RULE 1.5(e)" AND FEES

in the database for the Massachusetts Supreme Judicial Court quickly brings up only *Saggese* and one other case.

One or more Labaton experts opined that Rule 7.2(b) does not apply when the "person" who is paid for recommending a client to a lawyer is a lawyer. Chargois is a lawyer. For two reasons, this construction of the rule is wrong. Currently, Rule 7.2 or its comment uses the word "nonlawyer" five times. If the drafters wished to limit the category of "person" to non-lawyers, they would have used the word "nonlawyer," not "person." (The Rules also use the terms "nonlawyer" elsewhere. *See, e.g.*, Rule 5.4 and its comment, which use the term "nonlawyer" seven times.) Second, if the word "person" was intended to exclude lawyers, there would be no need for the exception in Rule 7.2(b)(5) for fee agreements that divide fees between *lawyers.* That exception makes sense only if "person" includes lawyers. Apart from this, if "person" did not include lawyers, a lawyer could make the following offer to another lawyer: "I will pay you

[76] Effective March 15, 2011, the *Saggese* Court's writing requirement was added to Rule 1.5(e). Mass. R. Prof. C. 1.5(e) (current through Feb. 1, 2018). Rule 1.5(e) currently reads:

> 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. This limitation does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement. *Id.*

$5000 for every client who retains me on your recommendation whether or not I eventually earn a fee in the referred matter." Because that arrangement would not be *a division of fees* because compensation would not depend on earning fees, it would not satisfy Rule 1.5(e) and violate Rule 7.2(b).[77]

The *Daynard* Court, in distinguishing Daynard's fee, recognized that non-compliance with the division of fee rule can mean that payment to a lawyer for a recommendation can violate Rule 7.2(b): "[Attorney] Daynard is nothing like the plaintiffs in many cases who are denied enforcement of their 'fee-splitting' contracts, which are in reality fee-referral contracts." *Daynard,* 188 F. Supp. 2d at 131, citing *Holstein v. Grossman*, 616 N.E.2d 1224, 1229 (1993) (holding that a "fee-sharing agreement which is primarily based on a client referral is unenforceable as a matter of public policy where the undisputed facts show that the referred client never consented in writing to the attorneys' arrangement"). This observation would have been unnecessary if lawyers could receive fees for recommendations alone.

ii. BECAUSE LABATON DID NOT COMPLY WITH RULE 1.5(e), IT PAID CHARGOIS FOR RECOMMENDING A CLIENT IN VIOLATION OF RULE 7.2(b)(2)

Bringing the Chargois Arrangement within Rule 1.5(e), as it was written both at the time and now, removes that Arrangement from the prohibition in Rule 7.2(b) against paying Chargois for a recommendation. Labaton, however, did not tell ATRS (or George Hopkins) about Chargois or get written (or any) consent. According to the statement of facts (p.43):

> Labaton's purported reason for not informing Hopkins of the Chargois Arrangement is because Hopkins "did not want to know." was a unilateral decision by Belfi, however, who concluded after meeting Hopkins that he would appreciate a more direct relationship. According to Belfi, the subject of Chargois "did not come up," and

[77] The Labaton experts who said that "person" does not include lawyers explained that Rule 7.2(b)(5) was "surplusage" or "redundant." This is wrong. If "person" does not include lawyers, then Rule 7.2(b)(5) *contradicts* Rule 7.2(b).

> admittedly, Belfi did not want to bring another attorney not from Labaton into the case. (internal citations omitted).

In mitigation, Labaton cites a 2008 email from Christa Clark, ATRS's then-chief counsel, and language in the firm's February 2011 Retainer Agreement with ATRS. Labaton and some of its experts argue that these provisions mean either that Labaton fully complied with Rule 1.5(e) or that compliance was at worst "imperfect."

But neither the 2008 Clark email, nor the language in the Retainer Agreement, satisfies the requirements of Rule 1.5(e) as construed in *Saggese*.

The Clark email, informing Labaton that the Chargois' firm would *not* be "additional monitoring counsel," added this paragraph:

> If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or use them as independent contractors, if you deem is [sic] appropriate on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conducive to a joint proposal. *See* p. 41, *supra*.

Labaton's retainer agreement with ATRS in this case provides:

> Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent assisting with the prosecution of the Litigation. Any division of fees among counsel will be Labaton Sucharow's sole responsibility and will not increase the fees payable by Arkansas Teacher or the class upon a successful resolution of the Litigation. *See* pp. 44, *supra*.

For the following reasons, these provisions are inadequate to comply with the requirements of Rule 1.5 as revised by the Supreme Judicial Court in *Saggese*: (a) ATRS was not notified "before the referral is made" that Labaton's fee would be divided with Chargois; and (b) ATRS never consented to the fee division "in writing." *See Saggese*, 445 Mass. at 442-443. With

regard to (a), the sensible way to read "before the referral is made" is "before the client retains the referred lawyer." When the Supreme Judicial Court amended the rule in December 2010, effective March 15, 2011, it used the phrase "before or at the time the client enters into a fee agreement." The amended rule was available at the time of the ATRS retainer agreement in February 2011.

Rule 1.5(e), then and now, has as its object protection of the client. If Hopkins had been told about Chargois, he could have rejected the Chargois Arrangement, just as ATRS had earlier refused to list Chargois as "monitoring counsel." He could have asked for details of the financial arrangement. Labaton would have been required to tell him.[78] Hopkins could have asked what Chargois' contributions to the case were expected to be. He could have asked to know more about Chargois' qualifications and to meet him. He could have negotiated to have money slated for Chargois to go instead to the class. He could have asked for advice or consulted other counsel on the obligations of ATRS as the representative of a putative class. But Hopkins did not know about Chargois because Belfi decided that this information was not relevant to Hopkins' representation of the class.

iii. LABATON'S OWN CONDUCT, OBJECTIVELY VIEWED, IS INCONSISTENT WITH THE CLAIM THAT THE CHARGOIS ARRANGEMENT WAS A VALID DIVISION OF FEE AGREEMENT

[78] The Comment to Rule 1.5(e), effective in February 2011, at the time expanded the disclosure obligation in the text of the rule itself. Whereas the plain language of 1.5(e) required notice to the client that "a division of fees will be made," the Comment required that, if the client asks, lawyers go further and disclose "the *share* of each lawyer." (Emphasis added.) The difference is between saying "we are dividing the fee," which the black letter rule required, and saying if asked, "I am going to get 70 percent and he is going to get 30 percent." More specifically, the Comment in February 2011 provided: "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." Mass. R. Prof. C. 1.5(e) cmt. [4A] (amended Dec. 22, 2010, eff. March 15, 2011.) Today, the same obligation to provide the greater detail on request appears in cmt. [7A] of Massachusetts Rule 1.5, which states: "Unlike ABA Model Rule 1.5(e), Paragraph (e) does not require that the division of fees be in proportion to the services performed by each lawyer or require the lawyer to assume joint responsibility for the representation in order to be entitled to a share of the fee. 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." Mass. R. Prof. Cond. 1.5, cmt. [7A].

Whether a division of fee agreement complies with a jurisdiction's rule is an objective inquiry. It asks: Did counsel's conduct satisfy the rule's requirements?[79] Objectively viewed, Labaton's own conduct is, in the following ways, inconsistent with its current claim that it had a valid division of fee agreement with Chargois.

Although Labaton asked ATRS's permission to add Lieff and Thornton as counsel for ATRS, it did not inform Hopkins about Chargois. Instead, it blind copied Chargois on emails that included George Hopkins and forwarded to Chargois alone email exchanges with Hopkins.

Labaton did not disclose to the Thornton and Leiff Cabraser law firms, which were contributing to the payments to Chargois, the true nature of those payments when it appeared that those firms may have misunderstood Chargois' role. In an April 26, 2013, email on which Keller and Belfi of Labaton were copied, Garrett Bradley referred to Chargois as "the local counsel who assists Labaton in matters involving" ATRS. In a July 8, 2016, email from Garrett Bradley, on which Keller, Belfi, and Sucharow were copied, Chargois is referred to as "the local attorney in this matter who has played an important role." Each characterization of Chargois is false or misleading. Chargois was getting paid for a client recommendation only.[80] The Labaton lawyers who were recipients of the emails had knowledge of the terms of the Chargois Arrangement but

[79] Both *Saggese* and *Daynard* determined whether the purported agreement satisfied the conditions in Rule 1.5(e), the fee division rule in Massachusetts. *See Saggese*, 445 Mass. at 441; *Daynard*, 188 F. Supp. 2d at 123.

[80] Labaton and some of its experts say that Rule 7.2(b) is in any event inapplicable because Chargois only made an introduction, not a recommendation. That view would eviscerate the rule and allow lawyers and nonlawyers alike to get paid for "introductions" so long as they were careful not to use the word "recommend" or variants. It would allow the proverbial ambulance driver to get a reward every time he "introduced" an accident victim to a lawyer by handing out the lawyer's cards while avoiding the word "recommend." The facts I've been asked to assume say that "Chargois explained to Doane that *he was working with* a New York law firm that *specialized in institutional investors* and asked if Doane would meet with him, Belfi and Keller, and Doane agreed." *See* p. 35, *supra*. (Emphasis added.) That is a recommendation and would be understood as such.

did not correct Bradley's characterizations, as would have been expected if they believed that the Chargois Arrangement was a valid division of fee agreement.

If Labaton considered the Chargois Arrangement a true division of fee agreement, one would have expected it to finalize the agreement and adjust it to comply with the division of fee rules in each jurisdiction in which Labaton then or later represented ATRS. For example, both before and after it filed this action, Labaton represented ATRS in a total of four matters in courts in California, whose rule is set out below.[81] Labaton did not comply with that rule's provisions, which, among other things, require the client's written consent after "a full disclosure has been made in writing that a division of fees will be made and the terms of such division." Cal. R. Prof. C. 2-200(A)(1) (adopted Nov. 28 ,1988; eff. May 27, 1989).

By early 2009, after George Hopkins replaced Paul Doane as ATRS Executive Director, Labaton knew that it would not get the substantial, legal help from Chargois that it had apparently anticipated. Chargois had no relationship with Hopkins. As a result of this "unexpected turn of events," Labaton "believed that the fee sharing agreement had been based upon a condition that was not being satisfied." (Response by Labaton Sucharow LLP to Special

[81] California Rule of Professional Conduct 2-200 provides:

> (A) A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless:
>
> > (1) The client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and
> >
> > (2) The total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200.
>
> (B) Except as permitted in paragraph (A) of this rule or rule 2-300, a member shall not compensate, give, or promise anything of value to any lawyer for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client….
>
> This rule was adopted November 28, 1988, and became effective May 27, 1989.

Master's September 7, 2017 Request for Supplemental Submission, pg. 2.) But Labaton continued to pay Chargois anyway, "fearing that [Chargois] would otherwise sue the Firm in state court in Texas, an event that could have an extremely adverse impact on a firm that works extensively with public pension and retirement plans." *Id*.[82] That motive may have served the firm's own interests at the time, as it appears to have viewed them, but it is inconsistent with a claim that the Chargois Arrangement was a *valid* division of fee agreement in the various states in which the firm represented ATRS. Labaton's interests, furthermore, would be contrary to the interests of its clients because Chargois would get paid out of settlement funds the Court might award even though Labaton believed "a condition" of the agreement "was not being satisfied."

iv. COURT OPINIONS IN DISPUTES BETWEEN LAWYERS DO NOT RENDER THE CHARGOIS ARRANGEMENT A VALID DIVISION OF FEE AGREEMENT

On occasion, a lawyer will seek to deny another lawyer his or her promised fee, citing a failure to tell the client about the agreement or to put it in writing (or both), as a jurisdiction's rule required. On one hand, the agreement does not comply with the rule. On the other hand, refusing to enforce a purported fee-sharing agreement would let one lawyer keep the entire fee even where he or she was equally culpable of the violation.

Saggese v. Kelley, supra, enforced an oral agreement between a referring and referred lawyers where the client, who was *not* a fiduciary, later ratified the agreement. 434 Mass at 442. The Court wrote that the referred lawyers could not rely on the failure to comply with the rule "to absolve them of their contractual obligation." *Id*. at 441. But the Court "emphasize[d] that although failure to comply with the rule may not necessarily render a contract unenforceable

[82] The Labaton Response further states at page 10: "Labaton Sucharow was justifiably concerned that litigation over a fee dispute would be harmful to its reputation and to its relationship with ATRS, and also concerned that, as Chargois threatened, a Texas state court would rule in Chargois & Herron's favor."

between lawyers, it may subject both lawyers to disciplinary action upon division of a fee." *Id*. at 443 (emphasis added).

In a division of fee case in federal court in Massachusetts, a law firm of record refused to pay a lawyer for work it had allegedly retained him to do in exchange for an oral promise of five percent of any recovery. *Daynard*, 188 F. Supp. 2d at 117. The firm in that case argued noncompliance with the Rule 1.5(e), governing division of fees, excused it from performing under the contract. *Id*. at 118. The court held that the oral promise was enforceable, citing the lawyer's "valuable" work across more than a decade, the fact that his work appeared "proportional to the alleged contract amount," and the fact that the lawyer's work on the matter was not concealed. *Id*. at 131.

These two cases respond to the equities between lawyers when a division of fee rule is violated and one of the lawyers wants to keep the entire fee. In *Saggese,* an individual client (not a class representative) ratified the agreement and was not harmed. *See* 434 Mass. at 444. In *Daynard,* the clients were states acting through their attorneys general, some of whom did know of Daynard's work and did not object. 188 F. Supp. 2d at 129. Furthermore, Daynard worked on the matters over the course of a decade. *Id*. at 131. There was no "taking advantage of uninformed clients." *Id*. at 131. The Court said that refusal to enforce the agreement would "smack of injustice." *Id*. at 132.

The validity of the $4.1 million payment to Chargois does not arise in a fee dispute between Chargois and Labaton. This is not a case where a referred lawyer, equally to blame, cites the rule in order to keep the entire fee for himself. This is not a case where a law firm, which (and whose clients) benefitted for a decade from the work of an unaffiliated lawyer, now

seeks to renege on its promise. Labaton's duties were owed to ATRS, to the class ATRS purported to represent -- and after certification did represent -- as a fiduciary, and to the Court.

v. LABATON'S POSITION

In argument and expert testimony, Labaton has advanced the position that an "imperfect" effort to comply with Rule 1.5(e) should not default to the prohibition against paying for recommendations under Rule 7.2(b), and that its compliance with the rule was either perfect or at worst imperfect. In support of the position that it fully or imperfectly complied with Rule 1.5(e), Labaton or its experts cite (i) the Christa Clark 2008 email appointing Labaton as "additional monitoring counsel" and adding that it "may affiliate [Chargois & Herron] or use them as independent contractors, if you deem [it] appropriate on a case by case basis;" (ii) the language in the 2011 Retainer Agreement with ATRS giving Labaton permission to "allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation;" and (iii) Belfi's perception at the time ATRS retained Labaton in this case that George Hopkins had no interest in knowing how fees would be divided among counsel. Years later, Hopkins confirmed the accuracy of Belfi's perception when, in the course of the Special Master's investigation, he learned of the Chargois Arrangement for the first time. *See* pp. 41-44, *supra.*

vi. ***FURTHER ANALYSIS AND CONCLUSION***

Labaton failed to comply with Rule 1.5(e). The fact that the Supreme Judicial Court has enforced a non-compliant division of fee agreement in a contest between referring and referred lawyers, each of whom was responsible for the violation, did not, as the Court wrote, make the agreement immune to discipline. "We emphasize that although failure to comply with the rule

may not necessarily render a contract unenforceable between lawyers, it may subject both lawyers to disciplinary action upon division of a fee." *Saggese*, 445 Mass. at 706.

Labaton did not *forget* to disclose the Chargois Arrangement to George Hopkins. It chose not to do so because Belfi testified that he *chose* not to share the information with Hopkins, and he inferred that Hopkins did not want to know how the class lawyers were dividing fees. In a March 2018 Declaration, Hopkins wrote that he had told Belfi "I do not want to know the specifics of fee allocations between Labaton and other attorneys." Hopkins 3/15/18 Declaration, ¶¶ 10, 14.[83]

This explanation is inadequate. There is a difference between not wishing to know "the specifics of fee allocations," as Hopkins says he said, and not wishing to know *who* was sharing in the fee. Labaton asked Hopkins for permission to add Lieff and Thornton to the representation of ATRS. It could have done the same for Chargois & Herron without violating Hopkins' desire to remain uninformed of the "specifics" of any fee division. Indeed, Rule 1.5(e) at the time (and still) *did not require* Labaton to tell Hopkins "the specifics" unless he asked. The rule required only that Labaton "disclose the fee-sharing agreement to the client before the referral is made and secur[e] the client's consent in writing." *Saggese* at 443. Labaton could have complied with the rule *and* have honored Hopkins' "express" and "clear instructions." *Id.* at ¶¶14, 16.[84]

C. THE CHARGOIS ARRANGEMENT SHOULD HAVE BEEN DISCLOSED TO THE COURT.

[83] In his Declaration, Hopkins wrote that he was "ratifying Labaton's fee-sharing agreement with Chargois & Herron." *Id.* at ¶17. Hopkins does not say if he was ratifying it only on behalf of ATRS or whether he was purporting to do so for the entire class.

[84] It bears mention that Hopkins was not Labaton's client. ATRS was the client. "A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." Rule 1.13(a). Nor was ATRS an individual client. It purported to be, and then became, a class representative, taking on fiduciary duties (and therefore potential liability) to the certified class. The Chargois fee would be paid not by Hopkins or even ATRS, but from the class's recovery. *See* C(v), *infra*.

i. DISCLOSURE TO THE COURT WAS REQUIRED UNDER THE MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT AND FEDERAL LAW

The obligation of Customer Class Counsel to have informed the Court of the Chargois Arrangement arises under federal case law as well as the Massachusetts Rules of Professional Conduct. *See*, *e.g.*, *Rodriguez v. Disner*, 688 F.3d 645, 654 (9th Cir. 2012) ("Although the application of the common fund doctrine is a matter of federal courts' equitable powers, we have frequently looked to state law for guidance in determining when an ethical violation affects an attorney's entitlement to fees.") (citation omitted). Here, both federal and state sources apply. Labaton and several experts rely on Fed. R. Civ. P. 23(h)(1) and 54(d)(2) to support their contention that, unless the Court asked, there was no duty to inform the Court of the Chargois Arrangement. (Labaton Response, pp 19-23; Rubenstein 4/9/18 Dep., p. 74: 9-12; Sarrouf 3/24/18 Dep., 270: 22- 271: 2. Labaton attorney Chris Keller stated during the negotiations that, whatever the fee allocation amongst Customer Class Counsel might be, the court need not be informed. TLF-SST-052209 (8/28/15 email correspondence between Bradley and Keller, 'cc Sucharow) ("We should talk this through. The court absolutely need not understand what the allocation of fees is amongst counsel so that should not be included in any document to be filed with the court…") [EX. 51].

While there may not have been a duty under Rules 23 and 54 to disclose the division of fees among those lawyers *whom the Court knew about*, and so could inquire, the Court could not be expected to ask counsel about a division of fees with Chargois, a lawyer who had not appeared in the case and whom it did not know about. Labaton's construction of its obligation under Rule 54(d)(2) would impose on the Court the affirmative responsibility to ask: "Is anyone else getting any portion of the attorney's fees you are asking me to award whose existence you

have not revealed?" As discussed below, the Court had no such responsibility. I do not rely on Rules 23 and 54 for my opinion.

The 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." 11/2/16 Hearing. Tr., p. 35:4-5. Chargois was not mentioned. But Mr. Goldsmith did not know about the Chargois Arrangement and the lawyers who did know about it were not in Court.[85]

Earlier in the proceeding, the Court said: "Is there anything you feel I didn't say that I should have?" and asked to be reminded "of the terms of allocation." Mr. Goldsmith replied, "I didn't want there to be something that was left that Your Honor wanted to hear." He then described the allocation among the members of the class. *Id.* at 21 *et seq.* In my deposition, it was pointed out that this particular colloquy related only to the allocation among class members, not to the fee request, which the Court turned to next. ("So now with regard to requests for attorneys' fees." *Id.* at 22.) The implication seems to be that there was, therefore, no failure to inform the Court of the Chargois Arrangement after the Court spoke. This reading would have merit if there were then no discussion of fees. But the Court's statement does express the Court's reliance on information from counsel. That reliance was underscored when shortly thereafter the colloquy *did turn to fees*. "I'm relying heavily on the submissions and what's been said today," the Court said directly before finding that the "requests for attorneys' fees of $74, 541, 250 is reasonable." *Id.* at 35.

[85] The Rules partly mitigate the risks associated with compartmentalization of functions within a firm by imposing certain managerial responsibilities on partners and others. Rule 5.1(a) provides: "A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." Further reducing the risk attendant on compartmentalization, Rule 8.4 provides: "It is professional misconduct for a lawyer to… (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

ii. FEDERAL CASE LAW CONTRADICTS LABATON'S NARROW VIEW OF ITS DISCLOSURE OBLIGATIONS TO THE COURT

Case law, including cases from the District of Massachusetts, amply supports recognition of the Court's fiduciary responsibility to protect the class and the Court's reliance on counsel to be forthcoming with the information the Court needs in order to do so. Private agreements among counsel do not bind the Court, which can ignore them if they reward those who did little or nothing to serve the class. Nor is the Court bound to honor the retainer agreement between counsel and the named class members. The cases that follow reflect the expansive language that District and Circuit Courts use to describe class counsel's duties to the Court and the Court's duties to the class.

In re Volkswagen and Audi Warranty Extension Litigation, 89 F.Supp.3d 155, 183 (D. Mass. 2015):

> While fee sharing agreements among counsel may be respected or treated as presumptively reasonable in a district court's allocation of attorneys' fees, persuasive authority convinces this Court that it is not bound blindly to follow such private arrangements. *See, e.g., In re FPI/Agretech Sec. Litig.,* 105 F.3d 469, 473 (9th Cir.1997) ("[A] court may reject a fee allocation agreement where it finds that the agreement rewards an attorney in disproportion to the benefits that attorney conferred upon the class—even if the allocation in fact has no impact on the class."); *In re "Agent Orange" Prod. Liab. Litig.,* 818 F.2d 216, 223 (2d Cir.1987) (rejecting authority that "allows counsel to divide the award among themselves in *any* manner they deem satisfactory under a private fee sharing agreement"). *Cf. In re Cendant Corp. Litig.,* 264 F.3d 201, 282–83 (3rd Cir.2001) (holding that although retainer agreements in class actions enjoy a presumption of reasonableness at the fee award stage, the presumption may "be abrogated entirely were the court to find that the assumptions underlying the original retainer agreement had been materially altered by" unforeseeable developments). More important than the terms of a private agreement are the actual contributions each firm made to the prosecution of this case and the interests of the plaintiff class.

In re Relafen Antitrust Litigation, 231 F.R.D. 52, 71 (D. Mass. 2005):

As this Court recently noted, "[b]oth the United States Supreme Court and the Courts of Appeals have repeatedly emphasized the important duties and responsibilities that devolve upon a district court pursuant to Rule 23(e) prior to final adjudication and settlement of a class action suit." *In re Relafen Antitrust Litig.,* 360 F.Supp.2d 166, 192 (D.Mass.2005) (citations omitted). Although settlement is often a more favorable result than litigation, "the court has a fiduciary duty to absent members of the class in light of the potential for conflicts of interest among class representatives and class counsel and the absent members." *In re Lupron*, 228 F.R.D. at 94 (citing *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods.,*55 F.3d 768, 805 (3d Cir.1995) ("Rule 23(e) imposes on the trial judge the duty of protecting absentees, which is executed by the court's assuring the settlement represents adequate compensation for the release of the class claims.")).… *Reynolds v. Beneficial Nat'l Bank,* 288 F.3d 277, 279–80 (7th Cir.2002) (Posner, J.) (noting the concern that a lawyer's self interest may trump the interests of the class members "requires district judges to exercise the highest degree of vigilance in scrutinizing proposed settlements of class actions. We and other courts have gone so far as to term the district judge in the settlement phase of a class action suit a fiduciary of the class, who is subject therefore to the high duty of care that the law requires of fiduciaries.")

In re "Agent Orange" Product Liability Litigation, 818 F.2d 216, 223 (2nd Cir. 1987):

There is authority for a court, under certain circumstances, to award a lump sum fee to class counsel in an equitable fund action under the lodestar approach and then to permit counsel to divide this lodestar-based fee among themselves under the terms of a private fee sharing agreement. … We *reject* this authority, however, to the extent it allows counsel to divide the award among themselves in *any* manner they deem satisfactory under a private fee sharing agreement. Such a division overlooks the district court's role as protector of class interests under Fed. R. Civ. P. 23(e) and its role of assuring reasonableness in the awarding of fees in equitable fund cases. … *cf. Jones v. Amalgamated Warbasse Houses, Inc.,* 721 F.2d 881, 884 (2d Cir.1983) ("if the court finds good reason to do so, it may reject an agreement as to attorneys' fees just as it may reject an agreement as to the substantive claims"), *cert. denied,* 466 U.S. 944, 104 S. Ct. 1929, 80 L.Ed.2d 474 (1984). *In addition, this approach overlooks the class attorneys' "duty ... to be sure that the court, in passing on [the] fee application, has all the facts" as well as their "fiduciary duty to the ... class not to overreach." Lewis v. Teleprompter Corp.,* 88 F.R.D. 11, 18 (S.D.N.Y.1980). [Emphasis added.]

The *Agent Orange* Court then added (818 F.2d at 226):

We do agree with the district court's ruling that in all future class actions counsel must inform the court of the existence of a fee sharing agreement at the

> time it is formulated. This holding may well diminish many of the dangers posed to the rights of the class. Only by reviewing the agreement prospectively will the district courts be able to prevent potential conflicts from arising, either by disapproving improper agreements or by reshaping them with the assistance of counsel to conform more closely with the principles of *Grinnell I* and *Grinnell II*. In the present case, however, where the district court was not made aware of the agreement, and the potential for a conflict of interest arising was substantial, *the adoption of a rule for future cases in no way alleviates the fatal flaws of this agreement and does not offset the need for its invalidation.* [Emphasis added].

In re FPI Agretech Securities Litigation, 105 F.3d 469, 474 (9th Cir. 1997):[86]

> We reject Chuck's [counsel's] proposed rule that a district court may decline to approve a fee allocation only if it is contrary to the interests of the class or in violation of rules of professional conduct. Instead, we hold that the relative efforts of, and benefits conferred upon the class by, co-counsel are proper bases for refusing to approve a fee allocation proposal….
>
> Chuck next argues that the district court should have treated the fee allocation proposal as an enforceable contract. However, the cases on which Chuck relies are inapposite. Neither case involved attorneys' fees in a class action, and such fees derive from principles of equity, not contract. More importantly, both cases involved formal fee agreements, whereas here the parties merely submitted orally a fee allocation proposal, arrived at, figuratively speaking, "on the courthouse steps," for the court's approval. We decline to curb the district courts' broad discretion in exercising their equitable power to award attorneys' fees in common fund class actions by requiring that fee allocation proposal be treated as enforceable contracts. [Internal citations omitted.]

Lewis v. Teleprompter Corp., 88 F.R.D. 11, 18 (S.D.N.Y. 1980), which *Agent Orange* cited:

> Wolf Popper has argued that it should be a matter of indifference to the court how the pie is sliced, if the fee requested is on its face a reasonable one, and if the results accomplished warrant its award. It suggests that it is routine for the court simply to fix the amount of the fee, and then to leave it to the various plaintiffs' attorneys involved to decide for themselves how the fee is to be allocated that, in fact, it is a service to the court not to burden it with the nuts and bolts of determining distribution. While I appreciate Wolf Popper's solicitude, I reject its argument. Wolf Popper has overlooked two important obligations which are part and parcel of its role as plaintiffs' counsel: the duty of its members and associates as officers of the court to be sure that the court, in passing on its fee application, has all the facts; and its fiduciary duty to the shareholder class not to overreach.

[86] Lieff was co-lead counsel in this case and participated in the dispute over allocation of legal fees.

Federal case law also recognizes the special danger of conflicts between a lawyer and her client at the fee-determination stage in common fund cases. The economic interests of the two are then directly adverse because the greater the fee to the lawyer, the less will be the recovery to the class. *See, e.g., In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 307 (3rd Cir. 2005):

> The determination of attorneys' fees in class action settlements is fraught with the potential for a conflict of interest between the class and class counsel. *See* [*In re Cendant Corp. Litig.*, 264 F.3d 201, 254-255 (3rd Cir. 2001] (explaining that because clients seek to maximize recovery and lawyers seek to maximize fees, "there is often a conflict between the economic interests of clients and their lawyers, and this fact creates reason to fear that class counsel will be highly imperfect agents for the class"); [*In re Cendant PRIDE*, 243 F.3d 722, 730 (3d Cir. 2001) (discussing "the danger inherent in the relationship among the class, class counsel, and defendants" and recognizing "an especially acute need for close judicial scrutiny of fee arrangements in class action settlements") (internal quotations omitted); Fed. R. Civ. P. 23(h), 2003 Advisory Committee Notes ("Active judicial involvement in measuring fee awards is singularly important to the proper operation of the class-action process.").

In argument and testimony, Labaton has questioned the applicability of the disclosure directive in *Agent Orange* and *Lewis v. Teleprompter.* These are cases from the Second Circuit, not the First Circuit. I agree that they do not *obligate* lawyers appearing in a Court in the First Circuit.[87] They are, however, instructive on counsel's duties, especially when coupled with the requirements of Massachusetts Rule of Professional Conduct 3.3 and its comment, next discussed. The *Volkswagen* case, *supra,* from the District of Massachusetts, cites to one of the pages of *Agent Orange* in which the Second Circuit emphasized counsel's disclosure duties. A lawyer conscientiously researching those duties in this District would find *Volkswagen* and its citation to *Agent Orange.* The question for any lawyer in light of these authorities would then be

[87] I also agree that the particular fee agreement in *Agent Orange* created potential conflicts that the Chargois Arrangement did not. "Because we find that the agreement before us violates established principles governing awards of attorneys' fees in equitable fund class actions and creates a strong possibility of a conflict of interest between class counsel and those they were charged to represent, we reverse the district court's approval of the agreement. Accordingly, the fees originally allocated by the district court, based on the reasonable value of services actually rendered, will be distributed to the members of the PMC." *Agent Orange*, 818 F.2d at 218.

"how do I understand my duty of candor to the Court with regard to the disclosure of the Chargois Arrangement?"

Labaton, at my deposition and in its advocacy, seems to challenge the continued vitality of the holding in *Agent Orange* in light of subsequent events within the Second Circuit. I disagree with any such challenge. First, it should be clear that the Second Circuit's requirement of disclosure did not depend on whether a local rule then required disclosure of the terms of the particular side agreement in *Agent Orange*. The Second Circuit held more broadly that an approach that allows counsel to decide how to divide fees "overlooks the class attorneys' 'duty ... to be sure that the court, in passing on [the] fee application, has all the facts' as well as their 'fiduciary duty to the ... class not to overreach.' *Lewis v. Teleprompter Corp.,* 88 F.R.D. 11, 18 (S.D.N.Y.1980)."

Second, nothing in the subsequent history Labaton cites disturbed the holding in *Agent Orange.* That history is explained in the notes of the Second Circuit's Rules Committee:

> The Committee in 2011 recommended that prior Local Rule 23.1 regarding class actions be deleted as unnecessary. The Second Circuit's recent decision in *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 137 n.2 (2d Cir. 2016), stated that the prior Local Rule is not redundant with Fed R. Civ. P. 23(h) regarding fee sharing arrangements. The Committee therefore recommends reinstating Local Rule 23.1 and combining it with Local Rule 23.1.1 to cover both class actions and derivative actions. Local Rules for Eastern & Southern Districts of New York., Local Civ. R. 23.1 [2016 Cmt.].

The *Bernstein* footnote cited by the Committee, and spurring it to reinstate a rule, said:

> Formerly, the local civil rules of the Southern District of New York required that all fee applicants in derivative and class actions disclose to the court "any fee sharing agreements with anyone." By a rule amendment effective July 11, 2011—three weeks before BLB & G submitted its fee petition—the automatic-disclosure provision was repealed as to class actions. *See* S.D.N.Y. Local Civil Rule 23.1 (repealed effective July 11, 2011); S.D.N.Y. Local Civil Rule 23.1.1. According to the Joint Committee on Local Rules note, the committee recommended that the automatic-disclosure rule as applied to class

> actions be deleted "because it is redundant [with] ... Fed.R.Civ.P. 23(h)." Federal Rule 23(h), in turn, does not mandate automatic disclosure of all fee-sharing arrangements in class actions. *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 137 n.2 (2d Cir. 2016).

In other words, in 2016, after *Bernstein*, the Committee undid its 2011 deletion of a local rule for disclosure of fee recipients in class actions. It did this because, contrary to what the Committee had initially articulated, the rule was not redundant of Rule 23(h). None of this back-and-forth affects the holdings cited in *Agent Orange* and *Lewis*. The new local rule may now obviate the need for the *Agent Orange* disclosure instruction, but it does not, and of course could not, "overrule" it.

iii. THE MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT REQUIRED DISCLOSURE OF THE CHARGOIS ARRANGEMENT TO THE COURT BY THOSE WHO KNEW ITS TERMS

On September 15, 2016, Lawrence Sucharow submitted a Declaration to the Court "in support of," among other things, "an award of attorneys' fees." Dkt. # 104-1. The Sucharow Declaration appended nine individual fee declarations from nine law firms. At the same time, the Sucharow Declaration was also posted on the website for the class, where it would be available to class members. *See* p. 24, *supra*. The Notice of Pendency, sent to them in August, directed class members to this site, and in particular, this document. The filing also identified $1.257 million in expenses and $85,000 in service awards. The payment to Chargois is not included in this filing.

Rule 3.3(a)(1) provides: "A lawyer shall not knowingly 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." Mass. R. Prof. C. 3.3(a)(1) (amended March 26, 2015, eff. July 1, 2015). Rule 3.3(a)(3) provides in part that a lawyer "shall not knowingly offer evidence that the lawyer

knows to be false except as provided in Rule 3.3(e)," whose subject is criminal cases. Rule 8.4(c) provides: "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Mass. R. Prof. C. 8.4(c) (amended March 26, 2015, eff. July 1, 2015).

A true statement can violate these rules through omission. Rule 3.3, cmt. [3] ("There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."); *In re O'Toole*, 2015 WL 9309021, at *5 (Mass. St. Bar. Disp. Bd. 2015) ("'[H]alf-truths may be as actionable as whole lies.'… Statements that are 'technically accurate' or 'literally true,' but that nevertheless are 'clearly intended to mislead' or 'beg[ ] [a] false inference' amount, in appropriate cases, to false statements within the meaning of" Rules 3.3(a)(1) and 4.1(a)). In *In the Matter of An Attorney*, 2007 WL 4284758, at *4 (Mass. St. Bar Disp. Bd. 2007), the Board wrote:

> It is not a defense to these charges that the individual statements made in the letter could be read as literally true. Literal truth may be a defense to a criminal charge of perjury. *Compare Bronston v. United States*, 409 U.S. 353 (1973) with *United States v. DeZarn*, 157 F.3d 1042 (6th Cir. 1998). But Rule 8.4(c) "prohibits more than outright perjury. Attorneys may not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation ...." *Matter of Dittami*, 12 Mass. Att'y Disc. R. 98, 112 (1996) (applying predecessor to Rule 8.4(c)). *See also Matter of Moore*, 442 Mass. 285, 292 n. 10, 20 Mass. Att'y Disc. R. 400, 408 n.10 (2004); *Matter of Harlow*, 20 Mass. Att'y Disc. R. 212, 216-218 (2004) (misleading partial disclosure violated 8.4(c)).

The same principles abide in the commercial world.[88]

---

[88] Section 551 of the Restatement of Torts (Second) provides:

> (1) One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose, if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question.
> (2) One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated…
> (b) matters known to him that he knows to be necessary to prevent his partial or ambiguous statement of the facts from being misleading…

The Chargois Arrangement should have been identified in the fee petition in order to comply with Rule 3.3(a). That information was highly relevant to the Court's exercise of its fiduciary duty to protect the class because (i) the Court could otherwise reasonably have assumed that the lawyers who would participate in the fee were solely the lawyers whose lodestars were included in the petition; (ii) the request for expenses and incentive payments, which are not part of the lodestar, would support the inference that all beneficiaries were included; (iii) the size of the Chargois fee could reasonably have influenced the Court to direct that his fee go instead to the class recovery; (iv) especially is this so because the payment was solely in exchange for a recommendation some nine years earlier; (v) the Court could find that the class had no interest in paying Chargois for his service to Labaton; and (vi) the Court could reasonably, though incorrectly, have assumed that if there were a problem with the fee request, the class representative would have raised it, unaware that ATRS also did not know about Chargois.

Supporting this view of the relevance of the Chargois Arrangement is the fact that an experienced class action lawyer, Bob Lieff, testified that had he known that Chargois had done no work on the case, he would not have agreed to the allocation of part of his firm's fee award to Chargois.[89]

My opinion rests on the extraordinary nature of Chargois' compensation, both in amount and the basis for it – a recommendation made years earlier. Nondisclosure meant that no one who might have questioned the propriety of the Chargois Arrangement – not the class

---

Section 551(2) has been followed in Massachusetts. *See, e.g., Nota Constr. Corp. v. Keyes Assoc.*, 45 Mass. App. Ct. 15, 18 (1998).

[89] Bob Lieff testified that he thought Chargois was local counsel for Labaton dealing with the client in Arkansas. *See* Lieff 9/11/17 Dep., p. 67:9-13 ("I thought he was local counsel for Labaton in this particular case I assumed dealing with the Arkansas fund because that's what local counsel will do. That was my understanding.") He further testified that had he known that Chargois had done no work on the case, he would not have agreed to the allocation of part of his firm's fee award to Chargois. Lieff 9/11/17 Dep., p. 97:13-16.

representative, not the class members, not the Court – knew about it and so were unable to do so. It is not necessary to conclude that class counsel must inform the Court, or the class, of every lawyer who seeks a fee in a matter for the work he or she performed. Those are not the facts before the Court.

Comment 14A and Rule 3.3(d)

My opinion is further supported by Comment 14A to Rule 3.3, which provides:

> When adversaries present a joint petition to a tribunal, such as a joint petition to approve the settlement of a class action suit or the settlement of a suit involving a minor, the proceeding loses its adversarial character and in some respects takes on the form of an *ex parte* proceeding. The lawyers presenting such a joint petition thus have the same duties of candor to the tribunal as lawyers in *ex parte* proceedings and should be guided by Rule 3.3(d).

Rule 3.3(d) is discussed below.

So far as I can tell, Massachusetts is the only American jurisdiction with the text of Comment 14A. The comment recognizes that when there is no adverse party, the Court is denied the benefit of an adversary proceeding. There is, then, no opponent who can bring to the Court's attention facts or legal authorities that challenge the contentions or citations of the lawyer appearing before the court. In argument and through its experts, Labaton contends that Comment 14A does not literally apply here because the fee petition was not presented by "adversaries." It was presented by a single former adversary. The other former adversary, State Street, did not jointly present the fee petition because it had no interest in the fees the Court might award. Although it remained no less true that the "proceeding" on the fee petition lost "its adversarial character in some respects," it is argued that Comment 14A is inapplicable by its terms. This way of reading a rule *might* be defensible, if rather precise, in a commercial negotiation, but it is a crabbed view if looked at from the perspective of a lawyer's duty of candor to the Court, and to my mind wrong given the obvious policy that informs the Comment. The traditional precepts of

the adversary system do not apply in the same way when lawyers talk to a judge as when they talk to each other.

Moreover, this is *not* a situation where disclosure to the Court would have harmed a client or waived a privilege. If it were, a lawyer might sometimes be able credibly to resolve real doubts in favor of the client. But here disclosure could only *benefit* the client, the class, by giving the Court, which is charged to protect class members, the opportunity to consider the effect of the Chargois Arrangement. Indeed, it is hard to understand what countervailing interests could have justified nondisclosure. To whom did Labaton owe a competing duty not to disclose?

Candor to the Court

In arguing that Rules 23 and 54 were the sole sources of its duty to the Court, that the Second Circuit precedent is not binding in the First Circuit, and that Comment 14A does not literally apply, Labaton subordinates any duty its lawyers may have had as officers of the Court.

I appreciate, as Labaton has argued, that the phrase "candor to the Court" is not an unbounded source of duty, entirely untethered to rules, custom, or case law. But the word "candor" should at least guide a lawyer's understanding of his or her duties as an officer of the court. One question presented in *Pearson v. First NH Mortgage Corp.*, 200 F.3d 30, 38 (1st Cir. 1999), was whether a law firm had concealed its conflict of interest from the Bankruptcy Court. Citing case law and Bankruptcy Rules, the Court found that it had. But the Court also identified a broader duty of candor to the Court:

> Here, Attorney Gannon made an affirmative misrepresentation to the court, which did not comport with his duty of candor. *See*, *e.g.*,NHRPC 3.3(a)(1), comment ("There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."); *In re Tri–Cran,* 98 B.R. at 616 (" 'Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.' ") (citation omitted); *cf. Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir.1994) ("Every lawyer is an officer of the

> court ... [and] he always has a duty of candor to the tribunal;" *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 457 (4th Cir.1993) ("[A] general duty of candor to the court exists in connection with an attorney's role as an officer of the court."); *cf. also Erickson v. Newmar Corp.*, 87 F.3d 298, 303 (9th Cir.1996) ("[I]t is th[e] court which is authorized to supervise the conduct of the members of its bar ... [and has] a responsibility to maintain public confidence in the legal profession.").

Pearson cites the Fourth Circuit's influential decision in *Shaffer Equipment* to recognize a "general duty of candor to the court." *Schaffer Equipment* was an environmental civil case, in which the government failed to disclose false testimony at the deposition of its expert witness and then moved for summary judgment without relying on his opinion. The government claimed that it had not violated the terms of West Virginia's then-counterpart to Rule 3.3, which governed. The District Court dismissed the government's case because of its nondisclosure, citing both West Virginia Rule 3.3 and the duty of candor to the Court. The government appealed. On the page of its opinion cited by *Pearson*, the Fourth Circuit wrote that the professional conduct rules are not the sole source of a lawyer's duty of candor.

> It appears that the district court, in finding that the government's attorneys violated a duty of candor to the court, applied the general duty of candor imposed on all attorneys as officers of the court, as well as the duty of candor defined by Rule 3.3. Although the court referred to Rule 3.3, it also described the duty of candor more broadly as that duty attendant to the attorney's role as an officer of the court with a "continuing duty to inform the Court of any development which may conceivably affect the outcome of litigation." It concluded, "Thus, attorneys are expected to bring directly before the Court all those conditions and circumstances which are relevant in a given case." In its brief, the government did not address the existence, nature, and scope of any general duty of candor and whether its attorneys violated that duty. Nevertheless, we are confident that a general duty of candor to the court exists in connection with an attorney's role as an officer of the court.
>
> Our adversary system for the resolution of disputes rests on the unshakable foundation that truth is the object of the system's process which is designed for the purpose of dispensing justice. However, because no one has an exclusive insight into truth, the process depends on the adversarial presentation of evidence, precedent and custom, and argument to reasoned conclusions—all directed with unwavering effort to what, in good faith, is believed to be true on

> matters material to the disposition. Even the slightest accommodation of deceit or a lack of candor in any material respect quickly erodes the validity of the process. As soon as the process falters in that respect, the people are then justified in abandoning support for the system in favor of one where honesty is preeminent. (Internal citations omitted.)[90]

These cases establish that lawyers have a duty of candor to the court that goes beyond the text of Rule 3.3. So does *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009), where an incentive "arrangement was not disclosed when it should have been and where it was plainly relevant, at the class certification stage." The "arrangement" there was between class counsel and class representatives and created a conflict between their interests and the interest of the class. The trial Court had "observed that the parties' failure to disclose their agreement to the court, and to the class, violated the contracting representatives' *fiduciary duties to the class and duty of candor to the court*." (Emphasis added.) The Ninth Circuit wrote: "We agree." True, the Chargois Arrangement did not create a client-client conflict, as did the arrangement in *Rodriquez*. But *Rodriguez* is relevant here because it holds that withholding "plainly relevant" information from the class and the Court can violate the fiduciary duty to the former and the requirement of candor to the latter.

Apart from Comment 14A and a lawyer's duty of candor as an officer of the court, Rule 3.3(d) explicitly required disclosure of the Chargois Arrangement to the Court. Rule 3.3(d) provides:

> 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. Mass. R. Prof. C. 3.3(d).

[90] Further distinguishing duties under [West Virginia's] Rule 3.3 from the duty of candor, the *Shaffer Equipment* Court wrote: "While Rule 3.3 articulates the duty of candor to the tribunal as a necessary protection of the decision-making process, and Rule 3.4 articulates an analogous duty to opposing lawyers, neither of these rules nor the entire Code of Professional Responsibility displaces the broader general duty of candor and good faith required to protect the integrity of the entire judicial process (internal citation omitted)." *Shaffer Equipment*, 11 F.3d at 458.

Labaton relies on Comment 14 as an aide to interpreting Rule 3.3(d). I rely on it, too, but I think it cuts the other way. That Comment provides:

> Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any *ex parte* proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an *ex parte* proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision. Rule 3.3(d) does not change the rules applicable in situations covered by specific substantive law, such as presentation of evidence to grand juries, applications for search or other investigative warrants and the like. *Id*. at [cmt. 14].

In my opinion, Rule 3.3(d) encompasses the present situation. We must begin with the universal recognition that at the fee determination stage, the interests of class counsel and the class are adverse. *In re Rite Aid Corp.,*396 F. 3d at 307. The fee will be paid from the class recovery. Consequently, although class counsel remains counsel for the certified class, with the fiduciary duties that lawyers owe clients, at the fee stage, class counsel are understood to be advocating their own interests, not the class's interests. This presents a rare instance in which lawyers are permitted, in fact expected, to prefer their own interests above those of their current clients. We accept it. It is written into class action law and procedure. But it is then also true that that the class interests are *not* represented when lawyers petition for a fee, which is why the proceeding is properly understood to be *ex parte*. Only one of two interests is present before the Court. Only by denying that the class has any interest at all in the size of the fee is it possible to interpret proceeding as *not* being *ex parte*. Or to put it affirmatively, because the class does have an interest, but lacks an advocate (unless there is an objector), the proceeding *is* within Rule

3.3(d). And because Rule 3.3(d) applies, the Court should be given the information that will enable it to protect the unrepresented class.

It seems to me that Labaton wants it both ways. It argues that Comment 14A does not apply because the fee petition was not a "joint petition" of "adversaries," but rather a petition by a single former adversary. But at the same time, it denies that there was an unrepresented party (its own clients) before the Court, whose interests were adverse to the firm's interests when the firm petitioned for fees.

Professor Rubenstein and Labaton say that the solution was for the judge to ask the right question. But Professor Rubenstein testified that his opinion was limited to duties under Rules 23 and 54. Rubenstein 4/9/18 Dep., p. 198: 21-24. He offered no opinion on duties that have their source elsewhere. I accept Professor Rubenstein's interpretation of the Rules of Civil Procedure. Rule 3.3(d) – and in my view, Comment 14A – are two sources of other duties.

It may be that if the Chargois Arrangement had been disclosed, the Court would award the same fee. Or not. The Court was not obligated to do so. I did not (and could not) testify to what the Court would or would not have done, or what it should or should not have done. My testimony is that the Court should have been informed.

Labaton's Rebuttal Memorandum (p. 28) quotes the final sentence of Comment 14 to argue that Rule 3.3(d) is subordinate to Rules 23 and 54. That sentence reads: "Rule 3.3(d) *does not change* the rules applicable in situations covered by specific substantive law, such as presentation of evidence to grand juries, applications for search or other investigative warrants and the like." (emphasis added.) The argument seems to be that Rules 23 and 54 displace Rule 3.3(d) (and maybe all of Rule 3.3). But the final sentence of Rule 3.3(d) permits no such claim. The rules for grand jury presentations and search warrant applications exclude third persons and

are meant to be *ex parte*. If the Comment were applied to them, it would "change" them. Applying Rule 3.3(d) to a class action fee application does not "change" Rules 23 and 54, which easily coexists with Rule 3.3(d). Neither contradicts the other. Indeed, Comment 14A recognizes that coexistence because it cites class actions specifically.

Rule 1.5(a)

At my deposition, Judge Rosen asked whether in my opinion Rule 1.5(a) applied to a lawyer who was part of a division of fee agreement under Rule 1.5(e). That is, even if the total fee for all lawyers in a division of fee agreement is "reasonable," as Rule 1.5(e) requires, can the fee for any individual lawyer who is a party to the agreement violate Rule 1.5(a)? Rule 1.5(a) forbids "clearly excessive" fees and identifies a non-exclusive list of eight factors that can be weighed to determine whether or not a fee is clearly excessive. No factor is dispositive and some will be inapplicable in a particular situation. For example, the "results obtained" factor is retrospective and cannot be evaluated when the lawyer first "enter[ed] into an agreement."

A straight analysis of the text of the two rules tells us that Rule 1.5(a) is applicable to the fee of any individual lawyer in a division of fee agreement under Rule 1.5(e). The subject of Rule 1.5(e) is a division of *fees*. The subject of Rule 1.5(a) is *fees*. "Fee" is the same word both places. Neither rule exempts a lawyer from the requirements of the other rule.

Apart from statutory construction, as a matter of policy, applying Rule 1.5(a) to a division of fees is the right result. Otherwise, a lawyer whose fee would be clearly excessive under Rule 1.5(a) if she were to send a separate invoice would be able to avoid Rule 1.5(a)'s requirements by teaming up with other lawyers, who collectively send a single invoice, so long as their total fee was reasonable. The view that Rule 1.5(a) doesn't apply to an individual

lawyer's fee under Rule 1.5(e) would, therefore, allow a lawyer to "launder" a clearly excessive fee.

In answering Judge Rosen's questions at my deposition, I did not say, nor do I now say, whether the Chargois fee is clearly excessive. In fact, for a very good reason, I did not address Rule 1.5(a) in my Report. The Court has the power to abrogate the Chargois fee if it chooses to do so without having to find that the fee is clearly excessive under Rule 1.5(a). The Court is not bound by counsel's fee agreement. Given that inherent authority, whether or not Rule 1.5(a) could apply is of marginal relevance.

iv. *OMISSION OF THE CHARGOIS ARRANGEMENT FROM THE SEPTEMBER 15, 2016 FEE PETITION VIOLATED RULE 11 FED. R. CIV. P.*

I have been asked to address whether the omission of the Chargois Arrangement from the September 15, 2016 fee petition also violated Fed. R. Civ. P. 11 ("Rule 11"). Rule 3.3(a) and Rule 11 overlap. The same facts that establish a violation of the Rule 3.3(a) can also reveal a violation of Rule 11. Here they do.

Rule 11 is in one way even broader than Rule 3.3(a). Its test is objective reasonableness, rather than subjective knowledge. Rule 11(b)(3) provides:

> 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…
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Rule 11 "requires that an attorney make reasonable inquiry to assure that all pleadings, motions and papers filed with the court are factually well-grounded, legally tenable and not

interposed for any improper purpose." *Cooter & Gell v. Hartmax Corp*., 496 U.S. 384, 393 (1990). Thus, counsel is held to standards of due diligence and objective reasonableness." *Mariani v. Doctors Assoc. Inc.*, 983 F.2d 5, 7 (1st Cir. 1993).

A finding of bad faith is not required. *E.E.O.C. v. Tandem Computers, Inc*. 158 F.R.D. 224 (D. Mass. 1994)("Imposition of Rule 11 sanctions does not require a finding of bad faith. The test as to whether an attorney made a reasonable inquiry prior to signing a pleading is an objective standard of reasonableness under the circumstances at the time the attorney acted. Of course, in determining whether sanctions are appropriate, courts must avoid chilling an attorney's enthusiasm or creativity")(internal citations omitted).

The Seventh Circuit has held that *omission* of facts can violate Rule 11, just as it can under Rule 3.3(a). In that case, L&M, a law firm for a Creditors' Committee requested a continuance before a bankruptcy judge. It gave as its reason the fact that the firm had been retained as counsel on the day of the hearing so "it had not had adequate time to prepare for it." The request was denied. In imposing Rule 11 sanctions on appeal from the Bankruptcy Court, the District Court called the request "disingenuous because Committee makes no mention of [L&M's] significant involvement in the case *before* the hearing." *In re Ronco, Inc*. 838 F.2d 212, 214-215 (7th Cir. 1988) (emphasis in original). On further appeal, the Seventh Circuit wrote:

> We believe that the district court was correct in determining that two aspects of the appellant's argument with respect to the need for a continuance were sanctionable. The appellant did not disclose in its initial brief to the district court that it had previously represented a single unsecured creditor in the bankruptcy action prior to its representation of the Creditors' Committee beginning on February 24, 1984. This information was highly relevant to the question of whether the bankruptcy judge should have granted a continuance. As the representative of a single creditor, L&M had been required to face the issue of whether the Banks' liens were valid and, indeed, had filed a discovery request. *While the appellant did not misstate an empirical fact, it did omit facts that were highly relevant to an accurate characterization of the facts that were stated. Such an obvious omission placed a heavy burden on a court. The presentation*

> *amounts, in its totality, to a half-truth that can be just as misleading, sometimes more misleading, than an absolutely false representation.* For purposes of determining whether sanctions are appropriate, it is not relevant that a later submission by the appellees brought the truth to light. The impact on the court and on the opposing party occurs when the initial omission is made. Later correction does not permit a recoupment of the time, energy or, in some cases, money that has already been expended.

Id. at 218 (emphasis added).

The fee petition was a "written motion" or "other paper" within the meaning of Rule 11. Omission of the Chargois Arrangement from the September 15, 2016 fee petition was, moreover, "highly relevant to an accurate characterization of the facts stated." My reasons for concluding the nondisclosure of the Chargois Arrangement violates Rule 11 are the same as my reasons for concluding that the fee petition did not comply with Rule 3.3(a), *supra* pages 84-88.

v. ANY CLAIM THAT THERE WAS NO DUTY TO DISCLOSE THE CHARGOIS ARRANGEMENT TO THE COURT OR TO CLASS MEMBERS BECAUSE IT WOULD BE PAID FROM COUNSEL'S FEE AWARD IS INCORRECT AS A MATTER OF FACT AND LAW

It is *not* true that the Court, the named plaintiffs, and the members of the certified settlement class had no interest in the Chargois payment on the theory that Customer Class Counsel would pay it out of their own fee award. Counsel's fee did not, and would not, exist unless and until the Court awarded it. Labaton itself recognized as much in the Notice of Pendency of Class Actions among other places. The Notice states: "Lead Counsel…will apply to the Court for an order awarding attorneys' fees…." (Page 4.) *See also* page 9, stating the question in the conditional tense ("*If* the Court awards fees" at a particular rate…) (emphasis added).

In deciding the amount of fee to award to class counsel, and to whom to award it, the Court, as a fiduciary for the class including class members named and unnamed, needed *first* to know who would be participating in any fee the Court in its discretion might award from the

class recovery and the basis for the claim. A contrary argument would deny the Court the very information it needed in order to decide how much of the undifferentiated settlement funds should go to counsel, and which counsel, and how much should go to the class. Quite simply, until the Court made that decision, *there was no fee to divide.* The Court was empowered, for example, as an exercise of its equitable power and fiduciary duty to the class, to deny any part of the recovery to Chargois and instead to direct that money to the class.

vi. A LAWYER'S MISCONDUCT MAY AFFECT A COURT'S DETERMINATION OF THE AMOUNT OF FEES TO AWARD

In the First Circuit and elsewhere, lawyer misconduct may influence fee decisions. *Travers v. Flight Services & Systems, Inc*., 808 F.3d 525, 542 (1st Cir. 2015):

> "[I]t is well settled in this circuit that the district court has the duty and responsibility to supervise the conduct of attorneys who appear before it, and that ... [d]enial of attorneys' fees may be a proper sanction" for attorney misconduct. *Culebras Enters. Corp. v. Rivera–Rios*, 846 F.2d 94, 97 (1st Cir. 1988); *see also Wong v. Luu*, 472 Mass. 208, 218 (2015) (holding that "[t]he inherent powers necessary to preserve the court's authority to accomplish justice include the power to sanction an attorney' for misconduct" by assessing fees).

Indeed, *Rodriguez v. Disner*, *supra*, applied this doctrine in a class action.

vi. CONCLUSION

Counsel's duty to the Court required that those who knew the terms of the Chargois Arrangement disclose the arrangement to the Court before it awarded fees from which Chargois would be (and was) paid.

D. THE CHARGOIS ARRANGEMENT SHOULD HAVE BEEN DISCLOSED TO MEMBERS OF THE CLASS.

The unnamed members of the certified class were entitled to know about the Chargois Arrangement before they were called upon to decide, with legal advice if desired, whether to opt

out or object to the settlement, or to the fee request made by Customer Class Counsel. Both decisions naturally precede the Court's decision on any fee award.

On August 8, 2016, David Goldsmith of Labaton appeared before Judge Wolf for the "plaintiffs and the settlement class." Michael Thornton of Thornton and Daniel Chiplock of Lieff Cabraser appeared for the same clients. "We are here," the Court said, "with regard to the motion for preliminary certification of class action and preliminary approval of the proposed class settlement." 8/8/16 Hearing Tr., p. 4. The Court concluded that it was "appropriate to certify a class for settlement purposes." It then certified "the proposed class for settlement purposes only." *Id.* at 4, 11. Previously, in January 2012, the Court had appointed Labaton as "interim lead counsel to act on behalf of all plaintiffs and the proposed class." It had appointed Thornton as "liaison counsel for plaintiff and the proposed class" and Lieff Cabraser to "serve as additional attorney for the plaintiff and the proposed class." *See* 1/12/12 Memorandum and Order, p. 5, Dkt. No. 28. When the Court certified the settlement class in August 2016, the firms continued to hold these positions.

i. *CLASS COUNSEL WHO KNEW THE TERMS OF THE CHARGOIS ARRANGEMENT HAD A FIDUCIARY AND ETHICAL DUTY TO DISCLOSE THE CHARGOIS ARRANGEMENT TO CLASS MEMBERS*

At least as of August 8, 2016, Labaton, Lieff Cabraser, and Thornton maintained attorney-client relationships with the certified settlement class and its members. In that role, they had responsibility for the "Notice of Pendency of Class Actions," dated August 22, 2016, which Labaton prepared, which Nicole Zeiss circulated to Lieff and Thornton, and which was then sent to the Customer and ERISA class members. *See* pp. 19-21, *supra*. The Notice of Pendency's caption identifies ATRS, Henriquez, and the Andover Companies as named plaintiffs. It refers to

the "class action lawsuits (collectively, the 'Class Actions')." It defines the "Settlement Class" as follows:

> All custody and trust customers of SSBT (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT's records as having a United States tax address at any time during the period from January 2, 1998 through December 31, 2009, inclusive, and that executed one or more Indirect FX Transactions with SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive.
>
> Notice, p. 3.

Labaton Sucharow and Lawrence Sucharow are identified as "Lead Counsel." *Id.* at 2, 14. No other law firm or lawyer is identified. Class members receiving the Notice are told only that:

- "Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, will apply to the Court for an order awarding attorneys' fees in an amount not to exceed $74,541,250.00." (*Id*. at 4, 13);
- Attorneys' fees for ERISA counsel will not exceed $10.9 million, and about how fees for the other counsel will be computed "if the Court awards the total amount of fees that Lead Counsel intend to request." (*Id*. at 9);
- They can obtain "[a]dditional information" by calling Labaton's phone number, website, and email address, as provided." (*Id*. at 2); and
- They have a right to opt out and to object and provided information on how to do so. (*Id*. at 2).

Recipients of the Notice were *not* told about the Chargois Arrangement although this information -- that a lawyer who did no work to produce the class recovery and who accepted no legal responsibility for the work of others stood to receive more than $4 million from the class recovery – was relevant to "The Allocation of Settlement Proceeds," including the completeness of the attorneys' fees" disclosures in the Notice. That information could reasonably have influenced members of the class in deciding whether to exercise the right to object to the disclosure regarding attorneys' fees. As important, it may have affected the advice ERISA

Counsel[91] would have given their clients. At the August 8, 2016 hearing, the Court specifically recognized that class members could object to the requested fee. It said: "As I understand it, counsel will seek up to 25 percent, roughly $76 million, of the common fund. The class members will have an opportunity to be heard on the propriety of that." 8/8/16 Hearing. Tr., pp. 22:23 – 23:1.

In this District, *Fulco v. Continental Cable Vision, Inc.*, 789 F.Supp.2d 45, 47 (D. Mass. 1992), recognized the formation of an attorney-client relationship between class counsel and the class after the class is certified. "While this is apparently a case of first impression in the First Circuit, I agree with courts which have held that 'once the court enters an order certifying a class, an attorney-client relationship arises between all members of the class and class counsel.'" (Citations omitted.) *Newberg on Class Actions* §19.2 (5th ed.) similarly states:

> [O]nce a class has been certified, the default presumption is that there is an attorney-client relationship between class counsel and the absent class members. This is certainly true in some contexts. Thus, for example, courts and commentators have held that absent class members *are* class counsel's clients for communications purposes. This means that opposing counsel must treat absent class members in a certified class as "represented parties" for communications purposes and can only communicate with them through counsel. [Emphasis in original.]

And at least as of August 8, Labaton, Thornton, and Lieff also had fiduciary duties to the unnamed members of the certified settlement class. *Piambino v. Bailey*, 757 F.2d 1112, 1139 (11th Cir. 1985)("The lawyers who bring these [Rule 23] cases have a heavy fiduciary

[91] ERISA attorney Lynn Sarko testified that it would have affected his advice. Sarko 9/8/17 Dep., pp. 75-80. Beyond this, the fact that the ERISA lawyers received only approximately $7.5 million of the $10.9 million allocated for fee awards out of the ERISA class's share of the funds, with the $3.4 million balance going back to the Customer Class Counsel, would (they testified) have informed the ERISA lawyers' conduct of the case and agreement to accept only a $7.5 million share of the fees; several of the ERISA lawyers testified to this. *See, e.g.*, Sarko 9/8/2017 Dep., pp. 28:10-49:18; 74:23-82:24; 90:13-92:18; McTigue 9/8/17 Dep., pp. 21:15-30:9; Kravitz 9/11/17 Dep., 68:20-71:22; 82:6-85:17; 101:16-102:23; 113:22-115:3

responsibility to their clients -- especially those who are absent and those in the minority whose interests are at odds with the named plaintiffs and their group -- to the trial judge and to the people, who provide the forums and governmental resources for these suits."); *Singer v. AT&T Corp*, 185 F.R.D. 681, 690 (S.D. Fla. 1998)("The class attorney has a fiduciary duty to the court as well as to each member of the class.").[92]

Because representing an entire class presents special considerations not present when the client is an individual or an entity, certain professional conduct rules have been held to apply in a different way or not at all, and Labaton has identified narrow exceptions to argue that a lawyer's duty inform a client also does not apply here. That argument is wrong.

The most noteworthy exception concerns former client conflicts. If the class divides, the question arises whether counsel who had represented the unified class can now represent a segment of it against another segment whose members were, until then, counsel's clients. Rule 1.9(a) forbids adverse representation on the same or substantially related matter when a former client is an individual client. But to disqualify class counsel in these circumstances would be highly inefficient and courts will not routinely do so. *See In re Agent Orange Product Liab. Lit.,* 800 F.2d 14, 19 (2nd Cir. 1986)("[W]e conclude that the traditional rules that have been developed in the course of attorneys' representation of the interests of clients outside of the class action context should not be mechanically applied to the problems that arise in the settlement of class action litigation.")

Another area in which a court might choose not to apply a professional conduct rule to class actions concerned the former rule (now superseded) that said that a lawyer could not

[92] Courts have held that attorneys for *putative* classes -- pre-certification -- have fiduciary and ethical obligations to unnamed class members after the complaint is filed. *In re General Motors Corporation Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 801 (3rd Cir. 1995)("Beyond their ethical obligations to their clients, class attorneys, purporting to represent a class, also owe the entire class a fiduciary duty once the class complaint is filed.").

advance litigation costs unless the client was responsible to repay them even if it lost. For obvious reasons, *Rand v. Monsanto,* 926 F.2d 596, 600 (7th Cir 1991), rejected that rule in a class action. Application of the rule would spell the end of class actions as we know them because few, if any, persons would be willing to serve as class representative given the expense of mounting a class action. Labaton cites *Rand* at page 33 of its Rebuttal Memorandum for the overinclusive suggestion that "courts have recognized [that] class actions are legally unique situations that do not always neatly fit within the standard framework of ethical rules." Yes, courts have recognized that class actions do not "*always* fit within the framework of ethical rules," but the situations in which courts do not apply traditional rules are few and tailored. They also tend to be situations in which doing so will favor the class, a segment of it, or the feasibility of class litigation. These situations are not a reason to relieve class action lawyers from ethical obligations that *benefit* the class and *supplement*, not contradict, duties to clients under Fed. R. Civ. P. 23.

As fiduciaries and lawyers for the unnamed certified class members -- and lawyers are fiduciaries for their clients as a matter of law[93] -- customer class counsel had a duty to give their clients information relevant to decisions that belonged to the client. That is also a duty imposed by Massachusetts Rules of Professional Conduct 1.2(a) and1.4(a)(last amended March 26, 2015, eff. July 1, 2015);[94] One decision that belongs to a client is whether or not to settle. *Moores v.*

[93] *Washington Legal Foundation v. Massachusetts Bar Foundation*, 993 F.2d 962, 974 (1st Cir. 1993)("The relationship between lawyer and client in Massachusetts is fiduciary as a matter of law.").

[94] Rule 1.2(a) provides in part: "A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter." Rule 1.4(a)(1) provides: "A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f) is required by these Rules." Rule 1.4(b) provides: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Rule 1.0(f), in turn, provides: "'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." *See also* Restatement (Third) of Law Governing Lawyers (2000), §§ 20(3) and 22(1).

Greenberg, 834 F.2d 1105 (1st Cir. 1987)("As part and parcel of [the duty to a client], a lawyer must keep his client seasonably apprised of relevant developments, including opportunities for settlement.").[95] This is the very decision the Notice of Pendency presented to the recipients -- i.e., whether to settle on the terms in the Notice or to object.

As with my discussion of duties to the Court above, my opinion here addresses the extraordinary situation presented by the Chargois Arrangement. Class members were told their "legal rights," which included their right to object to the anticipated fee application, but they were not given information that could reasonably have prompted an objection. They could assume that ATRS was fulfilling its fiduciary duties to the class but ATRS did not know about the Chargois Arrangement. The Notice of Pendency told them that the Court had appointed Labaton Sucharow for the Settlement Class, of which they were told they were members. They could assume that Labaton Sucharow was protecting their interests as its clients.

ii. CONCLUSION

As fiduciaries, counsel who knew the nature of the Chargois Arrangement 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. Rule 1.2(a) and Rule 1.4(b) imposed the same duty.

E. GARRETT BRADLEY'S DECLARATION CONTAINS FALSE STATEMENTS OF FACT AND FALSE "EVIDENCE," IN VIOLATION OF RULES 3.3(a)(1) AND 3.3(a)(3) BECAUSE THE FALSE STATEMENTS WERE MADE KNOWINGLY. THE DECLARATION ALSO VIOLATED RULE 8.4(c)'S PROHIBITION OF MISREPRESENTATIONS AND DECEIT. SEPARATELY, GARRETT BRADLEY'S DECLARATION VIOLATED FED. R. CIV. P. 11 BECAUSE BRADLEY FAILED TO

[95] A lawyer is an agent and the law of agency separately creates a duty to inform. *Gagnon v. Coombs*, 39 Mass. App. Ct. 144, 156 (1995) ("An agent's duty to make full disclosure to the principal of all material facts relevant to the agency is a necessary corollary to the fundamental agency obligations of undivided loyalty and utmost good faith.")

CONDUCT "AN INQUIRY REASONABLE UNDER THE CIRCUMSTANCES" TO ESTABLISH THAT HIS FACTUAL CONTENTIONS HAVE "EVIDENTIARY SUPPORT"

i. FILING OF THE FEE PETITION

The Court's task when class counsel requests attorneys' fees is to identify what the market would have recognized as a reasonable rate for counsel's service to the class. To aid the court in fulfilling its fiduciary duty to the class, counsel will provide information to persuade the Court that the requested fee is reasonable. When lawyers seek attorneys' fees, their interests and the interests of the client they represent are economically adverse, which heightens the need for the Court to be especially vigilant. *See In re Rite Aid Corp. Securities Litigation*, 396 F. 3d at 307. As discussed, *supra,* in Section C(iii), the Court is not bound by a fee agreement between counsel and class representatives or among themselves.

Naturally, a court may first look to the evidence counsel submits in support of a fee request, which was the purpose of the Bradley Declaration. But courts must also independently evaluate the requested fee against reasonable market rates for the particular lawyer. "While fee sharing agreements among counsel may be respected or treated as presumptively reasonable in a district court's allocation of attorneys' fees, persuasive authority convinces this Court that it is not bound blindly to follow such private arrangements." *In re Volkswagen and Audi Warranty Extension Litigation,* 89 F. Supp. at 183. In *In re Citigroup Inc. Securities Litigation,* 965 F.Supp.2d 369, 393-394 (S.D.N.Y. 2013), the Court awarded $200 hourly for contract lawyers, writing that:

> The lodestar figure should be based on market rates in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. The Court must determine the rate a paying client would be willing to pay.… In other words, if the class were a reasonable, paying client free to choose its counsel and negotiate rates, what hourly rate would it accept for the attorneys and other professional staff

employed here? (internal quotations and citations omitted)

Labaton submitted the Bradley Declaration dated September 14, 2016, as part of the materials in support of the fee applications of the several law firms. It is evidence upon which the Court was invited to base its fee award.[96]

The Bradley Declaration states under oath in paragraphs 3 and 4:

> 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 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 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 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 complex class actions.

Paragraphs 5 and 6 implicitly incorporate some of these statements.[97]

These paragraphs were taken verbatim from a template prepared by Labaton and shared with Thornton and Lieff.

ii. GARRETT BRADLEY VIOLATED RULE 3.3(a) BECAUSE HE KNEW THAT HIS DECLARATION CONTAINED FALSE STATEMENTS

[96] I understand that a separate issue addressed by the Special Master is that certain staff attorneys listed on Exhibit A of the Bradley Declaration were also identified by Labaton or Lieff in their request for fees -- i.e. some were double-counted.

[97] These paragraphs state:

> 5. The total number of hours expended on this litigation by my firm during the Time Period is 15,302.5 hours. The total lodestar for my firm for those hours is $7,460,139.
>
> 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 bill separately and such charges are not duplicated in my firm's billing rates.

Exhibit A to the Garrett Bradley Declaration uses the designation "SA" to identify 24 "staff attorneys." Total compensation requested for the SAs is $4,508,837 at an hourly rate of $425 for each, except that one "SA," Michael Bradley, is billed at $500. Additional compensation requested for four Thornton partners and one associate totals $2,831,287. The Declaration contains numerous false statements. I am asked to assume that Garrett Bradley knew these statements were false when he submitted his Declaration. *See*, *e.g.*, pp. 23-24.

- The Declaration states: *Exhibit A contains professional support staff members "of my firm."* None of the SAs are support staff members of the Thornton law firm.

- The Declaration states: *The billing rates for the SAs are "based on my firm's current billing rates."* The firm did not have "current billing rates" for these lawyers.

- The Declaration states: *For personnel "who are no longer employed," the lodestar is based on their rates for the "final year of employment."* None of the SAs were ever "employed" at Thornton.

- The Declaration states: *The schedule was prepared from "contemporaneous daily time records regularly prepared and maintained by my firm.*" The SAs worked at Labaton or Lieff, which prepared their time records and is where those records were maintained. Or they were prepared and maintained by an agency. Other TLF attorneys may have kept contemporaneous time records.

- The Declaration states: *The hourly rates "are the same as my firm's regular rates charged for their services."* Thornton had no "regular rates" for the SAs.

- The Declaration states: *These rates "have been accepted in other complex class actions."* This is true for four of the SAs but it is not true for the other 20, including Michael Bradley.

Although Goldsmith of Labaton informed the Court in the November 10, 2016 letter that SA time was double-counted in the lodestars of Customer Class Counsel, and although attorneys listed in the Thornton lodestar were among those who were double- counted (except Michael Bradley), Thornton did not inform the Court of false statements in its lodestar.

The characterization of Michael Bradley, Garrett Bradley's brother, is especially serious. Contrary to the Garrett Bradley Declaration, Michael Bradley's $500 hourly rate had never been accepted by a Court in a complex class action. Michael Bradley had not been a staff member of the Thornton law firm. The Thornton law firm did not have a current billing rate for him or prepare and maintain his time records. It did not supervise him. There appears to be no physical evidence of the work for which he was paid $203,200. I am asked to assume that "[u]nlike the Labaton and Lieff SAs, Michael Bradley did not prepare any memoranda or deposition notebooks. And, the record reveals no written work product created by Michael Bradley."

iii. APPLICATION OF RULE 3.3 AND FEDERAL JURISPRUDENCE TO THE BRADLEY DECLARATION

To exercise its fiduciary duty to protect the class when responding to a law firm's fee request, the Court required accurate and complete information about the contributions of the firm seeking counsel fees. That information would inform the hourly rate the Court would approve for SAs and contract (or agency) attorneys. For example, the Court could consider not merely the fact that a law firm assumed financial responsibility for the expense of a staff lawyer, but also whether it assigned legal work to those lawyers, supervised their work, and provided them with a place to work and research support. The Court might also consider as relevant to its decision the fact that the rate requested for these lawyers was nearly nine times their cost to the law firm. The question is not what the Court would or would not do based on such information but the relevance of the information to the Court's exercise of its judgment as a fiduciary for the class. While the Court was informed of the hourly rate *claimed* for the SAs, other statements in the Bradley Declaration, which could reasonably affect the Court's decision whether to approve that rate, are false.

Analysis of the Bradley Declaration is rooted in the rule governing a lawyer's duty of candor to the Court and federal case law. As noted in Section C (iii), *supra,* Rule 3.3(a)(1) provides: "(a) A lawyer shall not knowingly (1) 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." A lawyer who unknowingly offers false "evidence" to a tribunal and comes to know of its falsity must take reasonable remedial measures if the evidence is material. Rule 3.3(a)(3). Here, that would have required correction of the falsity. Rule 1.0(g) defines "knowingly." "'Knowingly,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Rule 8.4(c) forbids "conduct involving dishonesty, fraud, deceit or misrepresentation."

The Court was not bound by how the several law firms chose to allocate fees or SA time among themselves. "More important than the terms of a private agreement are the actual contributions each firm made to the prosecution of this case and the interests of the plaintiff class." *In re Volkswagen,* 89 F. Supp. 3d at 183; *In re FPI/Agretech Sec. Litig.,* 105 F.3d 469, 473 (9th Cir.1997) ("[A] court may reject a fee allocation agreement where it finds that the agreement rewards an attorney in disproportion to the benefits that attorney conferred upon the class—even if the allocation in fact has no impact on the class"); *In re "Agent Orange" Prod. Liab. Litig*., 818 F.2d at 223 (rejecting authority that "allows counsel to divide the award among themselves in *any* manner they deem satisfactory under a private fee sharing agreement"). In making a fee award, the Court would of course be cognizant of the fact that the money paid to the law firms would necessarily come from the class recovery.

iv. APPLICATION OF FED. R. CIV. P. 11 TO THE BRADLEY DECLARATION

Federal Rule of Civil Procedure 11(b)(3) required Bradley to conduct "an inquiry reasonable under the circumstances" to ascertain that the facts he was asserting in his Declaration had "evidentiary support," which Bradley did not do because, as I am asked to assume, he knew that statements in the Declaration were false.[98]

v. CONCLUSION

Garrett Bradley prepared the "evidence" -- in his sworn Declaration -- from a template Labaton circulated. This is "evidence" in the sense that it is information declared to be true and upon which the Court was invited to issue a ruling. He is governed by Rules 3.3 and 8.4. Rule 3.3 prohibits knowing false statements to a tribunal. Rule 8.4(c) forbids "conduct involving dishonesty [and] deceit." Bradley knew the statements in his Declaration were false. Federal law separately required reasonable care to ensure that the information provided to the Court for the exercise of its discretion be true. The reasonable inquiry required by Rule 11 would quickly have identified these statements as false if Bradley did not already know it.

STEPHEN GILLERS

May 8, 2018

[98] The cited provision of the Rule continues: "or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery."

EX. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[illegible] TE [illegible] HE [illegible] ETI [illegible] EME [illegible] T [illegible] [illegible] TEM, [illegible] B h [illegible] It [illegible] d [illegible] th r [illegible] i [illegible] r [illegible] it [illegible] t d, [illegible] i ti [illegible], [illegible] i [illegible] t [illegible] [illegible] T [illegible] TE [illegible] T [illegible] EET [illegible] [illegible] [illegible] TI [illegible], [illegible] T [illegible] TE [illegible] T [illegible] EET B [illegible] [illegible] T [illegible] T [illegible] M [illegible], [illegible] d [illegible] T [illegible] TE [illegible] T [illegible] EET [illegible] B [illegible] M [illegible] ET [illegible], [illegible], [illegible] d [illegible] t.	**CIVIL ACTION NO. _____** **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

[illegible] i ti [illegible] r [illegible] T [illegible] h r [illegible] tir [illegible] t [illegible] t [illegible] T [illegible], i di id [illegible] d [illegible] b h [illegible] th r p r [illegible] i i r [illegible] it [illegible] t d, b it [illegible] d r i [illegible] d tt r [illegible], [illegible] th [illegible] i [illegible] i [illegible] ti [illegible] i [illegible] t [illegible] d t [illegible] t t [illegible] tr t [illegible] rp r ti [illegible], t t [illegible] tr t B [illegible] d Tr t [illegible] p [illegible] t t [illegible] tr t B [illegible] r th [illegible] B [illegible], d t t [illegible] tr t [illegible] b [illegible] M r t, [illegible] t t [illegible] tr t [illegible] b [illegible] ti [illegible], t t [illegible] tr t, r [illegible] d t [illegible] b d p th i [illegible] ti ti [illegible], x pt [illegible] t th [illegible] ti [illegible] p rt i i [illegible] p i i t [illegible] i ti th t r b d p r d.

I. INTRODUCTION

1. t t [illegible] tr t B [illegible], thr h it h d rt r i B t, M h tt, r [illegible] th [illegible] t di r [illegible] r 40 [illegible] p b i p i [illegible] d i th it d t t. t t [illegible] tr t B [illegible] i th r t h t di i th tr, d h d 4.4 tri i i p i [illegible] t d r t d b [illegible] M r h 31, 2010. t t [illegible] tr t B [illegible] r [illegible] th [illegible] t di r [illegible] p b i i t [illegible] d d th r i t r. t di, t t [illegible] tr t B [illegible] i r p [illegible] ib, *inter alia*, r d rt i [illegible] thr h i i t [illegible] h t t [illegible] tr t [illegible] b th r i [illegible] rr

□x□h□□□□ □□X□tr□□□□□ti□□□□□□□□r□t□□□i□it□t□□□□□t□di□□□□t□□ r□□p□r□h□□□□r □□□□□□□□ □r□i□□ □□□□t□□r th□r□p□tri□ti□□ th□r □r□i□□ □□□d.

2. □r □□r □d□□d□, □t□t□□tr□□t, i□ i□□ti□□ □□M□□□□□h□□tt□□□□, h□□□ i□t□i□□d □□ □□□□ir □d d□□pti□□ pr□□ti□□□□h□r b□□X tr□□□□□ti□□□r□□□d□t□d □□ □□t□□ xi□i□□ pr□it□t□□t□t□□tr□□t □t□□□ i□□r□□ □□□□ti□it□i□□X r□t□□□□t th□ xp□□□□□□□□b□t□ti□□ □□□□t □□it□□□□t□di□□□□t□□ r. I□□□□, □□□□d□t□h□□□h□r□d □□□□□th□ir □□t□di□□ □□t□□ r□□□□i□□□t□d □X r□t□□□h□b□i□□ □r□i□□ □rr□□□□ r th□□□□□t□□ r, □d b□ d□□□t□d □X r□t□□□h□ □□□□i□□ □r□i□□ □rr□□□□ r th□□□□□t□□ r, □d p□□□t□d th□di□□r□□□□ b□t□□□□th□□t□□□□d r□p□rt□d r□t□.

3. □□□□d□t□□□□□ir □d d□□pti□□pr□□ti□□r□□ i□d □□□□□□□t□□□i□ti□□□d th□ □□□□b□□□□□, *inter alia,* th□□□□□□t □t□t□□ □t□□□□d□t□pr□id□d t□th□□□□t□d □□t□di□□ □t□□ r□r□p□rt□d th□□X tr□□□□□ti□□□□h□i□□t□□□□p□□□□t □□p□i□i□d ti□□d□ri□□ □12 □r 24 h□r p□ri□d, □d □□□i□□ □X r□t□□□□□i□□ □ithi□ th□hi□h□□□□r□□□□□th□t p□ri□d. H□□□□r, th□□X r□t□□th□t □t□t□□tr□□t r□p□rt□d □d □pp□i□d t□th□tr□□□□ti□□□□r th□□ □□t□di□□□□t□□ r□□□r□i□□rr□t. □t□t□□tr□t □rri□d □t th□r□p□rt□d □X r□t□□□□t□r th□□□t, □ □t□□h□r□□t□r p□r□r□i□□th□r□□□□□t □X tr□□□□□ti□□□□r th□□□t□di□□□□t□□ r.

4. □□□□d□t□□□□□ir □d d□□pti□□□X pr□□ti□□h□□□□□r□t□d □□□□h □□□500 □i□i□□i□pr□it□□□□□□□□□□r □t□t□□tr□t, □r r□□□h□□h□□□□□□t□t□□tr□t□□□X pr□it□□□r th□□□t t□□□□r. Thi□i□□□□□t□□□□dir□□t□□□t □□th□p□□□□t□□□□t□t□□tr□t□□□□t□di□□□□t□□ r.

5. □□T□□bri□□□thi□□it □□□□□□□□□ti□□□□b□h□□□□□□□□i□i□r□□□□□t□d □□t□di□□□□t□□ r□□□□t□t□□tr□t, □x□pt th□□□□□□r□□ □t p□□i□□ □□d th□t □r□□□□r□d b□ i□d□p□d□t □i t□□ □ti□□□th□t h□□□b□□□□□□□d, □r th□t b□□□□ □□□□□□□d d□ri□□th□

p□d□□□□ □□thi□□ti□□ th□□□□□□□□□, i□ □rd□r t□ r□□□□r th□pr□□□d□□□□□□□□□□ bt i□d thr□□h □t t□□tr□t□□X □ti□iti□, □d □r i□□□□□ti□□r□i□.

II. JURISDICTION AND VENUE

6. Thi□□□rt h□□□ri□di□ti□□ □□r th□□□i□ p□r□□□t t□th□□□□rt□□di□r it□ □ri□di□ti□□. 28 □.□.□. □1332□□, □d 28 □.□.□. □1331 b□□□□□□□□□t Thr□□ri□□□□d□r □d□r□□□□.

7. Thi□□□rt □□□h□□□ri□di□ti□□p□r□□□t t□th□□□□□□□□ti□□ □ir□□□□□t □□2005 □□□□□□□□, 28 □.□.□. □1332□d□2□□□□d □□□. □ith r□p□t t□□□□□, i□th□□□□□t i□ □□tr□□r□□ x□□d th□□ri□di□ti□□□□□□□t, □ii□th□□□□□□□□□i t□□h□dr□d, □d p□rh□p□ th□□□□d, □□i□□r□d p□rti□, □d □iii□□□□ □□ □□b□r□□□th□□□□□□□r□□iti□□□□□□t t□□□th□r th□□th□□□□□□□□d□t□.

8. □□□□□i□thi□□di□i□□□i□tri□t i□pr□p□r □d□r 28 □.□.□. □1391 b□1□□d □2□ □b□t□□ti□p□rt □□th□□□□t□□r □□i□i□□□□i□i□□ri□□t th□□□i□□□□□rr□d □ithi□thi□□i□tri□t. □□□□d□t□r□id□i□□d tr□□□□t b□i□□□□i□thi□□i□tri□t. □□□□d□t□r□□iti□□□□□th□ □□□□□□□□th □□M□□□□h□□tt□□d □r□h□d□□□rt□r□d i□thi□□i□tri□t.

III. PARTIES

9. □i□□2001, □d □t □□ti□□ □r□□□□□t h□r□t, □□□□d□t□□d th□ir □b□idi□ri□, h□□□□r□d □th□d□□ □ti□□d i□t□r□ti□□□□□t di□b□□□r th□□T□□p□□i□□□□d.[1] □i□□□t □□□t □□□□1, 2001, □□□□d□t, □□□□t di□□□r th□□T□□p□□i□□□□d, h□□b□□□ r□p□□ib□□□r □x□□ti□□ th□p□r h□□, □□□□d pri□i□□□□X □□tr□t□□r th□□□□□□t□□□ □□T□□.

[1] □t□t□□tr□t B□□□□d Tr□t □□□□r□□□□th□□□□riti□□□di□□□□t □r th□□□d.

10. The Trust is a unit investment trust registered under the Investment Company Act of 1940 that was sponsored by Eaton Vance Distributors, Inc. ("EVD"). EVD is a wholly owned subsidiary of Eaton Vance Corp. ("EVC"). EVC is a publicly traded company, and its shares are traded on the New York Stock Exchange under the ticker symbol "EV."

11. As of December 30, 2009, the Trust consisted of 343 participating municipal bond funds with a total of approximately 115,000 investors. In 2001, EVD and its affiliates created and distributed tax-exempt municipal bond funds with approximately $2,436,510,000.

12. As of December 30, 2009, EVD reported that its municipal bond funds had approximately $8,802,987,225. Of this amount, EVD's Massachusetts municipal bond funds accounted for approximately 75.7% of the dollar, representing approximately 45.4 percent.

13. As of December 30, 2009, EVD was the beneficial owner of approximately 30% of the Trust. As of the most recent report, EVD's beneficial ownership had increased to approximately 28.9%, representing approximately $2,542,601,000. EVD's ownership of beneficial interests in the Trust and its affiliates' ownership of interests in the Trust.

14. EVD paid approximately $851,413 per year to the Trustees in their capacities as Trustees during 2009. The amounts paid to the Trustees were disclosed in the Trust's annual reports to shareholders.

15. The Trust's principal executive offices are located at Massachusetts Municipal Income Trust, which is an investment company registered with the Securities and Exchange Commission, 2 International Place, Boston, MA 02111. The Trustees provide oversight services to the Trust's business affairs and serve as the Trust's board of directors. The Trustees are responsible for overseeing the Trust's investment activities, including its compliance with applicable laws and regulations.

it [illegible] d it [illegible] b idi ri [illegible] th [illegible]. 1 [illegible] r i r [illegible]. [illegible] p [illegible] i [illegible] p [illegible], [illegible] d [illegible] M r h 31, 2010, h d 4.4 tri i [illegible] i p [illegible] i [illegible] [illegible] t [illegible] d r [illegible] t d [illegible] b [illegible].

16. [illegible] d t t t tr t B [illegible] i h d [illegible] rt r d i B t , M [illegible] h [illegible] tt [illegible] d h [illegible] i [illegible] i [illegible] ri [illegible] th r t t . t t tr t B [illegible] rr t pr id [illegible] r h pr id d [illegible] t di b [illegible] i [illegible] r i [illegible] d X r i t [illegible] T [illegible] d th p p d [illegible]. t t tr t B [illegible] i h [illegible] d b idi r [illegible] t t tr t rp r ti .

17. [illegible] d t t t tr t b M r t , r r [illegible] t t tr t pit M r t , i h d [illegible] rt r d i B t , M [illegible] h [illegible] tt [illegible] d h [illegible] i [illegible] i [illegible] ri [illegible] th r t t . t t tr t b M r t rr t pr id [illegible] r h pr id d [illegible] t di b [illegible] i [illegible] r i [illegible] d X r i t [illegible] T [illegible] d th p p d [illegible]. I p rti [illegible] r, t t tr t b M r t pr id p i i d i t t r [illegible] r h d tr di i r i x h [illegible], iti , ix d i [illegible] d d ri ti [illegible] r t t tr t [illegible] t di [illegible] t r. t t tr t b M r t i h [illegible] d b idi r [illegible] t t tr t rp r ti .

18. t r [illegible] t ti , h th [illegible] d t [illegible] d i th t, p [illegible], p [illegible] r, i t t r r, r pr [illegible] t ti , t r [illegible], b idi r d r p rt r [illegible] r r th th r [illegible] d t, d , i p r r i th t [illegible] p i d h r i , ti i ithi th [illegible] p h [illegible], p [illegible] t, i t t r, r p rt r hip th rit , d ri i [illegible] th r r p ib r th t [illegible] r r th th r [illegible] d t.

IV. CLASS ACTION ALLEGATIONS

19. Thi ti i br ht d pr p r b i t i d [illegible] ti p r t t [illegible] 23 [illegible] 1 [illegible] 4, d 23 b 2 d 3 th d r [illegible] i r d r d M . . 93 , 11. Thi ti ti i th pr d r r ir t t rth b [illegible] 23 d . 93 , 11.

20. This Court is vested with subject matter jurisdiction of this civil action arising under the patent laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. § 271, and 28 U.S.C. §§ 1331 and 1338(a). Upon information and belief, Defendant Watson Laboratories, Inc. is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Massachusetts Long Arm Statute, due at least to its substantial business in this forum, including: (a) at least part of its infringing acts alleged herein; and (b) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Massachusetts. Upon information and belief, Defendant Watson Laboratories, Inc. has also purposefully availed itself of the privilege of conducting activities within the State of Massachusetts, has established minimum contacts with this forum such that the exercise of jurisdiction over Defendant Watson Laboratories, Inc. would not offend traditional notions of fair play and substantial justice, and has committed acts of infringement and has placed or contributed to placing infringing products into the stream of commerce, directly or through intermediaries, with the knowledge or understanding that such products are sold in the State of Massachusetts, including by Internet sales or sales via retail or wholesale stores. It is beyond dispute that personal jurisdiction is proper under 28 U.S.C. § 1391(b)-(c) and 1400(b).

21. Defendant Watson Laboratories, Inc. is a corporation organized and existing under the laws of the State of Nevada, with its principal place of business at 360 Mt. Kemble Avenue, Morristown, New Jersey 07960. Watson Laboratories, Inc. is a wholly owned subsidiary of Actavis, Inc., which is a corporation organized and existing under the laws of Nevada, with its principal place of business at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, New Jersey 07054.

22. The exact nature of the relationship among the Defendants named herein is currently unknown to Plaintiffs, and is peculiarly within the knowledge of Defendants. Plaintiffs will amend this Complaint to allege the true relationship among Defendants when it is ascertained.

23. The Defendants named herein have acted and continue to act in concert to:

(a) Make, use, offer to sell, sell, and/or distribute in the United States, including in this District, and/or import into the United States, including into this District, generic versions of Actiq® with the FDA-approved prescribing information for Actiq®;

(b) Make, use, offer to sell, sell, and/or distribute in the United States, including in this District, and/or import into the United States, including into this District, generic versions of Actiq® that are not bioequivalent to Actiq®, and/or that have different labeling than Actiq®; and

(c) Make, use, offer to sell, sell, and/or distribute in the United States, including in this District, and/or import into the United States, including into this District, generic versions of Actiq® that have labeling that is not the same as the labeling approved for Actiq®.

(d) Said Defendants failed to timely report to the Commission as required by the Massachusetts Uniform Securities Act, Mass. Gen. Laws ch. 110A, § 93(c), and Massachusetts Uniform Securities Act Rule 410(c)(2).

(e) Said Defendants failed to maintain and preserve books, records and documents as required by the Massachusetts Uniform Securities Act and Rule 410(c)(2).

(f) In the alternative to (a) through (e) above, Defendants violated Section 204A of the Investment Advisers Act of 1940, which requires investment advisers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by such investment adviser or any person associated with such investment adviser.

24. Defendants' violations of Section 204A of the Investment Advisers Act of 1940 and the rules promulgated thereunder and Defendants' violations of Section 204A of the Investment Advisers Act of 1940 and the rules promulgated thereunder described herein.

25. The rules promulgated by the Commission pursuant to Section 204A of the Investment Advisers Act of 1940 require investment advisers to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the investment adviser's business, to prevent the misuse in violation of the Investment Advisers Act of 1940 or the rules promulgated thereunder by the investment adviser or any person associated with the investment adviser of material, nonpublic information by such investment adviser or any person associated with the investment adviser.

26. The investment advisers to the Defendants' Funds, Defendants' Investment Advisers, and Defendants' Investment Advisers' employees, and agents, including, but not limited to, the Defendants, are persons associated with the Defendants' Investment Advisers.

27. The Defendants' Investment Advisers had a duty to establish, maintain and enforce written policies and procedures. The Defendants' Investment Advisers' failure to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information, in violation of the Investment Advisers Act and rules promulgated thereunder, and their failure to prevent such misuse of material, nonpublic information.

28. The Defendants' violations of Section 204A of the Investment Advisers Act of 1940, and rules promulgated thereunder, as described in paragraphs 23(a) through 23(e), above, proximately caused and/or will proximately cause losses to investors in the Defendants' Funds, within the meaning of Section 21B(a)(1) of the Exchange Act, 15 U.S.C. § 78u-2(a)(1), and Section 209(f) of the Investment Advisers Act, 15 U.S.C. § 80b-9(f).

29. [illegible] tion is prior to the ob[illegible]r the ad[illegible]r the addi[illegible]tion of this [illegible]tr[illegible]r. I did id[illegible]i d[illegible]iti[illegible]ti[illegible]i[illegible]r[illegible]th d[illegible]d [illegible]xp[illegible]t [illegible]p[illegible]rti[illegible]d th[illegible]rt [illegible]t [illegible]i[illegible]th[illegible]p[illegible]x [illegible]d [illegible]t[illegible]i[illegible]th[illegible], [illegible]d [illegible]di[illegible]d t[illegible]r[illegible]ti[illegible]th[illegible] [illegible] [illegible]d [illegible]t[illegible]i[illegible]ti[illegible]t thi[illegible]d b[illegible]r [illegible]r[illegible]ir, [illegible]i[illegible]t [illegible]d [illegible]i[illegible]ti[illegible]th[illegible]ti[illegible]d i thi[illegible]r th[illegible]i[illegible]pi[illegible]di[illegible]d[illegible] d[illegible]r[illegible]ti[illegible].

30. [illegible]i[illegible]ti[illegible]di[illegible]t th[illegible]t [illegible]i[illegible]b[illegible]t[illegible]r d i th[illegible]t[illegible] thi[illegible] [illegible]ti[illegible]th[illegible]t [illegible]d pr[illegible]d[illegible]it[illegible] i t[illegible]ti[illegible]. [illegible]p[illegible]r d t[illegible]di[illegible]d[illegible]i d [illegible]ti[illegible], th[illegible]ti[illegible]d[illegible]i[illegible]pr[illegible]t[illegible]r [illegible]r [illegible]t di[illegible]ti[illegible], [illegible]d pr[illegible]id[illegible]th[illegible] b[illegible]it[illegible]i[illegible]d di[illegible]ti[illegible], [illegible], [illegible]d [illegible]pr[illegible]i[illegible]p[illegible]r i[illegible]b[illegible]i[illegible] [illegible]rt.

31. [illegible]d t[illegible]h[illegible]t[illegible]d r[illegible]d t[illegible]t [illegible]r[illegible]d[illegible]r[illegible]pp[illegible]b[illegible]t th[illegible] [illegible], th[illegible]b[illegible]i[illegible]ppr[illegible]pri t[illegible]i[illegible]d i[illegible]ti[illegible]r[illegible]ith r[illegible]p[illegible]t t th[illegible].

32. I th[illegible]t[illegible]r[illegible]ti[illegible], th[illegible]b[illegible]r[illegible]d [illegible]b[illegible]rti[illegible]d [illegible]d[illegible]r [illegible]23[illegible]b[illegible]1[illegible] b[illegible]

[illegible] Th[illegible]pr[illegible]ti[illegible]p[illegible]r t[illegible]ti[illegible]b th[illegible]i[illegible]di[illegible]d[illegible]b[illegible]r th[illegible] [illegible]d[illegible]r[illegible]t[illegible]ri[illegible]i[illegible]t[illegible]t[illegible]r[illegible]d[illegible]di[illegible]ti[illegible]ith r[illegible]p[illegible]t t[illegible]i[illegible]di[illegible]d[illegible] [illegible]b[illegible]r[illegible]i[illegible]hi[illegible]h [illegible]d[illegible]t b[illegible]h i[illegible]p[illegible]tib[illegible]t[illegible]d[illegible]d[illegible]t[illegible]r[illegible]d[illegible]t[illegible]d

[illegible]b[illegible] Th[illegible]pr[illegible]ti[illegible]p[illegible]r t[illegible]ti[illegible]b[illegible]i[illegible]di[illegible]d[illegible]b[illegible]r th[illegible]i[illegible] [illegible]d[illegible]r[illegible]t[illegible]ri[illegible]d[illegible]di[illegible]ti[illegible]hi[illegible]h [illegible]d[illegible]pr[illegible]ti[illegible]t[illegible]r, b[illegible]di[illegible]p[illegible]iti[illegible]th[illegible] i[illegible]t[illegible]r[illegible]t[illegible]th[illegible] [illegible]b[illegible]r th[illegible]i[illegible]h[illegible]r[illegible]t p[illegible]rti[illegible]t th[illegible]d[illegible]di[illegible]ti[illegible], [illegible]hi[illegible]h [illegible]d[illegible]b[illegible]t[illegible]ti[illegible]i[illegible]p[illegible]ir [illegible]r i[illegible]p[illegible]d th[illegible]bi[illegible]it[illegible] th[illegible]r [illegible]b[illegible]r[illegible]t pr[illegible]t[illegible]t th[illegible]ir i[illegible]t[illegible]r[illegible]t.

Case 1:11-cv-10230-MLW Document 401-21 Filed 07/23/18 Page 9 of 219

V. DEFENDANTS' FX PRICING PRACTICES

A. Background On Defendants' Relationship With Custodial Customers

33. □t□t□ □tr□□t h□d □it□□□□□t □□it□□ □b□it□□ □th□□□□. 1 □r□i□□r □□□.□. p□□□i□□ p□□□□ □□d th□ □□□di□□ □□□t□di□□ □r□d□id□.□ I□ it□ □□□□□□ □p□rt □□ □□r□ 10□□ □□r □i□□□□ □□r □□d □□□□□b□r 31, 2007, □t□t□ □tr□□t r□p□rt□d th□t it h□d □15.3 tri□i□□i□ □□□t□ □□d□r □□□t□d□ □□d □1.98 tri□i□□i□ □□□t□ □□d□r □□□□□□□ □□t □□□□□□□□b□r 31, 2007. □□□t□ □□d□r □□□t□d□ □r□□ □t □□□□p□□□d □□□□□r□t□ □□13□ b□t□□□□2004 □□d 2007, □□□rdi□□ t□th□2007 10□□. I□th□2007 □□□□□□□□p□rt t□ □h□r□h□d□r□, □□□□□d □□□□□, □t□t□ □tr□□t□□ □hi□□Ex□□□ti□□ □□i□□r, □t□t□d th□t □t□t□ □tr□□t h□d □hi□□□d 30 □□□□□□□ti□□ □□□r□ □□□r□□th i□ □p□r□ti□□ □□r□i□□□p□r □h□r□.

34. □□r 2008, □□t□ith□t□□di□□th□tr□□b□□d □□□□□□i□ □i□ □t□, □t□t□ □tr□□t □□□□ti□□□d t□r□p□rt p□□iti□□ □r□□th i□ □p□r□ti□□ □□r□i□□□p□r □h□r□.

35. □□□□rdi□□ t□ □t□t□ □tr□□t□□2007 □□r□ 10□□, □□□□r□□□□□□□□r□□ □tr□di□□ □□r□i□□□,□□hi□h i□□□□d□□□X r□□□□□□, □r□□ □r□□ □862 □i□i□□i□2006 t□ □1.152 bi□i□□i□2007, □□i□r□□□□ □□34□. □t□t□ □tr□□t □□rth□r r□p□rt□d i□it□ □□□□□□□p□rt □i□□d □ith th□ □.E.□., □□r□i□□ □x□h□□□□tr□di□□r□□□□□□□i□r□□□□d □r□□ □468 □i□i□□i□2005 t□ □611 □i□i□□i□2006, t□ □802 □i□i□□ t□2007, □□d t□ □1.08 bi□i□□i□2008, □r □□□□□□□□i□r□□□□ □□31□ i□2006 □□d 2007 □□d 35□ i□2007 □□d 2008. □□□r th□p□□t t□□ □□□r□ □t□t□ □tr□□t h□□ r□p□rt□d □□r□i□□ □x□h□□□□tr□di□□r□□□□□□□□□□□□ □r□th□□ □4 bi□i□□. □ppr□xi□ □t□□ □□□□h□□□□th□□r□□□□□□ □□r□d□ri□□d □r□□ th□ □X pri□i□□pr□□ti□□□□□□□d h□r□i□.

36. □t□t□ □tr□□t r□p□rt□d □□it□□ □b□it□□□ □□□□□r□31, 2008 th□t it □□□rr□□t□□ □□r□i□□□ □□r□th□□40 p□r□□□t □□th□p□bi□□□□d b□i□□□□i□th□ □□it□d □t□t□□thr□□□h it□d□di□□t□d p□b□i□ □□□d t□□□, □ith □□□t□□ □r□i□33 □t□t□□□d th□ □i□tri□t □□□□□□bi□, □□□rt□ □i□□ □□d th□ □.□. □ir□i□I□□□□d□.□

37. Neither Tether nor the Individual Defendants disclosed to Plaintiffs or the investing public that Tether's reserves were not fully backed by cash and cash equivalents, and that Tether had misled the public about the true composition of its reserves. Tether's failure to disclose the true composition of its reserves was material to Plaintiffs' decision to purchase Tether tokens, and to the investing public's decision to purchase Tether tokens, because Tether's reserves were intended to support the value of Tether tokens. Plaintiffs would not have purchased Tether tokens if they had known that Tether's reserves were not fully backed by cash and cash equivalents, and that Tether had misled the public about the true composition of its reserves. Plaintiffs had a right to rely on Tether's representations that its tokens were fully backed by cash and cash equivalents.

38. Although Tether was required to disclose, and Tether had a duty to disclose, the true composition of its reserves, Tether failed to do so.

39. Plaintiffs' reliance was justified because, at the time Plaintiffs purchased their Tether tokens, Tether was the only source of information about the composition of its reserves. Plaintiffs reasonably expected that Tether would disclose any material information relevant to the value of Tether tokens. Plaintiffs had no reason to believe that Tether was misrepresenting the composition of its reserves.

40. Plaintiffs' damages were caused by Tether's misrepresentations and omissions. Plaintiffs purchased Tether tokens, relying on Tether's misrepresentations and omissions, and suffered damages when the value of Tether tokens declined, as the truth about Tether's reserves emerged and the value of Tether tokens fell.

41. Plaintiffs' damages were the foreseeable result of Tether's misrepresentations and omissions. Tether's misrepresentations and omissions artificially inflated the price of Tether tokens, and Plaintiffs purchased Tether tokens at artificially inflated prices, *i.e.* prices that were higher than the value of Tether tokens.

42. Bo□□b□titi□□ □di□□r□t □X r□t□□d pri□□□r th□□r i□□ □rr□□□□tr□d□□□th□ □□i□ti□□□□d pr□p□□□d □□□□□, □□□□d□t□□□□□ir□□ □d d□□pti□□□□□i□□d t□h□□□p□id □ di□□□r□t r□t□th□□ □□□□□d□t□h□d □t□□□□□p□id t□□tt□□th□tr□d□.

43. Bo□□□□□i□□i□thi□pr□□ti□□□□□□□d□t□□□□□ir□□ □d d□□pti□□□□□□□□t□d □□□□□ dir□t□□r□□, □d □t th□□xp□□□□□□, th□ir □□t□di□□□i□t□.

44. Bo□□□□□□□□r□p□rt□th□t th□□□i□ti□□□□d pr□p□□□d □□□□□□□□d h□□□r□□□i□d r□□ □□□□□d□t□□□□□d h□□□i□di□□t□d th□t □□□h □X tr□□□□□ti□□ □□□□□□p□□t□d □t □r□t□□ithi□ th□r□□□□□□□X r□t□□pr□□□i□i□□d□ri□□th□t d□□, th□□□i□ti□□□□d pr□p□□□d □□□□□□□r□□□□b□□t□ di□□□□□r thi□□□□d□t.

45. □X tr□□□□□ti□□□□□b□h□□□□□th□□□□i□ti□□□□d pr□p□□□d □□□□□□□□d b□i□iti□t□d b□□□□di□□□tr□□□□□ti□□r□□□□□t, □□□□□□□□b□□□□□tr□i□□□□□□, t□th□□□□t□d□□id□□□th□B□□□, □□□□d th□□□□□riti□□r□□□□□i□□□□it. Th□r□□□□□t □□□d th□□b□□□□t □□□□tr□i□□□□□b□□□□t□d t□th□B□□□□□□tr□di□□d□□□, □h□r□it □□□□d □pp□□r □□□□□t□□r□□□□d b□th□□X tr□d□r, □□□□□d th□ M□□□□□□rd□r M□□□□□□□□□t □□□t□□ □□□□□ti□□□□□□r□□rr□d t□□□th□□M□r□□t □rd□r M□□□□□□□□□t □□□t□□□□r □M□M□□□.

46. □p□□th□tr□□□□□ti□□r□□□□□t □pp□ri□□i□M□M□, th□□X tr□d□r □□□□d □h□□□th□ □t□t□□□□th□t□□□□□rr□□□i□□i□□□□□□d, □□t □pri□□, □□d th□□□x□□□t□th□□X tr□□□□□ti□□. Th□ tr□□□□□ti□□ □□□□d b□□x□□□t□d □r □□□tt□□d□i□□□□t □□□□□b□th□b□□□tr□d□r □□□i□□□tr□□□□□ti□□ □□th□i□t□rb□□□□X □□r□□t □□□□□□□□□thr□□□h □□□th□r b□□□. I□th□tr□d□r did th□tr□d□thr□□□h □□□th□r b□□□, □r□□□rd □□th□tr□d□□□□□d b□□□t□r□d i□t□th□t □th□r b□□□□□□□□□□t□□, □□d th□t b□□□ □□□d th□□□□□d □□□□□ir□□ti□□ □□th□tr□d□t□□□□□□□d□t□.

47. □□□□d□t□th□□□□□ir□□d th□tr□□□□□ti□□thr□□□h □□p□r□t□□□t□□r□□□□t□□, □□□□d □□□□□tr□□t □□□□t□□□[2], □hi□h □□□□ri□i□□d it. □t th□t p□i□t, th□□□□ir □□d d□□□pti□□□□X r□t□, □r □pr□□d, □□□□□d□t□r□i□□d □□d □dd□d t□th□□□□t□di□□□□i□□t□□□□□t. Th□t i□, □□□□□d□t□ □X tr□d□r□□x□□□t□d th□tr□d□□t □□i□t□rb□□□r□t□□□d th□□th□□dditi□□□□□□□t □□□r p□r□h□□□□□r r□□itt□d □□□□□r p□□□□□□t □□□r □□□□□□□□□dd□d □□r tr□□□□i□i□□□r □h□r□□t□th□□□□t□di□□□□i□□t□, □□□h □□th□□□□i□ti□□□□d pr□p□□□d □□□□□.

48. Th□□X pri□□□□t□□□□p□id b□th□□□□□□d□□t□□□□d □□□□b□□□t□d b□th□tr□d□r i□ hi□□□r h□r □b□□tt□r, □□□i□□□r□□□r□□□i□□□□□□r □□t□b□□□□th□tr□d□r□□□rr□□□□p□iti□□□ thr□□□h th□d□□. Th□□□□□□d□□t□□□i□t□i□□□□□r□□□□□t r□□□rd□□□th□□□tr□□□□□ti□□□.

49. B□pri□i□□th□B□□□□□□□□t□di□□□X tr□d□□□t□r i□th□d□□, th□B□□□□bt□i□□d th□ □id□□t p□□□ib□□□r□□□□□□th□d□□.□ T□pi□□□□, th□r□i□□t □□□□t □□□□□X r□t□□□□□ti□it□□□□r□d□□, □□t□□□□□□rri□□□□t ti□□□□□h□□□□□□i□□□□i□□i□di□□□□r□r□p□rt□d, □□□h □□i□t□r□t r□t□ □□□□□□□□□□t□i□□□□□□r □□□□tri□□. Th□bi□□□r th□r□□□□□□th□d□□, th□bi□□□r th□B□□□□pr□□it□ □□□□□h □□□t□di□□□X tr□d□.

51. Th□di□□□r□□□□b□t□□□□□t□□□□□d □h□r□□d r□t□□t□th□□□□i□ti□□□□d pr□p□□□d □□□□□□□□b□□□r□□□r□□. □□r □x□□p□□, i□□p□□□i□□□□□d p□□□d □r□□□□□t t□p□r□h□□□10 □i□i□□ E□r□□□d th□□X r□t□□□r E□□□i□1.5355 □t 10:00 □.□., b□t th□□th□□X r□t□□□□□t□1.5475 □t 3:30 p.□., □di□□□r□□□□□□.0120, th□p□t□□ti□□□pr□□it□t□□t□t□□tr□□t □r□□ th□ir □X pr□□ti□□□ □□□□d b□□120,000 □.0120 x 10,000,000 □□120,000□.

52. □h□□□t□t□□tr□□t tr□d□d □X, it □□□□□□did □□□t th□i□t□rb□□□r□t□. Thr□□□h th□ □□□d□□t □□□□□d h□r□i□, □t□t□□tr□□t□□□□t□di□□□X □i□□t□□□□□r r□□□i□□d th□i□t□rb□□□r□t□□□r th□ir tr□d□□.

---

[2] □ri□r t□□□ □□□□□tr□□t □□□□t□□□, □□□□□d□□t□□ti□i□□d □□□th□r pr□□r□□ th□t □□r□□d th□□□□□ □□□□□ti□□. Th□t pr□□r□□ □□□□□□□□□□□□□□□IBI□□□□r □IB□.□

53. [illegible] the [illegible] and the proposed [illegible], however, [illegible] by [illegible] or to the [illegible] that added to or subtracted from the [illegible] benefited by participating in the [illegible] rate, proposed [illegible] by [illegible] had [illegible] the opportunity for the [illegible] to appreciate. [illegible] to [illegible] period, [illegible] the [illegible] and the [illegible] and proposed [illegible] had [illegible] to [illegible] appreciate. [illegible] [illegible] 3[illegible]. In other words, [illegible] or the [illegible] had [illegible] by participating [illegible] [illegible] to [illegible] 10 to 11 [illegible].

B. All Trades Executed by the Defendants Are Equally Affected

54. The [illegible] described herein [illegible] the [illegible] and proposed [illegible] [illegible] to [illegible] executed [illegible] for the [illegible] and proposed [illegible]. [illegible] to [illegible] executed [illegible] the [illegible] and proposed [illegible], the [illegible] to [illegible], [illegible], [illegible] to [illegible] by [illegible] [illegible] for the [illegible] to price [illegible], described herein.

55. [illegible], [illegible] by the [illegible] and proposed [illegible], transacted [illegible] in [illegible] for the [illegible] and proposed [illegible] [illegible] or participating [illegible] [illegible] and [illegible] and participating [illegible] [illegible] [illegible] for [illegible] to be [illegible] in the [illegible] [illegible] to [illegible] [illegible] [illegible] to [illegible], in addition, [illegible], and [illegible].

56. [illegible] to [illegible] executed [illegible] for the [illegible] and proposed [illegible], the [illegible] and [illegible] to their [illegible] and to the [illegible] in the [illegible] and proposed [illegible]. This [illegible] is [illegible] by the [illegible] and proposed [illegible] [illegible] that the [illegible] [illegible] with respect to the [illegible] by the

[illegible]

58. [illegible]

C. **<u>The California Attorney General Action</u>**

67. [illegible]

68. [illegible]

69. The Director's attorney's fees and costs incurred in this action to enforce the Director's rights under the Massachusetts Consumer Protection Act, M.G.L. c. 93A.

FIRST CLAIM FOR RELIEF

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

70. The Director repeats and realleges the allegations set forth above, as if fully set forth herein.

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

72. The Defendants' engaging in unfair or deceptive acts or practices, as described in this Complaint, including the Defendants' failure to provide adequate disclosures to investors, violated Section 2 of the Massachusetts Consumer Protection Act, M.G.L. ch. 93A, §§ 2, 11, including, without limitation:

(a) The Defendants' unfair or deceptive acts or practices in connection with the offer or sale of MBT securities to investors, including the failure to disclose material information concerning the risks associated with investing in MBT securities;

(b) The Defendants' unfair or deceptive acts or practices in connection with the offer or sale of MBT securities, including misrepresentations concerning the risks associated with investing in MBT securities; and

(c) The Defendants' unfair or deceptive acts or practices in connection with the offer or sale of MBT securities, including the failure to disclose material information concerning the risks associated with investing in MBT securities.

(d) The Defendants' unfair or deceptive acts or practices in connection with the offer or sale of MBT securities to investors that were unsuitable for their investment objectives, financial circumstances, and investment experience.

(e) The Defendants' violations of 940 CMR 3.16(1)(2).

73. The Defendants' violations of Section 2 and 11 of the Massachusetts Consumer Protection Act, M.G.L. ch. 93A.

74. The Defendants' unfair or deceptive acts or practices were willful and knowing, entitling the Director to recover treble damages, including the Director's reasonable attorneys' fees and costs incurred in bringing this action.

SECOND CLAIM FOR RELIEF

Breach of Agent's Duty of Loyalty

76. [illegible] repeats and realleges, [illegible] as though set forth herein, each and every allegation contained in the above paragraphs.

77. [illegible] owed the [illegible] duties not to [illegible] their beneficiaries [illegible] Extraordinary [illegible] not to [illegible] their purchased [illegible] criteria.

78. [illegible] entered into a [illegible] relationship with [illegible] and with the [illegible] members.

79. [illegible], by virtue of their [illegible] and [illegible] were [illegible] and [illegible] duty to [illegible] the [illegible], and [illegible] to prioritize [illegible] and [illegible] the [illegible] and trust placed in them by [illegible], to [illegible] Extraordinary [illegible].

80. [illegible] breached their duty [illegible] and [illegible] to [illegible] members by [illegible] Extraordinary [illegible] to [illegible] the [illegible] members, [illegible] the [illegible] Extraordinary [illegible] to [illegible] their [illegible] and [illegible] Extraordinary [illegible], and providing the [illegible] with [illegible] to [illegible] their [illegible] Extraordinary [illegible] and [illegible] to [illegible] their Extraordinary [illegible].

81. [illegible] result [illegible] breach, [illegible] and the [illegible] suffered damages, including, but not limited to, the [illegible]. [illegible], [illegible] and the [illegible] entitled to [illegible] and [illegible] to be [illegible].

THIRD CLAIM FOR RELIEF

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

82. [illegible] repeats and realleges, [illegible] as set forth herein, [illegible] as [illegible] in this paragraph.

83. [illegible] set forth above, [illegible] that [illegible] and [illegible] in [illegible] and [illegible] with [illegible] trading activities, [illegible] and [illegible] in their [illegible] and [illegible] with [illegible] trading [illegible] have been proper.

84. [illegible], [illegible] exist between [illegible] and [illegible] and [illegible] in the [illegible] and [illegible] with respect to [illegible] trading activities.

85. The [illegible] seek [illegible] declaration that their respective rights, duties and [illegible] and other relations, [illegible] or not the [illegible] and [illegible] entitled to [illegible].

PRAYER FOR RELIEF

WHEREFORE [illegible] and [illegible] respectfully request that the [illegible]

1. [illegible] and [illegible] that the Court certify this action as a class action [illegible] and [illegible] that [illegible] be appointed as Class Representatives and that [illegible] be appointed as Class Counsel;

2. [illegible] and [illegible], that the Court certify this action as a class action [illegible] and [illegible] that [illegible] be appointed as Class Representatives and that [illegible], and [illegible] be appointed as Class Counsel;

3. Pursuant to the Third Amendment, the Court may, in its discretion, substitute a qualified class representative in this action in place of a class representative who is found inadequate or atypical, or otherwise substitute a qualified class representative in this action in place of a class representative who withdraws as a class representative.

4. The Amendment does not become effective until it is approved by the Court, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure.

5. The Amendment does not become effective unless and until the Court enters an order granting approval of the Amendment, and the Amendment becomes void and of no further force and effect if the Court does not enter such an order.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: December 10, 2011

Respectfully submitted,

THORNTON & NAUMES LLP

By: /s/ Garrett J. Bradley

Michael T. Hart
Garrett J. Bradley
100 Summer Street, 30th Fl.
Boston, MA 02110
Telephone: 617-720-1333
Facsimile: 617-720-2445

LABATON SUCHAROW, LLP
Joseph H. Bates
Eric Belfi
Gregory S. Asciolla
140 Broadway
New York, NY 10005
Telephone: 212-907-0839
Facsimile: 212-883-7039

.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
□t□□□□E. □i□□□ □□
□□i□□□. □hip□□□□
250 H□d□□□ □tr□□t, 8th □□□r
□□□ □□r□, □□ 10013□1413
T□□ph□□□□ □212□355□9500
□□□i□i□□ □212□355□9592

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
□i□h□rd M. H□i□ □□□
□□xi □. H□□□□
275 B□tt□r□ □tr□□t, 29th □□□r
□□□ □r□□i□□, □□ 94111□3339
T□□. □415□956□1000
□□x. □415□956□1008

Attorneys for Plaintiff

753081 □2
□2□7□2011 18□23□

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[illegible] STATE OF THE MOVEMENT TRUST, [illegible] behalf of itself and all others similarly situated, Plaintiff, v. THE STATE STREET CORPORATION, THE STATE STREET BANK AND TRUST COMPANY, and THE STATE STREET GLOBAL MARKETS, LLC, Defendants.	C.A. No. 11-10230 MLW **AMENDED CLASS ACTION COMPLAINT** Jury Trial Demanded

Plaintiff Fire and Police Pension Association of Colorado, individually and on behalf of itself and all others similarly situated, by its attorneys, for its complaint against The State Street Corporation, The State Street Bank and Trust Company, and The State Street Global Markets, LLC, alleges, upon information and belief, except as to the allegations specifically pertaining to plaintiff and its counsel, which are based on personal knowledge, as follows:

I. INTRODUCTION

1. This case arises from defendants' deliberate and systematic breaches of their fiduciary duties to their custody clients, including plaintiff and the other members of the Class. As a result of defendants' breaches of fiduciary duties, plaintiff and the Class have suffered substantial losses. Defendants' breaches of fiduciary duties include, among other things, their failure to properly supervise their employees and agents, their failure to comply with applicable laws and regulations, and their failure to adequately disclose the fees they charged for foreign exchange transactions, all in violation of their fiduciary duties and duties of loyalty, honesty and good faith. Defendants' breaches of fiduciary duties were motivated by their desire to increase their profits at the expense of their custody clients.

□i□h t□ □□□□□□ □□□□riti□□□□ d□p□it □ith th□ir br□□□rd□□□□r□r i□□□t□ □□t □ □□□□□r. B□ □p□r□ti□□ th□□□d□ti□, th□ □□□ □□□□□t□di□□□□ □t □□□t i□th□r□□ r□d□□□□th□ri□□ □□r□d □r th□r □i□□□d□t. □□i□d□p□d□t □□□t□di□□ □□□□r□□th□t th□i□□□t□r h□□□□□□□□b□r□d □□□r□hip □□th□□□□riti□□th□r □□□□t□r□pr□□□t t□h□□□p□r□h□□d □□it□b□h□□.

2. □t□t□□tr□□t B□□□i□th□□□ti□□□□□□□□d□□r□□□t □□□t□di□□b□□□, □ith □21.5 tri□i□□ i□□□□□t, i□□□di□□□4.7 tri□i□□i□p□□i□□ □□□□t, □□d□r □□□t□d□□□d □d□i□i□tr□ti□□ □□□□ □□□□b□r 31, 2010. □t□t□□tr□□t h□r□d □□T□□□□d it□□th□r □□□t□di□□□i□t□h□□dr□d□□□ □i□i□□□□□d□□□r□□□□r i□□□□□□r □□□t□di□□□r i□□□.

3. □□p□rt □it□□rr□□ □□□□□i□□r□□□t□di□□□r i□□□, □t□t□□tr□□t □x□□t□d □r i□□ □rr□□□□ □x h□□□□ □□□X□□tr□□□□□ti□□□□b□h□□□□it□□i□□t□i□□rd□r t□ □□□i□it□t□□i□t□□ p□r□h□□□□r □□□□□□□□□r i□□ □□□□riti□□r th□r p□tri□ti□□ □□□□r i□□ □rr□□□□i□t□□.□. d□□□r. □□ri□□ th□p□t d□□d□, p□□i□□ □□d□□d □th□r i□titit□ti□□□i□□□t□r□h□□□i□r□i□□□□□d t□□□□r□□□□□□p□i□□□d □□□riti□□□r□t□i□□rd□r t□di□r□i□□th□ir h□di□□□□d □xi□i□□ i□□□t□□t r□t□r□□. Th□□□□□□it□□□r p□□i□□□□d, i□p□rti□□□r, t□i□□□t i□□r□i□□□□riti□□ i□□rd□r t□pr□p□r□di□r□i□□□d □□t th□ir □□di□r□□ir□□t□i□□□□□□□t□□d □ppr□i□t□d b□□□t□di□□□□□h □□t□t□□tr□t, □p□□i□□□□d□i□□t□□t □id□i□□□r□ p□b□i□□□d r□di□□□□i□b□.

4. B□□□□□□□r□i□□i□□□t□□t□r b□□ht □d □□d i□th□□r□i□□ □rr□□i□□□th□ □ti□□□i□□hi□h th□□r□i□□□d, □.□. b□□d i□□□t□r□□□□□ri□□□□t p□r□h□□□d □□□th□□□ □r□i□□ □rr□□i□□i□□rd□r t□□□□p□t□th□tr□□□□ti□□.

5. □□T□□□d th□□□□b□r□□□th□□□□□r p□□d □hi□h d□r□□□tr□t i□t□t□ tr□t. □□T□□□d □□□□□□b□r□□th□ri□d t□t□□tr□t t□x□□t□□X tr□□□□ti□□□□d□r □□diti□□i□□hi□h t□t□□tr□t □□tr□□d □□□p□t□□□X tr□d□, i□□□di□□th□□□t. □□T□□

and other banks and dealers that participated in the FX spot market, but that did not report their FX trades to Thomson Reuters with their trade data submissions.

6. The Thomson Reuters Methodology expressly provided that Thomson Reuters FX rates would not include any additional charges by the banks that submitted data to Thomson Reuters for the Thomson Reuters benchmarks. Indeed, while Thomson Reuters represented to its clients that Thomson Reuters FX rates were based on actual trades, Thomson Reuters told the banks that Thomson Reuters FX rates would not include any additional charges or commissions, and that Thomson Reuters FX rates would be the "mid-market" price, without additional charges or commissions.

7. In connection with the Interest Rate Swaps Class Action, Thomson Reuters produced documents and data that banks submitted to Thomson Reuters, which explained that the principles of Thomson Reuters FX rates were ***"based on the market rates at the time the trade is executed."*** That is, Thomson Reuters represented that its benchmarks would be based on actual trades, and Thomson Reuters FX rates would be the "mid-market" price, without additional charges or commissions.

8. Despite the express promises in the Interest Rate Swaps Class Action, Thomson Reuters failed to base its benchmarks on actual trades, in addition to the fact that it charged its subscribers for its benchmarks, Thomson Reuters failed to disclose material information to its subscribers that Thomson Reuters FX rates were not based on actual trades, and Thomson Reuters failed to disclose that Thomson Reuters FX rates were not the "mid-market" price, and did not disclose that the banks submitting data to Thomson Reuters were manipulating Thomson Reuters FX rates. In this regard, Thomson Reuters failed to disclose its material misrepresentations and

initiation of X ray treatments to the correct body part that the treatment was prescribed for and explaining the X treatments.

9. The defendants submitted claims for payment to Medicare that falsely represented that the X ray treatments were performed as reported and documented and that the X ray treatments were medically necessary and reasonable and were performed as claimed.

10. The X ray treatments were performed and billed pursuant to a Medicare provider agreement, which required the defendants to abide by all provisions of the Medicare statute, regulations and instructions. The defendants knowingly and willfully violated many of these provisions, including the requirement that X ray treatments be performed only when medically necessary and reasonable. This action seeks treble damages and civil penalties for the defendants' violations of the False Claims Act, as described in this Complaint, in order to recover all monies fraudulently obtained by the defendants from the Medicare program.

11. The United States brings this action to recover damages and civil penalties arising from false claims submitted by the defendants in violation of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* as amended. This action is brought by the United States pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b), for violations committed against the Medicare program administered by the United States Department of Health and Human Services ("HHS"), acting through its agency, the Centers for Medicare and Medicaid Services ("CMS"). This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), because the action is between citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because the action arises under the laws of the United States, specifically the False Claims Act, 31 U.S.C. § 3729.

II. JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a), because the amount in controversy exceeds $75,000, exclusive of interest and costs, and because the action is between citizens of different states. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because the action arises under the laws of the United States, specifically the False Claims Act, 31 U.S.C. § 3729. This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a), because the action is between citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs, and pursuant to 28 U.S.C. § 1367(a).

13. This is a civil action of which this district court has original jurisdiction pursuant to 28 U.S.C. § 1391(b)(1) and (2). A substantial part of the events or omissions giving rise to the claims occurred within this district. Defendant transacts business throughout the United States, including within this district.

III. PARTIES

A. Plaintiff ARTRS

14. ARTRS, based in Reykjavik, Iceland, is one of the largest pension funds in Iceland by assets under management. ARTRS was established in 1943 to provide retirement benefits to employees of the Icelandic government and its agencies. As of December 31, 2009, ARTRS included 343 participating employers and more than 115,000 members, and had total assets under management of approximately $8.8 billion.

15. In connection with its investments, ARTRS entered into written agreements with its investment managers, referred to as "Investment Guidelines." The Investment Guidelines set forth the investment objectives and strategies for ARTRS's investments. As of September 30, 2009, ARTRS had invested approximately 33% of its assets, or about $3.2 billion. The investments were made through the end of 2010.

16. ARTRS's transactions in Toyota securities are listed on Exhibit 1 to this Complaint. ARTRS purchased ARTRS's Toyota securities for $51,412.83 after discovering the fraud and purchased the securities during the period January 1, 2008 through June 30, 2009. ARTRS did not sell any of its Toyota securities during the class period.

Case 1:11-cv-10230-MLW Document 401-137 Filed 07/23/18 Page 614 of 1309

B. Defendants

17. □□□□□d□□t □t□t□ □tr□□t □□rp□r□ti□□ i□ □ M□□□□□h□□□tt□ □□rp□r□ti□□ h□□d□□□rt□r□d □t □t□t□ □tr□□t □i□□□□i□□ □□□t□r, □□□ □i□□□□□ □tr□□t, B□□t□□, M□□□□□h□□□tt□ 02111.

18. □□ri□□ th□ □□□□□□ □□ri□d, □t□t□ □tr□□t □□rp□r□ti□□ pr□□id□d □□□t□di□□ b□□□i□□□ □□d □X □□r□i□□□ t□ □□T□□□ □□d □th□r □□□ b□r□ □□th□□□□□ thr□□□h □t□t□ □tr□□t B□□□ □□d Tr□□t, □□d it□ □□b□idi□ri□□, □□□□t□, □□p□□□□□□ □□d □□□□□□pir□t□r□. □t □□r□□□□□□t ti□□□, □t□t□ □tr□□t□□ □□X tr□di□□ d□□□ □□□□ □□□□□□t□d i□ B□□t□□.

19. □□□□□d□□t □t□t□ □tr□□t B□□□ i□ □ □h□□□□ □□□□□d □□b□idi□r□ □□ □t□t□ □tr□□t □□rp□r□ti□□ □□d i□ □i□ i□r□ □h□□d□□□rt□r□d i□ B□□t□□. □□ri□□ th□ □□□□□□ □□ri□d, □t□t□ □tr□□t B□□□ pr□□id□d □□□t□di□□ b□□□i□□□ □□d □X □□r□i□□□ t□ □□T□□□ □□d □□□ b□r□ □□th□□□□□.

20. □□□□□d□□t □t□t□ □tr□□t □□□b□□ M□r□□t□, □□r□□r□□ □□□□□ □□ □t□t□ □tr□□t □□pit□□ M□r□□t□, i□ □ □h□□□□ □□□□□d □□b□idi□r□ □□ □t□t□ □tr□□t □□rp□r□ti□□ □□d i□ □i□ i□r□ □h□□d□□□rt□r□d i□ B□□t□□. □□ri□□ th□ □□□□□□ □□ri□d, □t□t□ □tr□□t □□□b□□ M□r□□t□ pr□□id□d □□□t□di□□ b□□□i□□□ □□d □X □□r□i□□□ t□ □□T□□□ □□d □□□ b□r□ □□th□□□□□. I□ p□rti□□□□r, □t□t□ □tr□□t □□□b□□ M□r□□t□ pr□□id□□ p□i□□i□□d i□□□□t□□□□t r□□□□□r□h □□d tr□di□□ i□ □□r□i□□ □x□h□□□□, □□□iti□□, □ix□d i□□□□□□, □□d d□ri□□ti□□□ □□r □t□t□ □tr□□t□□ □□□□t□di□□ □□i□□t□.

IV. CLASS ACTION ALLEGATIONS

21. Thi□ □□ti□□ i□ br□□□ht □□d □□□ pr□p□r□□ b□ □□i□t□i□□d □□ □ □□□□□ □□ti□□ p□r□□□□t t□ □□□□□ 23□□□□1□□□4□□□d 23□b□□3□□□ th□ □□d□r□□ □□□□□ □□ □i□i□ □r□□□d□r□ □□d M□□□□□h□□□tt□ □□□□r□□□ □□ □h. 93□, □□9 □□d 11. Thi□ □□ti□□ □□ti□□i□□ th□ pr□□□d□r□□ r□□□ir□□□□t□ □□t □□rth b□ □□□□□23 □□d □h. 93□, □□9 □□d 11.

22. Thi□ □□it i□ □ □□□□□ □□ti□□ br□□□ht □□r □□□□□d□□ □□□□□□ b□h□□□ □□ □□□□d□i□□d □□□□i□□tit□ti□□□□ i□□□□t□r□ i□ □□r□i□□ □□□□riti□□, i□□□□di□□ b□t □□t □i□it□d t□ p□b□i□ □□d pri□□t□ p□□□i□□ □□□d□, □□t□□□□□d□, □□d □□□ □□t □□□d□ □□d i□□□□t□□□t □□□□□□□r □□□d□, □□r □hi□h □t□t□

□tr□t □r□d □□th□□□□t di□b□□□ □d □x□□□t□d □X tr□d□□□ □□□t di□□i□tr□ti□□□ r
□□□□□□□□□ti□t□d □b□i□b□t□ □□□ □□□□r□2, 1998 □□d □□□□b□r 31, 2009, i□□□□i□□th□□□□□□□
□ri□d□, □d □hi□h □□□□r□d d□ □□□□□□□□r□□□t □□th□d□□pti□□ □t□□□d pr□ti□□□□d □th□r
□i□□□d□t □□□□□□d h□r i□. Ex□□d□d □r□□ th□□□□□□r□□□t di□□i□t□□□t t□□tr□t th□t □r□
□□□r□d b□i□d p□d□t *qui tam* □ti□□□th□t h□□□b□□ □□□□□□d □r th□t □r□□□□□□d d□ri□□th□
p□d□□□□ □□thi□□ti□□. □□□□ x□□□d□d □r□□ th□□□□□□r□□□□d□t, □□□ □titi□i□hi□h
□□□□d□t h□□□□□□tri□i□t□r□t, □d th□□i□r, dir□t□r, □ii□t□, □□□□r pr□□□t□ti□□,
h□ir, □□□□□□□r, □b□idi□ri□, □d□r □□i□□□□□□□□h □titi.

23. Th□□ b□r□□□th□□□□□□r□□□ □□□th□t □i□d□r □□□□□ b□r□
i□di□id□□□□, i□ □□□□ti□□ r th□r□i□, i□ pr□ti□b□.

24. Th□r□r□□□□ti□□□□□□ □d □□t □□□ □□t th□□□□□, i□□di□□h th□r□

□□ t□t□tr□t □□□□d i□□□ir □d d□pti□□t□d pr□ti□i□
□□□□ti□□ □ith □X tr□□□ti□□, □□ t□□ xi□it□□□ pr□it□t th□xp□□□
□it□□□t di□□i□t□

b□ t□t□tr□t h□r□d □d r□p□rt d t□it□□□t di□□□t□□ r□X
r□t□th□t did □t r□□□t th□□t□□□□t □th□X tr□□□ti□t□t□t□tr□t, □d
i□t□d i□□d□d hidd□ □d □th□ri□d □r□p□r □r□d□□□□
□□ t□t□tr□t p□□t□d th□di□r□□b□t□□th□□t□, □r□t□
b□d □X r□t□□d th□□□□X r□t□r□p□rt□d □d h□r□d t□it□□□t di□□i□t□
d□ t□t□tr□t□□t□d □i□i□□□ith r□p□t t□□T□□ □d th□
□□□□i□t□d th□M□□□h□tt□□□□□r □r□t□ti□□ t, M□□. □□. □□□□h.
93□□

[illegible]

[illegible]

25. [illegible]

26. [illegible]

27. [illegible]

28. [illegible]

29. [illegible]

30. [illegible]

[illegible]

31. [illegible]

V. SUBSTANTIVE ALLEGATIONS

A. The Nature of FX Trading

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

32. [illegible] 15 [illegible] 2003. B[illegible] 2009, [illegible] 33 [illegible].

33. [illegible]

34. [illegible]

r□□i□d □d p□r h□□d□□r. □□□rdi□□, □X tr□□□□ti□□□r th□ □□□□□r □□□□rti□□.□. d□□r i t□ r i□ □rr□□□ d i□□r.

2. How FX Trading Works

35. □X tr□di□t□□□p□□□r□□d th□ r□d □□ □□□r 24 h□r □□□□, i□□□d□□ h□d□□□□□□. Th□□i□□X tr□di□ □□□b□i□t 7:00 □.□. □□□ □□□□d ti□□ M□d□, □ith □h □b□□□□t tr□di□d□□ di□□t 5:00 p.□. □□□ □r□it□ti□.

36. □r □h □rr□□□b□ht □d □d d□ri□ th□□r□□□th□X tr□di□d□, th□r□ i□□□□□□ri□b□hi□h tr□d□□d □□ tr□d, □ith □□th□r tr□d□□□i□ □□h□r i□ b□t□□□. Thi□i□r□ti□i□d t□r i□d thr□h tr□d□d t□□□it□r d □d tr□d b□ pr□pri t□r□r i□□□h □, b□t □t i□it□d t□, E□tr□i□Br□r□□□t□ □EB□□□d □t□r.

37. Th□di□r□□b t□□□th□ tr□d□□d th□hi□h tr□d i□□□d th□r□□□th□ d□. M□r□pr□i□, th□p□t r□□□th□d□r□t□X r t□□□□□p□i i□d pr□pt □tti□ t d t, □□□t□ b□i□d□□t r th□tr□d□d t. T□□r□□r t□□□ th□ tr□d□t □r □X tr□□ti□th□t □tti□pri□ t□r t th□th□d t□r p t tr□d, p□rti□p□t i□th□X □r□t □□□□t□th□r□rd□d□t□d r□□□th□d. B□□□□X tr□d□d□t □□□tti□t□d□□t r th□tr□d, th□r□rd□d□t□d r□□□th□d□i□□r □□r□ti□d □r t□ h th□t it t□i t□□□□□t th□i t□r t r t di□r□ti□th□t xi t□t th□ti□ tr□d b t□ th□tr□d□d t□d □tti□ t d t□r th□ d□r□i□ rr□i□.

38. B□□□□x□p□, □100 □X tr□d□i□r□□□d□r□E□□□□ d□ri□ th□r□□□□tr□di□d. I th□ t r t tr□d□□rr□d t 1.25 t□ b□ 1.00, d th□hi□h t r t tr□d□□rr□d t 1.35 t□ b□ 1.00, th□r□□□th□d□□ d b□ 1.25 1.35.

Case 1:11-cv-10230-MLW Document 401-23 Filed 04/15/18 Page 14 of 195

39. [illegible]

40. [illegible]

3. Negotiated vs. Non-Negotiated FX Trades

41. [illegible]

42. [illegible]

execution price, to execute the trade at the best price available. Consistent with State Street's Master Agreement, ARTRS directed State Street to execute FX transactions for ARTRS's benefit between 2000 and May 2008, and ARTRS's instructions to State Street for FX Trading between May 2008 and November 2009. During November 2009, ARTRS has required State Street to execute FX.

43. ARTRS's trust in State Street's integrity, in addition to State Street's representations, led ARTRS to expect that State Street executed FX trades at the best price available. This expectation, and ARTRS's reliance thereon, was the result of State Street's repeated assurances that it provided ARTRS the most favorable prices for FX trades executed by State Street on behalf of ARTRS. State Street's Investment Manager Guide stated that State Street's FX trades would be executed ***"based on the market rates at the time the trade is executed."***

44. Institutional investors rely upon sophisticated custodian banks, such as State Street, to execute FX trades, as the custodian bank possesses the infrastructure and technology to execute FX transactions, through its own trading desk or by outsourcing the execution to a third party.

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

45. Since at least September 15, 1998, ARTRS, through State Street, executed FX trades, instructed State Street to execute FX transactions on its behalf, including purchases and sales of foreign currency. ARTRS's investment managers relied on State Street to execute FX transactions in accordance with ARTRS's instructions.

46. □□T□□, i□□□th□r □□□□□□□□b□r, r□p□□□d □hi□h d□r□□□□tr□□t i□□t□□tr□□t t□□x□□□t□□t□□di□□i□□tr□□ti□□□X tr□□□□□ti□□□. I□□□□d□□ti□□th□□□tr□□□□□ti□□□, □t□t□□tr□□t □□□□pi□d □□□p□ri□r p□□iti□□t□□□□T□□□d□□t□it□□□□tr□□□□□r □□□□p□□t□□□th□□X tr□d□, i□□□□di□□□th□□ti□□i□□□□th□□tr□d□□, □□d □□□t i□p□rt□□t□□, th□pri□□□t □hi□h th□tr□d□□□□r□ □x□□□t□d.

47. □□T□□□d□p□□d□d □p□□□t□t□□tr□□t □□t □□□□t□□x□□□t□th□□X tr□d□□, b□t □□□□t□ □□□□r□t□□□□d h□□□□t□□r□p□rt th□□X r□t□□□d t□□□rr□□□t th□tr□d□□i□□□□□rd□□□□□□ith th□ir □□t□di□□□□□tr□□t□, □□□□□i□t□d □□□□h□d□□□□, □□d □□id□i□□□□□□□t □□rth i□th□I□□□□t□□□t M□□□□□□r □□id□□.

48. □dditi□□□□□□, □□p□r□t□□□d □p□rt □r□□ th□□□□□t□di□□□□□tr□□t□□□d I□□□□t□□□t M□□□□□□r □□id□□, □□T□□, i□□□t□t□□tr□□t□□□th□r □□□t□di□□□i□□t, h□d □r□□□□□□b□□□xp□□t□ti□□ th□t th□□X r□t□□th□t □□t□□□tr□□t h□r□□d □□r □r□dit□d□□□□t□□di□□i□□tr□□ti□□□X tr□d□□□□□d □□□r□t□□□r□□□□□t th□tr□□r□t□□□□th□□□□X tr□d□□. Th□r□i□□□r□□□□□□□□t□di□□□i□□t □□□□d □xp□□t it□□□□t□di□□b□□□□ t□□hi□h it □□□p□i□□□□b□t□□ti□□□□□□□□□□□□□r □□□t□di□□ □r□i□□□□ t□□h□r□□□□r □r□dit□it i□□□□□□□□ti□□□ith t□□di□□i□□tr□□ti□□□X tr□d□□□t □□□r□t□ □th□r th□□th□□□t□□□r□t□□□r th□□X tr□d□.

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

49. □□T□□□□i□iti□□□□□t□di□□□□□tr□□t □ith □t□t□□tr□□t □□□d□t□d □pt□□b□r 15, 1998. Th□p□rti□□□□p□r□d□d th□t □□□tr□□t □□□□□□□1, 2001 □ith □□□□ □□□t□di□□□□□tr□□t □□□t□i□i□□□□r□□□id□□ti□□□t□r□□□□d pr□□i□i□□□. Th□□□□□□□d □□□tr□□t □□□□□p□r□□d□d b□□ □□□t□di□□□□□tr□□t □i□□□d □□□□29, 2004, □□□□□□□t□i□i□□id□ti□□□pr□□i□i□□□. Th□t third □□□tr□□t □□□□□□□t□□□□□□p□r□□d□d b□□□□□□t□di□□□□□tr□□t d□t□d □□□□30, 2009, □□t□i□i□□ id□□ti□□□r□□□□□□t t□r□□.

50. Each of the Settlement Trust provided that the Settlement Trust shall be entitled to compensation for its reasonable expenses incurred in the performance of its duties. The Settlement Trust shall be entitled to compensation for the performance of its duties.

51. The Settlement Trust shall receive and hold the Settlement Payments in the Settlement Trust Fund in accordance with the following payment schedule:

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

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

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

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

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

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

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

52. The Settlement Trust shall receive Settlement Payments effective September 15, 1998 provided for in the Settlement Agreement in the amount of $233,534. The Settlement Trust shall receive Settlement Payments provided for in the Settlement Agreement in the amount to be paid by the Settlement Trust in accordance with the following schedule:

(a) $600,000 per quarter (or portion) effective July 1, 2001 through June 30, 2004;

(b) $500,000 per quarter (or portion) effective July 1, 2004 through June 30, 2007;

(c) $400,000 per quarter (or portion) effective July 1, 2007 through June 30, 2009, with a balloon payment of $320,000 (or portion) April 1, 2008 through June 30, 2009; and

(d) $200,000 per quarter (or portion) effective July 1, 2009 through June 30, 2014.

53. Th□ □□□□ □h□d□□□□□□□ □t □rth □rt□i□ □t□□ri□□□□□□i□□r□ □r□i□□□□r □hi□h □t□t□ □tr□□t □□□p□r□itt□d t□ □h□r□□□. T□□ □dditi□□□□□□, i□□□di□□ □ ir□□□□, □□p□rti□□ □□□□, □ □i□r□ □□□□□□d □□b□□t□d □□□□□.

54. □□□□□□th□□□p□rti□□□□r □□□i□□r□ □r□i□□ □t□□ri□□r□□t□i□ □□□□ □□□t□ □X tr□di□□. Th□ □□□t□di□□ □□□tr□□t□did □□t □t□t□th□t th□□□□□i□□r□ □□□□r□□t□t□ □X tr□di□□ □r th□t □t□t□ □tr□□t □□□□d i□p□□□□□□ □□□□i□ □□□□□□ti□□ □ith □X tr□di□□.

55. □□i□□□□ □t □□th□ □t□r □□□□□h□d□□□□, □hi□h □□r□ □i□□□t □□t□ □□□□□□d □h□r□□□ □□r □X tr□di□□, th□ □□pt□□b□r 15, 1998 □□□□□h□d□□□p□i□i□□□□ □ □ti□□□d □X tr□di□□, □t□ti□□ th□t ***"No Charge"*** □□□d b□□□□□□□d □□r □□□□□r□i□□ □x□h□□□□□x□□□t□d thr□□□h □t□t□ □tr□□t.

56. Th□ □□□□1, 2009 □□□□□h□d□□□□□□□ □ □ti□□□□X tr□di□□□□t□t□ □tr□□t □p□i□i□□□□ □t□t□d th□t □□t□r□□□□□ti□□ □□□t□□r □□□□□r□i□□ □x□h□□□□tr□d□□tr□□□□t□d thr□□□h □t□t□ □tr□□t ***will be waived."*** □E□ph□□i□□dd□d.□

57. □□□□□h, □□r □ □r□th□□ □d□□□d□, □□T□□□□□□□t□di□□ □□□tr□□t□□ith □t□t□ □tr□□t □□□□xpr□□□□□pr□id□d th□t □t□di□□i□□tr□ti□□ □X tr□d□□□□□□d b□ □x□□□t□d □r□□□□□h□r□□□□ □b□did □□t □i□t □X tr□□□□□ti□□□□□ □□□th□ □r□i□□□□□r □hi□h it □□□p□r□itt□d t□ □h□r□□□ □dditi□□□□□□□□r □□□□th□r □□□t □b□□□th□ □□□□□□□□□t □□□.

58. □□b□t□ti□□□□ □i□i□r t□r□ □□ □□r□ □□p□□□□d i□th□ □□□t□di□□ □□□tr□□t□□□r □th□r □□□b□r□□□th□ □□□□□d□ri□□th□ □□□□□□□ri□d.

59. □dditi□□□□□, d□ri□□th□ □□□□□□□ri□d, □t□t□ □tr□□t pr□□id□d I□□□□t□ □□t M□□□□□r □□id□□t□ □□□t□di□□□i□□t□□□d □□t□id□i□□□t□ □□t □ □□□□□r□th□t □□□t□i□□d □□□pr□h□□□i□□ i□□□r□ □ti□□ □b□□t □t□t□ □tr□□t□□□□□t□d□pr□□ti□□□□□d □□r□i□□□, i□□□□di□□ pr□□□d□r□□ r□□□ir□□□□t□, □□□t□, □□d □□□t□r□□. Th□ □ □□□ □□r□i□□□□d□□rib□d th□r□i□ i□□□□d□d □□t□t□ □tr□□t □□r□i□□ Ex□h□□□□Tr□□□□□ti□□□□.□

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

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

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

62. State Street's FX practices differed from what the custodial contracts authorized and what the Investment Manager Guides represented. Despite representations that FX transactions would be based on market rates, State Street reported and charged ARTRS and the Class FX rates on standing-instruction trades far above what State Street actually paid for foreign currency or far below what State Street actually received for sales of foreign currency [illegible], at rates that often fell ***outside of the range of the day.***

63. As such, [illegible] sent to ARTRS and the Class, State Street reported FX rates on standing-instruction trades to its clients that did not reflect the actual cost or proceeds of the FX transaction to State Street, and instead included a hidden and unauthorized markup. Put simply, State Street inflated the FX rates it reported and charged (or credited) to ARTRS and the Class. State Street paid or received one rate for FX, reported to ARTRS and Class Members another rate that was either higher (in the case of purchases) or lower (in the case of sales), and pocketed the difference.

64. □h□□ □□□t di□□□i□t□□r th□ir □□□□t□r□□□□□t□d th□t □t□t□ □tr□□t □x□□□t□□□□□X tr□□□□ti□□, th□r□□□□t □□□r□□t□d □□□tr□i□□□□ □i□□t□t□□tr□□t□□M□r□□t □rd□r M□□□□□□ □□t □□□t□□ □M□M□□t□□□r□p □□□ri□□tr□d□r□□□□r□i□□□t □t□t□□tr□□t□□□X tr□di□□d□□□□h□th□□ □x□□□t□d th□□X tr□d□□b□□□t□ri□□tr□d□i□□r□□ti□□th□t did □□t r□□□t th□□□t□□r□t□□t□t□ □tr□□t p□id □r r□□□i□□d.

65. T□i□□□tr□t□th□d□□□pti□□, □□□□□□□□□i□th□□x□□p□□□□t □rth □b□□□□ 100 □□r□□ □r□d□□□r tr□d□□□□□□i□□□d□th□t r□□□□d □r□□ □1.25 t□□1.35 □th□□r□□□□□th□d□□□□t□ p□r□h□□□□1.00, □ith □d□□□□□id□r□t□□□1.30. □□□□□, □□d □□, □t□di□□□i□tr□□ti□□ □□r□□□r□ d□□□r tr□d□□□□b□h□□□□□it□□□□t□di□□□i□□t□, □t□t□□tr□□t □□□□d h□□□p□id □r□t□b□t□□□□□1.25 □□d □1.35 □□r th□□□□r□□, b□t r□p□rt□d t□it□□i□□t□th□t it p□id □□r□. □t□t□□tr□□t □h□r□□d it□ □i□□t□th□□□□□hi□h□r □□□□□t □□d □□pt th□di□□□r□□□□.

66. Thi□□□□□□□i□□i□□pp□rt□d b□□□□i□ti□□□□□□□□i□□□t□□ □□□r□□□□X tr□□□□ti□□□ □x□□□t□d b□□t□t□□tr□□t □□b□h□□□□□□d r□p□rt□d t□□□T□□. B□t□□□□□□□□r□3, 2000 □□d □□□□□b□r 31, 2010, □□T□□h□d □t□t□□10,784 □X tr□□□□□ti□□□□ith r□i□b□□d□t□. □□□□□th□□□ 10,784 tr□□□□ti□□□, 4,216, □r 39□, □□r□□□□□□□□ti□t□d, □t□di□□□i□tr□□ti□□tr□d□□. Th□□□ 4,216 □X tr□d□□h□d □□□□□r□□□t□tr□di□□□□□□□□□x□□□di□□□1.2 bi□i□□.

67. I□□□□d□ti□□th□□□□□□i□, □□T□□□□X tr□d□□□□r□□□□p□r□d t□□th□r □X tr□d□□ □□□□□d □□d tr□□□□d i□□□□□pr□h□□□i□□d□t□b□□□□□□□r□th□□2 □i□i□□b□□□id□□□rr□□□□tr□d□□. B□□□□p□ri□□□□T□□□tr□d□□i□□rt□i□□rr□□□i□□□ith th□□□□□□rr□□□□p□ir tr□d□□i□th□ d□t□b□□, □□□□□□ □ti□ □t□th□tr□di□□□□□t □□□□□T□□□□□t□di□□□i□tr□□ti□□□X tr□d□□i□ r□□□ti□□□t□tr□d□□□□ □d□□□r□d□id□. □□r p□rp□□□□□□thi□□□□□□□i□, th□tr□di□□□□□t i□th□ di□□r□□□□b□t□□□□th□d□□□□□□id□r□t□□□d th□r□t□th□t □t□t□□tr□□t □h□r□□d □□r □r□dit□d□t□ □□T□□□□r □t□□di□□□i□tr□□ti□□□X tr□d□□.

68. □t□t□ □tr□□t did □□t r□p□rt t□ □□ □T□□ □□r □□□ □th□r □□□□□□ □□b□r □th□ □□t□□ti□□ □□□x□□□ti□□ □□□□□□ □X tr□d□. Th□r□□□r□, □□□ p□ri□□ th□ d□□□□ id□r□t □t □th□ □t□di□□□ i□tr□□ti□□ □X r□t□□ □□t□t□ □tr□□t □h□r□□d □□r □r□dit□d t□ □□ □T□□ i□th□ b□□t □ □th□d □□ d□t□r□i□i□□ □h□th□r □t□t□ □tr□□t □h□r□□d □□r □r□dit□d □□ □T□□ □r□t□ b□□□d □□ th□ □□t□□□□□ r□□t r□t□□t th□ ti□□ □□ □x□□□ti□□, □□□ t□t□ □tr□□t r□pr□□□□t□d i□ it□ I□□□□t□□ □□t M□□□□□r □□id□.

69. □t□t□ □tr□□t d□ri□□d it□□□□□ □X r□t□□ b□ □ddi□□ □□□ p□r□h□□□□□r □□btr□□ti□□ □□□ □□□□□□□ b□i□ p□i□t□ □□r □pip□□ □r□□ th□ □□t□□□□X r□t□. □ b□i□ p□i□t, □r pip, i□ □□□it □□□□□t□ 1□100th □□□ p□r□□□t□□ p□i□t. □□r □x□□p□, th□ □□ □□□□t □ □□□ th□ □□r□d□□□r □□rr□□□□ p□ir □□□□r□□□ □ □□□□i□ 1□100th □□□ p□□□□, □r □□□ b□i□ p□i□t.

70. □□r th□ p□ri□d □□□□□□□□r □3, 2000 thr□□□h □□□□□b□r 31, 2010, th□ □X r□t□□ th□t □t□t□ □tr□□t r□p□rt□d □□d □h□r□□d □□r □r□dit□d t□ □□ □T□□ □□it□ 4,216 □□□□□□□□ti□t□d □X tr□d□□ □□r□, □□ □□□r□□□, ***17.8 basis points*** □b□□□□r b□□□□ th□ d□□□□□ id□r□t□. I□ □th□r □□rd□, th□ □X r□t□□ th□t □t□t□ □tr□□t r□p□rt□d □□d □h□r□□d □□r □r□dit□d t□ □□ □T□□ □□r □t□di□□ i□tr□□ti□□ □X tr□d□□, □□ □□□r□□□ □□d d□ri□□ thi□ 10□□□□r p□ri□d, □r□□t□d □tr□di□□ □□□t 17.8 b□□i□ p□i□t□ hi□h□r th□□ th□ □□□r□□□ □X r□t□ □th□ d□□□□ id□r□t□□.

71. B□ □□ □□ □□□x□□p□, □□□□□ □th□t th□r□t□□t□t□ □tr□□t □□t□□□□□ p□id t□ p□r□h□□□ □1.00 □□ □ i□□□d□□ □□□□1.31551. I□□t□t□ □tr□□t □h□r□□d □□T□□17.8 b□□i□ p□i□t□ □□ r□th□□ it p□id, th□r□t□ □□□□d b□ □1.31729 □□1.31729 □□1.31551 □0.00178□. □□r □p□r□h□□□ □□□10 □i□i□□, th□ □□di□□□□□d pr□□it t□ □t□t□ □tr□□t □□ th□t □i□□□□tr□d□□ □□d th□ □□□□□ □it□□t □□□□□□□ □□□ b□ □□T□□□ □□□d b□ □17,800. □□□□rdi□□□□, th□ di□□□r□□□□ i□t□t□tr□di□□ □□□t□ b□t□□□ th□ □□t□□□□□d □□□□□r□t□□□□b□ □□r□ □r□□.

72. T□□i□□□□, □□r th□ □□□ □10 □□□□r p□ri□d, th□ □X r□t□□ th□t □t□t□ □tr□□t r□p□rt□d □□d □h□r□□d □□r □r□dit□d t□ □□ □T□□ □□it□□ □r□ th□□6,500 ***negotiated*** □X tr□d□□ □dd□d, □□ □□□r□□□,

3.6 basis points i tr di t pr d t th d id r t. h, hi th X tr d x t d b t t tr t p r t t d b t x ti pr ti i rr d tr di t 17.8 b i p i t r , th X tr d ti ti d b t t tr t d T r it t id i t t r i rr d tr di t 3.6 b i p i t r .

73. Th r i titi t r th X r t t t tr t r p rt d d h r d r r dit d t T i rth r d tr t d h i i T t di i tr ti X tr d i th t xt th r rd d t d r th d. T 4,216 t di i tr ti X tr d , ***2,217, or 53%, fell entirely outside the forward-adjusted range of the day.*** Th 2,217 X tr d , ith t t x di 200 i i , dd d tr di t r ***64.4 basis points*** r th d id r t hidd d th ri d r p. i th b x p pr h 10 i i , di d 64.4 b i p i t d r t i 64,400 pr it t t tr t th t i tr ti.

74. t i t t b r b th d i id r t d tr t th t t tr t t i i it d ti t di b h r i hidd r p, d th d tr t i ti th t r th pr t ti i th I t t M r id. B t h r th h t di i tr ti X tr d r p rti r t di i t ***outside*** th r rd d t d r th d, it b r th t th r p rt d X r t r t t, r t b d X r t, b t r i t d i titi d d i d t h r, i t r, it b i i ri . I th p b i p i d, th b i i ri i d t h r, p i i r, ir i ht r d th r p b i r r.

75. Th r i r ti , h t b i r pr i X r t p rti ip t i t t tr t, r i d d X r t p rti ip t, t h r X r t t id th r rd d tr d r th d ith t di i it. Th d r d i th r t hi h pri r d i b d t di b tr t d i X d ri th t tr di d . Th i titi t r r t i d t id th r rd d tr d r th d i tr t, p rh p t t r , th ir d d pti t r t t tr t t di i tr ti X tr di pr ti . I h rt, th pr ti r d i d t ri h t t tr t hi d i i d ir d pri i i titi ti i t h T d th h d d d .

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

76. ith r T r b r r b d h di r d t t tr t d pti t d pr ti r i X tr di d ri th ri d. t t tr t x t d h dr d i t th d X tr d b h it t di i t r th. Th p ri di r p rt t t tr t T d th h d th r t th t t t tr t h r d r it X tr d . Th r p rt did t i d th r th d , th d i id r t, r i di ti th ti th d th t th tr d x t d ti t p . rdi , th r T d th t r b d t r i , r p rt, th t t t tr t r t h r i r th it t p id r X r p i i t th it t r i d r X.

77. It r b r T d th t pr th t th pri r d i th r p rt t t tr t pr id d t th r pr r t r pr t ti th tr t th X tr d . ith r p rt t T p i i , th t di tr t xpr pr id d th t th t di h r d r t th i ti th r p rt i r i d r p id

b h th d. rdi , t t tr t h d ir ti b i ti t r p rt r t th t it p i r r i i r X.

78. rth r r , b d th I t t M r id r th t X r t d b pri d b d th r t r t t th ti th tr d i x t d, ith r T r th h d r t t p t th t th r b i h r d r r dit d thi th r th r t th t t t tr t it h d p id r r i d th t di i tr ti X tr ti .

79. M r r, d b , t t tr t pi d p iti tr t d id ith r p t t it t di i t. Th i t d t, d did t, p t th t th t di i hi h th t tr t r id d, d pr it t r d di d d r th r i r hi h th p id h d . I d d, th t di i t d, d did, pr th t th t di b d d t i d t i t th ir b t i t r t.

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

80. t b r 20, 2009, th tt r r i ri i d p i t i I t r ti r i ti th i ri i t, . . d 12651, h r i t t tr t ith i ppr pri ti r th 56 i i r th t i ri i t r t p i p E d T r ti r p ri d i ti ith th ir d d pti X pr ti d h r i . *People of the State of Cal. ex rel. Brown v. State Street Corp.*, . 34 2008 00008457 M . p r. t. r t t. 20, 2009 .

81. Th i ri i tt r r th t t t tr t r p rt d i t d X r t h b i r i riti r E d T , r p rt d d t d X r t h i ri i riti r th , d p t d th di r b t th r p rt d d t r t . Th tt r r th r th t t t tr t hid it r d t b

□□t□ri□□i□□□rr□□t □X □x□h□□□□r□t□□i□t□ □t□t□ □tr□t□□□□□tr□i□□X tr□di□□ □□□t□□□□□d pr□□idi□□ □□□□r□□□rd□t□ □□□□E□□ □□d □□□□T□□.

82. I□th□□ □□th□th□t □□□□□□d, □t□t□ □tr□□t dr□□ □ti□□□□ □h□□□□d it□□X tr□di□□ p□i□i□□□□d di□□□□□r□□□d □□i□□r□ □d □□T□□ □□d □th□r □□□□□□ □□b□r□. □□d□r th□□□□□ p□i□i□, □t□t□ □tr□□t □d□itt□d □□r th□□ir□t ti□□ th□t it h□d □□□t□□ □ti□□□□i□p□□□d □dditi□□□□ □h□r□□□□r □X tr□di□□. □□r □x□□p□, i□ □□ □x□□rpt □r□□ □□□pd□t□d I□□□□t□□□t M□□□□□r □□id□ d□t□d □□□□□b□r 20, 2009, □t□t□ □tr□□t □d□i□□d □□□t□di□□□□i□□t□th□t it □□□□d p□□t □□it□□□b□it□, □□.□t□t□tr□□t.□□□, □□□rr□□t □□r□□p□□□d □□r□d□□□□□□□d b□□t□t□ □tr□□t □□□b□□M□r□□t□□r □t□□di□□□i□□tr□□ti□□□□□r□i□□ □x□h□□□□tr□□□□□ti□□r□□□□□t.□

83. I□□□i□i□r □□□□□□□ □□□t t□ □□□t□di□□□i□□t□, □t□t□ □tr□□t □d□itt□d th□t ***"[s]ince December 2009***, □t□t□ □tr□□t h□□pr□□id□d t□ □□□□□it□□□□t□d□□i□□t□□□d th□ir i□□□□t□□□t □□□□□□r□□i□□□r d□di□□t□d □□i□□t p□rt□□, □□.□t□t□tr□□t.□□□, □□□pr□h□□□i□□di□□□□□r□□□th□ pri□i□□□□d □x□□□ti□□□□th□d□□□□□i□□□di□□th□□ □xi□□□□ □r□□p □r □□r□d□□□th□t □□□b□ □pp□i□d□□r □□□h □□it□I□dir□□t □t□□di□□□i□□tr□□ti□□□□X □□r□i□□□.□ □E□ph□□i□□dd□d.□ □t□t□ □tr□□t □dd□d th□t □□□th□d□□□□t□r □tr□d□i□□x□□□t□d, □t□t□ □tr□□t pr□□id□□□□r □□□h □□rr□□□□ p□ir th□r□□r□□□□i□t□rb□□□r□t□□□d th□ti□□□□□t □hi□h th□□ □r□□bt□i□□d, th□□□t□□□r□t□, th□ d□i□□hi□h□□□□ r□□□□□t th□ti□□□□□pri□i□□□□h□r□□pp□i□□b□□□□d th□□□t□□□□ □r□□p □r □□r□□ d□□□th□t □□□□pp□i□d.□

84. □t□t□ □tr□□t □□t□r□d it□pr□□ti□□□t□□□□□ □□□t□di□□□i□□t□□□r□□□□p□t□□□□□□t□ □X tr□di□□d□t□□□□□ □□t□r it□d□□□pti□□□□t□□□d pr□□ti□□□b□□□□t□b□r□□□□□d. □t□t□ □tr□□t□ □t□□di□□□□□r□th□t it □h□r□d □□r□□p□□□d □□r□d□□□□□□□t□di□□□i□□tr□□ti□□□X tr□d□□ □□□tr□di□t□it□pr□□i□□□r□p□□t□d □□□□r□□□□th□t □X r□t□□□□□d b□b□□□d □□□□r□□t r□t□□□t th□ ti□□ th□□tr□d□i□□x□□□t□d.

85. [illegible] *qui tam* [illegible] ***63%.*** [illegible] 498,940 [illegible] 196,280 [illegible] 302,660 [illegible] 2000-2010, [illegible] 2010 [illegible] 63% [illegible] 2000-2009.

FIRST CLAIM FOR RELIEF

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

86. [illegible]

87. [illegible]

88. [illegible] Mass. Gen. Laws ch. 93A, §§ 2, 11, including, without limitation:

(a) [illegible]

(b) [illegible]

□d th□ □□□□□r th□r th□□th□□t□□□r t□□□t □hi□h □t□t□□tr□t h□d □□□□t□d th□□□ tr□d□□□

□□□ □□□□□ti□□ th□di□□r□□□□b□t□□□□th□□t□□□□X r□t□□□t □hi□h □t□t□□tr□t □□□□t□d □□t□di□□□i□t□□t□di□□i□tr□□ti□□ □X tr□d□□□d th□□□□□□ □d i□titi□□□r□t□□□t□t□□tr□t r□p□rt□d t□th□□□□□t□di□□□i□t□□

□d□ t□i□□ □di□□□□□d pr□it□□□ t□di□□i□tr□□ti□□ □X tr□d□□r□□ □t□di□□□i□t□□□h □□□□T□□ □d th□□□□□□th□t □r□□□□□□x□□d□d th□ □t□□ □r□pri□□□t □hi□h □i□i□r □r□i□□□□r□r□di□□bt□i□□b□i□□□ti□t□d □X tr□□□□ti□□□b□i□□□□□□□□□b□r□□□d

□□□ □i□□ti□□ □tt□r□□□ □□□r□□□□□□ti□□, i□□□di□□ 940 □M□ □□3.16□1□2□.

89. Th□□□□t□□r pr□ti□□□i□□t□d □□ti□□□2 □d 11 □th□M□□□□h□□tt□□□□□□□□r □r□t□□ti□□ □□t, M□□□. □□□. □□□□h. 93□.

90. □t□t□□tr□t□□□□ir □d d□□pti□□□t□□r pr□ti□□□r□□t□d t□□t□di□□i□tr□ti□□ □X tr□□□□ti□□□□□□rr□d pri□ ri□□ □d □b□t□ti□□□i□M□□□h□□tt□, □h□r□□t□t□□tr□t□□□X tr□di□□d□□□i□□□□t□d.

91. □□□r□□□t□□th□□□□ir □d d□□pti□□□□d□t □□t□t□□tr□t, □□T□□ □d th□ □□□□□□□t□i□d □□□□□□i□d□□ □□□□i□□□□t □□□□th□□th□di□□r□□□b□t□□□□th□ □t□□□d□□r □□ □□t□p□id □r r□□i□d b□□t□t□□tr□t □h□□ □□d□ti□□ t□di□□i□tr□ti□□ □X tr□d□□□r □□T□□ □d th□□□□□□d b□th□□□□□□d i□titi□□d□□r □□ □□t□h□r□d □r r□ditd b□□t□t□□tr□t t□□□T□□ □d th□□□□□□r th□□□□ tr□d□□.

92. □t□t□□tr□t i□i□ □□i□□p□iti□t□ th□x□t □□ □□t □d□□ □□t□i□d b□□□T□□ □d th□□□□□□□r□□t □□t□t□□tr□t□□□□ir □d d□□pti□□□d□t,

b[illegible], *inter alia,* thr[illegible]h [illegible]t th[illegible]ri[illegible]d, [illegible]t [illegible]tr[illegible]t did [illegible]t pr[illegible]id[illegible]ti[illegible] [illegible]t[illegible] p[illegible]t[illegible]it[illegible] [illegible]t[illegible]di[illegible]i[illegible]t[illegible]r it[illegible]t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] [illegible]X tr[illegible]d[illegible].

93. [illegible]t[illegible]t[illegible]tr[illegible]t[illegible]ir [illegible]d d[illegible]pti[illegible]d[illegible]t [illegible]d[illegible]rib[illegible]d h[illegible]r[illegible]i[illegible]i[illegible]d i[illegible]t[illegible]ti[illegible], [illegible]rdi[illegible]titi[illegible]i[illegible]ti[illegible]d th[illegible]t[illegible]p t[illegible]tr[illegible], b[illegible]t [illegible]th[illegible]d[illegible]b[illegible], d[illegible], p[illegible]t[illegible]i[illegible]di[illegible]tt[illegible]r[illegible].

94. [illegible]pp[illegible]i[illegible]ti[illegible] [illegible]M[illegible]. [illegible]. [illegible]h. 93[illegible] t[illegible]b[illegible]r[illegible]t[illegible]d thr[illegible]h[illegible]t th[illegible]it[illegible]d [illegible]t[illegible], r[illegible]rd[illegible]th[illegible]ir [illegible]t[illegible]r r[illegible]id[illegible], i[illegible]ppr[illegible]pri[illegible]t[illegible]b[illegible]d[illegible]t[illegible]r[illegible] [illegible]t[illegible]d [illegible]d [illegible]i[illegible]tr[illegible]r [illegible]r[illegible]i[illegible]M[illegible]h[illegible]tt[illegible]d [illegible]th[illegible]b[illegible]t t[illegible]th[illegible]th[illegible] [illegible]th. [illegible]d[illegible]t[illegible]r[illegible]i[illegible]t[illegible]d t[illegible]b[illegible]i[illegible]i[illegible]M[illegible]h[illegible]tt[illegible], [illegible]d th[illegible]ir pri[illegible]ip[illegible] p[illegible]b[illegible]i[illegible]i[illegible]t[illegible]d i[illegible]M[illegible]h[illegible]tt[illegible], r[illegible] [illegible]hi[illegible]h th[illegible] [illegible]tr[illegible]d [illegible]d dir[illegible]t[illegible]d th[illegible] d[illegible]pti[illegible]d [illegible]ir pr[illegible]ti[illegible]d[illegible]rib[illegible]d h[illegible]r[illegible]i, i[illegible]di[illegible] [illegible]d[illegible]ti[illegible] [illegible]X tr[illegible]d[illegible] b[illegible]h[illegible] [illegible]T[illegible] [illegible]d th[illegible]. [illegible]rth[illegible]r, [illegible]i[illegible]r[illegible]ti[illegible] [illegible]d b[illegible]i[illegible], [illegible]p[illegible] [illegible]d[illegible]t dir[illegible]t[illegible] i[illegible] [illegible]d i[illegible]th[illegible] [illegible]ti[illegible]iti[illegible] p[illegible]i[illegible]d [illegible]h[illegible]r[illegible]i[illegible]r[illegible]b[illegible]d i[illegible]M[illegible]h[illegible]tt[illegible].

SECOND CLAIM FOR RELIEF

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

95. [illegible]i[illegible]ti[illegible]r[illegible]p[illegible]t[illegible]d r[illegible], [illegible]i[illegible] [illegible]t [illegible]rth h[illegible]r[illegible]i[illegible]t [illegible]th, [illegible]h [illegible]d [illegible]r[illegible] [illegible]ti[illegible] [illegible]t[illegible]i[illegible]d i[illegible]th[illegible] b[illegible] p[illegible]r[illegible]r[illegible]ph, [illegible] [illegible]th[illegible]i[illegible] [illegible]pp[illegible]rt [illegible]th[illegible] th[illegible]r [illegible]i[illegible] [illegible]r r[illegible]i[illegible]rt[illegible]d [illegible]b[illegible]h[illegible]th[illegible], [illegible]d [illegible]rth[illegible]r [illegible].

96. Thi[illegible]i[illegible] [illegible]r r[illegible]i[illegible]i[illegible]p[illegible]d[illegible]d i[illegible]th[illegible]t[illegible]r[illegible]ti[illegible]t th[illegible]ir[illegible]t [illegible]i[illegible] [illegible]r [illegible]i[illegible] b[illegible]h[illegible]i[illegible]i[illegible]ti[illegible]d th[illegible] [illegible]b[illegible]r[illegible]th[illegible], [illegible]t[illegible]r pr[illegible]it [illegible]titi[illegible]ti[illegible]i[illegible]t t[illegible] tr[illegible]t t[illegible] [illegible]d[illegible]t [illegible]X tr[illegible]ti[illegible], [illegible]r[illegible]d i[illegible]th[illegible]rth[illegible]r[illegible] th[illegible]ir [illegible]r[illegible]i[illegible], [illegible]hi[illegible]h i[illegible]d[illegible]i[illegible]ti[illegible] [illegible]d b[illegible]di[illegible]r[illegible]tir[illegible] [illegible]t [illegible]d[illegible]r p[illegible]i[illegible] p[illegible].

97. Th[illegible] d i[illegible] tr[illegible] d[illegible] r [illegible] r[illegible], t[illegible] t[illegible] tr[illegible] t [illegible] d i[illegible] [illegible] ir [illegible] d d[illegible] pti[illegible] [illegible] t[illegible] d pr[illegible] ti[illegible], [illegible] d i[illegible] thi[illegible] p[illegible] i[illegible] t, i[illegible] i[illegible] ti[illegible] [illegible] th[illegible] M[illegible] h[illegible] tt[illegible] [illegible] r [illegible] r[illegible] t[illegible] ti[illegible] [illegible] t, M[illegible]. [illegible]. [illegible] h. 93[illegible], [illegible]2, 9, i[illegible] di[illegible], [illegible] ith[illegible] t i[illegible] it ti[illegible]

[illegible] [illegible] ir[illegible] [illegible] d d[illegible] pti[illegible] pri[illegible] t[illegible] di[illegible] i[illegible] tr[illegible] ti[illegible] [illegible] X tr[illegible] d[illegible] [illegible] r [illegible] t[illegible] di[illegible] i[illegible] t[illegible] h [illegible] T[illegible] [illegible] d th[illegible] [illegible] i[illegible] r d[illegible] i[illegible] d t[illegible] [illegible] xi[illegible] i[illegible] pr[illegible] it[illegible] t[illegible] [illegible] t[illegible] tr[illegible] t t th[illegible] dir[illegible] t [illegible] d [illegible] di[illegible] [illegible] d [illegible] xp[illegible] [illegible] th[illegible] [illegible] t di[illegible] [illegible] i[illegible] t[illegible]

[illegible] b[illegible] [illegible] ir[illegible] [illegible] d d[illegible] pti[illegible] r p[illegible] rti[illegible] [illegible] d i[illegible] titi[illegible] [illegible] X r[illegible] t[illegible] [illegible] r [illegible] t[illegible] di[illegible] i[illegible] tr[illegible] ti[illegible] [illegible] X tr[illegible] d[illegible] t[illegible] [illegible] t[illegible] tr[illegible] t[illegible] [illegible] t di[illegible] i[illegible] t[illegible] h [illegible] T[illegible] [illegible] d th[illegible] [illegible] r th[illegible] r th[illegible] th[illegible] [illegible] t[illegible] r t[illegible] t [illegible] hi[illegible] h [illegible] t[illegible] tr[illegible] t h[illegible] d [illegible] t[illegible] d th[illegible] tr[illegible] d[illegible] r th[illegible] [illegible] t[illegible] r[illegible]

[illegible] [illegible] ti[illegible] th[illegible] di[illegible] r[illegible] b[illegible] t[illegible] th[illegible] [illegible] t[illegible] X r[illegible] t[illegible] t [illegible] hi[illegible] h [illegible] t[illegible] tr[illegible] t [illegible] t[illegible] d [illegible] t[illegible] di[illegible] i[illegible] t[illegible] t[illegible] di[illegible] i[illegible] tr[illegible] ti[illegible] [illegible] X tr[illegible] d[illegible] [illegible] d th[illegible] [illegible] d i[illegible] titi[illegible] r[illegible] t[illegible] [illegible] t[illegible] t[illegible] tr[illegible] t r[illegible] p[illegible] rt[illegible] d t[illegible] th[illegible] [illegible] t[illegible] di[illegible] [illegible] i[illegible] t[illegible]

[illegible] d[illegible] t[illegible] i[illegible] [illegible] di[illegible] [illegible] d pr[illegible] it[illegible] [illegible] t[illegible] di[illegible] i[illegible] tr[illegible] ti[illegible] [illegible] X tr[illegible] d[illegible] [illegible] r[illegible] [illegible] t[illegible] di[illegible] i[illegible] t[illegible] h [illegible] T[illegible] [illegible] d th[illegible] [illegible] th[illegible] t r[illegible] [illegible] x[illegible] d[illegible] d th[illegible] [illegible] t[illegible] [illegible] r pri[illegible] t hi[illegible] h i[illegible] i[illegible] r [illegible] r i[illegible] [illegible] r r[illegible] di[illegible] bt i[illegible] b[illegible] i[illegible] [illegible] ti t[illegible] d [illegible] X tr[illegible] [illegible] ti[illegible] b[illegible] i[illegible] [illegible] [illegible] b r[illegible] d

[illegible] [illegible] i[illegible] ti[illegible] [illegible] tt r[illegible] [illegible] r[illegible] [illegible] [illegible] ti[illegible], i[illegible] di[illegible] 940 [illegible] M[illegible] [illegible] 3.16[illegible]2[illegible].

98. Th[illegible] [illegible] t[illegible] r pr[illegible] ti[illegible] i[illegible] t[illegible] d [illegible] ti[illegible] 2 [illegible] d 9 [illegible] th[illegible] M[illegible] h[illegible] tt[illegible] [illegible] r [illegible] t[illegible] ti[illegible] [illegible] t, M[illegible]. [illegible]. [illegible] h. 93[illegible].

99. [illegible] trustees [illegible] their fiduciary duty to protect the prudent investor rights of the [illegible] to the distribution of MCRIF, which [illegible] trustees' breaches of fiduciary duty.

100. [illegible] the trustees [illegible] their fiduciary duty [illegible] trust, [illegible] The [illegible] the [illegible] investment [illegible] the [illegible] beneficiaries [illegible] the [illegible] trust [illegible] the [illegible] duty to distribute [illegible] trust [illegible] The [illegible] the [illegible] beneficiaries [illegible] trust [illegible] the [illegible] duty to distribute [illegible] trust.

101. [illegible] trustees [illegible] the [illegible] to [illegible] the [illegible] investment [illegible] the [illegible] beneficiaries [illegible] trust [illegible] their fiduciary duty, [illegible] *inter alia,* through [illegible] the [illegible] trustees did [illegible] provide [illegible] to [illegible] trust beneficiaries [illegible] distribute [illegible] trust.

102. [illegible] to the Mass. Gen. Laws ch. 93A, §9(3), [illegible] February 16, 2011 [illegible] the thirty (30) day prior to the filing of this Complaint, which [illegible] to, [illegible] the [illegible] to, [illegible] a demand letter to Mass. Gen. Laws ch. 93A, §9 [illegible] identified, [illegible] certified [illegible] mail, return receipt requested, [illegible] the [illegible] trustees [illegible] the [illegible] to distribute [illegible] to the [illegible] beneficiaries [illegible] the [illegible] trust. [illegible] March 18, 2011 [illegible] the [illegible] to [illegible] a [illegible] to [illegible] the [illegible] demand [illegible] with [illegible] to [illegible] the [illegible] trust. The [illegible] to [illegible] the [illegible] was [illegible] with [illegible] to [illegible] that the [illegible] the [illegible] to [illegible] Mass. Gen. Laws ch. 93A, §2.

103. [illegible] trustees [illegible] and described herein [illegible] including [illegible] litigation, [illegible] distributions [illegible] to the [illegible] beneficiaries, [illegible] other [illegible].

104. Application [illegible] Mass. Gen. [illegible] ch. 93[illegible] to [illegible] brought [illegible] through [illegible] the United States, recorded [illegible] their [illegible] or [illegible] in Massachusetts [illegible] and [illegible] in Massachusetts [illegible] the [illegible] of [illegible] in Massachusetts, or [illegible] which [illegible] directed [illegible] and [illegible] described herein, including [illegible] X trade [illegible] Ten [illegible] and the [illegible]. Furthermore, [illegible] beneficiaries, [illegible] to direct [illegible] in the [illegible] participated [illegible] in Massachusetts.

THIRD CLAIM FOR RELIEF

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

105. [illegible] repeated [illegible], [illegible] set [illegible] herein, [illegible] and [illegible] paragraph, [illegible] the [illegible] support [illegible] other [illegible] or [illegible] brought [illegible] behalf [illegible], and [illegible]

106. [illegible] and [illegible] the [illegible] participated [illegible] their [illegible] and [illegible] to [illegible] X trading [illegible] to [illegible] participated [illegible] securities [illegible] the [illegible].

107. [illegible] to [illegible] paid [illegible] prior [illegible] to [illegible] and [illegible] that [illegible] trading [illegible] to [illegible] X trading, including [illegible] X trading [illegible] the [illegible] to which [illegible] traded [illegible] and [illegible]. [illegible] and [illegible]

d□p□d□t □□ □□□□d□t□t□x□□t□th□□X tr□d□□□d □□□r□t□□r□p□rt th□pri□□t □hi□h □X tr□d□□□r□□tt□d.

108. □□□d□t□□d r□t□d th□t □□i□ti□□d th□□□b□r□□th□□□□□p□□d th□ir □□id□□□□d tr□t i□□□□d□t□t□r□p□rt □X tr□d□□□□r□t□□.

109. □□□d□t, b□irt□□□th□ir □p□ri□r □□□□d□□d p□iti□ □□□□tr□□□□□□th□□id□□□□d tr□t p□□d i□ th□ b□□□i□ti□□d th□□□□, □□d □d□t□□□□□t□t□ □□i□ti□□d th□□□□i□□□□□ti□□ □ith □rr□i□□ □t t□di□□i□tr□ti□□ □X tr□□□□ti□□.

110. □□□d□t, b□irt□□□th□ir □p□it□□□□t□di□□r □□i□ti□□d th□□□□, □d th□ir □p□ri□r □□□□d□□d p□iti□ □□□□tr□□□□□□th□□id□□□□d tr□t p□□d i□ th□ b□□□i□ti□□d th□□□□, □□d □d□t□□di□□□r□i□□□□ti□□ □ith □rr□i□□ □t t□di□□i□tr□ti□□ □X tr□□□□ti□□.

111. □□□d□t□br□□h□d th□ir d□t□□□□□t□t□□□i□ti□□d □h th□□□□ □□b□r□b□□□□h□r□i□□□i□ti□□d th□□□□hi□h□r □X r□t□th□□t□t□tr□t □t□□□p□id □h□b□i□□r□i□□rr□□□b□p□i□□□i□ti□□d th□□□□□r □X r□t□th□□t□t□tr□t □t□□□r□i□d □h□□□i□□r□i□□rr□□□□□p□□ti□th□di□r□b□t□□□t□t□ □tr□t□□t□□□t□d th□r□t□□h□r□d t□□i□ti□□d th□□□□d □hidi□th□ir □d□t b□pr□idi□ □□□□t □t□□□t□th□□i□ti□□d th□□□th□t r□p□rtd □□th□d□t□□ □hi□h □t□di□□i□tr□ti□□ □X tr□d□□□r□x□t□d, □d th□pri□h□r□d t□□i□ti□□d th□ □□□, □t □itti□□i□p□rt□t i□r□ti□□h □th□□t□ti□th□tr□d□□□x□t□d, □d th□ □t□□□t □th□tr□d□t□□t□tr□t, th□t □□d h□□□b□d □i□ti□□d th□□□t□r□i□ th□□r□p□i□i□x□□□t□□tr□t□□t□□□r r□i□i□□□th□□t□tr□t□ □t□□pr□d□.

112. [illegible] breached their duties of disclosure to the Class by failing to provide the Class with [illegible] that they knew or should have known that omitted the [illegible] trades executed by the [illegible] during the Class Period, including [illegible] trades executed by the [illegible] Defendants.

113. [illegible] breached their duties, [illegible] Defendants' misrepresentations and omissions, [illegible] Defendants' misrepresentations and omissions, in light of the circumstances under which they were made, not misleading, including by failing to disclose the [illegible] trades executed by the [illegible] Defendants. [illegible] Defendants' misrepresentations and omissions were material. [illegible] Defendants' misrepresentations and omissions were relied upon by the Class in connection with their trades.

FOURTH CLAIM FOR RELIEF

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

114. [illegible] repeated and realleged, as if fully set forth herein, each and every allegation contained in the above paragraphs, as if fully set forth herein and further alleged

115. [illegible] had [illegible] provided the Class with [illegible] trades executed by the [illegible] Defendants.

116. In addition, [illegible] provided [illegible] with [illegible] reports [illegible], including the reports [illegible], [illegible] Defendants' misrepresentations and omissions. The reports [illegible] were provided by [illegible] for the [illegible] in their business [illegible].

117. The report and trust and trustee provided to certain qualified settlement funds, and similar reports provided to beneficiaries of trusts, failed to disclose the existence of the Put Option and the Trust's purchase of Call Options, and failed to disclose the true nature of the Trust's investments. The trustee and trust advisor knew or should have known that the Trust's investments were not disclosed in the reports, and failed to correct the misrepresentations and omissions in the reports.

118. Because the trustee and trust advisor were responsible for investing with reasonable care, and because they failed to disclose the Put Option, and because the Put Option was a prudent investment, the trustee and trust advisor breached their duties to the beneficiaries of the Trust.

119. The beneficiaries were injured by the breaches described above and are entitled to damages in an amount to be proven at trial.

120. The trustee and trust advisor failed to disclose the existence of the Put Option and the Trust's purchase of Call Options, and failed to disclose the true nature of the Trust's investments.

121. The trustee and trust advisor failed to investigate the prudence of the Put Option, and failed to disclose the Put Option.

122. Therefore, the beneficiaries are entitled to recover damages in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF

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

123. [illegible] repeats and realleges each and every allegation set forth herein as if fully set forth herein.

124. [illegible] brings this claim for breach of contract [illegible] individually.

125. [illegible] entered into, by direct [illegible] with State Street Bank, pursuant to which State Street Bank agreed to, *inter alia*, provide [illegible] the [illegible].

126. The first such direct contract dated September 15, 1998. It was terminated by [illegible] effective January 1, 2001, [illegible] terminated by [illegible]. It, too, was terminated by [illegible] effective June 29, 2004, [illegible] terminated by [illegible]. That direct contract was terminated by [illegible] effective June 30, 2009 [illegible] terminated by [illegible].

127. This [illegible] for breach of [illegible]. Each contract provided that it shall be governed by the [illegible] interpreted under and in accordance with the laws of the Commonwealth [illegible] applicable to contracts entered into and to be performed entirely within the Commonwealth.

128. [illegible] the [illegible] State Street Bank agreed to provide [illegible] The [illegible] to the direct contracts is the [illegible] X, in which [illegible] to the direct contracts [illegible] The [illegible] contracts is attached to [illegible] [illegible], as [illegible]

i□tr□ti□□, □d □hi□h □ □□b□□t□di□□i□tr□ti□□□. . . □□r th□p□r□h□□□r □□□□□□r i□□ □x□h□□□□r □r i□□ □x□h□□□□□tr□t□□r th□□□□□t □th□□□d, i□□di□□tr□□□ti□□ □x□□t□d □ith □r thr□□h th□□□t di□, it□□□□t□r it□b□□t di□□.□

129. Th□□t di□ □□tr□t□p□i□d th□t th□ □□t b□hi□h □t t□tr□t B□□ □□□titl□d t□b□□□p□□t□d □r th□□r i□□it p□r□r□□r □□T□□p□r□□t t□th□□□tr□t□ □d b□t □rth i□□ritt□ □□□h□d□□r□d t□b□th□p□rti□□Th□□t di□□h□b□ □titl□d t□□□p□□ti□□ □r it□r i□□d □xp□□□□□t di□□t □rth i□□ritt□ □□□h□d□b□t□□th□p□rti□h□r t□□ti□di□r□t □□p□□ti□□h□b□i□riti□□ □r□d □p□b□t□□th□t□ □T□□d th□t di□.□

130. □T□□d □t t□tr□t B□□ □r□d t□□d □x□t□d th□ i□ □h□d□

□ E□□ti□□pt□b□r 15, 1998 thr□h □30, 2001□

b□ E□□ti□□1, 2001 thr□h □30, 2004□

□ E□□ti□□1, 2004 thr□h □30, 2007□

d□ E□□ti□□1, 2007 thr□h □30, 2009 □r□i□d□

□ E□□ti□□pri□1, 2008 thr□h □30, 2009 □r□i□d□

□ E□□ti□□b□r 1, 2008 thr□h □30, 2009□d

□ E□□ti□□1, 2009 thr□h □30, 2014.

131. Th□□□h□d□□h pr□id□d □r □□t b□p□id b□T□t□ t t□tr□t B□□ □r it□r i□□□t di□, □d □t □rth □rti□t□ri□□r i□, □h □ □ti□Tr□□ti□ □h□r□d □b□Tr□□ti□ □h□r, □r □hi□h t t□tr□t B□□ □ p□r□itt□d t□ □h□r□□T□□ □d□iti□□.

132. Th□□□□□h d□□□d t□d □pt□b□r 15, 1998 di□□□□□□□X tr□di□□, t□ti□□ th□t □***No charge*** □i□b□□□□□□d □r □□h □r□i□□ □x h□□□□ x□□t□d thr□□h □third p□rt□. □r□i□□ □x h□□□□ thr□□h □t t□□tr□t □***No Charge.”*** □E□ph□□□□i□ ri□i□□.□

133. Th□□□□□h d□□□d t□d □□□□1, 2001 □□□□1, 2004 □□□□1, 2007 □□pri□1, 2008□ □d □□□□b□r 1, 2008 d□□□t □□ti□□ □X tr□di□□ r i□t □X tr□di□□ □□□□□□ th□□r i□□□□r □hi□h □t t□□tr□t B□□□i□p□r□itt□d t□ h□r□□□□i□ti□□□ □dditi□□□□□. □□□rdi□□□, □□h □□ th□□□□□□h d□□□□□□t□□p□□t□d th□t □t t□□tr□t B□□□ h□□□□t b□□□□p□□□t□d □r th□ p□r h□□□r □□□□□□r i□□ □x h□□□□□□r □d b□□□th□□□□□□□□t □□□.

134. Th□□□□□h d□□□d t□d □□□□1, 2009 □□□□ □ □□□□thi□□□□r, □d □xpr□□□□□t t□□ th□t □t□r□□□□□ti□□ □□t□□r □□□□r i□□ □x h□□□□ tr□d□□tr□□□□□t□d thr□□h □t t□□tr□t □i□b□ □i□d.□ □□□rdi□□□, □t t□□tr□t B□□□i□□t p□r□itt□d t□ h□r□□□□T□□ □r th□p□r h□□□r □□□□□X □b□□□th□□□□□□□□t □□□□d□r th□t□r□ □□□th□□□t di□□□□tr□t.

135. I□th□□ □th□□t□r th□□□i□□r i□□tt□r□□□ □□□r□□□i□d it□□□□p□i□t i□ I□t□r□□ti□□ □□i□t □t t□□tr□t □□ □t□b□r 20, 2009, □t t□□tr□t B□□□i□□r□□d □□T□□ □□ □□rr□t □□r□□p□□□d □□r□d□□ □□□□□d b□□t t□□tr□t □□b□□M□r□t□□r □t□di□□□ i□tr□ti□□□□r i□□ □x h□□□□ tr□□□□ti□□r□□□□t.□ Th□□□□ □□r□□p□□□d □□r□d□□ □□□ ti□□□t□br□□h th□□xpr□□t□r□ □□□th□□□□29, 2009 □□t di□□□□tr□t □d □□□□i□t□d □□□ □h□d□□□□□□□ti□□ □□□□1, 2009 thr□□h □□□□30, 2014□, □hi□h □t t□□th□t □t□r□□□□□ti□□ □t□ □r □□□□□r i□□ □x h□□□□ tr□d□□tr□□□□□t□d thr□□h □t t□□tr□t □i□b□□□i□d.□

136. □t t□□tr□t□□pr□ti□□, d□t□i□d h□r□i□, □□h□r i□□ □□T□□i□□□t□d □X r□t□□ □h□□b□□i□□ □r□i□□ □□rr□□□, □□d d□□□t□d □X r□t□□□h□□ □□□i□□ □r□i□□ □□rr□□□, □□□titit□□ hidd□□ □d □□□th□ri□d □h□r□t□ □□T□□ b□□□th□□□□□□□□t □□□.

137. B□h□r i□□ □□T□□ th□hidd□□ □d □□□th□ri□d □□□d□□□rib□d h□r i□, □t□ □tr□t B□□□h□□br□□h□d th□□□□t di□□ □□□tr□t, □d □□T□□h□□□□□□r□d □b□t□□ti□□□ □□□□ d□□ □□□□□□□r□□□t □□th□t br□□h.

138. Th□□□□t di□□ □□□tr□t□□□rth□r pr□□id□d th□t □t h□□□□t di□□ h□□r□d r t□th□ □□t□□ □□□T□□□□□□ th□□r□p□rt □□□□□□ □i□r□□i□d □r p□id □□b□h□□□□th□□□□t□□ □d □□ it□□i□d □t□t□□ □t □th□□□□□riti□□□r □hi□h it i□□□□□□t□b□□□d□r thi□□□□tr□t □□□□th□□d □□□□h □□th, □□□□□□□□□i□t □□□□□□□□riti□□tr□□□□ti□□th□t r□□ i□□□□tt□d □t th□t ti□□.□

139. □t□t□□tr□t, h□□□□r, pr□□id□d □□T□□□ith □□□th□□r□p□rt□th□t h□□□d □□□□ th□pri□□b□i□□ h□r□d t□th□□□□i□ti□□□r □t□di□□i□tr□ti□□ □X tr□d□□□d th□d□t□□□th□ tr□d□ □t□t□□tr□t □□itt□d i□p□rt□□t i□□□r□□ti□□, □□□h □□th□ti□□□t□□p □□th□□□t□□□ti□□□□ th□tr□d□, □□d th□□□t□□□pri□□□t □hi□h □t□t□□tr□t p□id □□r th□p□r h□□□□r □□□□□□□r□i□□ □x h□□□□□□□□ □□t□hid□th□□□□t th□t □□T□□ □□□b□i□□ h□r□d □□□□r□t pr□it □□th□tr□d□.

140. □t□t□□tr□t B□□□□□□□i□r□t□□□□p□□□ith th□□□□t di□□ □□□tr□t□□r□p□rti□□ r□□□ir□□ □□t □□□□tit□t□□□□ □dditi□□□□br□□h □□th□□□□tr□t, □d □□T□□h□□□□□□r□d □b□t□□ti□□□ □□□□t□r□d□□ □□□□□□□□r□□□t th□r□□□.

141. Th□r□i□□□ i□□it□ti□□□p□ri□d th□t □□□d □□t □□□b□r t□thi□□□i□ □□r □□i□□ p□r□□□□t t□th□□□xi□ *nullum tempus occurrit regi* r□□□□□i□d □d□r □r□□□□□□□□□.

□□t□ith□t□□di□□, □□T□□ □□□□d □□t h□□□di□□□□□r□d □t□t□□tr□t B□□□□□br□□h □□□□i□th□ □x□r□i□□□□d□□di□□□□□□□□ti□th□□□r□i□□t, th□□□□□□□i□□□□th□□□□i□□r□i□□tt□r□□□□□□r□□ □□□□p□□i□t □□□i□t □t□t□□tr□t b□□□□□□, *inter alia,* th□r□p□rt□□t□t□□tr□t pr□□id□d t□□□□T□□ h□□□d □□□□th□pri□□□h□r□d t□□□□i□ti□□□r □t□di□□i□tr□ti□□ □X tr□d□□□d th□d□t□□□th□ tr□d□. B□□□itti□□i□p□rt□□t i□□□r□□ti□□, □□□h □□□ti□□□t□□p □d th□□t□□□pri□□p□id □r

r□□i□d b□ t t□□tr□t, □□□□d□t□hid □r □ti□□□ □□□□□□d th□ir i□pr□p□r □□d□t.

□□□rdi□□□, □□□□i□□t t t□□□i□it□ti□□□□r□t□pp□, it □□t□□□d b□ t t□□tr□t□□□ti□□.

Prayer for Relief

□HE□E□□E, □□i□ti□d□□ □d□□d□□ □t □r it□□□□d □□□th□r □□□b□r□□□th□ pr□p□□d □□□□□□□□□□□□□

□. □ith r□□rd t□th□□ir t □□i□ □r □□i□, th□t th□□□□rt □rti□thi□□ti□□ □□□ □□□□□□ti□□ □d □t□r □d□□ □t □□i□t □□□□d□t□i□□ □□ □□t □□□□t□p t□thr□b□t □□□□□□ th□t□□ti□ □th□□ □□t □d□□ □□□□□□i□ti□□d th□□□□□h□□□t□i□d □□r□□t □□ □□□d□t□□□ti□□, p□□□□t□i□□di□□ tt□r□□□□□□□□□

B. □ith r□□rd t□th□□□□□d □□i□ □r □□i□, th□t th□□□□rt □rti□thi□□ti□□ □□□ □□□□□□ti□□ □d □t□r □d□□ □t □□i□t □□□□d□t□i□□ □□ □□t □□□□t□thr□ti□ □th□□ □□t □d□□ □□□□□□i□ti□□d th□□□□□h□□□t□i□d □□r□□t □□□□□□d□t□□□ti□□, p□□□□t□i□□di□□ tt□r□□□□□□□□□

□. □ith r□□rd t□th□Third □□i□ □r □□i□, th□t th□□□□rt □rti□thi□□ti□□ □□□ □□□□□□ti□□, i□d th□t □□□□□d□t□br□□h□d th□ir d□ti□□□tr□t t□ □□i□ti□□□d th□□□□□, □d □□rd □ppr□pri□t□□□□p□□□□t□r□d□□ □□□□t□ □□i□ti□□□d th□□□□□i□□□ t□b□ d□t□r□i□d □t tri□□

□. □ith r□□rd t□th□□□□rth □□i□ □r □□i□, th□t th□□□□rt □rti□thi□□ti□□ □□□ □□□□□□ti□□, i□d th□t □□□□□d□t□□□□i□□t□□i□r pr□□□t□d t□ □□i□ti□□□d th□□□□□th□hidd□□ □□□□h□r□d i□ □□□□□□ti□□ □ith □X tr□di□□, □d □□rd □ppr□pri□t□□□□p□□□□t□r□d□□ □□□□t□ □□i□ti□□□d th□□□□□i□□□ t□b□ d□t□r□i□d □t tri□□

E. □ ith r□□rd t□th□ i th □□i□ □r □□i□, th t th□□□□rt i□d th t □□□□d□t t t□ □tr□t B□□br□□h□d □□h □it□□□t di□ □□tr□t□ith □□i□ti□, □d □□rd □ppr□pri t□ □□p□□□t r□d□ □□□t□ □□i□ti□i□ □□ □□t t□b□d t r□i□d t tri□□

□. Th t th□□□□rt □□rd □□i□ti□□d th□□□□□□□□□t□□d xp□□□□□□thi□□ti□, i□□di□□r□□□□b□□tt r□□□□□d xp□rt□□□□□□d

□. Th t th□□□□rt □□rd □□i□ti□□d th□□□□□□□h th□r r□i□□th□□□rt d□□□ □ □t □d pr□p□r.

Demand for Jury Trial

□□i□ti□d□□ □d□□tri□b□□r□□□□i□□□□□tri□b□.

□t□d□ □pri□15, 2011

TH□□□T□□ □ □□□ME□, □□□

B□□ */s/ Garrett J. Bradley*
Mi□h□□□. Th□r t□□BB□ □497390□
□□rr tt □. Br□d□□□BB□ □629240□
E□□□□. H□□□□□BB□ □678975□
100 □□□ □□r □tr□t, 30th □□□r
B□t□□, M□□□□h□□tt□ 02110
T□□ph□□□□ 617□720□1333
□□□i□i□□ 617□720□2445

Liaison Counsel for Plaintiff ARTRS and Proposed Interim Liaison Counsel for the Class

□□B□T□□ □□□H□□□□ □□□
□□□□H. B□r□□t□i□
□hri□t□ph□r □. □□□□r
Eri□□. B□□i
□□id □. □□d□□ith
□□□□□. □□r□t□
Mi□h□□□H. □□□□r□
140 Br□□d□□□
□□□ □□r□, □□□ □□r□ 10005
T□□□ph□□□□ □212□907□0700
□□□i□i□□□ □212□818□0477

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

□IE□□ □□B□□□E□ HEIM□□□
□ BE□□□TEI□, □□□
□t□□□□E. □i□□□ □□
□□□i□□□. □hip□□□□
Mi□h□□□□. Mi□r□i
□□i□□□. □□□th□r□
250 H□d□□□ □tr□□t, 8th □□□□r
□□□ □□r□, □□□ □□r□ 10013
T□□□ph□□□□ □212□355□9500
□□□□i□i□□□ □212□355□9592

Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT
FOR THE STATE OF MASSACHUSETTS

□□□□□□□□TE□□HE□ □ETI□EME□T □□□TEM, □□b□h□□□□□it□□□□□d □□□□th□r□ i□i□□r□□ □it□□t□d, □□□i□ti□□□, □. □T□TE □T□EET □□□□□□□TI□□, □T□TE □T□EET B□□□□ □□□ T□□□T □□M□□□□ □□d □T□TE □T□EET □□□B□□ M□□□ET□, □□□, □□□□□d□□t□.	□i□i□□□ti□□ □□. 11□□□10230 □M□□ □

CERTIFICATE OF SERVICE

I h□r□b□ □□rti□□th□t th□□r□i□□ □□□i□ti□□□□□□d □□□□□□ti□□ □□□p□i□t □□□i□□d thr□□h th□E□□ □□□t□□ □□□pri□15, 2011 □d □□□□rdi□□□□i□b□□r□d □□□□tr□□i□□□□□p□□ □□□r□□i□t□r□d p□rti□ip□□t□id□□ti□i□d □□th□□□ti□□□□E□□□tr□□i□ □i□i□□.

□□□□ □rr□tt □. Br□d□□□□□□□□□□□□□□
□□rr□tt □. Br□d□□□ □BB□□629240□
TH□□□T□□ □ □□□ME□, □□□
100 □□□ □□r □tr□□t, 30th □□□r
B□□t□□, M□ 02110
□h. □617□720□1333
□□x □617□720□2445
□br□d□□□□ t□□□□□.□□□

□t□d□□pri□15, 2011

EX. 2

Case 1:11-cv-12049 Document 1 Filed 11/21/11 Page 1 of 79

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[illegible]

Plaintiffs,

v.

[illegible]

Defendants.

C.A. No.:

CLASS ACTION COMPLAINT

[illegible]

I. NATURE OF THE ACTION

1. [illegible] 29 U.S.C. §§ 1001, et seq., [illegible] 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), [illegible]

2. □BT □d □□□M □□□□□□□ti□□□, □□ □□□□d □t □□□□□ r□r□□□ir□d t□ □□t pr□d□t□□ □d □□□□□□□ i□ th□ i□t□r□t □□ th□ □□□□□□ p□rti□ip□t□ □d b□□□□i□i□ri□□ i□ th□ir □p□it□ □□ E□I□□ id□□i□ri□□. □□i□□r□ti□□ □d b□i□, r th□r th□ □□□□i□i□□ th□ir id□□i□r□d□ti□□ □d□r E□I□□ th□ hi□h□t □□□□□ t□ th□ □□□□□□□[1], th□ □□□□d□t□ h□r□d i□ pr□p□r, □di□□□□□d □ r□p□□□ tr□□□□□ti□□□ i□ □r□i□□ □□rr□□□□□□□X tr□□□□□ti□□□□r □X tr□di□□□.

3. Th□ □□□□□ □d th□ i□i□r□□ it□□t□d □□□□□r□□t b□i□h□d □d p□□□□r□d b□ pri□t□ □□titi□□i□ □□□□rd□□□□□ith E□I□□.

4. □□i□ti□□ □□□□□□□ th□t □□□□d□t□ i□□□t□d E□I□□ b□ □□□□i□□ th□ □□□□□, □r □□□□□□ti□□ □□d□ p□r□t□d b□ □□□□d□t□ i□ □hi□h th□ □□□□□ □□r□i□□□t□d, t□ □x□□t□ □X tr□□□□□ti□□□t □x h□□□□r□t□□ □□□□r b□□t□ □□□□d□t□ □d r□p□rti□□ th□□□ tr□□□□□ti□□□t □□□□ □□r b□r□t□. Th□□□ tr□□□□□ti□□□ □r pr□hibit□d tr□□□□□ti□□□ □d□r E□I□□ □406, 29 □.□.□. □1106.

5. □□i□ti□□ □□□□ □□□□□□□ th□t □□□□d□t□ □i□d t□ □t □□□□□□ i□ th□ i□t□r□t □□ th□ p□rti□ip□t□ □d b□□□i□i□ri□□ □□ th□ □□□□□□ □d br□□h□d th□ir id□□i□r□d□ti□□ □□pr□d□□□ □d □□□t□ □□ith r□p□□t t□ th□ □□□□□□. □p□i□i□□□□, □□i□ti□□□□□□□ th□t □□□□d□t□, □□id□□i□ri□□□□ th□ □□□□□, i□□t□d th□ir id□□i□r□d□ti□□ □d□r E□I□□ □404, 29 □.□.□. □1104 b□ □□□□i□□ th□ □□□□□□r th□ □□□□□□□ti□□ □□d□ p□r□t□d b□ □□□□d□t□ i□ □hi□h th□ □□□□□□ □r□i□□□t□d t□ □□□□□□□ i□ tr□□□□□ti□□ th□t □r□ □□t t□ th□ □x□□□i□□ b□□□it □□ th□ □□□□□□ □r th□ir p□rti□ip□t□ □d b□□□□i□i□ri□□.

II. JURISDICTION AND VENUE

6. E□I□□ pr□id□□□r □x□□□i□□ □d□r □□□□ri□di□ti□□ □□r th□□□ □□□i□□. Th□ □□□□i□ □□ □□□ p□□□□□ b□□□it p□□□□ □ithi□ th□ □□□□i□□ □□E□I□□ □3□3, 29 □.□.□. □1002□3, □d Mr. H□ri□□□□i□□ p□rti□ip□t i□ th□ □□□□□ □ithi□ th□ □□□□i□□ □□E□I□□ □3□7, 29 □.□.□. □1002□7, □h□ i□ □th□ri□d p□r□□□t t□ E□I□□ □502□□2□□d □3, 29 □.□.□. □1132□□2□□d □3, t□

[1] *Donovan v. Bierwirth*, 680 □2d 263, 272 □8 □2d □ir. 1982□

bri□□ th□ pr□□□□t □ti□□ □□ b□h□□ □□th□ □□□□ □d it□p□rti□ip□t□ □d b□□□i□i□ri□□t□ □bt□i□ □ppr□pri□t□r□i□.

7. Thi□□□rt h□□□b□□t □□tt□r □ri□di□ti□□ □□r thi□□ti□□ p□r□□□t t□28 □.□.□. □ 1331 □□d□r□□□□□ti□□□□d E□I□□ □502□□□1□,29 □.□.□. □1132□□□1□.

8. □□□□□ i□pr□p□r i□ thi□di□tri□t p□r□□□t t□28 □.□.□. □1391b□□d E□I□□ □ 502□□□2□,29 □.□.□. □1132□□□2□,b□□□□□□□□□r □□□□th□ id□i□r□br□□h□□□r □hi□h r□i□□ i□□□□ht □□□rr□d i□thi□di□tri□t □d th□□□□□d□t□r□id□□d □□b□□□□d i□thi□di□tri□t.

III. PARTIES

A. Plaintiffs

9. **Plaintiff Arnold Henriquez**. □□i□ti□□□r□□d H□□ri□□□□i□□p□rti□ip□□t i□ th□ □ □t□M□□□□□□□t □□tir□□□t □□□i□□□□□□, □□E□I□□□□□□r□d d□i□□d □□□trib□ti□□p□□□. □t □□□□□t□ri□□ti□□□□r□□ th□ □□□□□d □□□rt□r □□2005 thr□□□h th□ □□□□□d □□□rt□r □□2009, Mr. H□□ri□□□□i□□□□t□d i□ th□ □I□t□r□□ti□□□□E□□it□□□□d[2] p□□□□□r□d b□□□BT □d □□□□r□d b□ th□ □□□□. Mr. H□□ri□□□□ □□□□i□□□□t□d i□ □th□r □□□d□p□□□□r□d b□□□BT □d □□□□r□d b□ th□ □□□□ d□ri□□ th□□□□□□□□□ri□d, i□□□□di□□ th□□□r□□□□p E□□it□□□□d, th□□□ □□□□□p E□□it□□□□d, th□ □□□□□r□□ti□□ □□□□t □□□□□□□ti□□ □□□d, th□ M□d□r□t□ □□□□t □□□□□□□ti□□ □□□d, th□ □□□r□□i□□ □□□□□□□ti□□ □□□d, th□B□□d M□r□□t □d th□□□□□□ T□r□□t □□tir□□□t 2030 □□□d. Mr. H□□ri□□□□ r□□id□□i□ □r□d□ri□□, M□r□□□□d. Mr. H□□ri□□□□bri□□□thi□□□ti□□ □□□□r□pr□□□□t□ti□□p□i□ti□□□□ b□h□□□□□□□□□i□i□□r□□□it□□t□d p□□□□.

10. **Defendant State Street Bank and Trust Company ("SSBT").** □□□□d□t□t□□ □tr□□t B□□□ □d Tr□□t □□□p□□□ i□ i□□□rp□r□t□d i□ M□□□□□h□□□tt□ □d i□ h□d□□□rt□r□d i□

[2] Th□ I□t□r□ti□□□□E□□it□□□□d i□ th□ □□□d □□□ □□□□d b□□□BT □□di□□□□□r□□t□p□rti□ip□□t□i□ th□ □□□□. Th□ I□t□r□ti□□□□E□□it□□□□d□□□□□□, □□□□rdi□□t□th□I□t□r□ti□□□□E□□it□□□□d□□□□r□□5500 □□r 2009 □d 2010, i□□d b□□□BT □ith □□□□, i□th□□□□ti□□I□t□□t□□□□□□ti□□ □□ □□ □□I □M8□□i□□. □r□□ 2006 thr□□□h 2008, th□ I□t□r□ti□□□□E□□it□□□□d□□□□□□, □□□□rdi□□t□th□I□t□r□ti□□□□E□□it□□□□d□□□□r□□5500 i□□d b□□□BT □ith □□□□ □□□th□ I□t□r□ti□□□□□ph□□□□□t □□ □ri□□□□d □ i□□. Th□□r□i□□ □□d □□□□□□□□□r□□r t□th□ I□t□r□ti□□□□E□□it□□□□d □t □p□rti□□□r p□□t i□ti□□, □□ □□□□□□t□ □□□□r □□r□□□□□r□□□□□□□□□i□t□r□t□ □□□□r□d i□th□I□t□r□ti□□□□E□□it□□□□d.

Boston, Massachusetts. Defendant State Street Bank and Trust Company provides directly, or indirectly through one or more subsidiaries, participant recordkeeping services for EBI's employer sponsored benefit plans and maintains custody of the collective investment trust funds. SSBT is a subsidiary of State Street Corporation, a publicly traded company headquartered in Boston, Massachusetts.

11. **Defendant State Street Global Markets, LLC ("SSGM")**. Defendant State Street Global Markets, LLC, is a subsidiary of State Street Corporation, is incorporated in Delaware and has its principal place of business in Boston, Massachusetts. SSGM describes itself on its website as a leading research and trading firm for State Street Corporation's institutional investor clients. It provides participants in employer sponsored benefit plans, including EBI's employer sponsored benefit plans.

12. **Defendants Does 1-20**. Defendants 1-20 are individuals or other entities that may be responsible for the misconduct complained of herein but whose identities cannot be ascertained through diligent inquiry.

IV. FACTUAL BACKGROUND

A. The Plans.

13. **Waste Management Retirement Savings Plan**. The Plan is an employee pension benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2). Participants in ERISA, the principal investment decisions for the benefit of the Plan.

14. **Other Similarly Situated Plans**. Defendants provide services to other employee benefit plans, either directly or indirectly, which have suffered losses as a result of the misconduct described herein.

B. Defendants' Fiduciary Status

15. Each participant directed by ERISA to discharge duties with respect to the Plan. A fiduciary is anyone who exercises discretionary authority or control over the management of a plan or the management or disposition of its assets, or who renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan.

16. EBIT treats dividends received from publicly traded EBIT stock, but other purchases of publicly traded EBIT stock. EBIT § 3121(v)(1), 29 U.S.C. § 1002(21)(A) (investment advice . . . with respect to assets of . . . plan" includes advice regarding purchase or sale of EBIT stock by plan).

17. Dividends paid to EBIT stock held by the Plan are exempt from tax.

18. EBIT pays dividends on the outstanding stock, in the form of cash distributions. Dividends, EBIT issues additional EBIT stock. EBIT issues the dividend to the Plan as a participant.

19. Mr. Mayfield and the trustee of the Plan entered into a transaction with EBIT to initiate a program for the exchange of EBIT stock for Exchange Notes and the subsequent transaction. As discussed above, the Exchange Notes were sold by EBIT to the Plan as a dividend to the Plan and then exchanged for Exchange Notes to the Plan.

C. Retirement Plan Investment Strategy

20. The Plan is a type of retirement plan, defined benefit plan and defined contribution plan. Both types of retirement plans, participants, have the right to direct, how to invest their accounts to be invested in EBIT stock. Additionally, defined benefit plans have exposed their investments to EBIT stock, and defined contribution plans are required to offer EBIT stock as an investment option.

21. Retirement plans are governed by ERISA, which requires that plans be invested in accordance with the terms of the plan, and participants in the plan must act in the best interest of the beneficiaries of the plan.

□□□r□i□□ □rr□□□□ i□t□ □□d r□□ □□ □□□r□ □□□□□, th□t i□, □X tr□di□□, □ith□r dir□□t□□ □r thr□□□h p□rti□ip□ti□□ i□ □□□□□ti□□ i□□□□t□ □□t □□□d□.

22. □ "□□□t□di□□" i□ □□ i□□tit□ti□□ th□t h□d□ □□□□riti□□ □□ b□h□□□ □□ i□□□□t□r□. Th□ r□□p□□□ibi□iti□□ □□tr□□t□d t□ □ □□□t□di□□ i□□□□d□ th□ □□□rdi□□ □□d □□□□□□pi□□ □□ □□□□riti□□, d□□i□□ri□□ □r □□□□pti□□ tr□d□d □□□□riti□□, □□d □□□□□ti□□ pri□□ip□□, i□t□r□□t, □□d di□id□□d p□□□□□t□ □□ h□□d □□□□riti□□. □□□t□di□□□ □□□ □□□□ p□r□□r□ □□□i□□r□ □□r□i□□□ □□r th□ir □□i□□t□. □□□t□di□□□ □r□ t□pi□□□□ □□□d b□ i□□tit□ti□□□□ i□□□□t□r□ □h□ d□ □□t □i□h t□ □□□□□ □□□□riti□□ □□ d□p□□it □ith th□ir br□□□r□ □□□r □□r i□□□□t□□□t □□□□□□r□. Th□ □□□ □□□ □□□t□di□□ b□□□i□ i□ t□□d□d t□ r□d□□□ th□ ri□□ □□□ i□□□□□d □□t b□ □□p□r□ti□□ th□ □□□t□di□□ □□d □□□□t □□□□□□□ □□t d□ti□□. □□ i□d□p□□d□□t □□□t□di□□ □□□□r□□ th□t th□ i□□□□t□r h□□ □□□□□□□ b□r□□ □□□□r□hip □□ th□ □□□□riti□□ □th□r □□□□t□r□ pr□□□□□t t□ h□□□ p□r□h□□□d □□ □□it□ b□h□□□.

23. □□BT □□r□□d □□ □□□t□di□□ □□r E□I□□ □□□□r□d d□□i□□d b□□□□it p□□□□.

24. □□BT □p□r□t□d □□□□□ti□□ i□□□□t□□□t □□□d□ i□□□□t□d i□ □□r□i□□ □□□□riti□□ i□ □hi□h E□I□□ □□□□r□d d□□i□□d □□□trib□ti□□ p□□□□ i□□□□t□d d□ri□□ th□ □□□□□ p□ri□d. □□BT □□r□□d □□ □□□t□di□□ □□r th□□□ □□□□□ti□□ i□□□□t□□□t □□□d□. □□□□□ti□□ i□□□□t□□□t □□□d□ th□t i□□□□t i□ □□r□i□□ □□□□riti□□, □□□h □□ th□ □□BT □p□□□□r□d I□t□r□□ti□□□□ E□□it□ □□□d □□□□r□d i□ th□ □□□□, □□□t □□□□□□□ i□ □X tr□□□□□ti□□□ i□ □rd□r t□ b□□□ □□d □□□□ □□□□riti□□, t□ r□p□tri□t□ di□id□□d□ □r i□t□r□□t p□□□□□t□, □□d t□ □□□□□□□ i□ □th□r tr□□□□□ti□□□.

25. □□□□□ □□□b□r□ p□□□□d □hi□h d□□r□□ □□tr□□t i□ □□□□□d□□t□. □□i□ti□□ □□d th□ □□□□□d p□□d□d □p□□ □□□□□d□□t□t□ b□th □x□□□t□ □□d r□p□rt □X tr□d□□ h□□□□t□□ □□d □□□□r□t□□□.

26. □□BT d□□□rib□d it□ □□□□□□□ □□□di□□ □p□□i□□it i□□ □□ti□□ th□ □□□d□ □□ i□□tit□ti□□□□ i□□□□t□r□. □I□ it□ □□□□□ □□ri□d □i□□□□ □ith th□ □E□, th□ □□□p□□□ r□p□□t□d□ □t□t□d th□t it□ □□□t□□ □r r□□□ti□□□hip□ □□r□ pr□di□□t□d □p□□ □□r r□p□t□ti□□ □□□□id□ir□ □□d □□r□i□□ pr□□id□r th□t □dh□r□□ t□ th□ hi□h□□t □t□□d□rd□ □□ □thi□□, □□r□i□□ □□□□it□ □□d r□□□□□t□r□ □□□p□i□□□□. □□□□ □□th□ □□r□i□□□ pr□□id□d b□ □□BT t□ it□ □□□t□di□□ □□□i□□t□ □□ th□ □x□□□ti□□ □□ □□r□i□□ □x□h□□□□

tr□□□□ti□□, □hi□h □□□□□d □i□t□t□p□r□h□□□d □□□□□r□i□□ □□□□riti□□r □□□□□□i□ □rr□□□□ tr□d□.

D. SSBT's Scheme

27. □□ □t□b□r 20, 2009, th□ □□i□r□i□ □tt□r□□□ □□□□r□□□□□i□r□i□ □□□□i□d □ □□□p□i□t □□□□i□□ th□t □t□t□ □tr□t h□d □□□r□h□r□d t□ □□□□□i□r□i□□ □r□□t p□b□i□p□□i□□ □□d□b□t□□□ □□□i□i□□□ □□d□□□r□□r □r□i□□ □x□h□□□□ tr□d□□ □□□d□t□d □□□r □p□ri□d □□□t □□□t □i□ht □□□r□. Th□ □□i□r□i□ □□□□□ □ti□□ □□□□ b□□□d □□ □□ □xt□□i□□ □i□ht□□□□□ □□th i□□□ti□□ti□□, □hi□h i□□□□d□d i□t□r□i□□i□□ □it□□□□□□□ □□d r□i□□i□□ h□□dr□d□ □□th□□□□□d□□□ i□t□r□□□□t□t□□ tr□t d□□□□ □□t□.

28. □□ i□□r□□ti□□ □□d b□i□, □□d □□□□rdi□□ t□ th□ □□i□r□i□ □□, □□□□□d□t, t□rti□□ i□ 2001, □dd□d □□ □di□□□□□□d □□d □b□t□□ti□□□□ r□□□p□t□ th□ □x□h□□□□r□t□it □□□d □h□□□□□i□□ □□r□i□□ □x□h□□□□ tr□d□□□□r it□□i□□t□. Th□□□h□□ □□□□□i□p□□□□d □□t di□□□□□□d t□ th□ □□□□□. □□□□□d□□t□h□d □□r□□□ □□t□□ith th□ir □□r□□□□□t di□□□i□□t th□t □b□i□□t□d □□□□□d□□t□ t□ □h□r□□ th□ir □i□□t□ th□ □□□□ □ □x□h□□□□r□t□□ □□ th□ □□□□ th□t □□□□□d□□t□ □□t□□□□□ □□d t□ □x□□t□ □□r□i□□ □x□h□□□□ tr□d□□r□□□□□t□d b□ th□ □i□□t. □□th□r th□□ d□i□□ □□, h□□□□□r, □□□M □□□□d □x□□□t□ th□ tr□d□ □t □□□□ □x□h□□□□r□t□ □ith□□t i□□□r□i□□ it□ □i□□t, □□d th□□ □□□it□r □□□□t□□ti□□□ i□ th□ r□t□ thr□□h□□t th□ d□□. Th□□, b□□□r th□□□d □□ th□ d□□, □□□M □□□□d pi□□ □ r□t□ th□t □□□□□r b□□□□i□i□□t □□□□□□d□□t, □□d t□□□it□□□i□□t□ th□t th□ tr□d□ h□d □□□□rr□d □t thi□ □th□r, □□□□□□r□t□.

29. □□r i□t□□□□, i□ th□ tr□□□□□ti□□ □□□□ p□r□h□□□□□□r□i□□ □□□□□rit□, □□□M □□□□d □h□r□□ th□ □i□□t □hi□h□r □□r□i□□ □x□h□□□□r□t□ th□t □□□□rr□d □t□r i□ th□ d□□, th□□ □□□□i□□ th□ □i□□t t□ p□□ □ r□ th□□ □h□t □□□M h□d □r□□d p□id. I□ th□ tr□□□□□ti□□ □□□□□□□□□□□r□i□□ □□□□rit□, □□□M □□□□d □h□r□□ th□ □i□□t □□□□□r □r□i□□ □x□h□□□□, th□□ p□i□□ th□ □i□□t □□□□ th□□ □h□t □□□M □t□□□□□□□ r□□□i□□d. I□ □ith□r □□□□t, □□□□□d□t□ □□□□d t□□□ □□r it□□□□ th□

di[illegible]r[illegible] b[illegible] th[illegible] [illegible] [illegible]t [illegible]r [illegible]hi[illegible]h th[illegible] tr[illegible]d[illegible] [illegible] [illegible] [illegible]t[illegible]m[illegible] [illegible]x[illegible]t[illegible]d [illegible]d th[illegible] [illegible] [illegible]t th[illegible] [illegible]BT [illegible]h[illegible]r[illegible]d it[illegible]i[illegible]t.

30. [illegible]d[illegible]t[illegible] i[illegible]t, i[illegible]di[illegible] th[illegible] [illegible], h[illegible]d [illegible] [illegible] [illegible]di[illegible]ri[illegible] th[illegible] tr[illegible]th b[illegible]th[illegible]r[illegible]rd, i[illegible]di[illegible] t[illegible]t[illegible] [illegible]t[illegible] [illegible]t[illegible]t[illegible] [illegible]d tr[illegible]ti[illegible]r[illegible]rd[illegible]pr[illegible]id[illegible]d b[illegible]t[illegible] [illegible]tr[illegible]t i[illegible]th[illegible]rdi[illegible]r[illegible]r[illegible]t[illegible]thir i[illegible]t, i[illegible]di[illegible] th[illegible] [illegible], h[illegible]d [illegible] th[illegible]t th[illegible]tr[illegible]d[illegible]h[illegible]d b[illegible] [illegible]x[illegible]t[illegible]d [illegible]ithi[illegible]th[illegible]r[illegible] [illegible]r[illegible]t[illegible] [illegible]rri[illegible]d[illegible]ri[illegible] th[illegible]t d[illegible], [illegible]t[illegible]ith[illegible]t[illegible]di[illegible] th[illegible]t th[illegible]r[illegible]t[illegible] r[illegible]p[illegible]rt[illegible]d [illegible]t th[illegible] [illegible]t[illegible]r[illegible]t[illegible]r th[illegible]tr[illegible]ti[illegible]. [illegible]d[illegible]t[illegible] i[illegible]t, i[illegible]di[illegible] th[illegible] [illegible], [illegible]r[illegible] [illegible]r i[illegible]r[illegible]d [illegible] th[illegible] [illegible]t[illegible]r[illegible]t[illegible]t [illegible]hi[illegible]h [illegible]X tr[illegible]ti[illegible] [illegible]r[illegible]d. [illegible]d[illegible]t[illegible] pr[illegible]idi[illegible] [illegible]h i[illegible] p[illegible]t[illegible] [illegible]t[illegible]t[illegible] [illegible]t[illegible] [illegible]d tr[illegible]ti[illegible] r[illegible]rd[illegible]t[illegible] thir i[illegible]t, i[illegible]di[illegible] th[illegible] [illegible], [illegible] [illegible]r[illegible] [illegible]d[illegible]t d[illegible]d t[illegible] [illegible]id[illegible] [illegible] thir br[illegible]h[illegible] [illegible]id i[illegible]r[illegible]d t[illegible] [illegible]d pr[illegible]hibit[illegible]d tr[illegible]ti[illegible] [illegible]t [illegible]rth h[illegible]ri[illegible]. Th[illegible] [illegible] [illegible]r[illegible] [illegible]t [illegible] [illegible]t[illegible] [illegible]r [illegible]tr[illegible]ti[illegible] [illegible]ti[illegible] [illegible] [illegible]h [illegible]id[illegible] [illegible]d[illegible]pit thir [illegible]x[illegible]ri[illegible] [illegible]r[illegible] b[illegible]di[illegible].

31. [illegible]r[illegible] [illegible]x h[illegible] tr[illegible]ti[illegible] [illegible]r [illegible]x[illegible]t[illegible]d [illegible]t [illegible] pr[illegible]i[illegible] [illegible]x h[illegible] r[illegible]t, [illegible]hi[illegible] d[illegible]tr[illegible]i[illegible]h[illegible] [illegible]h h[illegible] [illegible]rr[illegible] i[illegible] rth i[illegible]tr[illegible] [illegible]th[illegible]r. Th[illegible] [illegible]t [illegible] [illegible] [illegible]d [illegible]x h[illegible] r[illegible]t i[illegible] th[illegible] I[illegible]tr[illegible]b[illegible] [illegible]t, [illegible]hi[illegible]h [illegible]t[illegible]t[illegible] thr[illegible]h[illegible]t [illegible]h d[illegible] [illegible]d i[illegible]tr[illegible]d [illegible]d p[illegible]bi[illegible]h[illegible]d b[illegible] [illegible]ri[illegible] i[illegible]d[illegible]tr[illegible] [illegible]r[illegible]. Thr[illegible]h[illegible]t th[illegible] [illegible], [illegible]d[illegible]t[illegible] [illegible]x[illegible]t[illegible]d t[illegible] t[illegible]p[illegible] [illegible]r[illegible] [illegible]x h[illegible] tr[illegible]ti[illegible] [illegible]r it[illegible] i[illegible]t. [illegible] [illegible] [illegible]d[illegible]t[illegible] i[illegible]t[illegible] [illegible]d [illegible]d[illegible]t dir[illegible]t[illegible]r [illegible]ti[illegible]d[illegible]r[illegible] [illegible]x h[illegible] tr[illegible]d[illegible]. I[illegible] dir[illegible]t tr[illegible]d, [illegible] i[illegible]titi[illegible] [illegible]d [illegible]t[illegible] [illegible]d[illegible]t[illegible]r pr[illegible]t[illegible]ti[illegible] h[illegible] [illegible]d [illegible]t[illegible] [illegible]x h[illegible] r[illegible]t th[illegible]t th[illegible] i[illegible]titi[illegible] [illegible]d [illegible]pt [illegible]r r[illegible]t. I[illegible] [illegible]d[illegible]t[illegible]r[illegible]t[illegible] [illegible] [illegible]i[illegible]t[illegible] p[illegible]titi[illegible], th[illegible] i[illegible]t [illegible]d [illegible]pt [illegible]d th[illegible] tr[illegible]d[illegible] b[illegible] [illegible]x[illegible]t[illegible]d [illegible]t th[illegible] [illegible]r[illegible]d [illegible]p[illegible] [illegible]x h[illegible] r[illegible]t. [illegible]d[illegible]t[illegible] [illegible]d [illegible]t th[illegible] [illegible]r pr[illegible]i[illegible] th[illegible] tr[illegible]d[illegible] p[illegible] th[illegible] [illegible]t [illegible]th[illegible] [illegible]x h[illegible] r[illegible]t[illegible]t i[illegible]t[illegible].

32. [illegible]r [illegible]r th[illegible] 75[illegible] [illegible]BT[illegible] [illegible]r[illegible] [illegible]t di[illegible] i[illegible]t, h[illegible]w[illegible]r, [illegible]d[illegible]t[illegible] [illegible]d [illegible]d[illegible]t i dir[illegible]t[illegible]r [illegible]t[illegible]di[illegible] i[illegible]tr[illegible]ti[illegible] [illegible]ri[illegible] [illegible]x h[illegible] tr[illegible]d[illegible]. I[illegible] [illegible]t[illegible]di[illegible] i[illegible]tr[illegible]ti[illegible] tr[illegible]d, [illegible]ith[illegible]r th[illegible] i[illegible]titi[illegible] [illegible]r it[illegible] [illegible]t id[illegible] i[illegible]t[illegible] [illegible]t [illegible] [illegible]r [illegible]d b[illegible] [illegible]t[illegible]d [illegible] [illegible]x h[illegible]

rt. In td, th ir d rt tr ti i i r i x h ch h
p r h r i r iti , d d d t d x t th tr ti p r t t it
tr t ith it i t. i r ti d b i , d r th t r BT t di
rr t , BT b i t d t pr id it i t th x h r t th t d t
t m d t th tr d. Thi rr t pp d t b b i i t d t
i t b , th r thi , th d t h t i r th xp d ti
id ti i d h i th t p titi x h r t.

33. d t , i r ti d b i , x t d X tr ti b h
th ir m ti i t t d i th t di i tr ti th d. BT,
t di th ir d , r t b t t b t ti r ti th tr ti
b d i t r tr .

34. H r, thi t th r i t. Th i t h d t d dir t
tr d d b t d x h r t b M b r x ti th tr ti . Th
i t t r h d d t pi h d t t r t pri r , h
B b r r r t r, t d b h th tr th M r t t. rdi ,
d t d t r h r th i t, d th r rr d t th i t r m rt
i t r rt .

35. d t i d b th i r i , th th r i t r th ir i t t r
d i iti t r i x h tr ti b di r t, t tr i m, t th
riti r i it BT, hi h t d th t d id th p .
Thi r t th t tr i m t th t t tr t r i x h tr di d i
M, h r it d pp r th M r t rd r M t t M M t r
d b d t tr d r.

36. Th d t "b t x ti " r ir th t br r d r t t bt i r it
t r th t r b tr r b i b d r th ir t .

□i i□□, th r□□□r, "b□t □x□□ti□□ t□d rd" r□□ir□th t □□□□d□t□x□□t□tr d□□□□t r□□ th t □r □□ □□□□□□□□r b□□ th□□ th□□□ □□□□r d t□ □r□□t d p rti□□i□ □□□□p r b□□ r□□□□□□□th tr□□□□ti□□.

37. □□i ti□□□d th□ □□□□□r□□□□□□b□□ □xp□t d, b□□□□□□□□□d t□r pr□□□t d □d b□□□□□□E□I□□ □□ r□□□ir□, th□t th□□ □r th□ □□□□□□ti□□ i□□□t□ □□t □□d th□□ p rti ip t d i□ □□□d b□□□□r d t r□□□□ "t□di□□ i□tr□ti□□" tr d□□th t □□r□□ □□□□□□r b□□ th□□ th□□□ □□□r d b□□□□□d□t t□ □r□□t d p rti□□i□□□p r b□□ r□□□□□□th □X tr□□□□ti□□.

38. □X tr di□□ t□□□□ p□□□□ r□□□d th□ □□r d □□ □□□r□ 24 h□□r □□□□, i□□□□d□□□ h□□d□□□ □ □□□□. Th□ □□i i□□□X tr di□□ □□□□ b□i□□ t 7□00 □.□., □□□ □□□□□d ti□ □ □□ M□□d□□, □ith □□h □b□□□□□t tr di□□d□□ □di□□ t 5□00 p.□., □□□ □r□□it ti□□.

39. □□ i□□r□ ti□□ □d b□i□, □□□M□□ □X tr d r□ □r□ i□□r□d □□ □□BT□□ □□r□□t d t□di□□ i□tr□ti□□ tr d□r□□ir□□ □t□d ri□□ th□ □□□r□□ □□th□d□□. Th□□X tr d r□ □i□, th t d□□, tr d□ □□ th□ i t rb□□□ □X □ r□□t i□ rd r t□ □ti□□□ □□BT□□ t□di□□ i□tr□ti□□ p□iti□□□. Thi□ pr□□□□□i□□□□d "□□□□□tti□□" th□tr d□.

40. □□i□□r□ ti□□ □d b□i□, □p□r□□ipt □□th□r□□□□t, □□□M□□□r i□□ □x h□□□□ tr d r□ h□□□□d th□ □x h□□□□ r t, □t □pri□, □d □x□□t d th□ tr□□□□ti□□, □hi□h t pi□□□□ □□□□rr d □r□i□ th□d□□ b□□□□□□□□□□M tr d r□□□r□□t th ir d□□□□b□7 □.□. E□t r□ t□d rd Ti□□. □□□□□th□□□tr□□□□ti□□□□r th□□ □t r d b□th□tr d r i t□ □□p r t□□□t□□r□□□t□□ □□□□d □ □□□tr□t □□t□□ □□□□, □hi□h □□□ri□i□d th□tr□□□□ti□□ □d h r d th□□□t □□r p r h□□□□□r r□□itt d th□p□□□ □t □□r □□□□□□dir t□□ t□ □□□□d□t. Th□ □ □□ r□□□rd d ti□ □□t□□p□□□r th□□t□□□, r□□□ti□ □□tr□□□□ti□□.

41. □□i□□r□ ti□□ □d b□i□, □th□□□h th□tr□□□□ti□□ □□□□□ □□□p□t d □d th□ pri□□□□□□d i□, □□□□d□t□did □t i□□r□ th□ i□t. I□t□d, □□i□□r□ ti□□ □d b□i□, □□□M □b□r d □r□t □□□t□ti□□□□ti□□□□ti□ □r□□d 3 p.□. i□ th□ □t r□□□□ □d th□ □□i□□d □ith r □hi□h r □x h□□□□r t□□□r p r h□□□□□r □□□r □x h□□□□r t□□□r □□□□□t□th□□r i□□

exchange transaction that occurred during that day. Applying that rate to the dollar amount of the net dollar-denominated exchange transaction it had conducted that day.

42. Plaintiffs and the Class, at all relevant times, had the option to hedge their FX transactions by entering into offsetting FX transactions with BTMU or other counterparties.

43. Although the FX trading principal in this manner, Defendants did not impose the same restrictions on the trading that BTMU imposed on Plaintiffs and the Class. Instead, Defendants routinely traded in the same currencies at the same time as Plaintiffs and the Class were trading their FX transactions with BTMU.

44. Because Defendants routinely traded at the same time as Plaintiffs and the Class, Defendants were able to profit from their knowledge of Plaintiffs' and the Class's pending FX transactions with BTMU.

45. Plaintiffs and the Class, by principal traded in this manner for their own proprietary trading, Defendants routinely traded ahead of Plaintiffs' and the Class's pending FX transactions. That is, Defendants routinely placed orders to buy or sell currencies for their own proprietary trading accounts while in possession of material, non-public information concerning Plaintiffs' and the Class's pending FX transactions with BTMU.

46. Plaintiffs and the Class, Defendants routinely profited from principal traded in this manner to the detriment of Plaintiffs and the Class's pending FX transactions with BTMU, at the expense of Plaintiffs and the Class, and at the same time as Plaintiffs' and the Class's FX transactions with BTMU.

47. Plaintiffs and the Class, Defendants routinely executed trades in this manner, including, but not limited to, spot, forward, swap, participation, and option, either directly or indirectly, and executed trades that were detrimental to Plaintiffs and the Class in the FX market.

48. Plaintiffs and the Class, Defendants routinely executed trades in which they bought and sold currencies in the FX market, including, but not limited to, spot, forward, swap, participation, and option, either directly or indirectly, and executed trades that were detrimental to the Class in the FX market.

49. [illegible]

E. SSBT Makes Exceptions for Certain Clients, Offering Them Special Pricing

50. [illegible]

51. [illegible]

52. [illegible]

53. [illegible]

V. CLASS ALLEGATIONS

54. **Class Definition**. Plaintiffs bring this action on behalf of themselves and pursuant to Rule 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) on behalf of a class consisting of all persons who beneficially owned shares of Eaton Vance stock and who were damaged thereby. Excluded from the Class are Defendants and their immediate families, the officers, directors and affiliates of Defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest. Also excluded from the Class are any persons who were participants in the Eaton Vance Management Tax-Managed Buy-Write Strategy Portfolio, Eaton Vance Tax-Managed Buy-Write Opportunities Portfolio, or Eaton Vance Tax-Managed Buy-Write Income Portfolio, each of which was liquidated on or about November 1, 2001 and October 19, 2009 (the "Liquidated Funds").

Plaintiffs do not at this time propose any subclasses but reserve the right to propose subclasses as discovery progresses.

55. **Numerosity**. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that the proposed Class includes thousands of Eaton Vance shareholders who are dispersed throughout the United States. As of December 31, 2008, Eaton Vance had approximately 5.2 trillion shares of common stock outstanding. The number of shares owned by Class members is believed to be extremely large. Class members may be expected to reside in various jurisdictions. Class members who purchased Eaton Vance common stock may be identified from records maintained by Eaton Vance or its transfer agent and may be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in securities class actions. For example, the Form 5500 filed by the Eaton Vance Corporation Retirement Plan for the plan year 2009 lists 389 participants. The Eaton Vance Management Tax-Managed Buy-Write Strategy Portfolio, Eaton Vance Tax-Managed Buy-Write Opportunities Portfolio, Eaton Vance Tax-Managed Buy-Write Income Portfolio, each of which was liquidated on or about November 1, 2001 and October 19, 2009, filed Form N-8F, Application for Deregistration of Certain Registered Investment Companies, for the year 2009.

56. **Commonality**. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including, without limitation, whether Defendants engaged in the conduct alleged herein; whether Defendants' practices and representations related to the marketing, sale, and advertising of the Products misrepresented and omitted material facts; whether Defendants' practices and representations related to the marketing, sale, and advertising of the Products were likely to deceive reasonable consumers; whether Defendants' practices and representations related to the marketing, sale, and advertising of the Products violated applicable law; whether Defendants' practices and representations related to the marketing, sale, and advertising of the Products were unfair; and whether Defendants were unjustly enriched.

57. **Typicality**. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs, like all other members of the Class, purchased Defendants' Products. Plaintiffs and all members of the Class sustained monetary and economic injuries including, but not limited to, ascertainable loss arising out of Defendants' wrongful conduct as described herein. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all members of the Class.

58. **Adequacy**. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no interests antagonistic to those of the Class. Plaintiffs are members of the Class and do not have any conflicts of interest with other members of the Class. Accordingly, Plaintiffs will fairly and adequately protect the interests of the Class.

59. **Rule 23(b)(1)(A) & (B) Requirements**. Certification is also appropriate under Fed. R. Civ. P. 23(b)(1)(A), because the prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants. Certification is also appropriate under Fed. R. Civ. P. 23(b)(1)(B), because the prosecution of separate actions by the individual members of the Class would create a risk of adjudications with respect to individual

□□□b□r□□□th□□□□□□□th□t, □□□pr□ti□□□□□□ttr, □□□d b□di□p□siti□□ □□□th□i□t□r□□t□□□□th□r □□□b□r□□□t p□rti□□t□thi□□□ti□□, □r th□t □□□d □□b□t□ti□□□□i□p□ir □r i□p□d□th□ir □bi□it□t□ pr□t□□t th□ir i□t□r□□t□.

60. **Rule 23(b)(2) Requirements**. □□rti□i□ti□□ □□d□r □□□□ 23□b□2□i□ □□rr□□t□d b□□□□□□□□□□d□□t□h□□□□t□d □r r□□□□□d t□ □□t □□ □r□□□d□□□□r□□□ □pp□i□b□□t□th□ □□□□□, th□r□b□□□□i□□ □ppr□pri□t□ i□□□i□□□□□ti□□, d□□□□r□t□r□, □r th□r □□□it□b□□r□i□□□□ith r□p□□t t□ th□ □□□□□ □□ □ □h□□□. □□ p□□□□b□p□□□ i□□□ir□ □□□□d b□ r□□□ir□d t□ d□t□r□i□□ □h□th□r □□□□□d□□t□□br□□h□d th□ir id□i□r□d□ti□.

61. **Rule 23(b)(3) Requirements**. I□ th□□□t□r□ti□□, □rti□i□ti□□ □□d□r □□□□ 23□b□3□ i□□pr□pri□t□b□□□□□□□□□□ti□□□□□□□□□ □r □□□t □□□□□□t□□□□□□□□b□r□pr□d□□i□t□□□□r □□□ □□□□ti□□□□□□□□ti□□ □□□□□i□di□id□□□□□□□b□r□, □d □□□□□□□□ti□□ tr□t□□□t i□□p□ri□r t□ th□□th□r □□□i□b□□□□ th□d□□□r th□□□ir □d □□□i□i□t d□□di□ti□□ □□thi□□□□tr□□□r□□.

VI. CLAIMS FOR RELIEF

COUNT I

Engaging in Self-Interested Prohibited Transactions (Violation of § 406 of ERISA, 29 U.S.C. § 1106 by Defendants)

62. □□pr□i□□□□□□r□□t□□r□i□□□rp□r□t□d h□r□i□.

63. □t □□□r□□□□□t ti□□□, th□ □□□□□d□t□□□t□d □□□id□i□ri□□ □ithi□ th□ □□□□i□□ □□ E□I□□ □ 3□21□□□□□, 29 □.□.□. □ 1002□21□□□□□, b□ □x□r□i□□ □□th□rit□ □□d □□□tr□□□□□r □□□□ □□□□t.

64. Th□□□□□□d□□t□, b□th□ir □ti□□□thr□□□h□□t th□□□□□□□□ri□d, □□□□□d th□□□□□□t□ □□□□□□i□□□□□ir□□□d □□r□□□□□□b□□pri□□d □X tr□□□□□ti□□□.

65. □□ri□□ th□□□□□□□□ri□d, □□□□□d□t□□□□□□□d i□□X tr□□□□□ti□□□□i□□p□□□□□□t□ th□t □□r□□□t □□r th□□x□□□□i□□b□□□□it □□th□□□□□□□□r th□ir p□rti□ip□□t□.

66. Through their [illegible] transactions and principal holdings, [illegible] with respect to the [illegible] for their [illegible] investment and for their [illegible] account. This is a violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

67. [illegible] direct and proximate result of the prohibited transactions in which [illegible], the [illegible], directly or indirectly, paid significant [illegible] for investment transactions that were prohibited by ERISA and detrimental to the [illegible].

68. Pursuant to ERISA § 409(a), defendants are liable to restore to the [illegible] plan the losses resulting from the [illegible] transactions, return any profits obtained by the fiduciaries as a result of the prohibited transactions, and pay any other equitable or remedial relief as appropriate.

COUNT II

Breach of Duties of Prudence and Loyalty
(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by Defendants)

69. [illegible] paragraphs [illegible] are incorporated herein.

70. [illegible] breached their ERISA fiduciary duties of prudence and loyalty, in violation of ERISA § 404(a), including but not limited to the following:

a. [illegible] participating in the [illegible] investment, [illegible] to the [illegible] and the participants;

b. [illegible] the [illegible] investment transaction which the [illegible] in violation of [illegible] transactions that were [illegible] to the [illegible] and to the [illegible];

c. [illegible] to disclose to the [illegible], their fiduciary role, or participation to the [illegible] investment, that the [illegible] was being [illegible] transactions, and that they were receiving [illegible] to the [illegible], and that they were [illegible] the [illegible].

71. The [illegible] during the [illegible] and breaches [illegible] to fiduciary duties and prudent to the [illegible] ERISA [illegible] did not [illegible] their

fiduciary responsibility under the Act to avoid transactions prohibited by the Act. 29 U.S.C. § 1104(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

72. Defendant failed to adequately monitor the performance of Bridgewater from 2001 to 2009, during which time Bridgewater engaged in prohibited transactions with the Plan.

73. As a direct and proximate result of the breaches of duty by Bridgewater, the Plan, and Defendant's failure to monitor Bridgewater and remedy the breaches committed by Bridgewater, the Plan suffered losses.

74. Pursuant to ERISA § 409(a), Defendant is personally liable to restore to the Plan any losses suffered by the Plan as a result of the breaches of fiduciary duty committed by Bridgewater.

COUNT III

Liability for Breach of Co-fiduciary
(Violation of § 405 of ERISA, 29 U.S.C. § 1105)

75. Plaintiff repeats and realleges the foregoing paragraphs.

76. Defendant, as a fiduciary of the Plan, 29 U.S.C. § 1105(a)(1), is liable for participating knowingly in a fiduciary breach by Bridgewater. It did so through the actions described in this Complaint that it took to benefit Bridgewater at the expense of the Plan and its participants and beneficiaries, including failing to terminate the relationship with Bridgewater.

77. Defendant, as a fiduciary of the Plan, 29 U.S.C. § 1105(a)(3), is liable because it knew that Bridgewater had breached its fiduciary duties to the Plan and its participants and beneficiaries, but failed to remedy the breaches by the Bridgewater.

78. As a result of Defendant's failure to monitor the performance of Bridgewater, Defendant is liable for the breaches committed by Bridgewater.

79. Pursuant to ERISA § 409(a), Defendant is personally liable to restore to the Plan any losses suffered by the Plan as a result of the breaches of fiduciary duty committed by Bridgewater.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

Case 1:11-cv-10230-MLW Document 401-13 Filed 11/07/17 Page 18 of 41

80. □□□□r□ th□t th□ □□□□d□□t□ h□□□ □i□□t□d E□I□□□ pr□hibit□d tr□□□□□ti□□□ pr□□i□i□□□□

81. □□□□r□ th□t th□ □□□□d□□t□ br□□□h□d th□ir □id□□i□r□ d□ti□□ □□d□r E□I□□□

82. I□□□□ □□ □rd□r □□□p□□i□□ □ pr□p□r □□□□□□ti□□ □□ th□ □□r□i□□ □x□h□□□□ tr□□□□□ti□□□ i□ □hi□h th□ □□□□□h□□□ □□□□□□d□

83. I□□□□ □□ □rd□r □□□p□□i□□ □ □□□□d□□t□ t□ r□t□r□ □□□□□□□□ □□□□□d t□ th□ □□□□□

84. I□□□□ □□ □rd□r □□□p□□i□□ th□ □□□□d□□t□ t□ di□□□r□ □□ □□□□□□ p□id □□d i□□□rr□d t□ □□□□□d□□t□, i□□□□di□□ □□□ pr□□it□ th□r□□□□

85. □rd□r □□□it□b□□ r□□tit□ti□□ □□d □th□r □ppr□pri□t□ □□□it□b□□ □□□□t□r□ r□□i□□ □□□i□□t th□ □□□□□d□□t□□

86. □□□rd □□□h □th□r □□□it□b□□ □r r□□□di□□ r□□i□□ □□ □□□ b□ □ppr□pri□t□, i□□□□di□□ th□ p□r□□□□□□t r□□□□□□□ □□ th□ □□□□d□□t□ □r□□ □□□ p□□iti□□□ □□ tr□□t □ith r□□p□□t t□ th□ □□□□□ □□d th□ □pp□i□t□□□t □□ i□d□p□□d□□t □id□□i□ri□□t□ □r □□□□□□□t di□□□t th□ □□□□□

87. Th□t thi□ □□ti□□ b□ □□rti□i□d □□ □ □□□□□ □□ti□□ □□d th□t □□□h □□□□□b□d□i□□□t□d t□ r□□□i□□ th□ □□ □□□□t□r□□t□r□d t□ th□ □□□□□ b□ □□□□□d□□t□ □□d □ □□□□tr□□ti□□ tr□□t b□ □□t□b□i□h□d □□r di□trib□ti□□ t□ th□ □xt□□t r□□□ir□d b□ □□□□

88. E□□□i□ □□□□d□□t□ □□□□□□ti□□□□, □□d □□□h □□ th□□ i□di□id□□□□□, □r□□ □□□□ □□rth□r □i□□□ti□□□ □□ th□ir E□I□□ □id□□i□r□ r□□p□□□ibi□iti□□, □bi□□ti□□□, □□d d□ti□□□

89. □□□rd □□□i□ti□□□ th□ir □tt□r□□□□□ □□□□ □□d □□□t□ p□r□□□□t t□ E□I□□ □502□□□, 29 □.□.□. □1132□□□□□d□r th□ □□□□□ □□□ □□□d d□□tri□□□□□d

90. □□□rd □□□h □th□r □□d □□rth□r r□□i□□ □ th□ □□□rt d□□□□ □□□□it□b□□ □□d □□□t.

□□t□d□□□□□□b□r 18, 2011

□□p□t□□□□□□□b□itt□d,
□r□□d H□ri□□□□,
B□hi□□tt□r□□□□,

□□□□□th□ri□□M. □□□pb□□□
□th□ri□□M. □□□pb□□□, E□□.
BB□ □549397
□□□□□□□□□. B□h□□
□□□□□□. B□h□□, E□□.
BB□ □629444
Feinberg, Campbell & Zack, PC
177 Mi□□ □tr□□t, □□it□300
B□□t□□, M□ 02109□3408
T□□□□617□338□1976
□□x□617□338□7070
□□ □□ □□□□□□□.□□□

□. Bri□□M□Ti□□□
□□r□H□□□i□□t□b□i□□d□
b□ □ti□□□□□ □ □ti□□□□□□□.□□□

Br□□□T. □i□
□□r□H□□□i□□t□b□i□□d□

□□□ □□□. M□□r□
□□r□H□□□i□□t□b□i□□d□

McTigue & Veis, LLP
4530 □ i□□□□□i□ □□□□□□, □□
□□it□300
□ □hi□□t□□, □□ 20016
T□□□□202□364□6900
□□x□202□364□9960

□□□□□□□□□r □□i□ti□□

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, AND THOSE SIMILARLY SITUATED, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY and STATE STREET GLOBAL MARKETS LLC AND DOES 1-20, Defendants.	CIVIL ACTION No. 11-cv-12049-MLW

AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Arnold Henriquez (bringing this action pursuant to ERISA on behalf of the Waste Management Retirement Savings Plan ("WM Plan") and its participants and beneficiaries), Michael Cohn (bringing this action pursuant to ERISA on behalf of the Citigroup 401(k) Plan ("Citi Plan") and its participants and beneficiaries), and William Taylor and Richard Sutherland (both bringing this action pursuant to ERISA on behalf of the Retirement Plan of Johnson and Johnson ("J&J Plan") and its participants and beneficiaries) (collectively, "Plaintiffs") bring this action as a class action on behalf of a class of similarly-situated ERISA retirement plans (collectively, the "Plans") and their participants and beneficiaries against State Street Bank and Trust Company ("SSBT") and State Street Global Markets, LLC ("SSGM") (collectively, "Defendants"). The allegations below are based on the investigative efforts of private whistleblower firms, the State of California, the Securities and Exchange Commission

("SEC"), and an investigation by counsel, which included reviewing: Internal Revenue Service Forms 5500 ("Forms 5500") filed with the United States Department of Labor ("DOL"); filings with the United States Securities and Exchange Commission, including Annual Reports on Forms 10-K; documents filed in other litigation; and other publicly available documents related to this action.

I. NATURE OF THE ACTION

2. This is a civil enforcement action brought pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*, and in particular under ERISA §§ 502(a)(2) and (a)(3), 29 U.S.C. §§ 1132(a)(2) and (a)(3), to recover losses and obtain equitable relief on behalf of the WM Plan, the Citi Plan, and the J&J Plan (the "Named Plaintiffs' Plans"), and pursuant to applicable law as a class action to obtain relief for all other similarly situated ERISA plans.

3. SSBT and SSGM were required to act prudently and solely in the interest of the Plans' participants and beneficiaries in their capacity as ERISA fiduciaries. On information and belief, rather than fulfilling their fiduciary duties under ERISA (the "highest known to the law"),[1] the Defendants charged, or allowed to be charged, improper, undisclosed markups on transactions in foreign currency ("FX transactions" or "FX trading") and engaged in prohibited transactions in connection with such FX transactions.

4. The Named Plaintiffs' Plans and the similarly situated Plans are established and sponsored by private entities in accordance with ERISA.

[1] *Donovan v.Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982).

5. Plaintiffs allege that Defendants violated ERISA by causing the Plans, or collective funds (the "Collective Investment Funds") operated by SSBT in which the Plans were invested, to purchase foreign securities through the use of FX transactions at rates favorable to Defendants. These transactions were prohibited transactions under ERISA § 406, 29 U.S.C. § 1106.

6. Plaintiffs also allege that Defendants failed to act solely in the interest of the participants and beneficiaries of the Plans and breached their fiduciary duties of prudence and loyalty with respect to the Plans. Specifically, Plaintiffs allege that Defendants, as fiduciaries of the Plans, violated their fiduciary duties under ERISA § 404, 29 U.S.C. § 1104, by causing the Plans or the Collective Investment Funds operated by Defendants in which the Plans were invested to engage in transactions that were not to the exclusive benefit of the Plans or their participants and beneficiaries.

II. JURISDICTION AND VENUE

7. ERISA provides for exclusive federal jurisdiction over these claims. The Plans are "employee benefit plans" within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and Plaintiffs are participants in the Named Plaintiffs' Plans within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), who are authorized pursuant to ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3), to bring the present action on behalf of those plans and their participants and beneficiaries to obtain appropriate relief.

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all of the fiduciary breaches for which relief is sought occurred in this district and the Defendants reside and may be found in this district.

III. PARTIES

A. Plaintiffs

10. **Plaintiff Arnold Henriquez** is a participant in the WM Plan, an ERISA-covered plan. At all material times from the second quarter of 2005 through the second quarter of 2009, Mr. Henriquez invested in the "International Equity Fund" [2] sponsored by SSBT and offered by the Plan. Mr. Henriquez also invested in other funds sponsored by SSBT and offered by the WM Plan during the Class Period, including the Large Cap Equity Fund, the Small Cap Equity Fund, the Conservative Asset Allocation Fund, the Moderate Asset Allocation Fund, the Aggressive Allocation Fund, the Bond Market, and the SSgA Target Retirement 2030 Fund. Mr. Henriquez resides in Frederick, Maryland.

11. **Plaintiff Michael T. Cohn** is a participant in the Citi Plan, an ERISA-covered plan. At all material times from his initial enrollment in the Citi Plan in January 2005 through

[2] The "International Equity Fund" is the fund name used by SSBT on disclosures to participants in the WM Plan. The International Equity Fund's name, according to the International Equity Fund's Forms 5500 for 2009 and 2010, filed by SSBT with DOL, is the "Active Intl Stock Selection SL SF CL I (CM8J [*sic*]." From 2006 through 2008, the International Equity Fund's name, according to the International Equity Fund's Forms 5500 filed by SSBT with DOL was the "International Alpha Select SL Series Fund – [*sic*]." From 1999 to 2005, the WM Plan offered the SSgA International Growth Opportunities Fund Series A Non-Lending as the "International Equity Fund." The foregoing fund names may refer to the International Equity Fund at a particular point in time, as well as to one or more of several classes of interests offered in the International Equity Fund.

August 2007 Mr. Cohn was invested in the "Aggressive Focus Fund" offered by the Citigroup 401(k) Plan. According to the Citigroup 401(k) Plan Aggressive Focus Fund Fact Sheet for the second quarter of 2004, this fund had the objective of "seek[ing] as high a total return over time as is consistent with a primary emphasis on equity securities and a secondary emphasis on fixed-income and money market securities." The Aggressive Focus Fund was a "fund of funds" managed by SSBT that included two funds focused on international equities: (a) the Daily EAFE Index Securities Lending Series – Class T; and (b) the Daily Emerging Markets Index Non Lending Series Fund. These two funds accounted for 24% of the Aggressive Focus Fund's total holdings in 2004. In September 2007, the Citigroup 401(k) Plan changed its investment options, and Mr. Cohn invested in the newly offered "Emerging Market Equity" collective investment fund. He is still invested in that fund as of the date of this complaint. This Emerging Market Equity fund has used SSBT as an investment manager since it was first offered to the Citigroup 401(k) Plan in 2007. Mr. Cohn resides in Highland Park, Illinois.

12. **Plaintiff William R. Taylor** is a participant in the Retirement Plan of Johnson and Johnson, an ERISA-covered plan. Mr. Taylor began working at Johnson and Johnson and accruing service towards his pension benefit on September 21, 1998. At all relevant times to this complaint, SSBT served as the trustee and custodian of both the J&J Plan and the Johnson and Johnson Pension and Savings Plan Master Trust in which the J&J Plan was wholly invested. Mr. Taylor resides in Aston, Pennsylvania. The J&J plan holds foreign investments in both international securities that cannot be purchased on a domestic exchange and foreign currency. Each of these types of holdings requires FX transactions.

13. **Plaintiff Richard A. Sutherland** is a participant in the Retirement Plan of Johnson and Johnson, an ERISA-covered plan. Mr. Taylor began working at Johnson and

Johnson and accruing service towards his pension benefit on January 1, 1999. At all relevant times to this complaint, SSBT served as the trustee and custodian of both the J&J Plan and Johnson and Johnson Pension and Savings Plan Master Trust in which the defined benefit plan was wholly invested. Mr. Sutherland resides in Albuquerque, New Mexico. The J&J plan holds foreign investments in both international securities that cannot be purchased on a domestic exchange and foreign currency. Each of these types of holdings requires FX transactions.

B. Defendants

14. **Defendant State Street Bank and Trust Company** ("SSBT") is incorporated in Massachusetts and is headquartered in Boston, Massachusetts. Defendant State Street Bank and Trust Company directly, or indirectly through one or more subsidiaries, operates as a custodial bank for ERISA-covered benefit plans and for the Collective Investment Funds offered by ERISA-covered plans. SSBT is a subsidiary of State Street Corporation, a financial holding company headquartered in Boston, Massachusetts. SSBT describes itself as a leading specialist in meeting the needs of institutional investors. In its Class Period filings with the SEC, State Street Corporation repeatedly stated that its customer relationships were predicated upon our reputation as a fiduciary and a service provider that adheres to the highest standards of ethics, service quality and regulatory compliance. One of the services provided by SSBT to its custodial clients was the execution of FX transactions, which allowed clients to purchase and sell foreign securities or to engage in foreign currency trades for other purposes. Another of the services provided by SSBT to its custodial clients is investment management of custodial client assets through the use of "collective investment funds," which are described more fully below.

15. **Defendant State Street Global Markets, LLC** ("SSGM"), a subsidiary of State Street Corporation, is incorporated in Delaware and is headquartered in Boston, Massachusetts. SSGM is a broker/dealer registered with the SEC, the Financial Industry Regulatory Authority, ten self-regulatory authorities, and fifty-three U. S. states and territories. SSGM is the only State Street Corporation subsidiary registered as a brokerage firm. SSGM is the corporate successor of State Street Brokerage Services, Inc. and State Street Capital Markets, LLC. On or about June 1, 1999, State Street Capital Markets, LLC assumed all of the assets and liabilities of State Street Brokerage Services. Inc. State Street Brokerage Services, Inc. was dissolved, but "State Street Brokerage Services," not followed by "Inc.," continued to exist as a division of State Street Capital Markets, LLC. On or about March 1, 2002, SSGM assumed all of the assets and liabilities of State Street Capital Markets, LLC. SSGM describes itself as "the investment research and trading arm of State Street Corporation." SSGM provides specialized investment research and trading in foreign exchange, equities, fixed income, and derivatives to ERISA covered benefit plans. Confusingly, in their answer to the complaint-in-intervention of the California Attorney General described below,[3] SSBT and SSGM assert that SSBT executed FX transactions for its clients through a division of SSBT called "State Street Global Markets," which was a separate entity from Defendant State Street Global Markets, LLC. In marketing documents for its "Foreign Exchange Global Strategy,"[4] State Street Corporation has described

[3] *People of the State of Calif. v. State Street Corp.*, Case No. 34-2008-00008457-CU-MC-GDS. (Cal. Super. Ct., Sacramento County, April 12, 2010.).

[4] State Street Corporation added further confusion through its marketing materials, which state that "[p]roducts and services outlined in this document are offered to professional investors through State Street Global Markets LLC, which is a member of FINRA and SIPC, and State Street Bank and Trust Company, State Street Global Markets International Limited and State Street Bank Europe Limited, all of which are authorized and regulated by the Financial Services Authority in the United Kingdom, and their affiliates." State Street Global Markets, *Foreign Exchange Global Strategy*, www.statestreetglobalmarkets.com, 09-SGM08041209 (2010).

"State Street Global Markets" as "the marketing name and a registered trademark of State Street Corporation, used for its financial markets business and that of its affiliates."[5] Any action taken by the "State Street Global Markets" division of SSBT was an action of SSBT.

16. State Street Corporation, SSBT, and SSGM are under common control within the meaning of 29 C.F.R. § 2510.3-21(e)(1)(i). Further, State Street Corporation, SSBT, and SSGM are "affiliates" within the meaning of (a) Prohibited Transaction Exemption 94-20, § IV.(d), (e), 59 Fed. Reg. 8022-02, 8026 (Feb. 17, 1994) and (b) Prohibited Transaction Exemption 98-54 §IV. (e), (l), 63 Fed. Reg. 63503, 63510, because they directly or indirectly, or through one or more intermediaries, control, are controlled by, or are under common control with each other.

17. **Defendants Does 1-20** are fiduciaries of the Plans relevant to this lawsuit whose exact identities will be ascertained through discovery.

IV. THE FOREIGN EXCHANGE SCHEME

A. SSBT's General FX Trading Practices for Non-ERISA Clients

18. According to its September 26, 2006 Investment Manager Guide, SSBT purported to offer two generic types of foreign exchange transactions to third party investment managers for SSBT's custody clients. It offered "direct deals" whereby investment managers "deal[t] foreign exchange directly with [SSBT] Treasury trading desks." SSBT also offered "indirect deals" whereby "requests to execute a foreign exchange transaction [could be] sent to the processing site with the related securities instruction or as a separate instruction." As set forth below, indirect deals were also sometimes described as "standing instruction" trades.

[5] *Id.*

19. According to a class action securities fraud complaint filed in this Court on July 29, 2010 (*Hill v. State Street Corp.*, Document No. 51, Master Docket No. 09-cv-12146-NG), for more than 75% of SSBT's large custodial clients, Defendants would conduct "indirect" or "standing instruction" foreign exchange trades, as described in SSBT's September 26, 2006 Investment Manager Guide. Under the terms of SSBT's custodial arrangements, SSBT was obligated to provide its clients the same exchange rate that Defendants actually used to make the trade. This arrangement was supposed to be beneficial to Defendants' clients because, among other things, they would not have to incur the expense and time of identifying and choosing the most competitive exchange rate.

20. On October 20, 2009, based upon an investigation undertaken after the sealed filing of a *qui tam* complaint by "Associates Against FX Insider Trading" on the personal knowledge of Associates' partners, the California Attorney General ("California AG") filed a complaint alleging that SSBT, SSGM, and a third entity, State Street California Inc., had systematically overcharged two of California's largest public pension funds by tens of millions of dollars for foreign exchange trades conducted over a period of at least eight years. *People of the State of Calif. v. State Street Corp.*, Case No. 34-2008-00008457-CU-MC-GDS. (Cal. Super. Ct., Sacramento County Oct. 20, 2009.).

21. The California AG's action was based on an extensive eighteen-month investigation, which included interviewing witnesses and reviewing hundreds of thousands of internal State Street documents.

22. On information and belief, and according to the *qui tam* relators and the California AG, Defendants herein, starting in 2001, added an undisclosed and substantial "mark-up" to the exchange rate they used when making foreign exchange trades for its clients.

23. The California AG's allegations of undisclosed "mark-ups" were based in part on the sworn testimony of a former SSBT employee who worked on the same trading floor as the SSBT or SSGM foreign exchange traders and who overheard how SSBT or SSGM foreign exchange traders were marking up FX trade prices. This trader, in sworn testimony, described the practices of SSBT's FX traders as a "totally unethical thing to do" and said that the FX Traders practices were not within the "industry standard." *People of the State of Calif. v. State Street*, Declaration of Kenny V. Nguyen, Case No. 34-2008-00008457-CU-MC-GDS (January 31, 2012).

24. The California AG went on to explain that Defendants had agreements with their large custodial clients that obligated Defendants to charge their clients the same exchange rate as the one that Defendants actually used to execute FX trades requested by the client. Rather than doing so, however, SSBT or SSGM would execute the trade at one exchange rate, and then monitor fluctuations in the rate throughout the day. Then, before the end of the day, SSBT or SSGM would pick a rate that was more beneficial to Defendants, and tell its clients that the trade had occurred at this other, false rate.

25. The California *qui tam* relators explained that, for instance, if the transaction was a purchase of a foreign security, SSGM or SSBT would execute the transaction, but would charge the client a higher foreign exchange rate that occurred later in the day, thus causing the client to pay more for the security in U.S. Dollars than the U.S. Dollar value at the time SSBT or SSGM executed the transaction. If the transaction was a sale of a foreign security, SSBT or SSGM would execute the transaction, but would credit the client at a lower foreign exchange rate, thus paying the client less in U.S. Dollars than the U.S. Dollar value of what SSBT or SSGM actually received at the time SSBT or SSGM executed the transaction. In either event, Defendants would

take for themselves the difference between the amount for which the trade was actually executed by SSBT or SSGM and the amount that SSBT or SSGM charged its custody clients for the transaction.

26. According to the California AG complaint-in-intervention and a subsequent amended class action complaint filed in the District of Massachusetts,[6] Defendants' clients did not discover the truth because the records, including statements of account and transaction records provided by SSBT in the ordinary course to their clients, showed only that the trade had been executed within the range of rates occurring during that day, notwithstanding that the rate reported was not the actual rate for the transaction. Defendants' clients were not informed of the actual rates at which FX transactions were made. Defendants' providing such incomplete statements and transaction records to their clients was a course of conduct designed to conceal evidence of their breaches of fiduciary duty and prohibited transactions set forth herein.

B. How SSBT's Foreign Exchange Trading Scheme Worked

27. As detailed by the California relators, clients or their investment managers would initiate a foreign exchange transaction by sending a request, often electronically, to the Securities Processing Unit of SSBT, which was located on the "custody side" of the Company. This request was then sent electronically to the State Street foreign exchange trading desk in SSGM, where it would appear on the Market Order Management System ("MOMS") software used by Defendants' traders.

28. According to the Arkansas State Teacher Retirement System amended class action complaint, SSBT or SSGM's FX traders were informed of SSBT's aggregated standing

[6] *Arkansas State Teacher Retirement System v. State Street Corp.*, No. 11-CV-10230 (MLW) (April 15, 2011).

instruction trade requirements during the course of the day. The FX traders would, that day, trade on the interbank FX market in order to satisfy SSBT's standing instruction positions.

29. According to a class action securities fraud complaint filed in this Court ("*Hill*"),[7] upon receipt of the request, SSBT or SSGM's foreign exchange traders checked the exchange rate, set a price, and executed the transaction, which typically occurred early in the day because SSBT or SSGM traders were at their desks by 7 a.m. Eastern Standard Time. All of those transactions were then entered by the trader into a separate software system called Wall Street Systems ("WSS"), which memorialized the transaction and charged the cost (for purchases) or remitted the payment (for sales) directly to Defendants. The WSS recorded time stamps for the actual, real time transaction.

30. According to the *Hill* class action securities fraud complaint, although the transaction was now completed and the price locked in, Defendants did not inform the client. Instead, on information and belief, SSBT or SSGM observed market fluctuations until sometime around 3 p.m. and then assigned either a higher exchange rate (for purchases) or a lower exchange rate (for sales) to the foreign exchange transactions that occurred during that day. SSGM then applied that rate to all of the "standing instruction" foreign exchange transactions it had conducted that day.

31. On information and belief, at all relevant times to this Complaint, this pricing scheme was used for FX transactions for both custodial clients, including custodial ERISA plan clients, and for transactions involving the Collective Investment Funds.

[7] *Hill v. State Street Corporation*, Document No. 51, Master Docket No. 09-cv-12146-NG. (July 29, 2010).

32. On information and belief, with each FX trade priced in this manner, Defendants did not simply profit; they made excessive profits on each trade, based upon the range-of-the-day's FX rates at the point the trade was priced for the Plan.

33. On information and belief, because Defendants' scheme always priced the trades at or near the very lowest or very highest rates of the day, Defendants were able to make a profit with minimal risk to SSBT.

34. According to the California AG complaint-in-intervention, Defendants' practice of pricing trades in this manner and taking the largest possible mark-up or mark-down was not disclosed to custodial clients over the period of time relevant to that Complaint.

35. On information and belief, Defendants' practice of pricing trades in this manner and taking an excessive mark-up or excessive mark-down was not disclosed to investors in the Collective Investment Funds over the period of time relevant to this Complaint.

C. SSBT Made Exceptions for Certain Clients, Offering Them Special Pricing

36. According to the class action securities fraud complaint filed in this Court on July 29, 2010 (*Hill v. State Street Corporation*, Document No. 51, Master Docket No. 09-cv-12146-NG), over time, SSBT developed a special class of custodial clients that did not receive the excessively high or excessively low range-of-the-day pricing suffered by other custodial clients, including ERISA plans. Those clients who conducted "direct trades" would be quoted an exchange rate by SSBT or SSGM before executing the transaction. These clients – often large hedge funds – typically had easy access to an alternate price source, such as Bloomberg or Reuters, to double-check the truthfulness of SSBT or SSGM's rate quotes. Accordingly,

Defendants could not overcharge these clients, and thus referred to them internally as "smart" clients or "smart money."

37. According to the class action securities fraud complaint, instead of including FX trades for these custodial clients with other clients' trades, and subject to the excessive range-of-the-day mark-ups and mark-downs, these clients were allowed to deal directly with Defendants and were given the chance to directly negotiate prices for their FX requirements for that day, despite their trades coming to SSBT as standing instruction trades.

38. As a result, according to the class action securities fraud complaint, the "smart money" custodial clients received better pricing than their fellow custodial clients who are still subject to SSBT's excessive pricing schemes.

V. FACTUAL BACKGROUND OF ERISA PLAN CLAIMS

A. The Plans.

39. **Waste Management Retirement Savings Plan.** The WM Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

40. **Citigroup 401(k) Plan.** The Citi Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

41. **Retirement Plan of Johnson and Johnson.** The J&J Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

42. **Other Similarly Situated ERISA Plans**. Defendants provide services similar to those provided to the Waste, Citi, and J&J Plans to other, similarly situated Plans, either directly as plan custodian or indirectly as custodian of funds in which the Plans invest.

B. *Retirement Plan Investments in Foreign Securities*

43. There are two types of ERISA-covered pension plans — defined benefit plans and defined contribution plans. Both types of retirement plans have, especially over the last decade, found it necessary and prudent to expand their investments to include exposure to foreign markets. Accordingly, defined benefit plans have expanded international holdings, and defined contribution plans frequently include at least one, if not several, international investment options.

44. ERISA-covered plans regularly purchase and sell foreign securities in order to increase diversification and take advantage of opportunities for higher returns. Retirement plans that invest in foreign securities receive principal, dividends, and interest that are paid in foreign currencies, or participate in other investments that require the exchange of foreign currency into and from US Dollars ("USD"), either directly or through participation in collective investment funds. As a result, the purchase and sale of currencies incidental to a foreign securities transaction is vital to a plan's participation in the international securities markets and to the acquisition, holding, and disposition of foreign securities.

45. SSBT served as trustee and custodian to the WM Plan. Beginning in 1999, the WM Plan offered participants the option to invest in certain Collective Investment Funds, the SSgA International Growth Opportunities Fund Series A Non-Lending. For purposes of communications with the WM Plan and its participants, this fund was named the "International Equity Fund." The International Equity Fund is described more fully below. Another example is the SSgA Target Retirement 2030 Fund offered to WM Plan participants. In 2008, the SSgA Target Retirement 2030 Fund invested in another SSBT Collective Investment Fund, the SSgA MSCI ACWI EX-US Index Fund, a collective investment fund that held foreign securities and

would have been, directly or indirectly, party to FX transactions executed by SSBT or its affiliate SSGM. Neither of these Collective Investment Funds could have been operated without FX transactions, whether or not those transactions were executed at the fund level or at the brokerage level. SSBT, as the operator and manager of these funds, was ultimately responsible for the funds' FX transactions.

46. SSBT served as trustee and custodian to the Citi Plan. Similarly, the Citi Plan in 2008 offered four international Collective Investment Funds (either directly or as part of an underlying investment of the fund) operated and managed by SSBT: the SSgA EAFE Fund; the SSgA International Small Cap Fund; the SSgA MSCI EAFE Fund; and the SSgA MSCI Emerging Markets Free [*sic*]. None of these funds could have been operated without FX transactions, whether those transactions were executed at the Collective Investment Fund level or brokerage level. SSBT, as the operator and manager of these funds, was ultimately responsible for those FX transactions.

47. SSBT served as trustee and custodian to the J&J Plan. The J&J Plan did not invest in the Collective Investment Funds. Rather, the J&J Plan directly held foreign assets, including currency, such as Euros, and foreign securities that could not have been purchased on a domestic exchange. An example of one such security is Elpida Memory Inc, a Japanese stock available only on a Japanese exchange. The J&J Plan could not have made use of foreign currencies or purchased foreign securities which are not traded on U.S. securities exchanges without FX transactions. On information and belief, SSBT, as trustee and custodian of the J&J Plan, executed some or all of the J&J Plan's foreign currency transactions in the relevant period.

C. Defendants' Fiduciary Status

48. Every plan governed by ERISA must have fiduciaries to administer and manage the plan. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA §402(a)(1), but also any other person who in fact performs fiduciary functions. ERISA §3(21)(A)(i), 29 U.S.C. §1002(21)(A)(i) (a person is a fiduciary "to the extent … he exercises any discretionary authority or discretionary control respecting management of such plan or ***exercises any authority or control respecting management or disposition of its assets***…") (emphasis added).

49. An ERISA fiduciary is required to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and … for the exclusive purpose of … providing benefits to participants and beneficiaries and … defraying the reasonable expenses of administering the plan …." ERISA § 404(a)(1)(A)(i), (ii), 29 U.S.C. § 1104(a)(1)(A)(i), (ii).

50. Moreover, ERISA prohibits certain transactions. Specifically, unless exempted pursuant to ERISA § 408, 29 U.S.C. 1108:

> A fiduciary with respect to a plan shall not--
>
> **(1)** deal with the assets of the plan in his own interest or for his own account,
>
> **(2)** in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or
>
> **(3)** receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

ERISA §406(b), 29 U.S.C. 1106(b). As described below, Defendants functioned as fiduciaries to the Named Plans both by acting as trustee and custodian for the Plans and by exercising authority and control over Plan assets.

1. SSBT as Custodian

51. An ERISA-covered Plan's custodial bank is an ERISA fiduciary. A "custodian" is an institution that holds securities on behalf of investors. The responsibilities entrusted to a custodian include the guarding and safekeeping of securities, delivering or accepting traded securities, and collecting principal, interest, and dividend payments on held securities. Custodians may also perform ancillary services for their clients. Custodians are typically used by institutional investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. The use of a custodial bank is intended to reduce the risk of misconduct by separating the custodial and asset management duties. An independent custodian ensures that the investor has unencumbered ownership of the securities other agents represent to have purchased on its behalf.

52. SSBT served as the custodian for many ERISA-covered pension plans. Specifically, SSBT served as custodian for the Named Plans' assets. As custodian, SSBT was a fiduciary under ERISA and owed fiduciary duties to the Named Plans. SSGM also exercised authority and control over the Plans' assets in its role as SSBT's affiliate responsible for setting the exchange rates on FX transactions and executing those transactions. As discussed above, this process created the excessive spread between the marked-up FX exchange rates charged to custodial ERISA plan clients and the marked-down FX exchange rates used to process repatriation of principal, dividends, and interest paid in foreign currencies, and other FX transactions.

2. SSBT as Investment Manager of Collective Investment Funds for ERISA Plans

53. SSBT sponsored and operated the Collective Investment Funds and offered them to the ERISA plans, including the Plans and the Similarly Situated ERISA Plans. SSBT served as custodian and trustee for the Collective Investment Funds. The Collective Investment Funds were under the exclusive management and control of SSBT.

54. On information and belief, all of the Collective Investment Funds which invested in foreign securities suffered from the same inaccurate FX pricing described in the California *qui tam* complaint, the California AG complaint-in-intervention, and the *Hill* securities fraud class action complaint. *See* ¶¶ 18-38, *supra*.

55. Investments in collective investment funds are equity interests in a separate legal entity, but are not publicly-offered securities or securities issued by an investment company registered under the Investment Company Act of 1940, *i.e.*, mutual funds. Under ERISA, unlike mutual funds and other publicly-offered securities, investments in collective investment funds are subject to a unique "look-through" rule, pursuant to which, the "plan assets" of an ERISA-covered plan include ***both*** its undivided "equity interest [in the entity] ***and*** an undivided interest in each of the underlying assets of the entity …". 29 C.F.R. § 2510.3-101(a)(2); *see also* ERISA § 3(42), 29 C.F.R. § 1002(42) (authority of Secretary of Labor to define term "plan assets" by regulation) (emphasis added). Specifically, when a Plan acquires or holds an interest in a common or collective trust fund, that is, a Collective Investment Fund, "its assets include its investment and an undivided interest ***in each of the underlying assets*** of the entity." *Id*. § 2510.3-101(h)(1) (emphasis added).

56. "[A]ny person who exercises authority or control respecting the management or disposition of such underlying assets, and any person who provides investment advice with

respect to such assets for a fee (direct or indirect) is a fiduciary of the investing plan." *Id*. § 2510.3-101(a).

57. As the sponsor and operator of the Collective Investment Funds, SSBT exercised authority or control with respect to the management or disposition of plan assets. Accordingly, SSBT was a fiduciary of each and every ERISA Plan which invested in the Collective Investment Funds, including the Named Plaintiffs' Plans and the Plans, with respect to the underlying assets of each and every SSBT Collective Investment Fund.

58. In addition, according to SSBT documents provided by the WM Plan in April 2002 to a participant in the WM Plan in response to the participant's request for plan documents pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), on or about January 1, 1999, the Investment Committee of the WM Plan appointed SSBT to act as Investment Manager of the WM Plan "as such term is defined in Section 3(38) of [ERISA]" with respect to designated assets of the WM Plan. The designated assets included five of the Collective Investment Funds, one of which was the "International Growth Opportunities Fund Series A," that is, the International Equity Fund. Accordingly, SSBT also had authority and control over plan assets in its capacity as Investment Manager, including assets invested in the Collective Investment Funds, and specifically including assets invested in the International Equity Fund. This arrangement continued throughout the WM Plan's association with SSBT, regardless of the specific international equity fund being offered to participants at any given time.

3. Foreign Exchange Transactions Under ERISA

59. Certain of the Collective Investment Funds SSBT operated and offered to ERISA-covered plans during the Class Period invested in foreign securities. SSBT served as custodian

and trustee for these Collective Investment Funds. Collective investment funds that invest in foreign securities, or a person acting on their behalf, must engage in FX transactions in order to buy and sell securities, to repatriate dividends or interest payments, and to engage in other transactions. As the trustee of the Collective Investment Funds, SSBT was authorized to convert any monies into any currency through foreign exchange transactions and responsible for ensuring that these transactions were within the bounds of SSBT's fiduciary responsibilities and the limitations of ERISA.

60. For example, according to SSBT documents provided by the WM Plan in April 2002 to a participant in the WM Plan in response to the participant's request for plan documents pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), the stated investment objective of the International Equity Fund in the Waste Management Plan was "to provide long-term capital appreciation through equity investments ***in markets outside the United States***." (Emphasis added).

61. The WM Plan's Investment Policy Statement noted that "[t]he goal of the International Equity Fund is to invest in a portfolio of common stocks that will provide a vehicle for investing in a broad cross section of non-U.S. equities." The International Equity Fund was also permitted to invest in equity-based derivatives of foreign securities and fixed income securities issued by governments and corporations located in those countries. The "investable universe" of the International Equity Fund was "the equities of all developed market countries, excluding the U.S., including American Depositary Receipts." The International Equity Fund's benchmark was the "MSCI-EAFE Index, an index of more than 1,100 stocks in 21 countries outside of North and South America …."

4. SSGM as a Functional Fiduciary of ERISA Plan Assets

62. As noted above, many of the securities purchased, held, or sold in the Collective Investment Funds were foreign securities that could not be purchased or sold except on foreign securities exchanges in transactions denominated in foreign currencies.

63. As described more fully below, as a practical matter, unless a Collective Investment Fund invested solely in American Depositary Receipts or derivatives issued in the jurisdiction of the United States, the Investment Manager of the Collective Investment Fund, *i.e.*, SSBT, or some person acting on its behalf, such as a broker, was required to engage in foreign currency transactions in order to acquire equity securities "in markets outside the United States." Any funds used to acquire such securities at any level within SSBT, or through any affiliate thereof, would constitute "plan assets" under 29 C.F.R. § 2510.3-101.

64. On information and belief, SSGM provided brokerage services, that is, the purchase and sale of foreign securities, to the Collective Investment Funds. To the extent that the Collective Investment Funds settled such purchases and sales in U.S. Dollars, the Collective Investment Funds did not engage directly in FX trading in connection with the purchase or sale of foreign securities. Rather, they engaged in FX trading indirectly through SSGM, in that SSGM would have executed a purchase or sale of a foreign security in foreign currency and then converted the transaction to a U.S. Dollar-denominated transaction for purposes of settlement with the Collective Investment Funds.

65. On information and belief, SSGM also served as the conduit for the repatriation of dividend, principal, and interest payments by issuers of foreign securities and for receipt of proceeds of sales of foreign securities, and engaged in FX transactions in order to remit such payments to the Collective Investment Funds in U.S. Dollars.

66. SSGM's conversion of foreign currency to U.S. dollars constituted the exercise of authority or control respecting the management or disposition of the underlying assets of the Collective Investment Funds and, therefore, of assets of the ERISA Plans, within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(1), and 29 C.F.R. § 2510.3-101(a). Accordingly, SSGM was a fiduciary of the ERISA Plans.

5. Defendants' Prohibited Transactions

67. According to its September 26, 2006 Investment Manager Guide, SSBT purported to comply with a special procedure when effecting foreign exchange transactions for ERISA trust and custody clients. Until at least September 26, 2006, the so-called "FX Procedure" purported to be "designed to satisfy the conditions of Prohibited Transaction Exemption 94-20 ("PTE 94-20"). A prohibited transaction exemption permit[ted] certain 'directed' FX transactions between [SSBT] and its ERISA clients." Under the ERISA "FX Procedure," SSBT "agree[d] to post to its website on a daily basis, a specific buy rate and sell rate for each currency. Each ERISA plan manager [could] direct [SSBT] to effect the plan's FX transactions, including income repatriation and buy/sell related transactions at the posted rates or at rates more favorable if market conditions warrant."

68. The September 26, 2006 Investment Manager Guide did not, however, address foreign exchange transactions conducted in connection with assets managed directly by SSBT, as in the Collective Investment Funds. Under the terms of PTE 94-20, FX transactions generated by SSBT as investment manager of the Collective Investment Funds and executed by SSBT or SSGM could not be conducted under this so-called "FX Procedure," because, among other things, SSBT as investment manager would be dealing with itself, regardless of whether the FX

transactions were conducted internally at SSBT or through its affiliate, SSGM, without the benefit of an independent fiduciary.

69. Nor was there any other applicable prohibited transaction exemption. As set forth above, the terms of FX transactions conducted on behalf of the Collective Investment Funds were conducted on terms less favorable than the terms generally available in comparable arm's length FX transactions between unrelated parties and on terms less favorable than the terms generally afforded by the bank in comparable arm's length FX transactions between unrelated parties. Accordingly, the Defendants could not engage in FX transactions in connection with plan assets in the Collective Investment Funds without engaging in a prohibited transaction.

VI. CLASS ALLEGATIONS

70. **Class Definition**. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Plan and its participants and beneficiaries and the following class of similarly-situated persons (the "Class"):

> All qualified ERISA Plans (including the participants and beneficiaries thereof) for which State Street Bank and Trust Company or State Street Global Markets, LLC served as investment manager (including serving as the manager of a collective trust in which such a Plan invested) or trustee or custodian of assets and for which State Street Bank and Trust Company or State Street Global Markets, LLC provided foreign currency exchange transactional services (including foreign currency transactional services provided to entities such as collective trusts that held such ERISA Plans' assets), at any time between January 1, 2001 and the present (the "Class Period").

Class treatment is appropriate in this case because it would promote judicial economy by adjudicating the Plaintiffs' ERISA fiduciary breach and prohibited transaction claims with respect to all of the Plans and participants and beneficiaries in the class.

71. **Numerosity**. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that hundreds of ERISA Plans throughout the country invested in the Collective Investment Funds during the Class Period, and sustained losses as a result of the Defendants' imprudent FX trading activities. Defendants have more than $5.2 trillion of pension assets under custody. These assets could all be exposed to Defendants' improper pricing scheme. Plaintiffs believe that hundreds of ERISA plans are also exposed to the Collective Investment Funds with investments in foreign securities.

72. **Commonality.** The claims of Plaintiffs and all Class members originate from the same misconduct, breaches of duties and violations of ERISA perpetrated by Defendants with regard to management of its FX trading program. The questions of law and fact common to the Class include, but are not limited to:

a. Whether Defendants breached their fiduciary duties to the Plans by using an FX trading scheme to overcharge the Plans, or the Collective Investment Funds in which the Plans invested, for FX trading;

b. Whether Defendants' self-interested FX transactions constituted transactions prohibited under ERISA's statutory restrictions;

c. Whether Defendants' fiduciary breaches caused losses to the Plans; and

d. Whether Defendants' prohibited transactions caused losses to the Plans.

73. **Typicality.** Plaintiffs' claims on behalf of their Plans are not only typical of, but the same as, claims that would be brought with respect to other Plans. If cases were brought and prosecuted individually, each of the members of the Class would be required to prove the same

claims based upon the same conduct of the Defendants, using the same legal arguments to prove Defendants' liability, and would be seeking the same relief.

74. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel that are competent and experienced in class action and ERISA litigation. Plaintiffs have no interests antagonistic to, or in conflict with those of the Class. Plaintiffs have undertaken to protect vigorously the interests of the absent members of the Class.

75. **Rule 23(b)(1)(A) & (B) Requirements.** Class action status is warranted under Fed. R. Civ. P. 23(b)(1)(A), because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is also warranted under Rule 23(b)(1)(B), because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

76. **Rule 23(b)(2) Requirements.** Certification under Rule 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other equitable relief with respect to the Class as a whole. No plan-by-plan inquiry would be required to determine whether Defendants' breached their fiduciary duties.

77. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to Class members predominate over any

questions affecting only individual members, and class action treatment is superior to the other available methods for the fair and efficient adjudication of this controversy.

VII. CLAIMS FOR RELIEF

COUNT I

Engaging in Self-Interested Prohibited Transactions
(Violation of § 406 of ERISA, 29 U.S.C. § 1106 by Defendants)

78. All previous averments are incorporated herein.

79. At all relevant times, the Defendants acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), by exercising authority and control over ERISA plan assets.

80. The Defendants, by their actions throughout the Class Period, caused the Plans to engage in unfairly and unreasonably priced FX transactions.

81. During the Class Period, Defendants engaged in FX transactions using plan assets that were not for the exclusive benefit of the Plans' or their participants.

82. Through their FX transactions and pricing scheme, Defendants dealt with assets of the Plans for their own financial benefit and for their own account. This is a violation of ERISA § 406(b)(1) & (3), 29 U.S.C. 1106(b)(1) & (3).

83. As a direct and proximate result of these prohibited transaction violations, the Plans, directly or indirectly, paid millions of dollars in transaction fees that were prohibited by ERISA and suffered millions of dollars in losses.

84. Pursuant to ERISA, Defendants are liable to disgorge all fees paid them for the Plans' FX transactions, to restore all losses suffered by the Plans as a result of the prohibited transactions, and to disgorge all profits earned on the fees paid by the Plans to Defendants.

COUNT II

Breach of Duties of Prudence and Loyalty
(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by Defendants)

85. All previous averments are incorporated herein.

86. Defendants breached their ERISA fiduciary duties of prudence and loyalty by, *inter alia*:

a. Using plan assets for the own benefit, causing losses to the Plans and the participants;

b. Charging the Plans (or the Collective Investment Funds in which the Plans invested) fees for FX trading that were unreasonable and in excess of what Defendants had agreed to charge;

c. Failing to disclose to the Plans, their fiduciaries, or participants the amount of fees being charged for FX trading, that those fees were in excess of what Defendants had agreed to charge, and that other clients were charged less for the same services;

87. These actions during the Class Period were breaches of Defendants' fiduciary duties of loyalty and prudence to the Plans under ERISA, and Defendants did not execute their fiduciary responsibilities for the exclusive benefit of the Plans. § 404(a)(1)(A), (B), 29 U.S.C. §§ 1104(a)(1)(A), (B).

88. Defendants committed these breaches during each FX transaction involving assets of the Plans.

89. As a direct and proximate result of these breaches of duty, the Plans, and indirectly Plaintiffs and the Plans' other participants and beneficiaries, realized losses.

90. Pursuant to ERISA, the Defendants are liable to restore all losses suffered by the Plans caused by the Defendants' breaches of fiduciary duty.

COUNT III

Liability for Breach of Co-fiduciary (Violation of § 405 of ERISA, 29 U.S.C. § 1105)

91. All previous averments are incorporated herein.

92. SSGM violated ERISA, 29 U.S.C. §1105(a)(1), by knowingly undertaking to conceal SSBT's fiduciary breaches. It did so through the actions and omissions of its employees and agents by concealing and failing to provide complete and accurate information to the Plans regarding the cost of FX transactions.

93. SSGM violated ERISA, 29 U.S.C. §1105(a)(3), because it knew that SSBT had breached its fiduciary duties of prudence and loyalty, but failed to take reasonable steps under the circumstances to remedy the breach.

94. On account of SSGM's violations of these provisions, SSGM is liable for the breach of its co-fiduciary, SSBT.

95. As a result of SSGM's actions, the Plans suffered losses.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

a. Declare that the Defendants have violated ERISA's prohibited transactions provisions;

b. Declare that the Defendants breached their fiduciary duties under ERISA;

c. Issue an order compelling a proper accounting of the foreign exchange transactions in which the Plans have engaged;

d. Issue an order compelling Defendants to restore all losses caused to the Plans (or that will be caused to the Plans after the filing of this Complaint);

e. Issue an order compelling the Defendants to disgorge all fees paid and incurred to Defendants (or that will be paid or incurred by the Plans after the filing of this Complaint), including any profits thereon;

f. Order equitable restitution and other appropriate equitable monetary relief against the Defendants;

g. Award such other equitable or remedial relief as may be appropriate, including the permanent removal of the Defendants from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as custodian to the Plans;

h. That this action be certified as a class action and that each Class be designated to receive the amounts restored to the Plans by Defendants and a constructive trust be established for distribution to the extent required by law;

i. Enjoin Defendants collectively, and each of them individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

j. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

k. Award such other and further relief as the Court deems equitable and just.

Dated: February 24 , 2012

By: /s/ Bryan T. Veis

J. Brian McTigue (*pro hac vice*)
Bryan T. Veis (*pro hac vice*)
James A. Moore (*pro hac vice*)
McTigue & Veis, LLP
4530 Wisconsin Ave, NW
Suite 300
Washington, DC 20016
202-364-6900
Fax: 202-364-9960
Email: bveis@mctiguelaw.com
bmctigue@mctiguelaw.com
jmoore@mctiguelaw.com

Catherine M. Campbell
Renee J. Bushey
Feinberg, Campbell & Zack, P.C.
3rd Floor
177 Milk Street
Boston, MA 02109
617-338-1976
Fax: 617-338-7070
Email: cmc@fczlaw.com
rjb@fczlaw.com

Jonathan G. Axelrod (*pro hac vice*)
Beins, Axelrod, P.C.
1625 Mass. Ave. NW
Washington, DC 20036
202-328-7222
Email: jaxelrod@beinsaxelrod.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Bryan T. Veis, hereby certify that on February 24, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Bryan T. Veis

EX. 3

□□ITE□ □T□TE□ □I□T□I□T □□□□T
□I□T□I□T □□M□□□□H□□ETT□

Th□□□d□□□r □□□p□i□□E□p□□□□□□□□i□□□
□□d □r□it □h□ri□□ □□□□ □□b□h□□□□it□□□□, □□d
□□□ □□□□h□□□h□□□□t□□□□□□□d, □□d □□□□th□r□
i□i□i□r□□ □it□□t□d,
□□□i□ti□□□,

□□.

□t□t□□tr□□t B□□□ □□d Tr□□t □□□p□□□, □□d □t□t□□
□tr□□t □□□b□M□r□□t□, □□□,
□□□□□d□□t□.

DEMAND FOR JURY TRIAL

PLAINTIFFS' CLASS ACTION COMPLAINT

Table of Contents

[illegible] b[illegible]r, [illegible] Tr[illegible] [illegible] Th[illegible] E[illegible] [illegible] th[illegible] [illegible] B[illegible] [illegible] E[illegible] I[illegible] [illegible] th[illegible]r, th[illegible] [illegible]

I. PRELIMINARY STATEMENT

1. Thi[illegible] B[illegible] Tr[illegible] B[illegible] M[illegible] [illegible] E[illegible] I[illegible] 1974, [illegible] E[illegible]I[illegible]. Thi[illegible] 29 [illegible].[illegible].[illegible]. [illegible] 1001, *et seq.*, [illegible] E[illegible]I[illegible] [illegible] 502[illegible]2[illegible] [illegible]3[illegible], 29 [illegible].[illegible].[illegible]. [illegible] 1132[illegible]2[illegible] [illegible]3[illegible], [illegible] B[illegible] M [illegible] E[illegible]I[illegible] [illegible]. I[illegible] [illegible] E[illegible]I[illegible] [illegible] Th[illegible] E[illegible]I[illegible] [illegible]406, 29 [illegible].[illegible].[illegible]. [illegible] 1106.

2. [illegible] E[illegible]I[illegible] [illegible]404, 29 [illegible].[illegible].[illegible]. [illegible]1104, b[illegible] th[illegible]

Case 1:11-cv-12049-MLW Document 401-138 Filed 07/23/18 Page 3 of 122

□□□□t□ □□□□□i□tr□□□□ti□□□th□t □r□□t □r th□ □x□□□i□□b□□□it □□th□ □□□□r th□ir p□rti□ip□□t□□□d b□□□□i□i□ri□□.

3. □t□t□ □tr□□t □□□th□tr□□t□□ □r th□ □□i□□d □□□trib□ti□□ □□□□M□□t□r Tr□□t □□r□□□ □□t b□t□□□□M□rri□ □□□M□t□□□□ir□I□□r□□□□ □□p□□□ □□d □t□t□ □tr□□t B□□□ □□d Tr□□t □□□p□□□d□t□d □□pt□□b□r 1, 2002, □□d i□□□□t□ □□t □ □□□□r □□r th□ □□d□□r □□□□□□□□t□ i□□□□t□d i□ □t□t□ □tr□□t□ pr□pri□t□r□ □□□ □i□□□□d □□□d□ □□th□ □□□d□□.

4. □t□t□ □tr□□t □□□th□tr□□t□□ □r Th□B□i□□ □□□p□□□ E□p□□□□ □□□i□□□□□□ M□□t□r Tr□□t □B□i□□ M□□t□r Tr□□t□□□d □ □□□□□d □□rt□i□ □□□d□i□th□B□i□□ M□□t□r Tr□□t. □□ □□□ □□□□b□r 31, 2011, th□ □□□t□□□Th□B□i□□ □□□p□□□ □ □□□t□r□I□□□□t□ □□t □□□□th□ □B□i□□ □□□□□□□□pri□□d 100 p□r□□□t □□th□B□i□□ M□□t□r Tr□□t. Th□B□i□□ M□□t□r Tr□□t h□d□th□B□i□□ □□□□□□□□t□th□t □r□i□□□□t□d i□ □t□t□ □tr□□t□□□□□d□.

5. □□i□□□□t□ □□t □ □□□□r □□r th□ □□□ □i□□□d □□□d□, □t□t□ □tr□□t B□□□ □□□tr□□t□d □□b□h□□□□th□ □□□d□□r □hi□h it □□r□□d □□i□□□□t□ □□t □ □□□□r □□r □□□t□di□□□□r□i□□□r□□ it□ □□i□i□t□d □t□t□ □tr□□t □□titi□□□□h □□□□M. □t□t□ □tr□□t □dditi□□□□□ □r□□d □□□□t□di□□b□□□ □r □□rt□i□ □□th□ □□□□i□th□ □□□□i□□□di□□th□B□i□□ □□□, □□d thi□□□□ □r□□d □□□□□□t□di□□ b□□□ □r □□th□ □r□i□□ □□rr□□□□tr□□□□ti□□□□t i□□□□ □r □□rt□i□ □□th□E□I□□ □□□□r□d p□□□.

6. □ □□□t□di□□b□□□i□□i□tit□ti□□th□t h□d□□□□riti□□□□b□h□□□□i□□□□t□r□. Th□ r□□□□□□□□□t□di□□b□□□i□t□ □□□□□□rd □□d r□□□rd □ □□□□ □□t □□□□□t□, i□□□□di□□h□di□□ □□□□t□ □□d □□□riti□□i□ □□□□□pi□□ □ith □ppr□pri□t□ □□□□ti□□□, □rr□□□i□□ □□tt□□□□t □□□□p□r□h□□□□ □□d □□□□□□d d□i□□ri□□i□□□d □□t □□th□ □□□□□t, □d□i□i□tri□□ □□rp□r□t□ □□ti□□□□r □□□□riti□□, □□d □ □i□t□i□i□□ □□d □ □□□□i□□ □□□□□h tr□□□□□ti□□□, i□□□□di□□ □r□i□□ □□rr□□□□tr□□□□ti□□□. □□□t□di□□□r□t□pi□□□□ □□□d b□i□□□□t□r□□h□d□□□t □i□h t□ □□□□□ □□□riti□□□□d□p□□it □ith th□ir br□□□r□d□□□r□□r i□□□□t□ □□t □ □□□□□r. B□ □p□r□ti□□th□□d□ti□□, th□ □□□ □□□□□t□di□□□□ □t □□□□t i□th□r□□ r□d□□□□th□ri□□ □□□r□□d □r □th□r □i□□□□d□□t. □ □i□d□p□□d□□t □□□t□di□□ □□□□r□□th□t th□i□□□□t□r h□□□□□□□□□b□r□d □□□□r□hip □□th□ □□□riti□□□th□r □□□□t□r□pr□□□□t t□ h□□□p□r□h□□□d □□it□b□h□□□.

7. In 2011, the trust had approximately 22.8 million in assets under the control of the Trustee, which it received from the Protector of the Trust in the form of a distribution in kind.[1] The trust was the beneficiary of a life insurance policy on the life of the grantor, in which it had a substantial cash surrender value.

8. As part of its investment strategy, the Trustee invested in the Exchange Traded Options ("ETO") market, which is a highly regulated market in which investors purchase and sell standardized options contracts. Options contracts are derivative securities that give the purchaser the right, but not the obligation, to buy or sell the underlying asset at a specified price during a specified period of time. The seller of the option contract is obligated to buy or sell the underlying asset if the purchaser exercises the option.

9. Mr. Gruber and Mr. Shah had developed and implemented a trading strategy that they believed would be profitable in the ETO market. The strategy, which they referred to as the "Strategy," involved buying and selling ETOs, and was designed to exploit pricing inefficiencies in the ETO market. The Strategy required the purchase and sale of ETOs in large volumes, and was designed to generate profits from small movements in the prices of ETOs.

10. Despite the complexity of the Strategy, the Trustee delegated all investment decisions to Gruber and Shah. Since at least 1998, Gruber and Shah had traded ETOs for their own accounts and for the accounts of family members and friends. Gruber and Shah had a history of successfully executing the Strategy for their own accounts and for the accounts of family members and friends. Gruber and Shah represented to the Trustee that they had successfully executed the Strategy for their own accounts and for the accounts of family members and friends.

[1] *See* http://www.sec.gov/litigation/complaints/2012/comp-pr2012-183-Exhibit-1.pdf (last visited September 12, 2012).

their behalf, and did not disclose to Xerox or to the investing public, or in the Company's periodic reports filed with the SEC, that the Company's publicly reported financial results were materially misstated as a result of the fraudulent transactions described herein.

11. The Individual Defendants caused or participated in the fraudulent transactions described herein because they directly benefited from the fraud. For the Individual Defendants, their fraudulent participation in the transactions described herein resulted in the receipt of millions of dollars in bonuses and other compensation that they would not have received but for the fraud. Mr. Huber, for example, received bonuses totaling approximately $3 million, and Mr. Shah received bonuses totaling approximately $1.5 million. Moreover, as described herein, the Individual Defendants misrepresented the Company's financial performance, which artificially inflated the price of Xerox common stock. The Individual Defendants also caused the Company to purchase millions of shares of its own stock at artificially inflated prices, which benefited the Individual Defendants by increasing the value of their Xerox stock options.

12. The Individual Defendants' fraudulent conduct, as described herein, violated the Exchange Act, particularly Sections 10(b) and 20(a) thereof, and Rule 10b-5 promulgated thereunder. This action seeks to recover damages caused by the Individual Defendants' violations of the federal securities laws.

13. Mr. Huber and Mr. Shah have both been criminally charged in connection with their participation in the fraudulent transactions described herein. Mr. Huber pled guilty to violating the Exchange Act and was sentenced to 42 months in prison. Mr. Shah was convicted at trial of violating the Exchange Act and was sentenced to 60 months in prison.

II. JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act, 15 U.S.C. §78aa(1), 28 U.S.C. §1132(1). The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. §240.10b-5.

15. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa(2), 28 U.S.C. §1132(2).

III. PARTIES

A. Plaintiff Alan Kober

16. □□i□ti□□□ □□□ □ □b□r i□ □□I□di□id□□□Tr□□t□□ □□Th□ □ □d□□□r □□□p□i□□ E□p□□□□□□□□i□□□□□d □r□it □h□ri□□ □□□□ th□ □ □d□□□r □□□□□p□r□□□□t t□ □10.03 □□Th□ □d□□□r □□□p□i□□E□p□□□□□□□□i□□□□□d □r□it □h□ri□□ □□□ □d Tr□□t □ □r□□□ □□t, □ □ □d□d □□d □□□t□t□d E□□□ti□□ □□□□□□□□r□1, 1989. I□thi□□□p□□it□, Mr. □ □b□r i□□ □□□ □id□i□r□ □ith □t□di□□t□bri□□ □□i□ □□□r br□□□h □□□id□i□r□d□t□ □□b□h□□□□th□ □□□ p□r□□□□t t□E□I□□ □□409 □□d □502□□□2□.

17. □□i□ti□□M□rri□ □□□M□t□□□□ir□I□□r□□□□ □ □□p□□□ □M□rri□ □□□M□t□□□□i□ th□d□i□□□t□d □□□□ □d□i□i□tr□t□r □□r th□ □ □d□□□r □□□□. Th□ □ □d□□□r □□□□i□□□E□I□□□ □□□i□i□d d□i□□d □□□trib□ti□□p□□□ □t□b□i□h□d □□r th□b□□□□it □□th□ □□p□□□□□□□M□rri□ □□□ M□t□□□□d it□□i□t□r □□□p□i□□, □□□brid□□M□t□□□□ir□I□□r□□□□ □□□p□□□, □□d B□□ □t□t□ I□□□r□□□□ □ □□p□□□, □hi□h, t□□□th□r □ith M□rri□ □□□M□t□□□, □□□pri□□th□ □ □d□□□r □□□p□i□□ □□□ □d□□□r □□□p□i□□□□. □d□□□r □□□p□i□□i□□ □□□ E□□□□d □ □t□□□i□□r□□□□i□tit□ti□□ □hi□h □□□r□i□□r□□□□pr□r□□ □□□d i□□ □□□□□d □r□□ it□h□d□□□rt□r□i□ □ □d□□□r, M□□□□h□□tt□.

18. □ □tr□□t□□ □r th□ □ □d□□□r □□□, p□r□□□□t t□ □□□ti□□4.1 □□th□M□□t□r Tr□□t □ □r□□□ □□t, □t□t□ □tr□□t B□□□ □ □□r□□□ir□d t□ □x□r□i□□p□□ □r □□d □□th□rit□ □□□r th□i□□□□t□ □□t □□□□□t□□□r □hi□h it h□□□xpr□□□i□□□□t□ □□t □ □□□□□□ □□t di□□r□ti□□, □r □p□□th□dir□□ti□□ □□th□ I□□□□t□ □□t M□□□□□r. Th□i□□□□t□ □□t p□□□r □□th□tr□□t□□i□□□□d□th□p□□□r t□ □p□r□h□□□□d □□□□r□i□□ □x□h□□□□□d □□□tr□□t□□r □r□i□□ □x□h□□□□, i□□□di□□tr□□□□□ti□□□□□t□r□d i□t□ □ith □t□t□ □tr□□t B□□□ □□d Tr□□t □□□p□□□, it□□□□□t□□r it□□□b□□t□di□□□.□Th□M□□t□r Tr□□t □ □r□□□ □□t □□rth□r pr□□id□□th□t □□thi□□□i□th□p□□□□r□□□ir□□□□□i□□□□t□ □□t □ □□□□□r t□ □ □□□ □□□i□□□□t□ □□t□□hi□h □□□□tit□t□ □pr□hibit□d tr□□□□□ti□□.

19. □□r□□□□t t□th□I□□□□t□ □□t M□□□□□r □ □r□□□ □□t b□t□ □□□ □t□t□ □tr□□t B□□□ □□d M□rri□ □□□M□t□□□□□t□r□d □□□pri□1, 2001, □t□t□ □tr□□t B□□□ □ □□□pp□i□t□d i□□□□t□ □□t

□□□□□r p□r□□□t t□ □□□ti□□3□38□□□E□I□□ □ith r□p□□t t□ □□□□□h, □□□□riti□□, □r □th□r pr□p□rt□d□i□□□t□d b□ □i□□t.

20. □□ri□□th□r□□□□□t ti□ □p□ri□d, th□ □□d□□r □□□□ □□□r□d p□rti□ip□□t□ i□□□□t□ □□t□i□ □□□□r□□□t□t□ □tr□t B□□□□p□□□r□d □□□ □i□□□d □□□d□□p□rt □□th□ □□□□□□r□ i□□□□t□ □□t□. I□t□r□□ti□□□□E□it□ □□□d□ □ □r□□□□□t□□r□ □□□□r□i□□□□t□ □□t□□r th□ □□d□□r □□□, □hi□h □□□i□□□d□d□ □t□b□ □ □□□□ □□□d□, □ix□d I□□□□ □□□□d□, B□□□□d □□□d□□d □□□ □ti□E□it□ □□□d□. □□ri□□th□ □□□p□ri□d, th□ □□d□□r □□□i□□□d□d th□ □□□□i□□ pr□pri□t□r□ □□□ □i□□□d I□t□r□□ti□□□□E□it□ □□□d□t□p□rti□ip□□t□ □r i□□□□t□ □□t□I□t□r□□ti□□□□ □r□□th □pp□rt□□iti□□□□□□riti□□□□□di□□ □□□□□ □□□d, □□d □□□□ □□i□□I□t□r□□ti□□□□□ph□ □□□□t. □t□t□ □tr□t B□□□ □r□d □□th□Tr□□t□□□r □□d□□r □□□, □□d □r□d □□th□I□□□□t□ □□t M□□□□r □□r □□d□□r □□□p□i□□□□□□i□□□□t□ □□t i□th□I□t□r□□ti□□□□E□it□ □□□d□. Th□ □□d□□r □□□p□i□□□□□ □□□□r□d □□□□□□□□r□□□t □□□□t□t□ □tr□t□ □□□□ir □□d d□□□pti□□□X tr□di□□pr□□ti□□□□□b□h□□□□th□I□t□r□ti□□□□E□it□ □□□d□.

B. Plaintiff James Pehoushek-Stangeland

21. □□i□ti□□□□ □□□□h□□h□□□t□□□□□d i□□r□id□□t □□□□□tt□, □ □hi□□t□□. H□ □□r□□□r th□B□i□□ □□□p□□□ □□d i□□p□rti□ip□□t i□th□B□i□□ □□□, □□E□I□□ □□□□i□i□d r□tir□□ □□t p□□. □□□rdi□□□, □□i□ti□□□h□□h□□□t□□□□□d h□□□t□di□□t□bri□□ □it □□ b□h□□□□th□B□i□□ □□□ □r □□□□□t□th□ □□□d□□t□br□□h□□□□id□i□r□d□t□p□r□□□□t t□ E□I□□ □□409, □□d □502□□□2□.

22. □□ri□□th□r□□□□□t ti□ □p□ri□d, th□B□i□□ □□□ □□□r□d p□rti□ip□□t□i□□□□t□ □□t□ i□ □□□r□□□t□t□ □tr□t B□□□□p□□□r□d □□□ □i□□□d □□□d□□p□rt □□th□ □□□□□□r□i□□□□t□ □□t□. Th□I□t□r□□ti□□□□I□d□x □□□d □ □□□□□□t□□r□ □□□□r□i□□□□t□ □□t□□r th□B□i□□ □□□, □hi□h □□□i□□□d□d □i□□□□□□ □□□d□, □t□b□ □ □□□□ □□□d□, B□□d □□□d□, B□□□□d □□□d□, □□d □□□□ti□ E□it□ □□□d□. □□ri□□th□ □□□□□□ri□d, th□B□i□□ □□□i□□□d□d th□ □□□□i□□pr□pri□t□r□ □t□t□ □tr□t □□□d□th□ □t□t□ □tr□t B□□□ □□b□□□ □□□p E□it□ □x□ □I□d□x □□□□riti□□□□□di□□ □□ri□□□□d □□□□I □□□t□t□ □tr□t B□□□ □□b□□□□di□□ □□□d□□□□d th□ □t□t□ □tr□t B□□□ □□b□ □□□□p E□it□ □x□□ □I□d□x □□□□□□di□□ □□ri□□□□d □□□□□ □□□t□t□ □tr□t B□□□ □□b□□□ □□□

□□di□□ □□□d□, □r p□rti□ip□t□t□i□□□t i□. □□□□□ □□□□b□r 31, 2010, th□B□i□□ □□□□h□d □ppr□xi□□t□□□ □1.98 bi□i□□i□ □□□□□ □□□□t□i□th□□t□t□□tr□□t B□□□ □□b□□□ □□□□di□□ □□□d. □□□□ □□□□b□r 31, 2011, th□B□i□□ □□□□h□d □ppr□xi□□t□□□ □1.863 bi□i□□i□th□□t□t□□tr□□t B□□□ □□b□□□ □□□□□di□□ □□□d. □□□□□ □□□□b□r 31, 2010, □d □□□□b□r 31, 2011, th□□□ i□□□t□□t□□□□titi□t□d □ppr□xi□□t□□□6□ □□th□B□i□□M□□t□r, r□p□□ti□□□.

23. □t□t□□tr□□t □r□d □□th□Tr□□t□□□r th□B□i□□M□□t□r Tr□□t, □hi□h h□d□th□ □□□□t□□□th□B□i□□ □□□□, □□d □□th□i□□□t□□□t □□□□□□r □□r □□rti□□□d□i□th□B□i□□M□□t□r Tr□□t. Th□B□i□□ □□□□ □□□□□□r□d □□□□□□□□□□r□□□t □□□t□t□□tr□□t□□□□□ir □□d d□□pti□□□X tr□di□□ pr□□ti□□□□□b□h□□□□□th□I□t□r□□ti□□□I□d□x □□□d □t□□□th□r □ith □□i□ti□□□□b□r□□ i□t□r□□ti□□□□□□d□, □Th□I□t□r□□ti□□□E□□it□□□□d□□□.

24. Th□□□□i□ti□□□h□□□□t□di□□t□bri□□thi□□□ti□□, □□d p□r□□□□t t□□□d□r□□□□□□□□□□ □i□i□□r□□d□r□23, t□bri□□□r□pr□□□□t□ti□□□□ti□□□□b□h□□□□□th□□□d□□□r □□□□□□d th□ B□i□□□□□□, □□d th□□□□□□□□□□□□□□hi□h i□□□rr□d □□□□□□□□□□r□□□t□□□t□t□□tr□□t□□□br□□□h □□ it□□id□□i□r□d□ti□□□□□th□I□□□□t□□□t M□□□□□□r □□d □□□t□di□□□□□X tr□d□□□□r th□□□□□□□□ i□□□□t□□□t□□i□th□I□t□r□□ti□□□E□□it□□□□d□□□□□d□□r th□I□t□r□□ti□□□I□d□x □□□d□□□.

C. Defendants

25. □□□□□d□□t □t□t□□tr□□t B□□□□i□th□tr□□t□□□□□th□□□□□□. □□□□□ □□□□□th□t □□p□□□□□□ □□□trib□□t□□t□th□□□□□□□□i□h□d i□□□tr□□t □□□□d, □□d □t□t□□tr□□t B□□□□i□r□p□□□ib□□□□r □□□□□□□□pi□□ □□th□□□□□d□. □t□t□□tr□□t B□□□□i□□□□□th□i□□□□t□□□t □□□□□□r □□r th□□□d□□□r □□□□, □□d pr□□id□□i□□□□t□□□t □□□□□□□□□□t □□d □□□t□di□□□□r□i□□□t□th□B□i□□ □□□□□.

26. □□□□□d□□t □t□t□□tr□□t B□□□□i□□r□i□t□r□d □i□□□□i□□h□di□□ □□□□p□□□ □ith it□ pri□□ip□□p□□□□□□b□i□□□□□i□B□□t□□, M□□□□□h□□□tt□. □□ri□□th□□□□□□□□□ri□d, □t□t□□tr□□t B□□□□ dir□□t□□, □r i□dir□□t□□thr□□□h □□□□r □□r□□□b□idi□ri□□pr□□id□d □□□t□di□b□□□i□□□□d □X tr□di□□ □□r□i□□□t□E□I□□ □□□□□□□r□d b□□□□it p□□□□□□□d □□r th□□□□d□□□□□□r□d b□E□I□□ □□□□□□r□d □□□□□□, □□□h □□th□□□□□□□. □□□□□□th□□□r□i□□□pr□□id□d b□□t□t□□tr□□t B□□□□t□it□□□□□t□di□□□i□□t□ □□□th□□x□□□ti□□ □□□□X tr□□□□□□ti□□□, □hi□h □□□□□□d □i□□t□□t□p□r□h□□□□□d □□□□□□□□r□i□□ □□□□riti□□□r t□□□□□□□□i□□r□i□□□□rr□□□□□tr□d□□□□r th□r p□rp□□□□.

27. [illegible]

IV. CLASS ACTION ALLEGATIONS

28. **Class Definition.** [illegible]

> [illegible] … 2, 1998 [illegible] … [illegible]

29. **Numerosity.** [illegible]

30. **Commonality.** [illegible]

[illegible]

31. [illegible]

[illegible]

32. **Typicality.** [illegible]

33. □□i□ti□□□□□i□ □□r□t□pi□□□□□th□ □□i□ □□□th□□ □□b□r□□□th□ □□□□. □□i□ti□□ □r□□ □□b□r□□□th□ □□□□d□□rib□d h□r□i□.

34. Th□ □□□□ti□□□□□□□ □□d □□□t □□□□ □ □□t□th□ □□□□pr□d□□i□□t□□□□r □□□□ □□□ti□□□□□□ti□□ □□□□i□di□id□□□□ □□b□r□□□th□ □□□□.

35. □ □□□□□□ti□□i□□□p□ri□r t□ □th□r □□□i□b□□ □ □th□d□□□r th□ □d□di□□ti□□ □□thi□ □□□tr□□□r□□. I□di□id□□□iti□□ti□□b□ □□□□□□□□ □□b□r□□ □□d i□r□□□th□d□□□ □□d □xp□□□□t□ th□p□rti□□□□d th□ □□□rt □i□□□th□ □□□p□x □□□□□□□d □□□t□□□i□□□□□□th□ □□□□, □□d □di□i□□ d□t□r□i□□ti□□ □□th□ □□□□ □ □□ □□□□□□□d □□□t□□□i□□□□□□□□□ti□□t□thi□□□□□ □ □□d b□□ □r□□ir, □□i□i□□t □□d □□□□□□i□□□□□□ □□□□□□ti□□ □ □i□t□i□□d i□thi□ □r□□ th□□i□pi□□□□ □□□i□di□id□□□ d□t□r□i□□ti□□□.

36. **Adequacy.** Th□i□t□r□t□□□th□ □□□i□ti□□ □r□ □□□□xt□□□i□□ □ith, □□d □□t □□t□□□□i□ti□t□, th□□□ □□th□ □b□□□t □□□□□ □□b□r□. □□i□ti□□ □i□□□□d□rt□□□t□r□pr□□□□t □□d pr□t□□t th□i□t□r□□t□□□□b□□□t □□□□□ □□b□r□. Th□ □d□r□i□□□d □□□□□□□□r □□i□ti□□ □□d th□ □□□□□r□ □xp□ri□□□□d i□ □□□□□□ti□□, □□□p□x, □□d E□I□□ □iti□□ti□□, □i□□d□□□□t□□pr□□□□□t□ thi□ □□ti□□, □□d □i□□□□□rt □□d pr□t□□t th□ri□ht□□□□d □th□r□i□□r□pr□□□□t □□i□ti□□ □□d □b□□□t □□□□□ □□b□r□.

37. □□i□ti□□□□□□□ □□□□di□i□□□t□th□t □i□b□□□□□□□t□r□d i□th□ □ □□□□□□ □□t □□thi□ □iti□□ti□□□th□t □□□□d pr□□□d□it□□ □i□t□□□□□□□□□□□□□□□□□ti□□. □□□p□r□d t□i□di□id□□□□□ti□□□ b□□□□h □□□□□ □□b□r, th□ □□□□□□ti□□d□□i□□pr□□□□t□□r □□□□r □□□□□□□□ □t di□□i□□ti□□, □□d pr□□id□□th□b□□□□it□□□□i□□□□□d□di□□ti□□, □□□□□□ □ □□□□□□, □□d □□□pr□h□□□i□□□□p□r□i□i□□ b□ □ □i□□□□□□□rt.

38. **Rule 23(b)(1)(A) & (B) Requirements.** □□□□□□ti□□ □t□t□□i□thi□E□I□□ □□ti□□ i□□ □rr□□t□d □□d□r □□d□r□□□□□23□b□1□□□ □b□□□□□pr□□□□□ti□□ □□□□p□r□t□ □□ti□□□b□th□ □ □□b□r□□□th□ □□□□□□ □□d □r□t□□ri□□ □□□□t□b□i□hi□□i□□□□p□tib□□□t□d□rd□□□□□□d□□t □□r □□□□□d□□t□. □□□□□□ti□□ □t□t□□□□□i□□ □rr□□t□d □□d□r □□□□23□b□1□□B□b□□□□□pr□□□□□□ti□□ □□ □□p□r□t□ □□ti□□□b□th□ □ □□b□r□□□th□ □□□□□□ □□d □r□t□□ri□□ □□□□d□di□□ti□□□□□ith r□□p□□t t□ i□di□id□□□□ □□b□r□□□th□ □□□□□□hi□h □ □□□d, □□□pr□□ti□□□□ □tt□r, b□di□p□□iti□□ □□th□

[illegible]

39. **Rule 23(b)(2) Requirements.** [illegible]

40. **Rule 23(b)(3) Requirements.** [illegible]

V. SUBSTANTIVE ALLEGATIONS

A. The Nature of FX Trading Generally

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

41. [illegible]

42. [illegible]

43. [illegible]

r□□i□d □d p□r□h□□d□□□r. □□□□rdi□□□, □X tr□□□□ti□□□r th□□□□□□r □□□□rti□□.□. d□□□r□i t□□r□i□□ □rr□□□□ □d i□□□r.

2. How FX Trading Works

44. □X tr□di□□t□□□p□□□□r□□□d th□□□rd □□□□□r□□24 h□□r □□□□, i□□□□d□□h□□□ d□□□□□□□□. Th□□□i□i□□□X tr□di□□ □□□□b□i□□t 7□00 □.□. □□□ □□□□□d ti□□□□M□□d□, □ith □□h □b□□□□□t tr□di□□d□□ □di□□t 5□00 p.□. □□□ □□r□□it□ti□□.

45. □r □□h □rr□□□b□□ht □d □□d d□ri□□th□□□r□□□th□□X tr□di□□d□, th□r□ i□□□□□□□ri□□b□□hi□h tr□d□□d □□□□ tr□d, □ith □□□th□r tr□d□□□□i□□ □□□ h□r□i□ b□t□□□. Thi□i□□r□□ti□□i□d□t□r□i□d thr□□h tr□d□d□t□□□it□r□d □d tr□□□d b□pr□pri□t□r□ □r□i□□□□h □□, b□t □□t i□it□d t□, E□□tr□□i□Br□□r□□□□t□□ □EB□□□□d □□t□r□.

46. Th□di□□r□□□b□t□□□th□□□□ tr□d□□d th□hi□h tr□d□i□□□□d th□□r□□□□th□ d□□.□M□r□pr□□i□□□, th□□p□t r□□□□□th□d□□□r□□r□t□□X r□t□□□□□□p□□i□i□□d pr□□pt □tt□□□□t d□t, □□□□□□t□□b□i□□□d□□□t□r th□tr□d□d□t. T□□□r□□□□r□t□□□□r□th□ tr□d□□□t □r □X tr□□□□ti□□□th□t □tt□□pri□r t□□r □t□r th□□th□d□t□□r p□t tr□d□, p□rti□ip□t□ i□th□□X □r□□t □□□□□□□t□th□□□r□rd□d□□t□d r□□□□□th□d□. □B□□□□□□X tr□d□□d□□t □□□□□□tt□□t□□d□□□t□r th□tr□d, th□□r□rd□d□□t□d r□□□□□th□d□i□□□r□ □□□□r□ti□□□d □□□r□t□□□□r□□t □□h th□t it t□□□i□t□□□□□t th□i□t□r□t r□t□ di□□r□ti□□th□t □xi□t□□t th□ti□□□tr□d□b□t□□□th□tr□d□d□t□□d □tt□□□□t d□t□□r th□ □d□r□i□□□rr□□□i□.

47. B□□□□□□x□□p□, □□□□□□100 □X tr□d□□i□□r□□□□r□d□□□r□E□□□□□□□ d□ri□□th□□□□r□□□□□□□tr□di□□d□□. I□th□□□□□t r□t□tr□d□□□□rr□d □t □1.25 t□b□□□1.00, □d th□hi□h□t r□t□tr□d□□□□rr□d □t □1.35 t□b□□□1.00, th□r□□□□□th□d□□□□□d b□□1.25□1.35.

48. □□th□r □□□□□□□□□□r□i□th□d□i□□□id□r□t,□□hi□h i□□i□p□□th□□□□ □□th□ □r□□rd□d□□□t□d d□i□□hi□h □d □r□□rd□d□□□t□d d□i□□□□□, di□id□d b□t□□. Thi□r□t□r□□□□t□ th□□□□□r□□□□□X r□t□i□□□i□□□□rr□□□□□□□□i□□□d□□.

49. Th□d□i□□□id□r□t□i□□i□□i□□□t b□□□□□□□□□th□b□□□□□□□□p□b□i□□□□□□□□ib□□ d□t□□h□□i□□th□pr□i□□ti□□□□d□□□t□hi□h□X tr□d□□□□□r□□□xi□t□□ith□t□□□tr□di□□, □r

[illegible] b[illegible] t t[illegible] tr[illegible] did [illegible] di[illegible] h i[illegible] r[illegible] ti[illegible] t it[illegible] i[illegible] t. B[illegible] i[illegible] t th[illegible] id r t[illegible] r [illegible] i[illegible] t p ri d [illegible] ti[illegible], h[illegible] r, [illegible] r[illegible] b[illegible] ti[illegible] t th[illegible] r[illegible] X tr d[illegible] t [illegible] i[illegible] d. [illegible] r th[illegible] r[illegible] th r [illegible] r, it i r[illegible] b[illegible] t [illegible] xp[illegible] t X tr d[illegible] t r[illegible] r[illegible] t th[illegible] id r t. [illegible] i[illegible] d, [illegible] tr d[illegible] i ht [illegible] tt[illegible] b[illegible] r b[illegible] th d i[illegible] id r t, b t [illegible] r i r[illegible] i[illegible] th p ri d[illegible] ti[illegible], i[illegible] t [illegible] b r [illegible] X tr d[illegible] b[illegible] xp t d t[illegible] r t r xtr[illegible] [illegible] t th[illegible] id r t.

B. Negotiated vs. Non-Negotiated FX Trades: Trades for Custodial Clients

50. [illegible] t rth i th *Arkansas State Teacher Retirement System v. State Street Corp.*, [illegible]. 11[illegible]10230 M[illegible] [illegible]pr. 15, 2011[illegible] p i t, t t[illegible] tr t [illegible] it[illegible] t di[illegible] i t[illegible] h i[illegible] ith r p t t th[illegible] r i[illegible] hi h X tr d[illegible] d b[illegible] d t d. I[illegible] ti t d,[illegible] r [illegible] ti[illegible],[illegible] X tr d, [illegible] t di[illegible] i t r it[illegible] t id i[illegible] t[illegible] t [illegible] r [illegible] d p r[illegible] [illegible] i t th tr d i[illegible] r ti[illegible] t[illegible] t t[illegible] tr t X tr d r. Th[illegible] t t[illegible] tr t X tr d r [illegible] d th[illegible] t[illegible] r t, hi h [illegible] d b[illegible] pt d r r[illegible] t d. I[illegible] pt d, t t[illegible] tr t [illegible] d x[illegible] t th[illegible] X tr d[illegible] t th[illegible] r d[illegible] p[illegible] pri, hi h [illegible] d i[illegible] d[illegible] d t [illegible] r[illegible] p.

51. [illegible] ti t d[illegible] r t[illegible] di[illegible] i tr[illegible] ti[illegible] X tr d i[illegible] ti[illegible] th[illegible] pp it[illegible] [illegible] ti t d tr d. Th r i[illegible] r[illegible] th [illegible] ti ti[illegible] th pri[illegible] b t[illegible] th p rti[illegible] t th tr[illegible] ti. [illegible] ith [illegible] ti t d r t[illegible] di[illegible] i tr[illegible] ti[illegible] tr d[illegible], [illegible] t di[illegible] i t[illegible] d th ir [illegible] t id i[illegible] t[illegible] t [illegible] r d[illegible] t [illegible] ti t r t[illegible] ith t t[illegible] tr t, d t t[illegible] tr t d[illegible] t [illegible] t r t[illegible]. I t d, th[illegible] t[illegible] t di[illegible] i tr[illegible] ti[illegible], [illegible] t di[illegible] i t i p r p rt th d ir d rr[illegible] tr[illegible] ti[illegible] t t t[illegible] tr t, d tr t d r[illegible] p[illegible] t t[illegible] tr t, i[illegible] b t x[illegible] ti[illegible] pr ti[illegible], t[illegible] x[illegible] t th tr d[illegible] th i t[illegible] b h[illegible]. [illegible] rdi[illegible] t it I[illegible] t[illegible] t M[illegible] r id, t t[illegible] tr t r[illegible] rr d t[illegible] t di[illegible] i tr[illegible] ti[illegible] X tr[illegible] ti[illegible] I dir t [illegible] b t[illegible] 2000 d M[illegible] 2008, d I tit ti[illegible] I[illegible] t r X Tr di[illegible] b t[illegible] M[illegible] 2008 d [illegible] b r 2009. i[illegible] b r 2009, t t[illegible] tr t h[illegible] r[illegible] rr d t[illegible] h tr di[illegible] [illegible] t d X.

52. t t[illegible] tr t[illegible] t di[illegible] i t r[illegible] b[illegible] xp t d th t t[illegible] di[illegible] i tr[illegible] ti[illegible] X tr d[illegible] d h[illegible] r[illegible] p r[illegible]. Thi[illegible] i[illegible], [illegible] th r thi[illegible], [illegible] th h t

□□□□□□□□□□□t□di□□□□i□□t□p□id□□t□t□□tr□□t t□□r□□□□□□□t□di□□□□□r th□ir □□□□t□, □b□th□ □□□t□di□□□□□tr□□t□□□d □□□□□i□t□d □□□□h□d□□□th□t □□□□□□i□di□ti□□th□t □t□di□□□ i□tr□□ti□□□□X tr□di□□□□□□d i□□□r □xtr□□□□□□r □□r□□p□, □□d did □□t □□th□ri□□□□□□□h □□□□□r □□r□□p□, □□d □□□□t□t□□tr□□t□□I□□□□t□□□t M□□□□□r □□id□□th□t □□□□r□d □□□t□di□□□□i□□t□□□d □□t□id□i□□□□t□□□t □□□□□□□r□th□t th□pri□□□□□□X tr□d□□□□□□“*based on the market rates at the time the trade is executed.*”

53. I□□tit□ti□□□□i□□□□t□r□t□pi□□□□r□□□□□t□d th□t □t□t□□tr□□t □□d □th□r □□□t□di□□□ h□□d□□th□□□□□□□r □X tr□□□□□ti□□□, □□□t□th□r□p□tri□ti□□□□di□id□□d □□d i□t□r□□t p□□□□□□t□, thr□□□h □t□di□□□i□tr□□ti□□□b□□□□□□th□□□□□□□t □□□□□h tr□d□r□r□□□□□□ti□i□d th□ti□□□□□d □□□□rt r□□□ir□d □□r □□□□□□ti□t□d tr□d□.

1. Custodial Clients Relied Upon State Street’s Expertise and Loyalty

54. □i□□□□t □□□□t 1998, □t□t□□tr□□t □x□□□t□d th□□□□□rit□□□□□□t□di□□□□i□□t □X tr□□□□□ti□□□□□r it□□□□□□□t□, i□□□□di□□p□r□h□□□□□d □□□□□□□□.□. □□d □□r□i□□□□rr□□□□□□□□□ □□r□p□tri□ti□□□□□di□id□□d□□□d i□t□r□□t p□□□□□□t□i□t□□□.□. d□□□□r□.

55. □□□t□di□□□□i□□t□□r□p□□□d □hi□h d□r□□□□tr□□t i□□t□t□□tr□□t t□□x□□□t□□t□di□□□ i□tr□□ti□□□□X tr□□□□□ti□□□. I□□□□d□ti□□th□□□tr□□□□□ti□□□, □t□t□□tr□□t □□□□pi□d □□p□ri□r p□iti□□□t□it□□□□t□di□□□□i□□t□d□□t□it□□□□tr□□□□□□r □□□□p□t□□□th□□X tr□d□, i□□□□di□□th□ ti□i□□□□th□tr□d□□, □□d □□□t i□p□rt□□t□, th□pri□□□□t □hi□h th□tr□d□□□□□r□□x□□□t□d.

56. □□□t□di□□□□i□□t□d□p□□d□d □p□□□t□t□□tr□□t □□t □□□□t□□x□□□t□th□□X tr□d□□, b□t □□□□t□□□□□r□t□□□□□d h□□□□t□□r□p□rt th□□X r□t□□□d t□□□rr□□□t th□tr□d□□i□□□□□rd□□□□ □ith th□ir □□□t□di□□□□tr□□t□, □□□□□i□t□d □□□□h□d□□□, □□d □□id□i□□□□□□□t □□rth i□th□ I□□□□t□□□t M□□□□□r □□id□□.

57. □dditi□□□□□, □□p□r□t□□□d □p□rt □r□□ th□□□□t□di□□□□tr□□t□□□d I□□□□t□□□t M□□□□□r □□id□□, □t□t□□tr□□t□□□□t□di□□□□i□□t□h□d □r□□□□□b□□xp□□t□ti□□th□t th□□X r□t□□ th□t □t□t□□tr□□t □h□r□d □□r □r□dit□d□□□□t□di□□□i□tr□□ti□□□X tr□d□□□□□□d □□□□r□t□□□r□□□□t th□tr□□r□t□□□□th□□□□X tr□d□□. Th□r□i□□□r□□□□□ □□□t□di□□□□i□□t □□□□d □xp□□t it□□□□t□di□□ b□□□□ t□□hi□h it □□□p□i□□□□b□t□ti□□□□□□□□□□□□□□r □□□t□di□□□r□i□□□□ t□□h□r□□□r

Case 1:12-cv-11698-MLW Document 1 Filed 09/12/12 Page 50 of 122

□r□dit□it i□ □□□□□ti□□ □ith □t□□di□□i□tr□ti□□ □X tr□d□□t □□□r□t□□th□r th□□th□□□t□□r□t□ □□r th□□X tr□d□.

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

58. □t□t□□tr□□t□□□r□ □□□t□di□□□□tr□□t□pr□□id□d th□t □t□t□□tr□□t □□h□□b□□□titl□d t□ □□□p□□□□ti□□ □r it□□r□i□□□□d □xp□□□□□□□□t□di□□p□r□□□t t□ □□□ritt□□ □□□□h□d□□ b□t□□□□th□p□rti□□.□

59. □□□t□di□□□i□t□□□d □t□t□□tr□□t □□r□□d t□ □□d □x□□□t□d □□□ri□□□□□□□h□d□□□ □□□ri□□th□ti□□p□ri□d □r□□ 1998 t□th□pr□□□□t.

60. Th□□□□□h□d□□□□ith□r pr□□id□d □ti□□t□d □□□□□□□□□r □□□□□□□□t □□□□r □t□t□□tr□□t□□□r□i□□□□□□□□t□di□□.

61. Th□□□□□h□d□□□□□□ □□t □□rth □□rt□i□ □□t□□ri□□□□□i□□r□ □□r□i□□□□r □hi□h □t□t□□tr□□t □□□p□r□itt□d t□ □h□r□□□dditi□□□□□□, i□□□di□□□ □ir□□□□□, □□p□rti□□□□□□, □□i□□r□ □□□□□□d □□b□□t□d□□□□□.

62. □□□□□th□□□p□rti□□□r □□□i□□r□ □□r□i□□□t□□ri□□r□□t□i□ □□□□□□□t□□□X tr□di□□. Th□□□□t□di□□□□□tr□□t□did □□t □t□t□th□t th□□□□□i□□r□ □□□r□□t□t□□X tr□di□□□r th□t □t□t□□tr□□t □□□d i□p□□□□□□ □□□□i□□□□□□□ti□□ □ith □X tr□di□□.

63. □□r □□□□□□E□I□□ □i□t, th□□r□□□□□T□□h□r □□tir□□□□t □□□t□□ □□□□T□□□□, □□r □□r□th□□□d□□□d□, it□□□□t□di□□□□tr□□t□□ith □t□t□□tr□□t □□□□xpr□□□□pr□□id□d th□t □t□di□□i□tr□ti□□□X tr□d□□□□□d b□□x□□□t□d □r□□□□h□r□□□□r □b□did □□t i□t □X tr□□□□ti□□□□□ □□□th□□□r□i□□□□r □hi□h it □□□p□r□itt□d t□□h□r□□□□dditi□□□□□□□r □□□ □th□r □□□t □b□□□th□□□□□□□□t □□□.

64. □p□□i□□r□ □ti□□□d b□i□□, □b□t□ti□□□ i□i□r t□r□ □□□r□□p□□□d i□th□ □□□t□di□□□□□tr□□t□□□r □th□r □□□b□r□□□th□E□I□□ □□□□d□ri□□th□□□□□□□ri□d.

65. □dditi□□□□□, d□ri□□th□□□□□□□ri□d, □t□t□□tr□□t pr□□id□d I□□□□t□□□t M□□□□□r □□id□□t□ □□□t□di□□□i□t□□□d □□t□id□i□□□□t□□□t □□□□□□r□th□t □□□t□i□□d □□□pr□h□□i□□ i□□□r□ □ti□□ □b□□t □t□t□□tr□□t□□□□□t□d□pr□□ti□□□□□d □□r□i□□□, i□□□di□□pr□□□d□r□□

r□□ir□□ □t, □□t, □d □□t r□□. Th□ □□□ □r i□□d□□rib□d th□ r i□ i□□□d□d □t t□ □tr□t □□r i□□ Ex□h□□□□ Tr□□□□ti□□.□

66. □□ri□ th□ □□□□□□ri□d, □t t□ □tr□t i□□□d □□ □□□r th□ 15 di□ti□t I□□□t□ □t M□□□□r □id□, i□□di□ th□ d□t□d □□□9, 2003 □□ □□□t 9, 2005 □□pt□b□r 26, 2006 □t□b□r 17, 2006 □□ □□□b□r 20, 2006 □□ □□□b□r 15, 2006 □□□r□25, 2007 □□t□b□r 30, 2007 □□ □□□b□r 21, 2007 □□ □□□b□r 19, 2007 □□□r□28, 2008 □M□1, 2008 □□t□b□r 31, 2008 □□ □□□b□r 30, 2008 □□d □□□r□23, 2009, t□ □□t di□□i□t□d □t id□i□□t□ □t □□□r.

67. □t t□ □tr□t r□pr□□t□d i□ □h □th□ I□□t□ □t M□□□r □id□ th□t □t t□ □tr□t □□r i□ Ex□h□□□□ Tr□□□□ti□□. . . r□ ***priced based on the market rates at the time the trade is executed.*** □E□ph□i□dd□d.□

3. State Street's Deceptive Scheme Overcharged Custodial Clients for Standing-Instruction FX Trades

68. □t t□ □tr□t□□ X pr□ti□□ di□r□d r□□ □h□t th□ □□t di□□□ tr□t□□ th□ri□d □d □h□t th□ I□□□t□ □t M□□□r □id□r pr□□□t□d. □□pit□ □□r□□□ th□t X tr□□□ti□□ □□d b□b□d □□ □r□t r□t□, t□ t□ tr□t r□p□rt□d □d □h□r□d it□ t di□□i□t□ X r□t□ □□ t□ di□□i□t tr□ti□ tr□d □□r b□□□ □h□t t□ t□ tr□t □t□□□ p□id □r □r i□ □rr□□□ □r □r b□□□ □h□t t□ t□ tr□t □t□□□ r□□i□d □r □□□ r i□ □rr□□□ □t□ti□, t r□t□ th□t □t□□□ *outside of the range of the day.*

69. □□□h, □b□□□ □t t□ it□ t di□□i□t, t□ t□ tr□t r□p□rt□d X r□t□ t di□□i□t tr□ti□ tr□d t it□ i□t th□t did □t r□□□t th□ t□□□ t r pr□□d□ th□ X tr□□□ti□ t□ t□ t□ tr□t, □d i□t□d i□□d□d hidd□ □d □□□ th□ri□d □r□p. □t i□ p□, t□ t□ tr□t i□□□t□d th□ X r□t it r□p□rt□d □d □h□r□d □r r□dit□d t it□ t di□□i□t. □t t□ tr□t p□id □r r□□i□d □□r t□ □r X, r□p□rt□d t it□ t di□□i□t □□ th□r r□t th□t □□ i□h□r hi□h□r i□ th□ □□□□ □□□p□r h□□□r □□r i□ th□ □□□□ □□□□□, □d p□□t□d th□ di□□r□□□.

70. Th[illegible] [illegible]t di[illegible]i[illegible]t[illegible]r th[illegible]ir [illegible]t[illegible]r[illegible]t[illegible]d th[illegible]t [illegible]t[illegible]t[illegible]tr[illegible]t [illegible]x[illegible]t[illegible]d [illegible]X tr[illegible]ti[illegible], th[illegible]r[illegible]t [illegible]r[illegible]t[illegible]d [illegible]tr[illegible]i[illegible]i[illegible]t[illegible]t[illegible]tr[illegible]t[illegible]M[illegible]r[illegible]t [illegible]rd[illegible]r M[illegible]t [illegible]t [illegible]M[illegible]M[illegible]t[illegible]r[illegible]p [illegible]ri[illegible]tr[illegible]d[illegible]r[illegible]r[illegible]i[illegible]t [illegible]t[illegible]t[illegible]tr[illegible]t[illegible]X tr[illegible]di[illegible]d[illegible]h[illegible]th[illegible] [illegible]x[illegible]t[illegible]d th[illegible]X tr[illegible]d[illegible]b[illegible]t[illegible]ri[illegible]tr[illegible]d[illegible]i[illegible]r[illegible]ti[illegible]th[illegible]t did [illegible]t r[illegible]t th[illegible]t[illegible]r[illegible]t[illegible]t[illegible] [illegible]tr[illegible]t p[illegible]id [illegible]r r[illegible]i[illegible]d.

71. T[illegible]i[illegible]tr[illegible]t th[illegible]d[illegible]pti[illegible], [illegible]i[illegible]th[illegible]x[illegible]p[illegible]t [illegible]rth[illegible]b[illegible] 100 [illegible]r[illegible] [illegible]r[illegible]d[illegible]r tr[illegible]d[illegible] [illegible]i[illegible]d[illegible]th[illegible]t r[illegible]d[illegible]r[illegible] [illegible]1.25 t[illegible] 1.35 th[illegible]r[illegible]th[illegible]d[illegible]t[illegible] p[illegible]r h[illegible] 1.00, [illegible]ith [illegible]d[illegible]id[illegible]r[illegible]t[illegible] 1.30. [illegible], [illegible]d [illegible], t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] [illegible]r[illegible]r d[illegible]r tr[illegible]d[illegible] b[illegible]h[illegible]it[illegible]t di[illegible]i[illegible]t, [illegible]t[illegible]tr[illegible]t [illegible]d h[illegible] p[illegible]id [illegible]r[illegible]t b[illegible]t[illegible] 1.25 [illegible]d 1.35 [illegible]r th[illegible]r, b[illegible]t r[illegible]p[illegible]rtd t[illegible]it[illegible]i[illegible]t th[illegible]t it p[illegible]id [illegible]r. [illegible]t[illegible]tr[illegible]t th[illegible] [illegible]d h[illegible] [illegible]h[illegible]r[illegible]d it[illegible]i[illegible]t th[illegible] [illegible]hi[illegible]h[illegible]r [illegible]t [illegible]d [illegible]pt th[illegible]di[illegible]r[illegible].

72. Thi[illegible] [illegible]i[illegible]pp[illegible]rtd b[illegible]th[illegible]i[illegible]r[illegible] [illegible]E[illegible]I[illegible] [illegible]t di[illegible]i[illegible]t [illegible]T[illegible] [illegible]t[illegible] [illegible]r[illegible] [illegible]X tr[illegible]ti[illegible] [illegible]x[illegible]t[illegible]d b[illegible]t[illegible]t[illegible]tr[illegible]t [illegible]b[illegible]h[illegible]d r[illegible]p[illegible]rtd t[illegible] [illegible]T[illegible]. B[illegible]t[illegible] [illegible]r 3, 2000 [illegible]d [illegible] b[illegible]r 31, 2010, [illegible]T[illegible] h[illegible]d [illegible]t[illegible] 10,784 [illegible]X tr[illegible]ti[illegible] [illegible]ith r[illegible]i[illegible]b[illegible]d t[illegible]. [illegible] th[illegible] 10,784 tr[illegible]ti[illegible], 4,216, [illegible]r 39[illegible], [illegible]r[illegible] [illegible]ti[illegible]d, t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] tr[illegible]d[illegible]. Th[illegible] 4,216 [illegible]X tr[illegible]d[illegible] h[illegible]d [illegible] [illegible]r[illegible] t[illegible]tr[illegible]di[illegible] [illegible] [illegible]x[illegible]di[illegible] 1.2 bi[illegible].

73. I[illegible] [illegible]d[illegible]ti[illegible] th[illegible] [illegible]i, [illegible]T[illegible] [illegible]d th[illegible]t it [illegible]X tr[illegible]d[illegible] [illegible]r[illegible] [illegible]d [illegible] p[illegible]r[illegible]d t[illegible] th[illegible]r [illegible]X tr[illegible]d[illegible] [illegible]d tr[illegible] d i[illegible] [illegible] pr[illegible]h[illegible]i[illegible]d t[illegible] b[illegible] [illegible]r th[illegible] 2 [illegible]i[illegible] b[illegible] id[illegible] rr[illegible] tr[illegible]d. B[illegible] p[illegible]ri[illegible] [illegible]T[illegible] tr[illegible]d i[illegible] rt[illegible]i[illegible] rr[illegible]i[illegible] ith th[illegible] [illegible] rr[illegible] p[illegible]ir tr[illegible]d[illegible] i th[illegible]d[illegible]t b[illegible], [illegible] [illegible]ti[illegible] t th[illegible] tr[illegible]di[illegible] [illegible]t [illegible] T[illegible] t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] [illegible]X tr[illegible]d[illegible] b[illegible]t t[illegible]t[illegible]tr[illegible]t i[illegible]r[illegible]ti[illegible]t[illegible]tr[illegible]d[illegible] d[illegible]r[illegible]id. [illegible]r p[illegible]rp[illegible] [illegible]thi[illegible] [illegible]i, th[illegible] tr[illegible]di[illegible] [illegible]t i th[illegible] di[illegible]r[illegible] b[illegible]t[illegible] th[illegible]d[illegible] id[illegible]r[illegible]t[illegible]d th[illegible]r[illegible]t th[illegible]t t[illegible]t[illegible]tr[illegible]t h[illegible]r[illegible]d [illegible]r r[illegible]dit[illegible]d t[illegible] [illegible]T[illegible] [illegible]r t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] [illegible]X tr[illegible]d[illegible].

74. [illegible]t[illegible]t[illegible]tr[illegible]t did [illegible]t r[illegible]p[illegible]rt t[illegible] [illegible]T[illegible] [illegible]r [illegible] th[illegible]r E[illegible]I[illegible] [illegible]i[illegible]r[illegible]d [illegible]t di[illegible] [illegible]i[illegible]t th[illegible] [illegible]t[illegible]ti[illegible] [illegible]x[illegible]ti[illegible] [illegible]X tr[illegible]d. Th[illegible]r[illegible]r, [illegible] p[illegible]ri[illegible] th[illegible]d[illegible] id[illegible]r[illegible]t[illegible] th[illegible]t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] [illegible]X r[illegible]t[illegible] t[illegible]t[illegible]tr[illegible]t h[illegible]r[illegible]d [illegible]r r[illegible]dit[illegible]d t[illegible] [illegible]T[illegible] [illegible] th[illegible]b[illegible]t

□ th□d □□d t□r□i□i□□ □h□th□r □t□t□ □tr□□t □h□r□□d □□r □r□dit□d□□ □T□□ □r□t□ b□□d □□ th□ □t□□□□ □r□□t r□t□ □t th□ ti□□ □□ □x□□ti□□, □□□t□t□ □tr□□t r□pr□□□□t□d it □□□□d d□i□□ it□ I□□□□t□□□t M□□□□□r □□id□□.

75. Th□□□□□□i□ b□□□ T□□ □ □d□□□□r th□t □t□t□ □tr□□t d□ri□□d it□ □□□□ □X r□t□□ b□ □ddi□□ □□ □p□r□h□□□□□r □□btr□□ti□□ □□□ □□□□□□b□□i□ p□i□t□□□□r □pip□□ □r□□ th□ □□□t□□□□X r□t□. □ b□□i□ p□i□t, □r pip, i□ □□□it □□□□□t□ 1□100th □□□ p□r□□□t□□ p□i□t. □□r □x□□p□□, th□ □□ □□□□t □□□□ th□ □□r□d□□□r □□rr□□□□ p□ir □□□□r□□□ □ □□□□□i□ 1□100th □□□ p□□□□, □r □□□ b□□i□ p□i□t.

76. □□r th□ p□ri□d □□□□□□□r□3, 2000 thr□□□h □□□□□b□r 31, 2010, th□□X r□t□□ th□t □t□t□ □tr□□t r□p□rt□d □□d □h□r□□d □□r □r□dit□d □t□□□T□□ □□it□4,216 □□□□□□□□ti□t□d □X tr□d□□ □□r□, □□ □□□r□□□, ***17.8 basis points*** □b□□□□r b□□□□ th□ d□□□□□id r□t□. I□ □th□r □□rd□, th□□X r□t□□ th□t □t□t□ □tr□□t r□p□rt□d □□d □h□r□□d □□r □r□dit□d □t□□□T□□ □□r □t□di□□□i□tr□□ti□□□□X tr□d□□, □□ □□□r□□□ □□d d□ri□□ thi□ 10□□□□r p□ri□d, □r□□t□d □tr□di□□ □□□t 17.8 b□□i□ p□i□t□ □hi□h□r th□□ th□ □□□r□□□ □X r□t□□ th□ d□□□□□id r□t□□.

77. B□□□□□□□x□□p□□, □□□□□ □th□t th□ r□t□ □t□t□ □tr□□t □□t□□□□ p□id t□ p□r□h□□□ □1.00 □□□i□□□d□□□□□1.31551. I□ □t□t□ □tr□□t □h□r□□d □□T□□ 17.8 b□□i□ p□i□t□ □□ □r th□□ it p□id, th□ r□t□□□□□d b□□1.31729 □□1.31729 □□1.31551 □ 0.00178□. □□r □ p□r□h□□□ □□□10 □i□i□□, th□ □□di□□□□□d pr□□it t□ □t□t□ □tr□□t □□ th□t □i□□□ tr□d□□ □□d th□ □□□□□□it□□t □□□□□□□ □□□□b□□□T□□□ □□□□d b□□17,800. □□□□rdi□□□□, th□ di□□r□□□□ i□ □t□t□ □tr□di□□ □□□t□ b□t□□□□ th□ □□t□□□□□d □□□□r□t□□□□□b□□□r□□□r□□.

78. T□□i□□□□, □□r th□ □□□ □10□□□□r p□ri□d, th□□X r□t□□ th□t □t□t□ □tr□□t r□p□rt□d □□d □h□r□□d □□r □r□dit□d □t□□□T□□ □□it□□ □r th□□6,500 ***negotiated*** □X tr□d□□ □dd□d, □□ □□□r□□□, □□□□ ***3.6 basis points*** i□ tr□di□□ □□□t□□□□□□ p□r□d t□ th□ d□□□□□id r□t□. □□□□□h, □hi□□ th□□X tr□d□□ □x□□□t□d b□ □t□t□ □tr□□t p□r□□□□t t□ □□□□□□□d □b□□t □x□□□ti□□ pr□□ti□□□i□□□rr□d tr□di□□ □□□t□□□17.8 b□□i□ p□i□t□□□ □□□r□□□, th□□X tr□d□□ □□ti□□□ □□□□ti□t□d b□t□□□□ □t□t□ □tr□□t □□d □□T□□ □r it□ □□t□id□ i□□□□t□□□t □□□□□□r□ i□□□rr□d tr□di□□ □□□t□□□□□□ 3.6 b□□i□ p□i□t□□□ □□□r□□□.

79. The Plaintiffs' trades in the FX Options traded at prices that were not reported by the Exchange. These trades are known as "Off-Exchange" trades. Of the 4,216 Off-Exchange trades, ***2,217, or 53%, fell entirely outside the forward-adjusted range of the day.*** The 2,217 FX trades, with Notional Amounts of $200 million, added transaction costs of ***64.4 basis points*** over the Bloomberg mid-rate. For example, the purchase of $10 million, at a difference of 64.4 basis points, added $64,400 profit to the bank's bottom line.

80. Not only did the banks benefit from the difference between the Bloomberg mid-rate and the prices at which they executed Off-Exchange trades, but the banks also profited from their position in the Interbank Market. But when the banks executed Off-Exchange trades **outside** the forward-adjusted range of the day, it became apparent that the reported FX rates were not accurate, but rather included additional costs that were charged to the Plaintiffs and Class Members.

81. These practices, however, became apparent to FX participants, including Plaintiffs and Class Members, only after the Exchange published its findings. Before then, the banks' practices of executing Off-Exchange trades at prices outside the forward-adjusted range of the day were hidden from Plaintiffs and Class Members. The Defendants' misconduct was particularly egregious because the banks knew that Plaintiffs and Class Members relied on the banks' honesty and integrity in executing Off-Exchange trades.

4. For its Custodial Clients, State Street's Deceptive Acts and Practices Could Not Reasonably Be Detected.

82. [illegible]

83. [illegible]

84. [illegible]

85. [illegible]

C. Events After October 2009 Begin to Shed Light on State Street's Deceptive FX Trading Practices

86. [illegible] 20, 2009, [illegible] 12651, [illegible]

□t□t□□tr□□t □ith □i□□ppr□pri□ti□□ □ □r□th□□ □56 □i□li□□ □r□□ th□ □□□□□□t□□□□□□i□□r□i□□□t□□ □r□□t p□□i□□p□□□□□ □□□E□□ □□d □□□T□□□ □□□r □□ □□ti□□□r p□ri□d i□ □□□□□□ti□□ □ith th□ □□□ □□□□□ir □□d d□□□pti□□ □X pr□□ti□□□□□□□□d h□r□i□. *People of the State of Cal. ex rel. Brown v. State Street Corp.*, □□. 34□2008□00008457□□□□M□□□□□ □□□. □□p□r. □t. □□□r□□ □□t□ □□□□t□ □□t. 20, 2009□.

87. Th□ □□i□r□i□ □tt□r□□□ □□□□r□□□□□d th□t □t□t□ □tr□□t r□p□rt□d i□□□t□d □X r□t□□ □h□□ b□i□□ □r□i□□ □□□riti□□ □r □□□E□□ □□d □□□T□□, r□p□rt□d d□□□t□d □X r□t□□ □h□□ □□□i□□ □r□i□□ □□□riti□□ □r th□□, □□d p□□□□t□d th□di□□r□□□□b□t□□□□th□r□p□rt□d □□d □□t□□□r□t□□. Th□ □tt□r□□□ □□□□r□□□rth□r □□□□□d th□t □t□t□ □tr□□t hid it□ □r□□□□□□□□d□□t b□ □□t□ri□□i□□□rr□□t □X □x□h□□□□r□t□i□t□ □t□t□ □tr□□t□□□□□tr□□i□□X tr□di□□ □□□t□□ □□□d pr□□idi□□ □□□□r□□□rd□t□ □□□E□□ □□d □□□T□□.

88. Th□ □□i□r□i□ □tt□r□□□ □□□□r□□□□□□□ti□□□□□□□di□□□□d □□ □r□□p□□□□r□ b□□□d i□p□rt □□th□□□□r□t□□ti□ □□□ □□□□ □r□ □r □t□t□ □tr□□t B□□□ □□p□□□□□h□ □ □r□□d □□th□ □□□ □tr□di□□ □□□r □□th□ □t□t□ □tr□□t B□□□ □□d □□□M □□r□i□□ □x□h□□□□tr□d□r□□□d □h□ □□□rh□□rd h□□ □t□t□ □tr□□t B□□□□ □r □□□M □□r□i□□ □x□h□□□□tr□d□r□□ □r□ □□r□i□□ □p □X tr□d□ pri□□□. Thi□ tr□d□r, i□ □□ □r□t□□ti□ □□□, d□□□rib□d th□pr□□ti□□□□□□t□t□ □tr□□t B□□□□□X tr□d□r□ □□□□t□t□□□ □□□thi□□□thi□□□t□d□□□□d □id th□t th□□X Tr□d□r□ pr□□ti□□□□□r□□□t □ithi□ th□ i□d□□tr□ □t□□d□rd.□*People of the State of Cal. ex rel Brown v. State Street*, □□. 34□2008□ 00008457□□□□M□□□□□ □□□. □□p□r. □t. □□□r□□ □□t□ □□□□t□ □□□. 31, 2012□□□ □□□r□ti□□ □□ □□□□□ □. □□□□□□.

89. I□ th□□ □□th□th□t □□□□□□d, □t□t□ □tr□□t dr□□ □ti□□□□ □h□□□□d it□□X tr□di□□ p□i□i□□□□d di□□□□□r□□□□d □□i□□r□ □d it□□□□t□di□□□i□□t□. □□d□r th□□□□□ p□i□i□□, □t□t□ □tr□□t □d□itt□d □□r th□ □ir□t ti□□ th□t it h□d □□□t□□ □ti□□□□ i□p□□□d □dditi□□□□□h□r□□□□r □X tr□di□□. □□r □x□□p□, i□ □□ □x□□rpt □r□□ □□ □pd□t□d I□□□□t□ □t M□□□□□r □ □id□d□t□d □□□□□b□r 20, 2009, □t□t□ □tr□□t □d□i□□d □□□t□di□□□i□□t□th□t it □□□□d p□□t □□it□□ □b□it□, □□.□t□t□tr□□t.□□□, □□□rr□□t □ □r□□p□□□d □ □r□d□□ □□□□d b□□t□t□ □tr□□t □ □b□M□r□t□□r □t□di□□i□tr□ti□□□□r□i□□ □x□h□□□□tr□□□□ti□□r□□□□t.□

90. In its initial Complaint, the Trustee alleged that "[s]ince December 2009, the Trustee has provided to Citibank the Trustee's historical trading data, including the principal and exact time of each trade, so that Citibank could determine whether its FX trades were executed at the best prices available on the dates and times requested by the Trustee." Emphasis added. The Trustee added that "the Trustee has provided Citibank with the relevant historical data so that Citibank could determine whether its FX trades were executed at the best prices available on the dates and times requested by the Trustee."

91. The Trustee then alleged that "Citibank's FX trades executed on behalf of the Trustee's accounts were not executed at the best prices available on the dates and times requested by the Trustee." The Trustee alleged that Citibank's FX trades "were executed at prices that were unfavorable to the Trustee's accounts."

92. Contrary to the Trustee's allegations in his initial Complaint in this action, his *qui tam* complaint alleged that "the Trustee has provided Citibank, the Trustee's FX trading data showing that Citibank's FX trades executed on behalf of the Trustee's accounts were unfavorable ***63%.*** The Trustee's data included 498,940 FX spot and forward trades, 196,280 of the Trustee's trades, and 302,660 estimated trades for the years 2000–2010, and alleged that Citibank's FX trades on behalf of the Trustee's accounts, except for FX trades executed in 2010 and for 63 days in 2009.

D. FX Trading and State Street's Commingled ERISA Fund Clients

1. The Plaintiffs' Plans

93. The Department of Labor has published Prohibited Transaction Exemption 84-14, 29 C.F.R. § 2510.3-21(c).

94. □□□□d□□t□pr□□id□□□X tr□di□□ □r□i□□□□i□i□r t□th□□□pr□□id□d t□th□□□d□□□r □□□□ □□d th□B□i□□ □□□□t□ □th□r □i□i□r□ □it□□t□d □□□□□, □ith□r dir□□t□□ □□□p□□ □□□t□di□□, □r tr□□t□□, □r i□dir□□t□□ □□i□□□□t□ □□t □ □□□□□□r □□r th□□□□ □i□□□□d □□□d□i□ □hi□h th□ □□□□□i□□□□t.

95. Th□r□ □r□ t□ □□t□p□□□□□E□I□□ □□□□□r□d p□□i□□p□□□□□d□i□□d b□□□□it p□□□□□d d□i□□d □□□trib□ti□□p□□□□. B□th t□p□□□□p□□□□h□□□ □□□□d it □□□□□□r□ □□d pr□d□□t t□ □xp□□d th□ir i□□□□t□ □□t□t□i□□□□d□ □xp□□r□t□ □□r□i□□ □ □r□□t□. □ □□□rdi□□□□, d□i□□d b□□□□it p□□□□ h□□□ □xp□□d□d i□t□r□□ti□□□□h□di□□□, □□d d□i□□d □□□trib□ti□□p□□□□ r□□□□□t□i□□□□d□□t □□□□t □□□, i□□□t □□□□r□, i□t□r□□ti□□□□i□□□□t□ □□t □pti□□□.

96. E□I□□ □□□□□r□d p□□□□r□□□□r□p□r□h□□□ □□d □□□□□r□i□□ □□□□riti□□i□ □rd□r t□ i□□r□□□□di□□r□i□i□□ti□□ □□d t□□□ □d□□□t□□□ □□□pp□rt□□iti□□ □□r hi□h□r r□t□r□□. □□tir□□ □□t p□□□□ th□t i□□□□t i□ □□r□i□□ □□□□riti□□r□□i□□pri□□ip□, di□id□□d□, □□d i□t□r□□t th□t □r□ p□id i□ □□r□i□□ □□rr□□□i□□, □r p□rti□ip□t□i□ □th□r i□□□□t□ □□t□th□t r□□□ir□ th□ □x□h□□□□ □□□□r□i□□ □□rr□□□□i□t□ □□d □r□□ □ □ □ □□□□r□□□□ □□□, □ith□r dir□□t□□ □r thr□□□h p□rti□ip□ti□□i□th□ □□□□ □i□□□□d □□□d□. □ □□r□□□□t, th□p□r□h□□□ □□d □□□□ □□□□rr□□□i□□i□id□□t□□t□ □ □□r□i□□ □□□□riti□□tr□□□□□ti□□i□ □it□□t□ □p□□□□p□rti□ip□ti□□i□i□t□r□□ti□□□□□□□riti□□□□ □r□□t□□□d t□th□ □□□□i□iti□□, h□di□□, □□d di□p□□iti□□ □□□□r□i□□ □□□□riti□□.

97. □t□t□ □tr□□t □□r□□d □□tr□□t□□ □□d i□□□□t□ □□t □ □□□□□□r □□r th□ □□d□□□r □□□□. B□□i□□i□□i□2001, th□ □□d□□□r □□□□ □□□□r□d p□rti□ip□□t□th□ □pti□□□t□i□□□□t i□ □□rt□i□ I□t□r□□ti□□□□E□□it□ □□□□d□, i□□□□di□□th□ I□t□r□□ti□□□□r□□th □pp□rt□□iti□□□□□□riti□□□□□di□□ □□□□□□ □□□d, □□d th□□□□□ □□i□I□t□r□□ti□□□□□ph□□□□□□t □□□□d. Th□□□I□t□r□□ti□□□□E□□it□ □□□d□h□d □□r□i□□ □□□□riti□□□□d □□□□d h□□□b□□□, dir□□t□□, □r i□dir□□t□□, p□rt□□t□□X tr□□□□□ti□□□□x□□□t□d b□□□□□M p□r□□□□t t□i□□tr□□ti□□□□r□□ □t□t□ □tr□□t B□□□. □□ith□r □□□th□□□ □□□d□□□□□d h□□□b□□□ □p□r□t□d □ith□□t □X tr□□□□□ti□□□, □h□th□r □r □□t th□□□tr□□□□□ti□□□□□□r□ □x□□□t□d □t th□ □□□d □□□□□□r □t th□br□□□r□□□ □□□□. □t□t□ □tr□□t B□□□, □□th□i□□□□t□ □□t □ □□□□□□r □□d □id□i□r□ □□r th□□□□ □□□ □i□□□□d □□□d□, □□□□□ti□ □t□□r□p□□□ib□□ □□r th□ □□□d□□□X tr□□□□□ti□□□□□d□rt□□□□b□ □□□□M.

98. [illegible]

2. **Defendants' Fiduciary Status**

99. [illegible]

100. [illegible]

[illegible]

[illegible]

[illegible]

(i) is registered or is required to be registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

(ii) is not registered or is required to be registered under section 203 of such Act (15 U.S.C. 80b-3), if, if registered or required to be registered under such paragraph (1), it would be prohibited from registering with the Commission pursuant to any provision of section 203A of such Act (15 U.S.C. 80b-3a), by reason of the factors described in section 203A(b) of such Act (15 U.S.C. 80b-3a(b)), as applied to a person registered under this section, rules or regulations prescribed by the Commission under section 203A of such Act (15 U.S.C. 80b-3a), or rules or regulations prescribed by the Commission under section 203(e)(3) of such Act (15 U.S.C. 80b-3(e)(3)), with such modifications as the Commission may determine and specify in the rules or regulations prescribed under this paragraph; or

(iii) is a bank, and is described in subclause (I), (II), or (III) of section 15(b)(4)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)(B)(i)) (except to the extent that the Commission, by rule or regulation, determines that it is consistent with the public interest or the protection of investors that persons associated with a bank may be associated persons of a broker or dealer without registering or barring the broker or dealer pursuant to such section).

(Section 3(38), 29 U.S.C. 1002(38)).

101. Here, Plaintiffs contend that Defendants Investment Manager and Investment Committee Defendants, operating as fiduciaries, breached their duties to the Plan by, among other things, failing to monitor the investment in the Investment Manager Defendants' Proprietary Funds and allowing the Plan to pay unreasonable fees and expenses to the Investment Manager Defendants and their affiliates for investment management services to the Plan, which were borne by the Plan and Plan participants.

102. Plaintiffs contend Defendants breached their fiduciary duties to the Plan by failing to adequately monitor the Investment Manager Defendants' decision to offer the Proprietary Funds as investment options in the Plan during the Class Period, including but not limited to the period from January 31, 2006 through June 30, 2007 (the "Class Period").

103. Upon information and belief, Plaintiffs hereby demand that Defendants make good to the Plan all losses resulting from each breach of fiduciary duty for which Defendants are liable under ERISA, and restore to the Plan any profits Defendants have made through use of Plan assets, and pay such other equitable or remedial relief as the Court may deem appropriate.

104. Upon information and belief, during the Class Period, Defendants caused the Plan to invest in certain proprietary mutual funds managed by Defendant FMTC (the "Proprietary Funds"), including the

t[illegible] [illegible]p[illegible]i[illegible]t, th[illegible]i[illegible]r[illegible]i[illegible]tt[illegible]r[illegible] [illegible]r[illegible]p[illegible]i[illegible]t[illegible]i[illegible]t[illegible]r[illegible]ti[illegible], [illegible]d th[illegible] T[illegible] [illegible]p[illegible]i[illegible]t [illegible]r [illegible]t[illegible]di[illegible]i[illegible]tr[illegible]ti[illegible] X tr[illegible].

105. [illegible]d[illegible]r E[illegible]I[illegible], i[illegible]t[illegible] [illegible]t[illegible]i[illegible] [illegible]i[illegible]d [illegible]d[illegible]r[illegible]b[illegible]t t[illegible] [illegible]thr[illegible]h [illegible]r[illegible], p[illegible]r[illegible]t t[illegible]hi[illegible]h, th[illegible]p[illegible]t[illegible] E[illegible]I[illegible] [illegible]r[illegible]d p[illegible]i[illegible]d[illegible]b th it[illegible]di[illegible]d [illegible]it[illegible]i[illegible]t[illegible]r[illegible]t i[illegible]th[illegible]tit[illegible]d [illegible]di[illegible]d i[illegible]t[illegible]r[illegible]t i[illegible]h [illegible]th[illegible]d[illegible]r[illegible]i[illegible] [illegible]t[illegible]th[illegible] [illegible]tit[illegible] 29 [illegible].[illegible].[illegible]. [illegible]2510.3[illegible]101[illegible]2[illegible] *see also* E[illegible]I[illegible] [illegible]3[illegible]42[illegible], 29 [illegible].[illegible].[illegible]. [illegible]1002[illegible]42[illegible] [illegible]th[illegible]rit[illegible] [illegible]r[illegible]t[illegible]r[illegible] [illegible]b[illegible]r t[illegible]d[illegible]i[illegible]t[illegible]r[illegible] [illegible]p[illegible]i[illegible]t[illegible]t[illegible]b[illegible]r[illegible]ti[illegible]. [illegible]p[illegible]i[illegible]i[illegible], [illegible]h[illegible] [illegible]ir[illegible]r h[illegible]d[illegible]i[illegible]t[illegible]r[illegible]t i[illegible] [illegible]i[illegible]d [illegible]d, it[illegible]t[illegible]i[illegible]d it[illegible]i[illegible]t[illegible]t[illegible]d [illegible]di[illegible]d i[illegible]t[illegible]r[illegible]t i[illegible]h [illegible]th[illegible]d[illegible]r[illegible]i[illegible] [illegible]t[illegible]th[illegible] [illegible]tit[illegible]. *Id.* [illegible]2510.3[illegible]101[illegible]h[illegible]1[illegible].

106. [illegible]p[illegible]r[illegible]h[illegible]x[illegible]r[illegible]i[illegible]th[illegible]rit[illegible]r [illegible]tr[illegible]r[illegible]p[illegible]ti[illegible]th[illegible] [illegible]t[illegible]r di[illegible]p[illegible]iti[illegible] [illegible]h[illegible]d[illegible]r[illegible]i[illegible] [illegible]t, [illegible]d [illegible]p[illegible]r[illegible]h[illegible]pr[illegible]id[illegible]i[illegible]t[illegible]t[illegible]d[illegible]i[illegible]ith r[illegible]p[illegible]t t[illegible]h [illegible]t[illegible]r [illegible]dir[illegible]t[illegible]r i dir[illegible]t[illegible]i[illegible]id[illegible]i[illegible]r[illegible]th[illegible]i[illegible]ti[illegible]p[illegible]. *Id.* [illegible]2510.3[illegible]101[illegible].

107. [illegible]th[illegible]p[illegible]r[illegible]r[illegible]d i[illegible]t[illegible]t[illegible] [illegible]r[illegible]r th[illegible]i[illegible]d [illegible]d, t[illegible]t[illegible]tr[illegible]t B[illegible]x[illegible]r[illegible]i[illegible]d [illegible]th[illegible]rit[illegible]d [illegible]tr[illegible]ith r[illegible]p[illegible]t t[illegible]th[illegible] [illegible]t[illegible]r di[illegible]p[illegible]iti[illegible] [illegible]th[illegible] [illegible]t. [illegible]rdi[illegible], t[illegible]t[illegible]tr[illegible]t B[illegible] [illegible]id[illegible]i[illegible]r[illegible]h[illegible]d [illegible]r E[illegible]I[illegible] [illegible]hi[illegible]h i[illegible]t[illegible]d i[illegible]th[illegible] [illegible]i[illegible]d [illegible]d, i[illegible]di[illegible]th[illegible] [illegible]i[illegible]ti[illegible] [illegible]d th[illegible] [illegible]th[illegible] p[illegible]t[illegible]ti[illegible] [illegible]b[illegible]r[illegible]ith r[illegible]p[illegible]t t[illegible]th[illegible] [illegible]d[illegible]r[illegible]i[illegible] [illegible]t[illegible]h [illegible]d [illegible]r[illegible]t[illegible]t[illegible]tr[illegible]t B[illegible] [illegible]p[illegible]r[illegible]d [illegible] i[illegible]d [illegible]d.

108. [illegible]tr[illegible]t[illegible]r [illegible]rti[illegible]th[illegible] [illegible]i[illegible]d [illegible]d, t[illegible]t[illegible]tr[illegible]t B[illegible] [illegible]th[illegible]ri[illegible]d t[illegible] [illegible]rt [illegible] [illegible]i[illegible]t[illegible] [illegible]rr[illegible] thr[illegible]h [illegible]r[illegible]i[illegible]x h[illegible]tr[illegible]ti[illegible]d [illegible]r[illegible]p[illegible]ib[illegible] [illegible]r [illegible]ri[illegible]th[illegible]t th[illegible]tr[illegible]ti[illegible]r[illegible]ithi[illegible]th[illegible]b[illegible]d[illegible]t t[illegible]tr[illegible]t B[illegible] [illegible]id[illegible]i[illegible]r r[illegible]p[illegible]ibiliti[illegible]d th[illegible]i[illegible]it[illegible]ti[illegible] E[illegible]I[illegible].

109. [illegible]t[illegible]t[illegible]tr[illegible]t B[illegible]d [illegible]M[illegible] [illegible]ti[illegible]d [illegible]id[illegible]i[illegible]ri[illegible]t[illegible]th[illegible] [illegible]d th[illegible] [illegible]b[illegible]ti[illegible] [illegible]tr[illegible]t[illegible]d i[illegible]t[illegible] [illegible]t[illegible] [illegible]r th[illegible]d[illegible]r [illegible]d th[illegible]B[illegible]i[illegible], [illegible]d [illegible]r th[illegible] [illegible]i[illegible]d [illegible]d, [illegible]d b[illegible]x[illegible]r[illegible]i[illegible] [illegible]th[illegible]rit[illegible]d [illegible]tr[illegible]r th[illegible] [illegible]t.

110. Upon information and belief, Mr. Madrid breached his duties to the Trust, that is, the purchased securities were not suitable for the Trust. To the extent that the Trust's investment objectives permitted Mr. Madrid to purchase securities, he did not have discretion to engage in transactions with the purchased securities, but he did have discretion to engage in transactions with Mr. Madrid's securities, and he did not do so in the Trust's best interests.

111. Mr. Madrid breached his duties as the Trust's principal, principal, and investment manager by failing to disclose to the Trust's beneficiaries the existence of the securities and the fact that the Trust was purchasing the securities. To the extent Mr. Madrid disclosed transactions with the Trust, he failed to disclose the true nature of the transactions.

112. Mr. Madrid, in his role as the Trust's broker, breached his duties to the Trust by failing to act in the Trust's best interests when he executed transactions on behalf of the Trust, and thereby, he caused the Trust to engage in transactions that were not suitable for the Trust's investment objectives, and in which the Trust did not have sufficient liquidity to engage, but did have sufficient liquidity to engage in transactions with Mr. Madrid's securities. Upon information and belief, Mr. Madrid breached his duties as the Trust's broker by executing transactions with Mr. Madrid's securities.

113. Mr. Madrid's breaches of his duties to the Trust damaged the Trust in an amount to be determined at trial, and the Trust is entitled to recover its damages from Mr. Madrid, therefore, pursuant to the ERISA, within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i), and 29 U.S.C. § 2510.3-101(c). Accordingly, the Trust brings this claim against Mr. Madrid for ERISA

E. State Street's FX trades were prohibited transactions under ERISA and corresponding federal regulations.

114. ERISA § 406(a), 29 U.S.C. § 1106(a), prohibits transactions between a plan and a party in interest unless the transaction is specifically exempted by statute or regulation. Fiduciaries are responsible for ensuring that plan assets are not used for the benefit of parties in interest, and must refrain from causing the plan to engage in transactions that they know or should know constitute direct or indirect sales, exchanges, or leases of property between the plan and a party in interest. Prohibited Transaction Exemption 94-20, 59 Fed. Reg. 8022-02 (effective February 17, 1994). Prohibited Transaction Exemption 98-54 (PTE 98-54) required that each transaction be directed by an independent fiduciary, and PTE 98-54 directed that all foreign exchange transactions conducted pursuant to the exemption be executed in accordance with a bank's or broker-dealer's written policies and procedures. Prohibited Transaction Exemption 98-54, 63 Fed. Reg. 63503-63510 (November 13, 1998). The regulations required that the bank, broker, or dealer fiduciary negotiate the terms of each foreign exchange transaction with the plan fiduciary. 29 C.F.R. § 2550.408b-19 (effective August 17, 2006).

115. State Street Bank and Trust Company ("State Street") is a party in interest with respect to the Prohibited Transaction Exemptions and the directed trustee or directed custodian, through its various divisions, subsidiaries, or affiliates, engaged in foreign exchange transactions with the Plaintiffs.

116. State Street did not direct the foreign exchange transactions executed by the Plaintiffs, but State Street did execute foreign exchange transactions, both directly and indirectly, with the Plaintiffs' assets in its capacity as directed trustee or directed custodian, and State Street executed foreign exchange transactions with Plaintiffs' assets in its capacity as directed trustee or directed custodian to

i□□□□□□d i□th□tr□□□□□ti□□□. Th□□, □t□t□□tr□t□□□X tr□d□□d□□t □□□□□□d□r □TE 94□20 □r □d□r □TE 98□54.

117. □rth□r□□r, E□I□□ □406□b□, 29 □.□.□. □1106□b□, pr□hibit□tr□□□□□ti□□□ b□t□□□□p□□□□d □id□i□r□th□t □□ □□□t t□□□□□d□i□□.[2] □□i□ti□□□□□□□th□t □t□t□□tr□t□□ □X tr□di□□ pr□ti□□□□□ □□□t□d t□□□□□d□i□□ b□□□□□□□t□t□□tr□t □□□i□t□t□□ □□□□ti□t□d r□t□□, □r h□r□d r□t□□□r th□□X tr□□□□ti□□□th□t □□r□□□□r b□□t□□t□□tr□t, □d □□□□□r b□□t□it□ id□i□r□□i□t□, □d □t□t□□tr□t th□□h□d □□□□□i□t □i□t□r□t □ith r□□rd t□it□□X tr□di□□ pr□ti□□□□r □□i□ti□□□□d th□r □□□□□□□□b□r□.

COUNT I

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by State Street Bank)

118. □□i□ti□□□r□p□t □d r□□□□□□□□h □□th□□□□□□ti□□□□t □□rth i□th□□□r□□□i□□ p□r□□r□ph□.

119. □□□□d□□t □t□t□□tr□t B□□□i□□□i□□□t□□□t □□□□□r□□ithi□th□□□□i□□□□ E□I□□ □□□ti□□3□38□, 29 □.□.□. □1002□38□, b□□□□□it i□h□□th□p□□□r t□□□□□□, □□□ir□, □r di□p□□□□p□□□□□t□p□□□d i□it□□□t□d□□ii□i□□b□□□ ithi□th□□□□i□□□th□I□□□t□□t □d□i□r□□t □□1940□□d iii□h□□□□□□□□d□d i□□riti□□th□t it i□□id□i□r□□ith r□p□□t t□ th□□□□□.

120. □□□□i□□□t□□t □□□□□r, □t□t□□tr□t B□□□i□□id□i□r□□d□r E□I□□ □d b□□□d b□th□d□ti□□□□pr□d□□□□d □□□t□□id □t i□E□I□□ □□ti□□404□□1□, 29 □.□.□. □ 1104□□1□. Th□□d□ti□□□□□th□t □□□br□□□r □r th□□□i□ti□□□□□□□, □t□t□□tr□t B□□□i□ b□□d t□□t i□th□□□t□□ r□i□t□r□t □h□□tr□□□□ti□□b□i□□□□r th□□□□□t, □d th□□

[2] 29 □.□.□. □1106 □b□Tr□□□□ti□□□b□t□□□p□□□□d □id□i□r□ □ id□i□r□□ith r□p□t t□□p□□□h□□□□t□ □1□d□□□ith th□□□t□□□th□p□□□i□hi□□□i□t□r□t □r □r hi□□□□□□□t, □2□i□hi□i□di□id□□□r i□□□□th□r □p□it□□t i□□□□tr□□□□ti□□i□□□□i□□th□p□□□□b□h□□□□□p□rt□□r r□pr□□□t □p□rt□□□h□□□i□t□r□t□r□□d□r□□t□th□i□t□r□t□□□th□p□□□r th□i□t□r□t□□□it□p□rti□ip□t□□r b□□□i□i□ri□, □r □3□r□□i□□□□□□□id□r□ti□□□r hi□□□p□r□□□□□□□□t□r□□ □□□p□rt□d□□i□□□ith □□h p□□□i□□□□□□ti□□□ith □tr□□□□ti□□i□□□□i□□th□□□□t□□□th□p□□□.

b[illegible]d, [illegible]r [illegible]x[illegible]p[illegible], t[illegible]di[illegible][illegible][illegible][illegible][illegible]t[illegible]th[illegible][illegible][illegible][illegible][illegible]th[illegible]d[illegible]t[illegible]i[illegible][illegible]th[illegible]r[illegible][illegible][illegible]t [illegible]X tr[illegible]di[illegible] tr[illegible][illegible][illegible]ti[illegible][illegible]it [illegible][illegible][illegible]d[illegible]rt[illegible]i[illegible][illegible] [illegible]r th[illegible][illegible][illegible][illegible]t.

121. [illegible]t[illegible]t[illegible][illegible]tr[illegible]t B[illegible][illegible]h[illegible][illegible]br[illegible][illegible]h[illegible]d it[illegible]E[illegible]I[illegible] [illegible]id[illegible]i[illegible]r[illegible]d[illegible]ti[illegible][illegible][illegible]pr[illegible]d[illegible][illegible][illegible][illegible]d [illegible][illegible][illegible]t[illegible] b[illegible][illegible][illegible][illegible][illegible]it [illegible][illegible][illegible] [illegible]r [illegible]h[illegible][illegible]d h[illegible][illegible][illegible][illegible][illegible]th[illegible]t [illegible][illegible][illegible]M h[illegible]b[illegible][illegible][illegible]h[illegible]r i[illegible][illegible]th[illegible][illegible][illegible][illegible][illegible][illegible]r th[illegible] [illegible][illegible][illegible]i[illegible][illegible][illegible]d [illegible][illegible][illegible]d[illegible]i[illegible][illegible]hi[illegible]h th[illegible][illegible][illegible][illegible][illegible]i[illegible][illegible][illegible]t[illegible]d[illegible]r[illegible]t[illegible][illegible][illegible]r [illegible]X tr[illegible]di[illegible][illegible]th[illegible]t [illegible]r[illegible][illegible][illegible][illegible][illegible][illegible]r[illegible]b[illegible][illegible]r [illegible]r[illegible][illegible][illegible][illegible][illegible]b[illegible], [illegible]b[illegible][illegible]th[illegible][illegible] r[illegible]t r[illegible]t[illegible], [illegible]d[illegible]r i[illegible]x[illegible][illegible][illegible][illegible][illegible]h[illegible]t [illegible][illegible]M h[illegible]d [illegible]r[illegible]d t[illegible]h[illegible]r[illegible], b[illegible]t did [illegible]t [illegible][illegible]r, b[illegible][illegible][illegible][illegible]ti[illegible]ti[illegible][illegible] r [illegible]th[illegible]r i[illegible], th[illegible]t [illegible][illegible]M[illegible]r[illegible]t[illegible][illegible] r[illegible]r[illegible][illegible][illegible][illegible]b[illegible], [illegible]t [illegible]r [illegible]b[illegible][illegible]th[illegible] [illegible]r[illegible]t r[illegible]t[illegible], [illegible]d[illegible]r [illegible]t i[illegible]x[illegible][illegible][illegible][illegible][illegible]h[illegible]t [illegible][illegible]M h[illegible]d [illegible]r[illegible]d t[illegible]h[illegible]r[illegible].

122. Th[illegible]br[illegible]h[illegible][illegible][illegible]id[illegible]i[illegible]r[illegible]d t[illegible]i[illegible][illegible][illegible][illegible]d [illegible][illegible]t[illegible][illegible]th[illegible][illegible][illegible][illegible][illegible]hi[illegible]h [illegible][illegible][illegible]r[illegible] [illegible]i[illegible]d b[illegible] t[illegible]t[illegible][illegible]tr[illegible]t B[illegible][illegible]r [illegible][illegible]M.

123. [illegible][illegible]ti[illegible]409[illegible][illegible]E[illegible]I[illegible], 29 [illegible].[illegible].[illegible]. [illegible]1109[illegible], i[illegible]p[illegible][illegible][illegible]i[illegible]bi it[illegible] [illegible][illegible]t t[illegible][illegible]tr[illegible]t B[illegible][illegible]r th[illegible][illegible]br[illegible]h[illegible][illegible]d r[illegible][illegible]ir[illegible][illegible]t t[illegible][illegible]tr[illegible]t B[illegible][illegible]t[illegible] [illegible][illegible][illegible][illegible]d t[illegible]th[illegible][illegible][illegible][illegible]th[illegible][illegible][illegible][illegible] r[illegible][illegible]ti[illegible][illegible] r[illegible][illegible] it[illegible]br[illegible][illegible]h[illegible].

124. T[illegible][illegible][illegible]r[illegible]th[illegible]r i[illegible][illegible][illegible][illegible]i[illegible]b[illegible][illegible]d[illegible]r [illegible][illegible]ti[illegible]409[illegible][illegible], 29 [illegible].[illegible].[illegible]. [illegible]1109[illegible], [illegible]i[illegible]ti[illegible][illegible][illegible][illegible][illegible]rt thi[illegible][illegible]i[illegible] [illegible][illegible]i[illegible]t [illegible]t[illegible]t[illegible][illegible]tr[illegible]t B[illegible][illegible][illegible]d[illegible]r E[illegible]I[illegible] [illegible][illegible]ti[illegible]502[illegible][illegible]2[illegible], 29 [illegible].[illegible].[illegible]. [illegible]1132[illegible][illegible]2[illegible].

125. [illegible]rth[illegible]r, p[illegible]r[illegible][illegible]t t[illegible]E[illegible]I[illegible] [illegible][illegible]ti[illegible]502[illegible][illegible]3[illegible], 29 [illegible].[illegible].[illegible]. [illegible]1132[illegible][illegible]3[illegible], [illegible]t[illegible]t[illegible][illegible]tr[illegible]t B[illegible][illegible][illegible]t pr[illegible]id[illegible][illegible]th[illegible]r [illegible]ppr[illegible]pri[illegible]t[illegible][illegible][illegible]it b[illegible]r[illegible]i[illegible]t[illegible]r[illegible]dr[illegible][illegible]it[illegible]br[illegible][illegible]h[illegible][illegible][illegible][illegible]d t[illegible][illegible]d [illegible][illegible][illegible]r[illegible] it[illegible]id[illegible]i[illegible]r[illegible]d[illegible]ti[illegible].

COUNT II

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104 by SSGM)

126. [illegible][illegible]i[illegible]ti[illegible][illegible]r[illegible]p[illegible]t [illegible]d r[illegible][illegible][illegible][illegible][illegible]h [illegible]th[illegible][illegible][illegible][illegible]ti[illegible][illegible][illegible][illegible]t [illegible]rth i[illegible]th[illegible][illegible]r[illegible][illegible][illegible]i[illegible] p[illegible]r[illegible]r[illegible]ph[illegible].

127. [illegible][illegible]M i[illegible][illegible]id[illegible]i[illegible]r[illegible] [illegible]d[illegible]r E[illegible]I[illegible] [illegible][illegible]ti[illegible]3[illegible]21[illegible][illegible], 29 [illegible].[illegible].[illegible]. [illegible]1002, [illegible]ith r[illegible]p[illegible]t t[illegible]th[illegible][illegible][illegible][illegible]b[illegible][illegible][illegible][illegible][illegible]it [illegible]x[illegible]r[illegible]i[illegible][illegible][illegible]th[illegible]rit[illegible] [illegible]r [illegible][illegible]tr[illegible]r[illegible]p[illegible]ti[illegible][illegible] [illegible][illegible][illegible][illegible][illegible][illegible]t [illegible]r di[illegible]p[illegible]iti[illegible][illegible] [illegible]th[illegible][illegible][illegible][illegible][illegible][illegible][illegible][illegible]t[illegible].

128. [illegible] Defendants breached their fiduciary [illegible] prudence [illegible] and [illegible] in violation of ERISA [illegible] 404[illegible]1, 29 U.S.C. § 1104[illegible]1.

129. [illegible] Each breaching fiduciary [illegible] prudence [illegible] is liable for [illegible] losses [illegible] which the [illegible] instructed [illegible] or FX trading that [illegible] or [illegible] benefit, but [illegible] were not [illegible], and for [illegible] that it had [illegible] to [illegible].

130. The breaching fiduciaries [illegible] to [illegible] the [illegible] which [illegible] had the [illegible].

131. [illegible] 409[illegible] ERISA, 29 U.S.C. § 1109[illegible], imposes liability on [illegible] for the breaching fiduciaries' [illegible] to remedy [illegible] breaches [illegible] it breaches.

132. To [illegible] the relief [illegible] 409[illegible], 29 U.S.C. § 1109[illegible], [illegible] institutional [illegible] that [illegible] ERISA [illegible] 502[illegible]2, 29 U.S.C. § 1132[illegible]2.

133. Further, pursuant to ERISA [illegible] 502[illegible]3, 29 U.S.C. § 1132[illegible]3, [illegible] seeks [illegible] appropriate [illegible] breaching fiduciaries to remedy [illegible] violations.

COUNT III

Prohibited Transactions

(Violations of § 406(a)(1)(C)-(D) of ERISA, 29 U.S.C. § 1106(a)(1)(C)-(D) by State Street Bank and SSGM)

134. [illegible] paragraphs [illegible] through [illegible] as [illegible] paragraph.

135. ERISA [illegible] 406[illegible]1[illegible], 29 U.S.C. § 1106[illegible]1[illegible], provides that a fiduciary [illegible] shall not cause [illegible] plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect [illegible] between the plan [illegible] a party in interest.

136. E□I□ □□ti□ 406□□□1□□□, 29 □.□.□. □1106□□□1□□□, pr□id□ th□t □id□i□r□ h□□□□t □□□□□ p□□t□ □□□□□ i□ tr□□□□ti□ i th□ id□i□r □□□□ □r h□□d □□□ th□t th□ tr□□□□ti□ □□□ titl□ t□□ dir□t □r i dir□t tr□□□□r t□, □r □□b□□r □r th□ b□□□it □□p□rt□i□ i□t□r□t, □□□□□ □□□□t□□ th□ p□□.

137. □□□t□d □b□□, □t t□ tr□t B□□□i□□ id□i□r□ ith r□p□t t□ th□ □□□□□.

138. □□□M i□□ p□rt□i□i t□r□t□□ ithi□ th□ □□□i□□ E□I□ □□ti□ 3□14□, 29 □.□.□. □1002□14□, □r □t □□□t t□□ i d□p□d□t □□□□□i□i t r□□□□□it i□□id□i□r□ ith r□p□t t□ th□ □□□□□, □d it i□ p□r□□ pr□idi□□ □r i□□t th□ □□□□□.

139. B□ □□□□i□□ □□□M t□ h□r□ th□ □□□□□□ r th□ □□□ □i□□d □□d□i□ hi□h th□ □□□□i□□t□d □□□□□ r □X tr□di□ th□t □r□□□□□r b□□r □r□□□□b□, b□□ th□ □r□t r□t□, □d□r i□x□□□□□h□t it h□d □r□d t□ h□r□□ □d b□d□i□□ □□ h□□it □□□ □r h□□d h□□ □□□□ th□t □□M □□□h□r i□ th□ □□□□□□h □□□□ t□t□□ tr□t B□□□i□□t□d E□I□ □□ti□ 406□□□1□□□, 29 □.□.□. □1106□□□1□□□. □rth□r, b□ h□r i□ h □□□, □□M i□□t□d E□I□ □□ti□ 406□□□1□□□, 29 □.□.□. □1106□□□1□□□.

140. □hi□ E□I□ □□ti□ 408□b□2□, 29 □.□.□. □1108□b□2□, pr□id□□□ x□pti□ r□ th□ pr□hibiti□ E□I□ □□ti□ 406□□, 29 □.□.□. □1106□□, □r □□tr□ti□ r □□i□ r□□□□b□ rr□□□ t□ ith □p□rt□i□i t□r□t □r, *inter alia*, □r i□□□□□r□ th□ t□b□i□h□ t□ r □p□r ti□ th□ p□□, th□t x□pti□ i□□□□ t i□□ □r th□ r□□□□b□ p□□ti□ i□p□id. H□r, th□t x□pti□ d□□□t □pp□b th□ h□r□d b□ M □r□□□□b□ □r□□□□b□ d□r b□□ r□t r□t□.

141. □hi□ th□r□i□ th□r x□pti□ r□ th□ pr□hibiti□ E□I□ □□ti□ 406□□, 29 □.□.□. □1106□□, □r □r□i□ rr□□□ x□h□□□b t□□□ □□ p□□□b□it p□□□d □ b□□□r □br□□r d□□r □r □□ii t th□r□□□hi□h i□ p□rt□i□i t□r□t ith r□p□t t□ p□□, th□t x□pti□ d□□□t □pp□h□r□ r t□ i d□p□d t□ □□□i□i t r□□□□b□ 1 th□ t□r□ th□ tr□□□□ti□ r□□□□r b□t th□ th□t r□ □□□□r□□ i□b□i□ p□r b□r□ th□ r□i□ x□h□□□ tr□□□□ti□ d 2□□□ M h□d di□r ti□ r□ th□rit□ r □tr□ ith r□p□t t□ th□i□t□ t□ p□□ t□.

142. [illegible] ERISA [illegible] 502(a)(2) [illegible] 29 U.S.C. § 1132(a)(2) [illegible] 3, [illegible] State Street Bank [illegible] SSGM [illegible] breaches of fiduciary duties [illegible] provided [illegible] appropriate [illegible] equitable [illegible].

COUNT IV

(Co-Fiduciary Liability, against SSGM and State Street Bank)

143. [illegible] Plaintiffs repeat and reallege [illegible] the allegations set forth in the preceding paragraphs.

144. [illegible] Defendants, [illegible] SSGM and State Street Bank [illegible] violated ERISA [illegible] 402(a)(1), 29 U.S.C. § 1102(a)(1) and ERISA [illegible] 3(21)(A), 29 U.S.C. § 1002(21)(A). That, the [illegible] breached their fiduciary [illegible].

145. ERISA [illegible] 405(a), 29 U.S.C. § 1105(a), imposes liability [illegible] fiduciaries, in addition to [illegible] liability [illegible] which he [illegible] breach [illegible] fiduciary responsibility [illegible] other fiduciary with respect to the same plan in the following circumstances: (1) if he participates knowingly in an act or omission of the fiduciary which breach, or (2) [illegible] participation in breach, or (3) [illegible] breach. The [illegible] fiduciary [illegible] breached [illegible] thereby [illegible].

146. State Street Bank [illegible] SSGM [illegible] the breaches [illegible] their participation [illegible] knowing participation, that [illegible] fiduciary, [illegible] State Street Bank [illegible] that SSGM [illegible] provided [illegible] fiduciary [illegible] ERISA [illegible].

147. [illegible] State Street Bank [illegible] SSGM [illegible] participated [illegible] breach [illegible] other [illegible] by the [illegible] breach [illegible] by the [illegible] SSGM [illegible] fiduciary [illegible].

148. State Street Bank [illegible] SSGM [illegible] participated in the breaches [illegible] their fiduciary [illegible] by the [illegible] in the transactions [illegible], or [illegible] [illegible] that [illegible] to [illegible] SSGM, did [illegible] participate [illegible] the ERISA [illegible] in which [illegible] State Street Bank [illegible] that [illegible] [illegible] by, but [illegible] [illegible], [illegible] in [illegible] which it had [illegible] to [illegible].

149. [illegible]

150. [illegible] 29 U.S.C. § 1132 [illegible]

COUNT V

(Violations of § 406(a)(1)(C)-(D) of ERISA, 29 U.S.C. § 1106(a)(1)(C)-(D) by SSGM, alleged in the alternative)

151. [illegible]

152. [illegible] SSGM [illegible] ERISA.

153. [illegible] SSGM [illegible] ERISA [illegible] 406 [illegible], 29 U.S.C. § 1106 [illegible].

154. [illegible] SSGM [illegible] ERISA [illegible] 502 [illegible], 29 U.S.C. § 1132 [illegible] ERISA [illegible] 406 [illegible], 29 U.S.C. § 1106 [illegible].

COUNT VI

(Knowing participation in a breach of fiduciary duty by SSGM, alleged in the alternative)

155. [illegible]

156. [illegible] SSGM [illegible] Count I.

157. [illegible] phi[illegible]ti[illegible]t[illegible]d i[illegible]i[illegible]i[illegible]tit[illegible]ti[illegible], [illegible] M [illegible] [illegible]d r t[illegible]d th[illegible]d[illegible]ti[illegible]th[illegible]t id[illegible]i[illegible]ri[illegible][illegible]h [illegible]t t[illegible]tr[illegible]t B[illegible]h[illegible][illegible]d r E[illegible]I[illegible].

158. [illegible]pit[illegible]thi[illegible]d r t[illegible]di[illegible], [illegible] M p[illegible]rti[illegible]p[illegible]t[illegible]d i[illegible] i[illegible]d[illegible]d, [illegible]th[illegible]*cause* [illegible] t t[illegible]tr[illegible]t B[illegible][illegible][illegible]i[illegible]ti[illegible][illegible]it[illegible]id[illegible]i[illegible]r[illegible]d[illegible]ti[illegible][illegible][illegible][illegible]d i[illegible][illegible]t I.

159. [illegible]d r E[illegible]I[illegible] [illegible]ti[illegible]502[illegible]3, 29 [illegible].[illegible]. [illegible]1132[illegible]3, th[illegible][illegible][illegible]r[illegible][illegible]titl[illegible]d t[illegible] [illegible]it b[illegible]r[illegible]tit[illegible]ti[illegible]r[illegible] [illegible] M [illegible]ith r[illegible]p[illegible]t t[illegible]th[illegible]x[illegible][illegible][illegible][illegible]t p[illegible]id t[illegible]it b[illegible]th[illegible][illegible], [illegible] [illegible][illegible]th[illegible]r [illegible]ppr[illegible]pri[illegible]t[illegible][illegible]it b[illegible]r[illegible]i[illegible].

VI. PRAYER FOR RELIEF

[illegible]HE[illegible]E[illegible]E, [illegible]i[illegible]ti[illegible]pr[illegible][illegible]r r[illegible]i[illegible][illegible][illegible][illegible][illegible]

1. [illegible][illegible]r th[illegible]t th[illegible][illegible][illegible]d[illegible]t[illegible]h[illegible][illegible]i[illegible]t[illegible]d E[illegible]I[illegible][illegible] pr[illegible]hibit[illegible]d tr[illegible][illegible][illegible]ti[illegible][illegible] pr[illegible]i[illegible]i[illegible][illegible]

2. [illegible][illegible]r th[illegible]t th[illegible][illegible][illegible]d[illegible]t[illegible]br[illegible]h[illegible]d th[illegible]ir [illegible]id[illegible]i[illegible]r[illegible]d[illegible]ti[illegible][illegible]d[illegible]r E[illegible]I[illegible][illegible]

3. I[illegible][illegible][illegible]rd[illegible]r [illegible][illegible]p[illegible]i[illegible][illegible] pr[illegible]p[illegible]r [illegible][illegible][illegible][illegible]ti[illegible][illegible] th[illegible][illegible]r[illegible]i[illegible][illegible]x h[illegible][illegible][illegible] tr[illegible][illegible][illegible][illegible]ti[illegible][illegible]i[illegible][illegible]hi[illegible]h th[illegible][illegible][illegible][illegible]d th[illegible][illegible][illegible]d h[illegible][illegible][illegible][illegible][illegible]d[illegible]

4. I[illegible][illegible][illegible]rd[illegible]r [illegible][illegible]p[illegible]i[illegible][illegible] [illegible][illegible][illegible]d[illegible]t t[illegible]r[illegible]t[illegible]r[illegible][illegible][illegible][illegible][illegible][illegible][illegible][illegible]d t[illegible]th[illegible][illegible][illegible][illegible][illegible]r th[illegible]t [illegible]i[illegible]b[illegible][illegible][illegible][illegible]d t[illegible]th[illegible][illegible][illegible][illegible][illegible]t[illegible]r th[illegible]i[illegible]i[illegible][illegible] [illegible]thi[illegible][illegible][illegible]p[illegible]i[illegible]t[illegible][illegible]

5. I[illegible][illegible][illegible]rd[illegible]r [illegible][illegible]p[illegible]i[illegible][illegible] th[illegible][illegible][illegible][illegible]d[illegible]t t[illegible]t di[illegible][illegible]r[illegible][illegible][illegible][illegible][illegible][illegible]p[illegible]id [illegible]d i[illegible][illegible]rr[illegible]d t[illegible] [illegible][illegible][illegible]d[illegible]t[illegible][illegible]r th[illegible]t [illegible]i[illegible]b[illegible]p[illegible]id [illegible]r i[illegible][illegible]rr[illegible]d b[illegible]th[illegible][illegible][illegible][illegible][illegible]t[illegible]r th[illegible]i[illegible]i[illegible][illegible] [illegible]thi[illegible][illegible][illegible]p[illegible]i[illegible]t, i[illegible][illegible][illegible]di[illegible][illegible] [illegible][illegible][illegible]pr[illegible]it th[illegible]r[illegible][illegible][illegible]

6. [illegible]rd[illegible]r [illegible][illegible]it b[illegible]r[illegible]tit[illegible]ti[illegible][illegible]d [illegible]th[illegible]r [illegible]ppr[illegible]pri[illegible]t[illegible][illegible]it b[illegible][illegible] [illegible][illegible]t[illegible]r[illegible]r[illegible]i[illegible][illegible][illegible][illegible]i[illegible]t th[illegible][illegible][illegible][illegible][illegible]d[illegible]t[illegible][illegible]

7. [illegible][illegible]rd[illegible][illegible]h [illegible]th[illegible]r [illegible][illegible]it b[illegible][illegible]r r[illegible][illegible] di[illegible]r[illegible]i[illegible][illegible][illegible][illegible][illegible][illegible] b[illegible][illegible]ppr[illegible]pri[illegible]t, i[illegible][illegible][illegible]di[illegible][illegible] th[illegible]p[illegible]r[illegible][illegible][illegible][illegible]t r[illegible][illegible] [illegible][illegible][illegible][illegible][illegible]th[illegible][illegible][illegible][illegible]d[illegible]t[illegible]r[illegible][illegible] [illegible][illegible]p[illegible]iti[illegible][illegible][illegible][illegible]tr[illegible]t [illegible]ith r[illegible]p[illegible]t t[illegible]th[illegible][illegible][illegible][illegible][illegible] [illegible]d th[illegible]pp[illegible]i[illegible]t[illegible][illegible]t [illegible][illegible]i[illegible]d p[illegible]d[illegible]t [illegible]id[illegible]i[illegible]ri[illegible][illegible]t[illegible][illegible]r[illegible][illegible][illegible][illegible][illegible]t di[illegible][illegible]t[illegible]th[illegible][illegible][illegible][illegible][illegible]

8. Th[illegible]t thi[illegible][illegible]ti[illegible][illegible]b[illegible][illegible]rti[illegible]i[illegible]d [illegible][illegible][illegible][illegible][illegible][illegible]ti[illegible][illegible]d th[illegible]t [illegible][illegible]h [illegible][illegible][illegible]b[illegible]d[illegible]i[illegible][illegible]t[illegible]d t[illegible] r[illegible][illegible]i[illegible][illegible]th[illegible][illegible][illegible][illegible]t[illegible]r[illegible]t[illegible]r[illegible]d t[illegible]th[illegible][illegible][illegible][illegible][illegible]b[illegible][illegible][illegible][illegible][illegible]d[illegible]t[illegible][illegible]d [illegible][illegible][illegible][illegible]tr[illegible][illegible]ti[illegible][illegible]tr[illegible]t b[illegible][illegible]t[illegible]b i[illegible]h[illegible]d [illegible]r di[illegible]trib[illegible]ti[illegible][illegible]t[illegible]th[illegible][illegible]xt[illegible][illegible]t r[illegible][illegible][illegible]ir[illegible]d b[illegible][illegible][illegible][illegible]

9. E□□i□ □□□□d□t□□□□□□□ti□□□, □d □□h □th□□ i□di□id□□□□, r□□ □□□ □rth□r □i□□ti□□□□ th□ir E□I□□ □id□i□r□p□□□ibiliti□, □b□i□ti□□, □d d□ti□□

10. □□rd □□i□ti□□th□ir □tt□r□□□□□□□□□d □□t□p□r□□□t t□E□I□□ □502□□, 29 □.□.□. □1132□□□□d□r th□□□□ □ □□ □□d d□tri□□□d

11. □□rd □□h □th□r □d □rth□r r□i□□□ th□□□rt d□□ □□□it□b□□□d □□t.

JURY DEMAND

□□i□ti□□h□r□b□d□□ □d □□r□ □□ □□i□□□□□□□tri□b□.

□□t□d□□pt□b□r 12, 2012

HUTCHINGS, BARSAMIAN, MANDELCORN & ZEYTOONIAN, LLP

B□□□Th□d□r□M. H□□□M□h□□
Th□d□r□M. H□□□M□h□□, E□. BB□ □
110 □d□r □tr□t, □□it□250
□ □□□□□□Hi□□, M□ 02481
T□□ph□□□781□431□2231
□□□i□i□781□431□8726
thess-mahan@hutchingsbarsamian.com

KELLER ROHRBACK, L.L.P.
□□□□ □i□□□□□ □□r□□ *(pro hac vice pending)*
□r□□□. □□□□r *(pro hac vice pending)*
□□r□□. □□rb□r *(pro hac vice pending)*
1201 3rd □□□□□, □□it□3200
□□tt□, □ □ 98101
T□□ph□□□206□623□1900
□□□i□i□206□623□8986
lsarko@kellerrohrback.com
dloeser@kellerrohrback.com
lgerber@kellerrohrback.com

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

The Andover Companies Employee Savings and Profit Sharing Plan on behalf of itself, and James Pehoushek-Stangeland, and all others similarly situated, Plaintiffs,	)	No. 1: 12-cv-11698 MLW
	)	**DEMAND FOR JURY TRIAL**
vs.	)	
State Street Bank and Trust Company, Defendant.	)	

PLAINTIFFS' AMENDED CLASS ACTION COMPLAINT

Table of Contents

This is a classic case of self-dealing. The ERISA-qualified retirement plans of Plaintiffs suffered losses because Defendant State Street Bank and Trust Company did not prudently safeguard their assets, instead permitting its currency traders to pilfer plan assets by improperly marking up and marking down foreign currency trades. This self-dealing occurred whenever State Street needed to exchange currency on behalf of the plans. Rather than seek the best price for the plans' foreign currency exchange transactions—or even the actual market rate—State Street used one of its divisions, State Street Global Markets, to execute the foreign currency exchange trades to benefit its own accounts. In executing these trades, Global Markets did not charge the plans what the transaction cost. Nor did Global Markets charge a rate based on the cost of the transaction. Instead, Global Markets systematically priced the trades based on the worst price of the trading day, and pocketed profits at the plans' expense. State Street manipulated the currency transactions to the plans' detriment despite its duty as a fiduciary under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA") to protect the plans' assets. Because this practice was widespread and uniform, it forms the basis for claims on behalf of a class of ERISA Plans ("the Plans"). This lawsuit seeks to recover the losses the Plans suffered as a result of State Street's self-dealing.

I. INTRODUCTION

1. Plaintiffs' allegations are based on personal knowledge as to themselves and their own acts, and on information and belief and the investigation of counsel as to all other matters.[1]

2. Plaintiffs are Alan Kober, a trustee and fiduciary for The Andover Companies Employees' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, a participant in The Boeing Company Voluntary Investment Plan. Plaintiffs trusted State Street Bank with their

[1] Counsel's investigation included review of: (i) plan documents, (ii) publicly available data and news articles, and (iii) review of the pleadings and documents on file in *Hill v. State St. Corp*., No. 09-12146 (D. Mass.); *Demory v. State St. Corp.*, No. 10-10064 (D. Mass.); *Richard v. State St. Corp.*, No. 10-10184 (D. Mass.); *Ark. Teacher Ret. Sys. v. State St. Corp.*, No. 11-10230 (D. Mass.);; *Henriquez v. State St. Bank & Trust Co.*, No. 11-12049 (D. Mass.); *State of Cal. v. State St. Corp.*, No. 08-08457 (Cal. Sup. Ct. Sacramento Cnty.); and *People of Cal. v. State St. Corp.*, No. 08-8457 (Cal. Sup. Ct. Sacramento Cnty.).

retirement savings and suffered losses as a result of State Street's self-dealing FX trading scheme.

3. Defendant State Street Bank and Trust Company's ("State Street Bank" or "State Street") undertook self-dealing and imprudent management of Plaintiffs' ERISA-covered funds in two ways. Some of the Plans offered their participants investment options that included State Street Bank-sponsored commingled funds—that is, pools of assets created and aggregated by State Street Bank for a number of different investors and plans—that required foreign currency ("FX") trades, while other defined benefit Plans hired State Street to serve as custodian to undertake FX trades of plan assets. In either circumstance, the self-dealing and imprudent management by State Street violates ERISA.

4. For both defined contribution and defined benefit Plans, State Street was an ERISA fiduciary. State Street was an ERISA fiduciary because it served as the trustee and investment manager to the Plans and commingled funds through its State Street Global Advisors ("SSgA") division, and as the investment manager it exercised discretionary control over Plan assets. One example of State Street's discretionary control is that as investment manager for the commingled funds SSgA negotiated or contracted with State Street Global Markets ("Global Markets") to execute FX transactions to facilitate purchases or sales of foreign securities for the funds, or to repatriate profits made abroad.

5. State Street was also an ERISA fiduciary in its provision of trustee and custodian services. In serving as trustee and custodian to the defined benefit and defined contribution Plans, State Street acted as more than a "plain vanilla" custodian of assets—that is, it did more than perform administrative and ministerial duties. Instead, Global Markets took control of Plan assets and exercised discretion when it entered into FX transactions on behalf of the Plans. Rather than simply executing FX transactions according to market rates at the time requests were received, Global Markets utilized its control over Plan assets and the FX process to impose unauthorized, undisclosed mark-ups or mark-downs on the rates for the FX transactions and pocketed the difference. In so doing, it was a functional ERISA fiduciary.

6. As a custodial bank, State Street Bank holds securities on behalf of investors. Clients hire custodians to do several things, including: safeguard and record movement of assets; arrange settlement of all purchases and sales; and maintain and manage all cash transactions, including FX transactions. Custodians are typically used by investors who do not wish to leave securities on deposit with their broker-dealers or investment managers. By separating the duties of investment manager and custodian, an investor—at least in theory—reduces the risk of fraud or other misconduct.

7. As of September 2012, State Street held approximately $23.44 trillion in assets under custody and administration, making it one of the largest providers of custodial services in the world. In fact, as of December 31, 2011, State Street's SSgA division was the largest manager of institutional assets worldwide, the largest manager of assets for tax-exempt organizations (primarily pension and retirement plans) in the U.S., and the third largest investment manager in the world. State Street charged Plaintiffs and the Plans in the putative class hundreds of millions of dollars a year in fees for custodial and investment management services. A significant amount of State Street's revenue, however, was comprised of ill-gotten gains from self-dealing FX transactions.

8. Under ERISA, Plaintiffs may recover losses and obtain equitable relief on behalf of the Plans and all others similarly situated. ERISA demands that State Street act prudently and solely in the interest of those who, like Plaintiffs, have invested money in accounts covered by ERISA. This duty to act prudently and solely in the interest of Plaintiffs and others is a fiduciary duty, and fiduciary duties are among the strongest in the law.

9. ERISA also creates strict liability for certain types of prohibited transactions, such as State Street's self-dealing in charging unauthorized mark-ups and mark-downs to the Plans on the FX trades through its Global Market division, and then pocketing the difference. The undisclosed mark-ups and mark-downs were not for the exclusive benefit of the Plans or their participants and beneficiaries, but rather benefitted State Street Bank.

10. Despite its legal obligations to Plaintiffs, State Street has undertaken an unfair and deceptive practice from at least 1998-2009 (hereinafter, "Class Period"). Namely, State Street Bank has overseen and been responsible for the FX transaction practices described herein. These transactions were undertaken behind a veil of secrecy that allowed State Street to make exorbitant and undisclosed profits at the direct expense of the Plans. State Street charged the Plans marked-up FX rates when buying foreign currency on their behalf, and marked-down FX rates when selling foreign currency for the Plans, and in both cases pocketed the difference. State Street charged the Plans and the Proposed Class fictitious FX rates unrelated to the market-based rates State Street was actually paying.

11. The Plaintiffs, the Plans, and other Class members could not have detected State Street's deception. For the commingled funds, the transaction was conducted between two internal State Street divisions (SSgA and Global Markets) and was not reported on the fund fact sheets or otherwise reported to Plan sponsors. While State Street's custodial clients may have received a report of the rates that they were charged, without receiving a corollary report showing the range of actual trades for the currency pairs at issue, they could not detect that they were being charged hidden and unauthorized mark-ups (or mark-downs) on their FX trades.

12. State Street's unfair and deceptive FX trading practices generated hundreds of millions of dollars in profits annually for State Street—money that should have gone to Plaintiffs and the Proposed Class.

13. Plaintiffs bring this class action on behalf of all similarly affected ERISA clients of State Street during the Class Period, to recover the proceeds State Street reaped from Class members through its unfair and deceptive FX trading practices.

II. JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. section 1331 and 29 U.S.C. section 1132(e)(1). Plaintiffs' claims are brought as a class action under Rule 23 of the Federal Rules of Civil Procedure.

15. Venue is proper in this district pursuant to 29 U.S.C. section 1132(e)(2).

III. PARTIES

A. Plaintiff Alan Kober

16. Plaintiff Alan Kober is an Individual Trustee of The Andover Companies Employees' Savings and Profit Sharing Plan (the "Andover Plan"). In this capacity, Mr. Kober is a Plan fiduciary with standing to bring claims for breach of fiduciary duty on behalf of the Plan pursuant to ERISA sections 409 and 502(a)(2).

17. Merrimack Mutual Fire Insurance Company ("Merrimack Mutual") is the designated Plan Administrator for the Andover Plan. The Andover Plan is an ERISA-qualified defined contribution plan established for the benefit of the employees of Merrimack Mutual and its sister companies, Cambridge Mutual Fire Insurance Company, and Bay State Insurance Company, which, together with Merrimack Mutual, comprise the Andover Companies ("Andover Companies").

18. During the Class Period, the Andover Plan offered participants investments in several SSgA-sponsored commingled funds, including international equity funds such as State Street's International Growth Opportunities Securities Lending Class A Fund, and the SSgA Daily International Alpha Select fund.

19. By contract, State Street Bank served as both the Trustee for the Andover Plan and as an ERISA fiduciary and Investment Manager for the Andover Companies Plan investments from 2001 through approximately 2009.

20. As trustee for the Andover Plan, State Street Bank was required to exercise power and authority over the investment accounts for which it had express investment management discretion, or upon the direction of the Investment Manager. Pursuant to section 4.1(o) of the Master Trust Agreement, the investment power of the trustee included the power to "purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with State Street Bank and Trust Company, its agents or its subcustodians."

21. By separate contract, State Street Bank served as investment manager for the Andover Plan's assets invested in State Street's proprietary commingled funds. Pursuant to

section 1 of the Investment Manager Agreement, State Street was both a discretionary investment manager and a designated ERISA fiduciary pursuant to section 3(38) of ERISA with respect to all cash, securities, or other property designated by the Andover Plan.

B. Plaintiff James Pehoushek-Stangeland

22. Plaintiff James Pehoushek-Stangeland is a resident of Seattle, Washington. He is an employee of the Boeing Company and is a participant in The Boeing Company Voluntary Investment Plan ("the Boeing Plan"). Accordingly, Plaintiff Pehoushek-Stangeland has standing to bring suit on behalf of the Boeing Plan for losses to the Plan due to breaches of fiduciary duty pursuant to ERISA sections 409 and 502(a)(2).

23. The Boeing Plan is an ERISA-qualified defined contribution plan established for the benefit of the employees of the Boeing Company, a multinational aerospace and defense corporation headquartered in Chicago, Illinois.

24. By contract, State Street Bank served as Trustee for The Boeing Company Employee Savings Plans Master Trust ("Boeing Master Trust").

25. During the Class Period, the Boeing Plan offered its participants investment options in several SSgA-sponsored commingled funds. Among the international equity funds offered were the SSgA Global All Cap Equity ex-US Index Non-Lending Series Fund Class A ("SSgA Global Non-Lending Fund"), which Boeing designated as the "International Index Fund."

26. As of December 31, 2010, the Boeing Plan held approximately $1.98 billion in Plan assets in the International Index Fund. As of December 31, 2011, the Boeing Plan held approximately $1.863 billion in the fund. These investments constituted approximately 6% of the Boeing Plan investments.

27. The International Index Fund invests in an index comprised of global developed and emerging country stocks from outside the U.S. Its international investments require exchange of participants' U.S. dollars into various foreign currencies, and SSgA utilizes Global Markets for the FX transactions.

28. Due to the "fund of funds" structure of many offerings in the Boeing Plan, the International Index Fund appears in multiple placed in the Boeing Plan portfolio: not only as a stand-alone investment option, but also as part of the Balanced Index Fund and each of the nine Lifecycle Funds, which are the target retirement options for Boeing Plan participants.

29. During the class period, Plaintiff Pehoushek-Stangeland invested in SSgA's International Index Fund, directly as well as indirectly through the Lifecycle 2040 Fund and the Balanced Index Fund.

30. Plaintiffs use the term "International Equity Funds" to collectively denote the SSgA-sponsored commingled international equity funds that required purchases and repatriation of foreign currency by Global Markets, and that were investment offerings in the Boeing and Andover Plans, as well as for other members of the Proposed Class.

C. Defendant State Street Bank and Trust Company

31. Defendant State Street Bank is a registered financial holding company with its principal place of business in Boston, Massachusetts.

32. State Street Bank's business activities are organized into three segments or divisions: investment management provided by SSgA, custodial services provided by Global Markets, and institutional services provided by State Street Investor Services.

33. SSgA is a division of Defendant State Street Bank responsible for investment management. The SSgA division of State Street Bank provides asset management, and is billed as the "Fiduciary Heritage of State Street Corporation."

34. Global Markets is also a division of Defendant State Street Bank. Global Markets provides custodial services to clients, including processing the FX transactions at issue herein. Global Markets processes these FX transactions at the direction of SSgA on behalf of the International Equity Funds and the Plans.

35. State Street Bank is also the Trustee for the State Street Bank and Trust Company Investment Funds for Tax Exempt Retirement Plans (also referred to as the "commingled funds"). This was the trust pursuant to which State Street created, offered, and maintained the

various commingled funds—the funds that were offered to the Andover Plan and the Boeing Plan for their retirement plans.

36. The terms of the relevant Amended and Restated Declaration of Trust establish that State Street Bank and Trust Company was the trustee for the commingled funds, and that the funds were under the exclusive management and control of State Street Bank. Pursuant to the Declaration of Trust, State Street Bank had the power to hold, manage, and control all property held in the trust, or power to delegate responsibility for management of the assets to ERISA-qualified investment managers. State Street Bank also had the power to convert any monies into any currency through foreign exchange transactions to the extent permitted under ERISA. Accordingly, investment management for the commingled ERISA funds was conducted through State Street Bank's SSgA division, and FX trading through the Global Markets division.

IV. SUBSTANTIVE ALLEGATIONS

A. Foreign Exchange Trading is Essential to Plaintiffs' Ability to Meet Their Retirement Plan Investment Needs

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

37. Investors such as the Plans have found it increasingly necessary to enter the overseas securities markets and expand the global scope of their investment portfolios. These investments may offer increased diversification and greater returns than domestic investments alone.

38. Institutional investors that buy and sell foreign securities, such as Global Markets on behalf of the Plans, must trade currency because purchases, sales, dividends, and interest payments are all transacted in the currency of the nation in which the relevant securities exchange sits. Just as you need euros, yuan, or yen to buy coffee in Berlin, Beijing, or Tokyo, you need those same currencies to buy securities in Germany, China or Japan.

39. A U.S. investor must use euros to buy shares that trade on a German securities exchange. To get those euros, you must sell U.S. dollars and purchase euros. Similarly, dividends

or interest earned in Germany will be paid in euros, and turning those gains into dollars requires exchanging euros for dollars.

40. For a U.S. investor to receive proceeds from the sale of foreign securities, the foreign currency received from the sale must be converted into the currency of one's own country. This process is called repatriation. The rate of exchange matters because it impacts the proceeds of any investment made in foreign currency.

2. How FX Trading Works

41. The values of different currencies "float" against each other. That is, they vary based on factors ranging from supply and demand to political and economic trends. While the price of coffee at a Berlin café might be € 2 all week long, it might cost $ 2.50 on Monday morning and $2.72 by Friday.

42. FX trading occurs on a nearly 24-hour cycle, five-and-a half days a week. The official FX trading day begins at 7:00 a.m. New Zealand time and ends at 5:00 p.m. New York City time.

43. For each currency bought and sold during the course of the FX trading day, there will necessarily be a high trade and a low trade. This information is tracked by proprietary services such as Electronic Brokerage System ("EBS") and Reuters.

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

45. If, during one trading day, the lowest trade was $1.25 to buy €1.00, and the highest rate trade was $1.35 to buy €1.00, the range of the day would be $1.25-$1.35.

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

47. The daily mid-rate is significant to this case because Plaintiffs cannot discover the precise time of day when FX trades occurred (in contrast to stock trading, for example). By looking at the daily mid-rate over a significant period of time, one can reasonably estimate the average FX trade cost on any given day. Over time, FX trades will regress to the mid-rate.

3. Negotiated vs. Non-Negotiated FX Trades

48. In a "negotiated," or "active," FX trade, an investor communicates directly with a FX trader. The FX trader quotes a rate for a proposed transaction, which is accepted, rejected or countered—in other words, actively negotiated. If a deal is reached, the trader executes the FX trade at the agreed-upon price. Negotiated trades can potentially achieve better rates for an investor, but the process requires greater resources.

49. In a "non-negotiated," "standing-instruction," or "indirect" trade there is no arm's-length negotiation of the price between the investor and the trader. Instead, clients simply report the desired currency transaction to the bank, trusting and relying on the bank to execute the trade on the client's behalf using "best execution" practices. Plaintiffs' allegations herein complain solely of State Street Bank's practices with regard to non-negotiated trades.

B. State Street's Provision of FX Trades to its Custodial Clients

50. Institutional investors, such as pension plans like the Arkansas Teacher Retirement System ("Arkansas Teachers"), typically requested that State Street handle the smaller FX transactions, mostly the repatriation of dividend and interest payments, through non-negotiated trades because the amount of each trade rarely justified the time and effort required for a negotiated trade.

51. State Street's clients reasonably expected that non-negotiated FX trades would have no mark-ups or mark-downs, for at least three reasons: (1) custodial clients already paid State Street hefty annual fees to serve as custodian over their assets; (2) the Custodian Contracts

and associated fee schedules indicated no extra fees or mark ups, and did not authorize any such fees or mark-ups; and (c) State Street's Investment Manager Guides assured custodial clients and investment managers that the price of FX trades was *"based on the market rates at the time the trade is executed."* (Emphasis added).

1. State Street's Clients Relied Upon State Street's Expertise and Loyalty

52. Custodial clients placed a high degree of trust in State Street to execute non-negotiated FX transactions. In conducting these transactions, State Street occupied a superior position to its custodial clients due to its control over all aspects of the FX trade, including the information that its traders had about the FX market, the timing of the trades, and most importantly, the prices at which the trades were executed.

53. Custodial clients depended on Global Markets not only to execute the FX trades, but also to accurately and honestly report the FX rate to them, and to carry out the trades in accordance with their custodial contracts, associated fee schedules, and guidelines as set forth in the Investment Manager Guides.

54. Consistent with the custodial contracts and Investment Manager Guides, State Street's clients also had a reasonable expectation that the FX rates that State Street charged (or credited) on non-negotiated FX trades would accurately reflect the true market-rates of those FX trades. And there is no reason a custodial client would expect its custodian bank—to which it was paying substantial annual fees for custodial services—to charge non-negotiated FX trades at something other than the actual rate for the FX trade.

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

55. For State Street's custodial clients, such as the Arkansas Teachers, the contracts provided that State Street "shall be entitled to compensation for its services and expenses as Custodian" pursuant to "a written Fee Schedule between the parties." Custodial clients and State Street agreed to and executed a series of fee schedules covering the class period.

56. The fee schedules either provided estimated annual fees or annual flat fees for State Street's services as a custodian.

57. State Street's custodial contracts (a) expressly provided that non-negotiated FX trades would be executed free of charge; or (b) did not list FX transactions among the services for which it was permitted to charge an additional fee or any other cost above the annual flat fee.

58. The fee schedules did set forth certain categories of ancillary services for which State Street was permitted to charge additional fees, including Wire Fees, Reporting Fees, Delivery Fees and Subcustody Fees. None of these ancillary service categories relate to FX trading for non-negotiated trades.

59. The Custodian Contracts did not state that State Street would impose any fees in connection with FX trading.

60. State Street consistently stated that "Foreign Exchange Transactions . . . are ***priced based on the market rates at the time the trade is executed."*** (Emphasis added). This promise was made in Investment Manager Guides for custodial clients and investment managers. These Guides contained comprehensive information about State Street's custody practices and services, including procedural requirements, costs, and information on "State Street Foreign Exchange Transactions."

61. During the Class Period, State Street issued at least 15 Investment Manager Guides, including those dated July 9, 2003; August 9, 2005; September 26, 2006; October 17, 2006; November 20, 2006; December 15, 2006; January 25, 2007; October 30, 2007; November 21, 2007; December 19, 2007; January 28, 2008; May 1, 2008; October 31, 2008; December 30, 2008; January 23, 2009, November 20, 2009 and December 1, 2009.

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

3. State Street's Deceptive Scheme Overcharged Clients for Non-Negotiated FX Trades

63. Despite State Street's representations that FX transactions were priced based on market rates at the time the trades were executed, State Street's FX practices diverged from what the Custodial Contracts authorized and what the Investment Manager Guides represented. Instead, State Street reported and charged its custodial clients FX rates on non-negotiated trades far above what State Street actually paid for foreign currency (or far below what State Street actually received for sales of foreign currency)—oftentimes, at rates that actually fell outside of the range of the day**.**

64. However, unbeknownst to its custodial clients, when State Street reported FX rates on non-negotiated trades to its clients, those statements did not reflect the actual cost or proceeds of the FX transactions, and instead reflected rates that Global Markets selected at its discretion. Put simply, State Street invented the FX rates it reported and charged (or credited) to its custodial clients. State Street paid or received one rate for FX during the trading day, yet reported to its custodial clients another rate that was either higher (in the case of a purchase) or a lower (in the case of a sale), and pocketed the difference.

65. For example, when custodial clients or their agents requested that State Street execute an FX transaction, the request was routed electronically via State Street's Market Order Management System (MOMS) to a group of "risk traders" working at Global Market's FX trading desk. A Global Markets FX trader would execute the transaction at whatever the current exchange rate was (the "actual rate") using the Wall Street System ("WSS"). The rate reported by Global Markets for the transaction, however, was not the rate State Street charged clients. The trader would instead charge the client a rate selected at his discretion at the end of the day, after seeing the day's range of FX transaction rates for the relevant currencies. This manipulation allowed Global Markets to mark up or mark down rates, charge rates that were most favorable to itself rather than in the best interest of the Plans, and pocket the difference between the actual

rate and the rate entered by its traders—which could amount to tens of thousands of dollars from a single FX transaction.[2]

66. To illustrate the breach of fiduciary duty and failure to disclose, assume again the example set forth above—trades on a given day that ranged from $1.25 to $1.35 (the "range of the day") to purchase €1.00, with a day's mid-rate of $1.30. On any, and all, non-negotiated euro-for-dollar trades on behalf of its custodian clients, State Street would have paid a rate between $1.25 and $1.35, but reported to its clients that it paid at least $1.35, and sometimes more than that. State Street also kept the difference.

67. This conclusion is supported by the analysis from non-ERISA custodial client Arkansas Teachers of ten years of FX transactions executed by State Street on behalf of and reported to Arkansas Teachers. The Teachers reviewed almost 11,000 foreign currency trades between 2000 and 2010. About 4,216, or 39%, were non-negotiated trades.

68. The Arkansas Teachers compared its FX trades to other FX trades for the same currency pairs in a comprehensive database of more than 2 million trades, which allowed it to estimate the trading cost of the Teachers' non-negotiated FX trades. The trading cost is the difference between the day's mid-rate and the rate that State Street charged (or credited) to the Arkansas Teachers for non-negotiated FX trades.

69. State Street did not report the actual time of execution of any FX trade, so using the day's mid-rate was the best method to see whether State Street charged (or credited) the actual market rate at the time of execution, as State Street had promised to do.

70. The Arkansas Teachers determined that State Street overcharged for FX trading. State Street charged fictitious FX rates by adding (on purchases) or subtracting (on sales) "basis

[2] For example, the *Wall Street Journal* examined one trade of 8.1 million euros for dollars made by Bank of New York Mellon on behalf of a large pension fund. There the trader reported to the pension fund that the trade was $1.3610. On that day, however, euro/dollar trades occurred between $1.3704 and $1.3604. Had the trade settled at the higher end of the range of the day, which was $1.3704, the pension fund would have gotten an extra $76,012. The *Wall Street Journal* analyzed over 9,400 trades processed over a decade and found that 58% of the currency trades were within the 10% of the day's range least favorable to the client. Carrick Mollenkamp & Tom McGinty, *Inside a Battle Over Forex*, Wall St. J., May 23, 2011.

points" or "pips" from the actual FX rate. (A basis point is 1/100th of a percentage point. For example, the smallest move the euro/dollar currency pair generally makes is 1/100th of a penny, or one basis point.) State Street would add or subtract as much as it could get away with, by selecting a rate close to either the high or low extreme of the range of the day. During periods of increased market volatility, when currency prices fluctuated more and the currency trading ranges of the day were wider, allowed State Street to skim more off the top of each non-negotiated FX trade.

71. From January 3, 2000, through December 31, 2010, the FX rates that State Street reported and charged (or credited) to the Arkansas Teachers on **non-negotiated FX trades** were, **on average, 17.8 basis points above or below the day's mid-rate**. In other words, every foreign exchange transaction cost the Arkansas Teachers 17.8 basis points higher than the average FX rate (or the day's mid-rate).

72. If State Street actually paid $1.31551 to purchase €1.00, it charged the Teachers $1.31729, or 17.8 basis points extra. For a purchase of €10 million, the undisclosed profit to State Street on that single trade—and the concomitant unknown loss to the Teachers—was $17,800. During the years the Arkansas Teachers examined, State Street executed over $1.2 billion in standing order FX trades, meaning that State Street kept about $2 million dollars of the Arkansas Teachers' money.

73. State Street routinely reported and charged (or credited) fictitious prices for its FX trades. For instance, 53% of the standing-order (non-negotiated) trades analyzed by the Arkansas Teachers actually fell entirely outside the forward-adjusted range of the day, *see supra* at ¶44. These trades alone, over $200 million worth, actually added trading costs of ***64.4 basis points*** over the day's mid-rate—an enormous hidden and unauthorized mark-up. For example, on a purchase of €10 million, an undisclosed fee of 64.4 basis points means a $64,400 profit to State Street.

74. Rates consistently above (or below) the daily mid-rate alone demonstrate that Global Markets was charging a hidden mark-up that diverted assets of its clients and the Plans to

State Street, thereby breaching its fiduciary duties.. These actions also violated the terms of the custodial contracts and the representations in the Investment Manager Guides. When more than half of non-negotiated trades fall outside the forward-adjusted range of the day, it is plausible that those reported FX rates were not actual, market-based FX rates, but were instead fictitious and designed solely to gouge State Street's clients and, in turn, their beneficiaries.

75. There is no rational, honest basis for a professional FX market participant like Global Markets to charge a rate outside the forward-adjusted range of the day without disclosing it. The basis for this practice was rather, self-interested profit for State Street, to the significant detriment of its clients. State Street Corporation's revenue from FX trading services grew dramatically during the Class Period, due in significant part to its manipulation of the FX rates charged to clients for non-negotiated FX trades.

State Street Corporation's FX Trading Revenue 2004-2008

Year-End	**FX Revenue**	**% increase from prior year**
2004	$420 million	N/A
2005	$468 million	11%
2006	$661 million	41%
2007	$802 million	21%
2008	$1.08 billion	34%

76. State Street Corporation publicly acknowledged how market conditions provided profit-making opportunities for its FX business when it stated the following during an earnings call[3] held on October 16, 2007:

> [W]hile market conditions in the third quarter presented challenges ... it also created more opportunities in foreign exchange and in securities finance than we usually expect in the third quarter.... Revenue from foreign exchange increased 98% from the year ago quarter, and 29% from the second quarter.

77. Tellingly, from 2000 to 2010, the FX rates that State Street reported and charged (or credited) to the Arkansas Teachers on more than 6,500 negotiated FX trades added, on

[3] Earnings calls are teleconferences in which public companies discusses the financial results of a reporting period.

average, only **3.6 basis points** to the day's mid-rate. In other words, State Street padded its profits, at Plaintiffs' expense, by about 14 basis points per trade for non-negotiated trades.

4. State Street's Deceptive Acts and Practices Could Not Reasonably Be Detected

78. Sophisticated custodial clients such as the Arkansas Teachers were not able to discover the manner in which State Street deceptively marked-up and marked-down FX transactions during the Class Period. The periodic reports State Street sent to clients showed only the rate that State Street charged for its FX trades. The reports did not include the range of the day, the daily mid-rate, or any indication of the time of the day that the trade was executed (known as "timestamps"). Accordingly, clients could not reasonably determine, or even suspect, that State Street was secretly charging more than it actually paid for FX or was paying clients less than it actually received for FX.

79. Custodial clients also reasonably presumed that State Street's reports accurately represented the true cost of the FX trades. Pursuant to the custodial contracts, State Street made monthly reports of monies received or paid on behalf of the client. Accordingly, State Street had an affirmative obligation to report accurately the amount it was paying or receiving for FX trades.

80. Furthermore, based on the Investment Manager Guides' assurance that FX rates would be "priced based on the market rates at the time the trade is executed," no custodial client had any reason to suspect that they were being charged (or credited) anything other the rate that State Street itself had paid or received on those standing-instruction FX transactions.

81. Because sophisticated custodial clients such as Arkansas Teachers could not uncover State Street's deceptive FX trading practices—even when they had directly negotiated FX trades as a reference—less sophisticated clients had no chance at all.

C. Events After October 2009 Begin to Shed Light on State Street's Deceptive FX Trading Practices

82. On October 20, 2009, the Attorney General of California intervened in a whistleblower lawsuit that was filed in California state court. The suit alleged State Street

misappropriated more than $56 million from California's two largest pension plans using the same unfair and deceptive FX practices alleged here. *People of the State of Cal. ex rel. Brown v. State St. Corp.*, No. 34-2008-00008457-CU-MC-GDS (Cal. Super. Ct. Sacramento Cnty. Oct. 20, 2009).

83. The California Attorney General alleged that State Street reported inflated FX rates when buying foreign securities, reported deflated FX rates when selling foreign securities, and pocketed the difference. The Attorney General further alleged that State Street hid its wrongful conduct by entering incorrect FX rates into State Street's electronic FX trading systems and providing false records to clients.

84. The California Attorney General has represented that its allegations of undisclosed "mark-ups" are supported in part by the sworn testimony of a former State Street Bank employee, William Strazzullo, who worked on the same trading floor as the State Street Bank and Global Markets FX traders. He overheard how State Street Bank or Global Markets FX traders were marking up FX trade prices. This trader described the practices of State Street Bank's FX traders as a "totally unethical thing to do" and said that the FX traders' practices were not within the "industry standard." Declaration of Kenny V. Nguyen in Support of Plaintiff's Memorandum and Points and Authorities in Response to Defendants' Motion for Protective Order, Exhibit U at 4 (Plaintiffs' Oct. 6, 2011 letter to Defendants), *People of Cal., v. State St. Corp.*, No. 08-8457 (Cal. Super. Ct. Sacramento Cnty. Jan. 24, 2012).

85. After the California Attorney General filed suit, State Street dramatically changed its FX trading policies and disclosures and so informed its clients. Under these new policies, State Street admitted for the first time that it had systematically imposed additional charges for FX trading. These policy differences are made clear by comparing State Street's Investment Manager Guides published in 2006 and 2009.

86. The 2006 Investment Manager Guide said little about FX transactions. What it did say would have misled clients into thinking that State Street was protecting, rather than pocketing, clients' assets. The 2006 Guide assures clients that State Street has taken steps "to

ensure compliance with certain ERISA requirements" by "effect[ing] foreign exchange transactions for its ERISA trust and custody clients under a special 'FX procedure.'" September 26, 2006 Investment Manager Guide at 37.

87. In contrast, in the 2009 Investment Manager Guide, State Street dramatically increased its disclosures, and admitted that it was adding undisclosed charges to every foreign exchange transaction. In contrast to earlier disclosures, the 2009 Investment Manager Guide clearly states that foreign exchange transactions are not included in custodial services: "all foreign exchange services . . . are separate and independent of any services provided to custody clients." November 20, 2009, Investment Manager Guide at 36. In divulging this practice for the first time, State Street told customers that the FX charges would be "adjusted from time to time" but posted each business day on a website. *Id*. 2009 Investment Manager Guide at 37.

88. These new revelations stood in sharp contrast to State Street's previous communications. The 2006 Investment Manager Guide stated that standing-order (non-negotiated) foreign exchange transactions were "provided as part of each account opening" for ERISA clients. September 26, 2006 Investment Manager Guide at 37. Rather than explaining the charges it was imposing, in 2006 State Street hid that information and posted only the "buy rate and sell rate for each currency." September 26, 2006 Investment Manager Guide at 37. Indeed, the 2006 Guide assured clients that foreign exchange transactions would be done at these posted rates "or rates more favorable if market conditions warrant." *Id.*

89. Contrary to its 2006 promise to improve on posted rates, State Street's 2009 Investment Manager Guide stated that the "pricing of any transaction . . . is not determined by reference to any actual cost." November 20, 2009 Investment Manager Guide at 35. That is, in 2009 State Street *admitted* that the prices it had disclosed to custodial clients and others were not market prices, or prices State Street paid, but "prices" that increased its profits by padding fees on FX transactions.

90. Also in 2009, State Street Bank disclosed that a non-negotiated FX request "*is unlikely, in most circumstances, to be completed at the same or as favorable an execution rate as*

it would be" if the trade were negotiated directly. 2009 Investment Manager Guide at 38. This simple disclosure, not made in previous Investment Manager Guides, finally discloses what State Street Bank had been hiding for years: FX trades contained hidden fees that disadvantaged Plaintiffs and the Proposed Class at State Street's benefit.

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

92. State Street thus altered its practices only after its deceptive acts and practices were publicly revealed. State Street's late disclosure that it charged mark-ups and mark-downs on non-negotiated FX trades contradicts its previous repeated assurances in contracts and the Investment Manager Guides that FX rates would be based on market rates at the time the trade is executed.

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

94. Correspondingly, State Street's FX trading revenue decreased 56% from the fourth quarter of 2008 ($330 million) to the fourth quarter of 2009 ($144 million).

95. While State Street attributed this revenue decrease to lower "customer volumes" and a decrease in "currency volatility," State Street Corporation's 2009 Form 10-K filing stated that customer volumes declined by only 16% from 2008 to 2009, and currency volatility decreased by only 4%. State Street Corp. Annual Report (Form 10-K) (Feb. 22, 2012) ("2009 Form 10-K") at 41. A substantial portion of the 56% decline was the direct result of the California Attorney General's intervention, which forced State Street to stop its profitable self-dealing.

96. In fact, State Street Corporation conceded in its 2009 Form 10-K filing that disclosing its FX transaction profits on non-negotiated trades for its custodial clients would likely continue to affect its revenues and profits from these transactions:

> In light of the action commenced by the California Attorney General, we are providing customers with greater transparency into the pricing of this product and other alternatives offered by us for addressing their foreign exchange requirements. Although we believe such disclosures will address customer interests for increased transparency, over time such action may result in pressure on our pricing of this product or result in clients electing other foreign exchange execution options, which would have an adverse impact on the revenue from, and profitability of, this product for us.

2009 Form 10-K at 12-13.

97. The State Street whistleblower—whose allegations formed the basis of the California Attorney General lawsuit—alleged that State Street had generated $400 million in improperly obtained FX trading revenue annually, constituting one-third of Defendant's trading revenue.

98. Without discovery of State Street's internal documents it is impossible to determine how much State Street overcharged the Plans and other members of the Proposed Class. However, in *Hill v. State Street Corp.*, No. 09-12146, 2011 WL 3420439 at *32 n.25 (D. Mass. Aug. 3, 2011), Judge Gertner found that participants in State Street's own ERISA defined contribution plan offered a "logical rationale for calculating that about 30% of State Street's reported FX revenue in the years before October 2009" was attributable to the improper self-dealing on non-negotiated trades, based on the 56% FX revenue decline in the quarter

immediately following the Attorney General's suit. Assuming that 30% of State Street's revenue for FX trading during the relevant period was attributable to self-dealing, State Street's clients, including Plaintiffs' Plans, and the Plans of the Proposed Class, have overpaid State Street for its services by hundreds of millions of dollars.

D. Facts Bearing on Fiduciary Breach for State Street's ERISA Clients

99. ERISA-covered defined contribution plans like the Andover Plan and the Boeing Plan invested in foreign securities (and hence foreign currency) through their State Street Bank-sponsored commingled funds. The commingled funds received principal, dividends, and interest that were paid in foreign currencies, or participated in other investments that required the exchange of foreign currency into and from US Dollars. The Andover Plan offered participants the option to invest in certain State Street-sponsored commingled International Equity Funds, including the International Growth Opportunities Securities Lending Class A Fund, and the SSgA Daily International Alpha Select Fund. Likewise, the Boeing Plan offered participants the option to invest in certain State Street-sponsored commingled International Equity Funds, including the International Index Fund held by Plaintiff Pehoushek-Stangeland.

100. These International Equity Funds invest in a wide variety of international equity securities issued throughout the world. To purchase or sell the foreign securities in these funds, and then repatriate the funds to clients, FX transactions were required. As investment manager for the commingled funds, SSgA negotiated or contracted with its affiliate, Global Markets, for the FX transactions. State Street Bank, in its various roles as the trustee, investment manager, and custodian for the commingled funds, was a fiduciary with discretion and control over the funds' FX transactions ordered by SSgA and undertaken by Global Markets.

101. As investment manager for the commingled funds, SSgA had discretion as to the type and nature of instructions it gave Global Markets when undertaking FX trades. Upon information and belief, rather than negotiating each FX trade for the funds, SSgA placed non-negotiated trade orders with Global Markets. Provision of standing instructions by SSgA was insufficient from a fiduciary duty standpoint because in so doing, State Street failed to

appropriately limit the designated price range and time period for the requested FX transactions. This fiduciary breach was compounded by SSgA's apparent failure to monitor, detect, and rectify Global Markets' mark-ups and mark-downs of the trades for its ERISA clients. As a result, State Street Bank engaged in a multi-year, self-dealing FX trade scheme—that is, it allowed SSgA and Global Markets to breach their fiduciary duties and act against Plaintiffs' interests in FX transactions year after year, and knew that SSgA and Global Markets would in fact act against Plaintiffs' interests.

102. SSgA, as the internal investment manager, would initiate FX transactions required for the investment management of the commingled funds through the MOMS system. *See supra* at ¶65. To do so, SSgA would submit a request to the Securities Processing Unit of State Street through MOMS, which would then pass the order on to the Global Markets FX trading desk. Placing non-negotiated trades allowed Global Markets to mark-up or mark-down rates and charge rates that were most favorable to itself, rather than in the best interest of the Plans. SSgA and Global Markets thereby both exercised discretion over Plan assets.

103. Because Plan fiduciaries whose Plans invested in the commingled funds entrusted all aspects of the investment management to State Street, including the FX transactions required for international purchases and sales, State Street had control over all aspects of the FX transactions. Neither the time stamp nor the rate of the actual FX transaction was disclosed to the Plans, their fiduciaries, or participants, by SSgA.

104. Over time, and with SSgA requesting and Global Markets executing thousands of FX transactions annually as part of the management of the Funds, Global Market's discretionary pilfering of Plan assets added up to large losses to participants and beneficiaries. State Street thus took advantage of its already-profitable relationship as trustee, investment manager, and custodian for the funds (and Plans) to rake in additional unauthorized profits.

105. Defendant State Street Bank, through its investment management division, SSgA, and its trading arm, Global Markets, provided FX trading services similar to those provided to the Andover Plan and the Boeing Plan to other Plans in the class, in its roles as trustee,

custodian, and investment manager. With no direction from the Plans, State Street commingled assets of the Plans, controlled where the Plans' assets were deposited and how and when they were invested and disbursed, and controlled all aspects of the FX transactions for the Plans, including Global Market's unauthorized mark-ups and mark-downs for non-negotiated trades on behalf of the funds, which amounted to State Street's self-dealing and taking of Plan assets for its own use and benefit.

106. State Street Bank also served as an ERISA fiduciary to defined benefit plans in the putative class. On information and belief, State Street provided custodial services and commingled fund investment options to the defined benefit plans and utilized non-negotiated FX transactions in a like manner to the transactions executed on behalf of its public fund clients and the defined contribution commingled fund clients. *See supra* at ¶¶50-81.

E. Defendant's Fiduciary Status under ERISA

1. The Nature of Fiduciary Status

107. There are two types of fiduciaries under ERISA: "named fiduciaries" and "*de facto* fiduciaries."

108. **Named Fiduciaries**. Every ERISA plan must have one or more "named fiduciaries." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The "administrator" in the plan instrument is automatically a named fiduciary, and in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

109. Investment managers are also ERISA fiduciaries. Under ERISA:

> (38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102 (a)(2) of this title)—
>
> (A) who has the power to manage, acquire, or dispose of any asset of a plan;
>
> (B) who
>
> (i) is registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.];
>
> (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [15 U.S.C. 80b–3a (a)], is

> registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary;
>
> (iii) is a bank, as defined in that Act; or
>
> (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and
>
> (C) has acknowledged in writing that he is a fiduciary with respect to the plan.

ERISA § 3(38), 29 U.S.C. § 1002(38).

110. ***De Facto* Fiduciaries**. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under section 402(a)(1), 29 U.S.C. section 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus a person is a fiduciary to the extent

> (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
>
> (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
>
> (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

2. Defendant State Street's Fiduciary Status

111. In the relevant Amended and Restated Declaration of Trust, State Street acknowledged its fiduciary status as Trustee with exclusive management and control of the commingled funds for all the ERISA-covered plans that offered the International Equity Funds as an investment option for participants' retirement savings.

112. As a trustee for the commingled funds with exclusive management and control State Street Bank authorized its investment management division to manage the commingled funds, and authorized Global Markets to convert any monies needed for the funds' operation into

the required currency through FX transactions of Plan assets. State Street Bank also served as a trustee and investment manager to the Plans pursuant to separate contracts. At all times, State Street Bank had the duty to prudently and loyally manage Plan assets, discretion to select appropriate service providers and custodians, and the duty to monitor its various divisions to ensure that these transactions were within the bounds of its fiduciary responsibilities and the limitations of ERISA.

113. State Street Bank, through its SSgA division, served as the Investment Manager for the International Equity Funds in Plaintiffs' Plans and, upon information and belief, numerous other plans. In this capacity, SSgA was responsible for prudently and loyally managing Plan assets, and authorizing, reviewing and controlling the conduct of any other State Street division or representative engaged in activities affecting the value or performance of the Funds for which State Street served as Investment Manager.

114. Under ERISA, investments in commingled Funds are subject to a "look-through" rule, pursuant to which, the "plan assets" of an ERISA-covered plan include both its undivided "equity interest [in the entity] and an undivided interest in each of the underlying assets of the entity …". 29 C.F.R. § 2510.3-101(a)(2); *see also* ERISA § 3(42), 29 U.S.C. § 1002(42) (authority of Secretary of Labor to define term "plan assets" by regulation). Specifically, when a Plan acquires or holds an interest in a commingled Fund, "its assets include its investment and an undivided interest in each of the underlying assets of the entity." 29 C.F.R. § 2510.3-101(h)(1).

115. "[A]ny person who exercises authority or control respecting the management or disposition of such underlying assets, and any person who provides investment advice with respect to such assets for a fee (direct or indirect) is a fiduciary of the investing plan." *Id.* § 2510.3-101(a).

116. As investment manager for the commingled funds, State Street Bank, through its SSgA division, exercised authority and control with respect to the management or disposition of the Plans' assets. Accordingly, State Street Bank was a fiduciary of each and every ERISA Plan which invested in the International Equity Funds, including the Plaintiffs' Plans and the Plans of

the Proposed Class members with respect to the underlying assets of each and every State Street Bank-sponsored commingled fund.

117. State Street Bank, through its Global Markets division, also functioned as a fiduciary to the Plans and the Class by acting as trustee and custodian for the commingled funds, and by exercising authority and control over the Plans' assets when undertaking FX transactions for the International Equity Funds as to the price and timing for these transactions involving Plan assets.

118. Global Market's conversion of U.S. dollars to foreign currency, and foreign currency to U.S. dollars constituted the exercise of authority or control respecting the management or disposition of the underlying assets of the commingled investment funds and, therefore, of assets of the ERISA Plans, within the meaning of ERISA section 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(1), and 29 C.F.R. section 2510.3-101(a). This is particularly so because Global Markets exercised discretion in choosing when and how to execute the trades, and whether to mark up or mark down the FX transactions over the market rates that Global Markets had received for the transactions, and then profited and engaged in self-dealing by pocketing the difference for itself. Accordingly, Global Markets was also a functional fiduciary of the ERISA Plans.

F. The Relevant Law

1. Fiduciary Duties under ERISA

119. ERISA sections 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) & (B), provide, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

120. These fiduciary duties under ERISA sections 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and are the "highest known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982). They entail, among other things:

> (a) The duty to conduct an independent and thorough investigation into, and to continually monitor, the merits of all the investment alternatives for a plan;
>
> (b) The duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor; and
>
> (c) The duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

2. Prohibited Transactions under ERISA

121. In addition to ERISA's extensive fiduciary duty provisions, the statute categorically bars certain transactions deemed likely to injure a plan. *See Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 241 (2000).

a. ERISA § 406(b) is an absolute bar against self-dealing

122. ERISA section 406(b), 29 U.S.C. § 1106(b), prohibits certain transactions between fiduciaries and a plan. The statute sets forth an "absolute bar against self dealing" by a fiduciary. *See Brock v. Hendershott*, 840 F.2d 339, 341 (6th Cir. 1988). ERISA section 406(b) provides the following:

> A fiduciary with respect to a plan shall not—
>
> (1) deal with the assets of the plan in his own interest or for his own account,
>
> (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

> (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

b. ERISA § 406(a) prohibits party-in-interest transactions

123. ERISA section 406(a), 29 U.S.C. §1106(a), prohibits transactions between a plan and a party in interest. A "party in interest" is defined broadly with respect to an ERISA-qualified plan and includes, among others, any fiduciary, counsel, or employee of such employee benefit plan, as well as any person providing services to such plan. ERISA § 3(14), 29 U.S.C. § 1002(14). Section 406(a)(1) provides the following:

> (1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—
>
> (A) sale or exchange, or leasing, of any property between the plan and a party in interest;
>
> (B) lending of money or other extension of credit between the plan and a party in interest;
>
> (C) furnishing of goods, services, or facilities between the plan and a party in interest;
>
> (D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; or
>
> (E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107 (a) of this title.

c. Foreign currency exchange exemptions

124. Section 406(a)'s prohibitions against transactions with a party in interest are subject to numerous exemptions to allow the normal course of business with regard to investment management. *See* ERISA § 408, 29 U.S.C. § 1108. Foreign currency exchanges between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to such plans are exempted from the prohibition provided they meet certain conditions.

> (18) Foreign exchange transactions.— Any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either), and a plan (as

> defined in section 1002(3) of this title) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other party in interest, if—
>
> (A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),
>
> (B) at the time the foreign exchange transaction is entered into, **the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated partie**s, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,
>
> (C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and
>
> (D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction.

ERISA § 408(b)(18), 29 U.S.C. § 1108(b)(18) (emphasis added).

125. This section existed first as a Department of Labor ("DOL") regulation, Prohibited Transaction Exemption 94-20, 59 Fed. Reg. 8022-02 (Feb. 17, 1994), and was later codified as 29 U.S.C. § 1108(b)(18) (effective Aug.17, 2006). Prohibited Transaction Exemption (PTE) 94-20 required that foreign exchange transactions be "directed" by a plan fiduciary *independent of the bank, broker dealer, or affiliate*. Four years later the DOL promulgated another regulation, to allow non-negotiated trades within carefully circumscribed conditions. Prohibited Transaction Exemption 98-54, 63 Fed. Reg. 63503-63510 (Nov. 13, 1998). PTE 98-54 exempts FX transactions "performed under a written authorization [i.e., standing instructions]…by a fiduciary of the plan…independent of the bank or broker-dealer engaging in the covered transaction." Section III(e), 63 Fed. Reg. at 63508.

126. Although PTE 94-20 and PTE 98-54 carve out a limited space for execution of FX transactions within the ERISA regulatory scheme, these exemptions do not relieve State Street of fiduciary responsibility. As the DOL explained,

The Department wishes to point out that ERISA's general standards of fiduciary conduct would apply to the standing instruction arrangements permitted by this class exemption. Section 404 of ERISA requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion.63 Fed. Reg. at 63505.

3. Civil Remedies under ERISA

127. ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant or a fiduciary for relief under ERISA section 409, 29 U.S.C. § 1109.

128. ERISA section 409(a), 29 U.S.C. § 1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part:

> any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

129. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes individual participants and fiduciaries to seek equitable relief from Defendant, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

130. Plaintiffs therefore bring this action under the authority of ERISA section 502(a)(2) for relief under ERISA section 409(a) to recover losses sustained by the Plans arising out of the breaches of fiduciary duties by the Defendant for violations under ERISA sections 404(a)(1) and 406, as well as pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3) for

equitable relief from Defendant as fiduciary , including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

V. CLASS ACTION ALLEGATIONS

131. **Class Definition.** Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of the Andover Plan and the Boeing Plan, and the following class of persons similarly situated (the "Class"):

> All qualified ERISA plans, and the participants, beneficiaries, and named fiduciaries of those plans, that invested directly or indirectly in the State Street Bank commingled Funds, which includes the "International Equity Funds" identified in this complaint; or for which State Street Bank provided investment management or custodial services, that utilized State Street Global Market's indirect FX trading services, and suffered damages as a result of the deceptive acts and practices and other misconduct alleged herein, at any time between January 2, 1998 and December 31, 2009. Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest, and the officer, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such entity.

132. Plaintiffs reserve the right to modify the class definition before moving for class certification, including a reservation of right to seek to certify subclasses of State Street's clients, or extension of the class period, if information gained during this litigation, through discovery or otherwise, reveals that modifying the class definition or seeking subclasses would be appropriate.

133. **Numerosity.** The members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that numerous ERISA-covered benefit plans throughout the country offered the commingled International Equity Funds and that these plans collectively have tens of thousands of participants and beneficiaries.

134. **Commonality.** The claims of Plaintiffs and the members of the Class have a common origin and share a common basis. The claims of all Class members originate from the same misconduct, breaches of duties, and violations of ERISA, perpetrated by Defendant.

Proceeding as a class is particularly appropriate here the claim goes to the same type of currency trade instruction, indirect trades, conducted by Global Markets on behalf of the funds, and also on behalf of custodial clients, and therefore, State Street's deceptive acts and practices and misconduct regarding its FX trading practices affected all Plans were uniform and widespread.

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

(a) Whether Defendant breached its fiduciary duties under ERISA by selecting its internal division to conduct the FX transactions for the Funds;

(b) Whether Defendant breached its fiduciary duties under ERISA by failing to prudently and loyally manage Plan assets when it permitted its affiliate to conduct FX transactions;

(c) Whether Defendant breached its fiduciary duties under ERISA by marking-up or marking-down the FX transactions for the Funds at issue and passing a lower NAV to the Plaintiffs' Plans or the funds;;

(d) Whether Defendant pocketed the difference between the actual, market-based FX rates it received when entering into the FX transactions, and the FX rates that were reported and charged to the commingled funds, and the Plans;

(e) Whether Defendant breached its fiduciary duties under ERISA by pocketing the difference between the actual, market-based FX rates and the mark-ups and mark-downs, and maximized profit to State Street at the expense of Plan assets;

(f) Whether Defendant's self-interested FX transactions constituted prohibited transactions under ERISA; and,

(g) Whether Defendant's acts proximately caused losses to the Plans, and if so, the appropriate relief to which Plaintiffs, on behalf of the Plans and the Class are entitled.

136. **Typicality.** Plaintiffs are willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to or which directly and irrevocably conflict with the interests of other members of the class.

137. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs are members of the Class described herein.

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

139. A class action is superior to other available methods for the adjudication of this controversy. Individual litigation by all Class members would increase the delay and expense to the parties and the Court given the complex legal and factual issues of the case, and judicial determination of the common legal and factual issues essential to this case would be more fair, efficient and economical as a class action maintained in this forum than in piecemeal individual determinations.

140. **Adequacy.** The interests of the Plaintiffs are co-extensive with, and not antagonistic to, those of the absent Class members. Plaintiffs will undertake to represent and protect the interests of absent Class members. The undersigned counsel for Plaintiffs and the Class are experienced in class action, complex, and ERISA litigation, will adequately prosecute this action, and will assert and protect the rights of and otherwise represent Plaintiffs and absent Class members.

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

142. **Rule 23(b)(1)(A) & (B) Requirements.** Class action status in this ERISA action is warranted under Federal Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendant. Class action status also is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

143. **Rule 23(b)(2) Requirements.** Certification under 23(b)(2) is warranted because Defendant have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

144. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

VI. CAUSES OF ACTION

COUNT I

ERISA Prohibited Transactions

(Violations of § 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1))

145. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

146. Defendant State Street Bank is a fiduciary based on its discretionary control over Plan assets for the purposes of FX transactions.

147. ERISA section 406(b), 29 U.S.C. § 1106(b), prohibits transactions between a plan and a fiduciary that amount to self-dealing. Plaintiffs allege that State Street's FX trading practices amounted to self-dealing because State Street Bank, through its Global Markets division, consistently used its discretionary control over Plan assets to select for itself the most favorable FX rate based on the range of the day, regardless of the actual rate at the time the transaction occurred, and pocketed the difference between the two rates, causing its fiduciary clients, the Plaintiffs' Plans, and other members of the Proposed Class to suffer losses.

148. State Street's practice of FX transaction rate manipulation was nothing less than a fiduciary dealing with the assets of a plan for its own account. Fiduciary self-dealing is categorically prohibited by ERISA section 406(b), 29 U.S.C. § 1106(b).

149. Pursuant to ERISA section 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) & (3), State Street Bank is liable to restore the losses to the Plans and provide other appropriate equitable relief.

COUNT II

Breach of Duties of Prudence and Loyalty

(Violation of § 404 of ERISA, 29 U.S.C. § 1104)

150. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

151. Defendant State Street Bank, through its SSgA division, is an "investment manager" within the meaning of ERISA section 3(38), 29 U.S.C. § 1002(38), because it (i) has the power to manage, acquire, or dispose of plan assets placed in its custody; (ii) is a bank within the meaning of the Investment Advisers Act of 1940; and (iii) has acknowledged in writing that it is a fiduciary with respect to the Plans.

152. As a fiduciary under ERISA, State Street Bank is bound by the duties of prudence and loyalty laid out in ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1). These duties mean that as an investment manager for the Plaintiffs' Plans, State Street Bank is bound to act in the customer's interest when transacting business for the account, and thus bound, for example, to disclose fully to the Plans all the details of the relevant FX trading transactions it was undertaking, or negotiating on behalf of the funds, including the mark-ups or mark-downs that the funds were receiving for the FX trades.

153. As a fiduciary, State Street also had a duty to monitor its internal Global Markets division. Through its Global Markets division, State Street Bank knew that it was charging unauthorized mark-ups and mark-downs for the non-negotiated trades rather than the actual transaction rates and pocketing the difference.

154. State Street Bank has breached its ERISA fiduciary duties of prudence and loyalty because it knew that its Global Markets division was charging the Plans (or the commingled funds in which the Plans invested) unauthorized mark-ups and mark-downs for FX trading that

were unfavorable or unreasonable, above the transactional rates, and/or in excess of what Global Markets had agreed to charge, but did not ensure, by negotiation or otherwise, that Global Market's rates were in the best interest of the Plans.

155. State Street, through its Global Markets division, has breached the duties of prudence and loyalty by charging the Plans (or the commingled Funds in which the Plans invested) unauthorized mark-ups or mark-downs over the actual FX trade rates that were unfavorable or unreasonable, above the market rates, and/or in excess of what it had agreed to charge.

156. These breaches of fiduciary duty involved assets of the Plans on which fees were levied by State Street Bank. .

157. Section 409(a) of ERISA, 29 U.S.C. § 1109(a), imposes liability on State Street Bank for these breaches and requires State Street Bank to make good to the Plans the losses resulting from its breaches.

158. To enforce the relief available under ERISA section 409(a), 29 U.S.C. § 1109(a), Plaintiffs assert this claim against State Street Bank under ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2).

159. Further, pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), State Street Bank must provide other appropriate equitable relief to redress its breaches of duty and enforce its fiduciary duties.

COUNT III

ERISA Prohibited Transactions

(Violations of § 406(a)(1)(C) & (D) of ERISA, 29 U.S.C. § 1106(a)(1)(C) & (D))

160. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

161. ERISA section 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C), provides that a fiduciary shall not cause a plan to engage in a transaction if the fiduciary knows or should know that the

transaction constitutes a direct or indirect furnishing of goods, services, or facilities between the plan and a party in interest.

162. ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), provides that a fiduciary shall not cause a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of a party in interest, of any assets of the plan.

163. As noted above, State Street Bank is a fiduciary with respect to the Plans.

164. State Street Bank, State Street Global Advisors, and State Street Global Markets are "affiliates" within the meaning of the Prohibited Transaction Exemption and they directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with each other.

165. Global Markets, as an affiliate of State Street Bank, is a "party in interest" within the meaning of ERISA section 3(14), 29 U.S.C. § 1002(14), for at least two independently sufficient reasons: it is a functional fiduciary with respect to the Plans, and it is a person providing services to the Plans.

166. By allowing Global Markets to manipulate FX transaction prices to the detriment of the plan and pocket the difference between the actual transaction rate and the rate selected by Global Markets, State Street Bank violated ERISA section 406(a)(1)(C) & (D), 29 U.S.C. § 1106(a)(1)(C) & (D). State Street Bank caused the Plans to engage in transactions while knowing that such transactions constituted a direct or indirect transfer of assets of the Plans to a party in interest, Global Markets.

167. While ERISA section 408(b)(18), 29 U.S.C. § 1108(b)(18), provides an exemption from the prohibitions of ERISA section 406(a), 29 U.S.C. § 1106(a), for foreign currency exchanges between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to a plan, the exemption only applies if, at the time the FX transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange

transactions, and if the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction. The exemption does not apply here for two independently sufficient reasons: (1) the terms of the FX transactions, by which Global Markets essentially ensured that its clients would always get the worst exchange rate of the day, were indeed less favorable to the Plans than comparable arm's-length transactions, and (2) State Street, SSgA, and Global Markets had investment discretion (and SSgA provided investment advice) with respect to the investment of plan assets when it entered into the transactions. Thus, State Street's FX trades do not fall under the narrow exemption of section 408(b)(18).

168. Pursuant to ERISA section 502(a)(2) & (3), 29 U.S.C. § 1132(a)(2) & (3), State Street Bank is liable to restore the losses to the Plans and provide other appropriate equitable relief.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Declare that the Defendant has violated ERISA's prohibited transactions provisions;

2. Declare that the Defendant breached its fiduciary duties under ERISA;

3. Issue an order compelling a proper accounting of the FX transactions in which the Plans and other members of the Proposed Class have engaged;

4. Issue an order compelling Defendant to restore all losses caused to the Plans (or that will be caused to the Plans after the filing of this Complaint);

5. Issue an order compelling the Defendant to disgorge all fees paid and incurred to Defendant or its affiliates (or that will be paid or incurred by the Plans after the filing of this Complaint), including any profits thereon;

6. Order equitable restitution and other appropriate equitable monetary relief against the Defendant;

7. Award such other equitable, injunctive, or remedial relief as may be appropriate, including the permanent removal of the Defendant from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to serve as FX custodian to the Plans;

8. That this action be certified as a class action and that the Class be designated to receive the amounts restored to the Plans by Defendant and a constructive trust be established for distribution to the extent required by law;

9. Enjoin Defendant collectively, and each affiliate individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

10. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA section 502(g), 29 U.S.C. § 1132(g) and/or the Common Fund doctrine; and

11. Award such other and further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs hereby demand a jury on all issues so triable.

Dated: October 18, 2012

HUTCHINGS, BARSAMIAN, MANDELCORN & ZEYTOONIAN, LLP

By: s/ Theodore M. Hess-Mahan
Theodore M. Hess-Mahan, Esq. BBO #557109
110 Cedar Street, Suite 250
Wellesley Hills, MA 02481
Telephone: 781-431-2231
Facsimile: 781-431-8726
thess-mahan@hutchingsbarsamian.com

KELLER ROHRBACK, L.L.P.
Lynn Lincoln Sarko (*pro hac vice pending)*
Derek W. Loeser (*pro hac vice pending)*
Laura R. Gerber (*pro hac vice pending)*
1201 3rd Avenue, Suite 3200
Seattle, WA 98101
Telephone: 206-623-1900
Facsimile: 206-623-8986
lsarko@kellerrohrback.com
dloeser@kellerrohrback.com
lgerber@kellerrohrback.com

Counsel for Plaintiffs

EX. 4

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Friday, August 28, 2015 12:04 PM
To: Lynn Sarko
Cc: Daniel P. Chiplock; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Goldsmith, David
Subject: Re: SSBT: Draft STIPULATION AND AGREEMENT OF SETTLEMENT

I didn't get the email from Brian. So I don't intend to respond.
Others who receive the email Caroline should respond. I am only seeking the same powers but all of the lead counsel in all other cases I've been in received.

Of course I intend to honor all commitments, contracts, obligations, agreements, understandings buy what ever name or title. But especially those that are in writing like Brian's.

Sent from my iPhone

> On Aug 28, 2015, at 1:02 PM, Lynn Sarko <lsarko@KellerRohrback.com> wrote:
>
> We need to be careful about this as the DOL had asked if there were any agreements on fees between counsel. I would never answer their question. And then they seem to forget about it.
> But I'd rather not highlight it and have the DOL go sideways on us.
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 9:35 AM, Brian McTigue <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>> wrote:
>
> I don't agree with lead settlement counsel distributing attorney's fees and expenses in its sole discretion. Attorney's fees and expenses should be distributed pursuant to the existing, written agreements of counsel.
>
> _____
> J. Brian McTigue
> McTigue Law LLP
> 4530 Wisconsin Ave. N.W.
> Suite 300
> Washington, DC 20016
> (202) 364-6900 ext. 300
> (202) 364-9960 fax
> bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>
> www.mctiguelaw.com<http://www.mctiguelaw.com/>
> Member of the District of Columbia and California Bars
>
>
> The information contained in this E-mail transmission may be privileged and confidential and is intended solely for use by the individual or entity named as the recipient thereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this transmission error, or have any reason to believe that you may have received it in error please notify us immediately by calling the attached telephone number so we may arrange to retrieve this transmission at no cost to you.

>
> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
> Sent: Friday, August 28, 2015 9:29 AM
> To: 'Sucharow, Lawrence' <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>
> Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Lynn Sarko <lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>>; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; Evan Hoffman <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Kravitz, Carl S. <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; Brian McTigue <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> OK, sounds good. I will also get you whatever edits I have to the settlement docs by noon.
>
> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> Sent: Friday, August 28, 2015 9:28 AM
> To: Chiplock, Daniel P.
> Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
> Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
>
> I am speaking to Paine today at around 10 AM to both report to him and get his update.
> I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
> This looks OK to me, thanks. I'm happy to send it (after you've done the other redline) to Paine, if you like. Or someone else can, no matter.
>
> From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
> Sent: Thursday, August 27, 2015 3:27 PM
> To: Lynn Sarko; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Dear all,
>
> We've had some additional exchanges about the term sheet and, specifically, para 8(n). I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal. If you disagree, please let us know asap.
>
> When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.
>
> Thanks
>

>
>
>
>
>
>
> <image001.jpg><http://labaton.com/>
> Nicole M. Zeiss | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 | F: (212) 883-7067
> E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> <image002.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.jpg><https://twitter.com/LabatonSucharow> <image004.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Zeiss, Nicole
> Sent: Wednesday, August 26, 2015 5:09 PM
> To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.
>
> Thanks
>
>
>
>
>
>
>
> <image005.jpg><http://labaton.com/>
> Nicole M. Zeiss | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 | F: (212) 883-7067
> E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> <image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image007.jpg><https://twitter.com/LabatonSucharow> <image008.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Sucharow, Lawrence
> Sent: Wednesday, August 26, 2015 4:34 PM
> To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Then we can probably forget my proposed changes.

>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 4:26 PM
> To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Sure. If it works for them – its fine with me
>
> Lynn Lincoln Sarko
> Managing Partner
>
> Keller Rohrback L.L.P.
> 1201 Third Avenue, Suite 3200
> Seattle, WA 98101
>
> Phone: (206) 623-1900
> Fax: (206) 623-3384
> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>
> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> Sent: Wednesday, August 26, 2015 1:25 PM
> To: Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>; 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
> Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Can we leave para 8(n) the general way it is and protect the DOL through the express provision of para 12 limiting fees charged to ERISA allocation to $10.9 million?
>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 3:42 PM
> To: Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> David
> Thanks for sending this. Sorry, I had misunderstood what you were saying on our call earlier today.
>
> Two things:
>

> 1. I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
> 2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down. So—question—can we get rid of the word "fees" in this paragraph—does it still work?
>
> What do you think??
>
> Lynn
>
> Lynn Lincoln Sarko
> Managing Partner
>
> Keller Rohrback L.L.P.
> 1201 Third Avenue, Suite 3200
> Seattle, WA 98101
>
> Phone: (206) 623-1900
> Fax: (206) 623-3384
> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>
> From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
> Sent: Wednesday, August 19, 2015 2:59 PM
> To: 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
> Cc: Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>; Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
> Subject: SST--Proposed Revision to Term Sheet for DOL Deal
>
> All: The below reflects our proposed revisions to the Term Sheet (in red boldface) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet). Please comment. Thanks.
>
>
> 8(n). Plan of Allocation. . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court. However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.
>
> 12. Plaintiffs' Counsel's Attorneys' Fees and Expenses. Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of

the Settlement or the fee and expense award. Plaintiffs' Counsel shall may apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above. In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days. The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees. Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.

>
>
>
>
>
>
> [http://www.labaton.com/images/email-logo.jpg]<http://www.labaton.com/>
> David J. Goldsmith | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0879 | F: (212) 883-7079
> E: dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> [http://www.labaton.com/images/email-linkedin.gif]<http://www.linkedin.com/company/labaton-sucharow-llp> [http://www.labaton.com/images/email-twitter.gif] <https://twitter.com/LabatonSucharow> [http://www.labaton.com/images/email-facebook.gif] <https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
>
> ***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.
>
>
>
>
> 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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 5

From: Garrett Bradley
Sent: Wednesday, September 2, 2015 11:05 AM
To: Sucharow; Lawrence
Subject: Re: State Street FX - revised term sheet

My gut tells me they will press for a fee agreement deal or withhold signature at some point in the process. They may threaten their own fee app. State street may want us all on the dotted line but I wanted to raise it and have you think about it. It may be too late.

Garrett

> On Sep 2, 2015, at 12:02 PM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>
> Never thought of it.
> Why, is there a problem?
>
> -----Original Message-----
> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
> Sent: Wednesday, September 02, 2015 11:59 AM
> To: Sucharow, Lawrence
> Subject: Re: State Street FX - revised term sheet
>
> aren't you lead and Lieff Liason? no way around everyone signing?
>
> Garrett
>
>> On Sep 2, 2015, at 11:28 AM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>>
>> All Plaintiffs' Counsel for both Term Sheet and Stip.
>>
>> -----Original Message-----
>> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
>> Sent: Wednesday, September 02, 2015 11:25 AM
>> To: Sucharow, Lawrence
>> Subject: Re: State Street FX - revised term sheet
>>
>> Larry,
>>
>> Does any other counsel need to sign off besides you for the consumer side?
>>
>> Garrett
>>
>>> On Sep 2, 2015, at 11:16 AM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>>>
>>> I don't necessarily disagree, but would want it under my designation as Interim Lead Class Counsel, such as Interim Lead ERISA Sub-Class Counsel.
>>> That having been said, only the Court can make that designation, it is NOT a self-appointed title.
>>>

>>> -----Original Message-----
>>> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
>>> Sent: Wednesday, September 02, 2015 11:14 AM
>>> To: Robert L. Lieff; Sucharow, Lawrence; Michael Thornton
>>> Subject: FW: State Street FX - revised term sheet
>>>
>>> I'm going to respectfully suggest that we give Lynn this designation, if there needs to be one, in order to head this off.
>>>
>>> -----Original Message-----
>>> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
>>> Sent: Wednesday, September 02, 2015 11:10 AM
>>> To: Sucharow, Lawrence
>>> Cc: Chiplock, Daniel P.; Lieff, Robert L.; Garrett J. Bradley; Michael Thornton; Zeiss, Nicole
>>> Subject: Re: State Street FX - revised term sheet
>>>
>>> I will call him
>>>
>>> Sent from my iPhone
>>>
>>> On Sep 2, 2015, at 8:09 AM, Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>> wrote:
>>>
>>> Lynn this is getting crazy. We don't believe there is a need for such a designation, but if so, he should move before the Court so we can oppose.
>>> If I talk to him there may be a schism created. I suggest you ask him what the heck he's doing.
>>>
>>> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
>>> Sent: Wednesday, September 02, 2015 10:57 AM
>>> To: Sucharow, Lawrence; Lynn Sarko; Robert L. Lieff
>>> Subject: RE: State Street FX - revised term sheet
>>>
>>> I'm sure you guys noticed that Brian has appointed himself Interim Lead ERISA Counsel in the signature block?
>>>
>>> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
>>> Sent: Tuesday, September 01, 2015 11:07 PM
>>> To: Lynn Sarko
>>> Cc: Zeiss, Nicole; Chiplock, Daniel P.; Rogers, Michael H.; Goldsmith, David
>>> Subject: Re: State Street FX - revised term sheet
>>>
>>> Lynn, you and I should discuss how best to handle Brian, I completely agree with you.
>>>
>>> Perhaps a side letter from me as lead counsel saying I intend to abide by the agreement entered into between class counsel and ERISA counsel, dated, whatever, would satisfy him?
>>>
>>> Lawrence Sucharow
>>> Labaton Sucharow, LLP
>>> Sent from my iPad
>>>
>>> On Sep 1, 2015, at 10:43 PM, Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>> wrote:
>>> This is what went to the DOL as a draft.

>>>
>>> Lynn
>>>
>>> Lynn Lincoln Sarko
>>> Managing Partner
>>>
>>> Keller Rohrback L.L.P.
>>> 1201 Third Avenue, Suite 3200
>>> Seattle, WA 98101
>>>
>>> Phone: (206) 623-1900
>>> Fax: (206) 623-3384
>>> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>>>
>>>
>>> ***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.
>>>
>>>
>>> <#1397344v11_Active_ - State Street - Term Sheet.DOCX> <State Street - Term Sheet - State Street - Term Sheet.pdf>
>>>
>>>
>>> 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 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.
> 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.

EX. 6

From: Lynn Sarko
To: Lynn Sarko; 'Lieff, Robert L.'
CC: 'rlieff@lieff.com'; Lynn Sarko; Laura Gerber
Sent: 8/30/2013 1:22:50 PM
Subject: RE: State Street
Attachments: FeeAgreement083013.docx

Robert

I have signoff from the ERISA counsel on the fee division between the ERISA and Consumer counsel that we discussed this morning. Attached is a draft agreement that reflects the 91%/9% split.

I have received approval from the other ERISA counsel.

Regards,

Lynn

Lynn L. Sarko
Keller Rohrback LLP
206-224-7552

On Aug 28, 2013, at 2:31 PM, "Lieff, Robert L." <RLIEFF@lchb.com<mailto:RLIEFF@lchb.com>> wrote:

Lynn,

We are waiting to receive from you a draft agreement between ERISA and Consumer plaintiffs. Can we have it this week? We are drafting a settlement agreement for all plaintiffs including ERISA and defendants. Thanks.

Robert

<image001.gif>

Robert L. Lieff
Of Counsel
rlieff@lchb.com<mailto:rlieff@lchb.com>
t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com<http://www.lieffcabraser.com>

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.

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, Counsel for ERISA Plaintiffs), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis alleging state law claims against State Street Corporation, State Street Bank and Trust Company, and others, but no claims under ERISA.

1. WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al., vs. State Street Bank and Trust Company,, et. al.*, No. 11-cv-12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of

Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed, awarded and/or approved by the Court in connection with the *ARTRS, Andover or Henriquez* cases, whether the

product of settlement or litigated resolution of the cases, shall be divided 91 % to Counsel for Consumer Plaintiffs and 9 % to Counsel for ERISA Plaintiffs (the "Division of Fees").

2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.
7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

EX. 7

From: Chiplock, Daniel P.
To: Lynn Sarko; Laura Gerber
CC: lsucharow@labaton.com; Rogers, Michael H. (MRogers@labaton.com); 'Michael Thornton'; dgoldsmith@labaton.com; Michael Lesser; Lieff, Robert L.
Sent: 9/11/2013 12:23:26 PM
Subject: FW: State Street - Fee agreement
Attachments: LCHB_iManage_1129455_2.DOCX

Lynn/**Laura** (corrected):

Attached are redlines to the proposed fee agreement you circulated. Let us know if you have additional comments or care to discuss.

Thanks,

Dan

Lieff Cabraser Heimann & Bernstein
Attorneys at Law

Daniel P. Chiplock
dchiplock@lchb.com
t 212.355.9500
f 212.355.9592
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, NY 10013
www.lieffcabraser.com

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, "Counsel for ERISA Plaintiffs"), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging state and common law claims against State Street Corporation, State Street Bank and Trust Company, and others, on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis ~~alleging state law claims against State Street Corporation, State Street Bank and Trust Company, and others, but no claims under ERISA~~.

~~1.~~ WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al., vs. State Street Bank and Trust Company,, et. al.*, No. 11-cv-

Formatted: Indent: Left: 0.5", No bullets or numbering

12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state or common law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed to, awarded and/or approved by the Court in connection with ~~the~~any collective or joint resolution of the *ARTRS, Andover and~~or~~ Henriquez* cases ~~, whether the product of settlement or litigated resolution of the cases,~~ shall be divided 91 % to Counsel for Consumer Plaintiffs and 9 % to Counsel for ERISA Plaintiffs (the "Division of Fees").
2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.

Formatted: Indent: First line: 0.5", No bullets or numbering

Formatted: Indent: Left: 0.5", No bullets or numbering

7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, "Counsel for ERISA Plaintiffs"), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging state and common law claims against State Street Corporation, State Street Bank and Trust Company, and others, on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis ~~alleging state law claims against State Street Corporation, State Street Bank and Trust Company, and others, but no claims under ERISA~~.

~~1.~~ WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al., vs. State Street Bank and Trust Company,, et. al.*, No. 11-cv-

Formatted: Indent: Left: 0.5", No bullets or numbering

12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state or common law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed to, awarded and/or approved by the Court in connection with ~~the~~any collective or joint resolution of the *ARTRS, Andover and~~or~~ Henriquez* cases ~~, whether the product of settlement or litigated resolution of the cases,~~ shall be divided 91 % to Counsel for Consumer Plaintiffs and 9 % to Counsel for ERISA Plaintiffs (the "Division of Fees").
2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.

Formatted: Indent: First line: 0.5", No bullets or numbering

Formatted: Indent: Left: 0.5", No bullets or numbering

7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

EX. 8

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, Counsel for ERISA Plaintiffs), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis alleging state law claims against State Street Corporation, State Street Bank and Trust Company, and others, but no claims under ERISA.

1. WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al. vs. State Street Bank and Trust, et. al.*, No. 11-cv-12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of

Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed, awarded and/or approved by the Court in connection with the *ARTRS, Andover* ~~and~~ or *Henriquez* cases, whether the

product of settlement or litigated resolution of the cases, shall be divided __ % to Counsel for Consumer Plaintiffs and __ % to Counsel for ERISA Plaintiffs (the "Division of Fees").

2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.
7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

EX. 9

From: Cate Brewer
To: Laura Gerber
Sent: 12/10/2013 9:35:28 AM
Subject: SSFX
Attachments: FEEAGREEMENT082913.docx; FeeAgreement083013.docx


FeeAgreement083013.docx


FEEAGREEMENT082913.docx

Cate R. Brewer
Legal Assistant/Paralegal
to Gretchen Cappio, Laura Gerber and Harry Williams

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Phone: (206) 623-1900
Fax: (206) 623-3384
Email: cbrewer@kellerrohrback.com

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: [—] Labaton Sucharow LLP, Thornton & Naumes, LLP, [—] and Lieff Cabraser Heimann & Bernstein, LLP [—] (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigque Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and and Keller Rohrback Law Offices L.L.P. (collectively, Counsel for ERISA Plaintiffs), on the other hand (the "Parties"). This Agreement shall be effective as of _____, 2013.

Formatted: Font: Times New Roman
Formatted: Font: Times New Roman

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis alleging public and private (ERISA) pension plans federal and state law claims against State Street Corporation, State Street Bank and Trust Company, and others and others, but no claims under ERISA.

1. WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al. vs. State Street Bank and Trust, et. al.*, No. 11-cv-12049 MLW

Formatted: LCPldBlank_L6, None, No bullets or numbering
Formatted: Bullets and Numbering
Formatted: Font: Italic, Underline

("Henriquez"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("Andover"), ~~and Arnold Henriquez, et. al. vs. State Street Bank and Trust, et. al., No. 11-cv-12049 MLW ("Henriquez"),~~ in the United States District Court for the District of Massachusetts, alleging on behalf of their clients, ~~the Andover Companies and~~ Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, ~~claims under~~ alleging breaches of federal ERISA law ~~ERISA~~ against State Street ~~Corporation~~ Bank and Trust Company, and others, but none of the other ~~federal and~~ state law ~~claims~~ alleged by ARTRS.

Formatted: Font: Italic

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

~~WHEREAS, State Street Corporation and the other defendants have produced data, on a confidential basis, in the mediation of the *ARTRS, Andover* and *Henriquez* cases regarding volume of FX trading by public and ERISA pension plans.~~

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed, awarded and/or approved by the Court in connection with the *ARTRS, Andover* and *Henriquez* cases, whether the product of settlement or litigated resolution of the cases, shall be divided __ % to Counsel for Consumer Plaintiffs and __ % to Counsel for ERISA Plaintiffs (the "Division of Fees").

~~2.~~ The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.

Formatted: Bullets and Numbering

2.

~~3. Notwithstanding Paragraphs 1 and 2 above, the Division of Fees does not apply in the event that there is no recovery in the *ARTRS* case or if there is no recovery in both the *Andover Company* and *Henriquez* cases. **[CSK Comment: this is a difficult issue. If ARTRS loses, we win, and the division applies, then ARTRS counsel gets virtually the entire fee. On the other hand, if it went the other way, then we get shut out. On balance, I think we want this provision, but it is definitely not perfect either way.]**~~

~~4. The Parties agree that the Division of Fees is consistent with the relative volume of FX trading by ERISA and non-ERISA plans as reflected in the data produced by State Street and the prospects of recovery on the various claims alleged, and is therefore reasonable and appropriate.~~

~~5.~~ The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.

3.

~~6.~~ The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.

4.

~~7.~~ The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.

5.

~~8.~~ This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.

6.

~~9.~~7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.

EX. 10

AGREEMENT BETWEEN COUNSEL
FOR CONSUMER AND ERISA PLAINTIFFS
REGARDING DIVISION OF ATTORNEYS' FEES

This Agreement Between Counsel For Consumer And ERISA Plaintiffs Regarding Division Of Attorneys' Fees (the "Agreement") is made and entered into by and between: Labaton Sucharow LLP, Thornton & Naumes, LLP, and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Counsel for Consumer Plaintiffs"), on the one hand, and McTigue Law LLP, Zuckerman Spaeder LLP, Beins, Axelrod, P.C., Richardson, Patrick, Westbrook & Brickman, and Keller Rohrback L.L.P. (collectively, "Counsel for ERISA Plaintiffs"), on the other hand (the "Parties"). This Agreement shall be effective as of December 11, 2013.

RECITALS

WHEREAS, Counsel for Consumer Plaintiffs have filed the lawsuit captioned *Arkansas Teacher Retirement System vs. State Street Corporation, et. al., No. 11-cv-10230 MLW ("ARTRS")*, in the United States District Court for the District of Massachusetts, alleging state and common law claims against State Street Corporation, State Street Bank and Trust Company, and others, on behalf of their client, the Arkansas Teacher Retirement System ("ARTRS"), and a putative class of all institutional investors in foreign securities, including public and private pension funds, ERISA-qualified plans, mutual funds, endowment funds and investment manager funds, for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis.

WHEREAS, Counsel for ERISA Plaintiffs have filed two lawsuits captioned *Arnold Henriquez, et. al., vs. State Street Bank and Trust Company,, et. al.*, No. 11-cv-12049 MLW ("*Henriquez*"), and *Andover Companies, et. al., vs. State Street Bank and Trust Company*, No. 12-cv-11698 MLW ("*Andover*"), in the United States District Court for the District of

Massachusetts, alleging on behalf of their clients, Arnold Henriquez (as a participant and beneficiary of the Waste Management Retirement Savings Plan), Michael T. Cohn (as a participant and beneficiary of the Citigroup 401(k) Plan), William R. Taylor and Richard A. Sutherland (each as participants and beneficiaries of the Retirement Plan of Johnson & Johnson), Alan Kober as a Trustee of The Andover Companies' Savings and Profit Sharing Plan, and James Pehoushek-Stangeland, as a participant and beneficiary of The Boeing Company Voluntary Investment Plan), and putative classes of private (ERISA) pension plans for which State Street served as the custodial bank and executed FX trades on an "indirect," "standing-instruction," or "non-negotiated" basis, alleging breaches of federal ERISA law against State Street Bank and Trust Company, and others, but none of the other state or common law claims alleged by ARTRS.

WHEREAS, the *ARTRS, Andover* and *Henriquez* cases are all pending before the same judge and are being mediated and litigated together and the Parties believe that it is in the best interests of their respective clients and the putative classes that they are seeking to represent that, where appropriate and consistent with their obligations to advocate for their respective clients, they work cooperatively in the litigation against State Street Corporation and the other defendants, and further, that agreeing to a division of attorneys' fees, as set forth below, is in the best interests of their respective clients.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Parties agree that any attorneys' fee agreed to, awarded and/or approved by the Court in connection with any collective or joint resolution of the *ARTRS, Andover*

and Henriquez cases shall be divided 91 % to Counsel for Consumer Plaintiffs and 9% to Counsel for ERISA Plaintiffs (the "Division of Fees").

2. The Parties agree that the Division of Fees shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise.
3. The Parties agree that they will each remain responsible for representing the interests of their respective clients and that nothing herein limits in any way their obligations to represent and exercise independent judgment on behalf of their respective clients.
4. The Parties agree that the terms of this Agreement may be disclosed to the Court, if any of them believes it appropriate to do so.
5. The Parties represent that they have disclosed and explained this Agreement to their respective clients and that their clients have consented to the Division of Fees and other terms herein.
6. This Agreement does not impact or change the Parties' rights and ability to seek the reimbursement of litigation expenses; nor does it contain any agreement on the sharing of expenses.
7. This Agreement is governed by the substantive law of the Commonwealth of Massachusetts.
8. This Agreement may be signed in counterpart, and faxed or emailed signatures will have the force of original signatures.

DATED: 12/11/13

Lawrence A. Sucharow
Labaton Sucharow LLP

DATED: 12/11/13

Michael P. Thornton
Thornton & Naumes, LLP

DATED: 12/11/13

Daniel P. Chiplock
Lieff Cabraser Heimann & Bernstein, LLP

DATED: _____

J. Brian McTigue
McTigue Law LLP

DATED: _____

Carl S. Kravitz
Zuckerman Spaeder, LLP

DATED: _____

Jonathan G. Axelrod
Beins, Axelrod, P.C.

DATED: _____

Michael J. Brickman
Richardson, Patrick, Westbrook & Brickman LLC

DATED: _____

Lynn Lincoln Sarko
Keller Rohrback L.L.P.

DATED: _____

Lawrence A. Sucharow
Labaton Sucharow LLP

DATED: _____

Michael P. Thornton
Thornton & Naumes, LLP

DATED: 12/11/13

Daniel P. Chiplock
Lieff Cabraser Heimann & Bernstein, LLP

DATED: _____

J. Brian McTigue
McTigue Law LLP

DATED: _____

Carl S. Kravitz
Zuckerman Spaeder, LLP

DATED: _____

Jonathan G. Axelrod
Beins, Axelrod, P.C.

DATED: _____

Michael J. Brickman
Richardson, Patrick, Westbrook & Brickman LLC

DATED: 12/11/13

Lynn Lincoln Sarko
Keller Rohrback L.L.P.

DATED: _____

Lawrence A. Sucharow
Labaton Sucharow LLP

DATED: _____

Michael P. Thornton
Thornton & Naumes, LLP

DATED: 12/11/13

Daniel P. Chiplock
Lieff Cabraser Heimann & Bernstein, LLP

DATED: _____

J. Brian McTigue
McTigue Law LLP

DATED: _____

Carl S. Kravitz / DWIGHT BOSTWICK
Zuckerman Spaeder, LLP

DATED: 12/13/13

Jonathan G. Axelrod
Beins, Axelrod, P.C.

DATED: _____

Michael J. Brickman
Richardson, Patrick, Westbrook & Brickman LLC

DATED: _____

Lynn Lincoln Sarko
Keller Rohrback L.L.P.

EX. 11

From: Lynn Sarko <lsarko@KellerRohrback.com>
Sent: Wednesday, November 23, 2016 10:22 AM
To: Kravitz, Carl S. <ckravitz@zuckerman.com>
Subject: Fwd: SST - ERISA Fee and Expense Allocations
Attach: image009.jpg; ATT00001.htm; image010.jpg; ATT00002.htm; image011.jpg; ATT00003.htm; image012.jpg; ATT00004.htm; SST - Fee and Expense Allocation for ERISA Actions (1668269_1).DOC; ATT00005.htm

---

So I spoke with the Labaton folks yesterday. They didn't want to put it in the formal letter but agreed to send us an email putting the numbers in and confirming the 10 percent. Here it is

Lynn

Sent from my iPhone

Begin forwarded message:

From: "Zciss, Nicole" <NZciss@labaton.com<mailto:NZciss@labaton.com>>
Date: November 23, 2016 at 7:17:24 AM PST
To: Lynn Sarko <lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>>, 'David Copley' <dcoplcy@KellerRohrback.com<mailto:dcoplcy@KellerRohrback.com>>, 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>, "'Kravitz, Carl S.'" <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>

Cc: "Sucharow, Lawrence" <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>, "Goldsmith, David" <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>

Subject: SST - ERISA Fee and Expense Allocations

Dear all,

Attached and below are tables showing the ERISA fee and expense allocations. Please let us know if you have any questions or changes. Thanks

FEES AND LITIGATION EXPENSES:

Total Fee Awarded: $74,541,250.00, plus accrued interest to be calculated
ERISA Fee Allocation 10%: $7,454,125.00,[1] plus accrued interest to be calculated
Total ERISA Expenses Awarded: $431,613.31, without interest

FEE ALLOCATION

Firm

Fee

Keller Rohrback LLP

$2,484,708.33

McTigue Law LLP

$2,484,708.34

Zuckerman Spaeder LLP

$2,484,708.33

TOTAL

$7,454,125.00

EXPENSE ALLOCATION

Firm

Expenses

Keller Rohrback LLP, on behalf of itself and
-Hutchings Barsamian Mandelcorn LLP

$342,270.63
$496.00

McTigue Law LLP, on behalf of itself and
- Beins Axelrod PC
- Richardson Patrick Westbrook & Brickman LLC
- Feinberg Campbell & Zack PC

$41,412.90
$1,306.83
$7,456.66
$0.00

Zuckerman Spaeder LLP

$38,670.29

TOTAL

$431,613.31

1 Although the fee agreement with ERISA Counsel provides for a 9% allocation from the awarded fee, counsel in the ARTRS Action have determined to increase the allocation to 10% in light of the excellent work and contribution of ERISA Counsel.

<https://urldefense.proofpoint.com/v2/url?u=http-3A__labaton.com_&d=DgIFAg&c=kWwxgxBGq8MXL6t_SoviyQ&r=EFKDQsqQzO6nTYTa8RwS5Q9M2leSqI2v4EMjMy0k2eA&m=LIDDE2W-oq6r1H24vdfZGej1nAzDuuCcFGQ0L4lzkwI&s=fEywAfJB3Bc44abxskTbAGK3ooX9Okbd8Z85QHGKadA&e=>

EX. 12

From: Kravitz, Carl S. <csk1@zuckerman.com>
Sent: Wednesday, November 23, 2016 2:56 PM
To: Brian McTigue <bmctigue@mctiguelaw.com>
Subject: Fwd: SST - ERISA Fee and Expense Allocations
Attach: image009.jpg; ATT00001.htm; image010.jpg; ATT00002.htm; image011.jpg; ATT00003.htm; image012.jpg; ATT00004.htm; SST - Fee and Expense Allocation for ERISA Actions (1668269_1).DOC; ATT00005.htm

---

At least we got the numbers up a bit!!

Sent from my iPhone

Begin forwarded message:

From: "Zeiss, Nicole" <NZeiss@labaton.com>
Date: November 23, 2016 at 10:17:24 AM EST
To: Lynn Sarko <lsarko@kellerrohrback.com>, 'David Copley' <dcopley@KellerRohrback.com>, 'Brian McTigue' <bmctigue@mctiguelaw.com>, "'Kravitz, Carl S.'" <ckravitz@zuckerman.com>
Cc: "Sucharow, Lawrence" <LSucharow@labaton.com>, "Goldsmith, David" <dgoldsmith@labaton.com>
Subject: SST - ERISA Fee and Expense Allocations

Dear all,

Attached and below are tables showing the ERISA fee and expense allocations. Please let us know if you have any questions or changes. Thanks

FEES AND LITIGATION EXPENSES:

Total Fee Awarded: $74,541,250.00, plus accrued interest to be calculated
ERISA Fee Allocation 10%: $7,454,125.00,[1] plus accrued interest to be calculated
Total ERISA Expenses Awarded: $431,613.31, without interest

FEE ALLOCATION

Firm	Fee
Keller Rohrback LLP	$2,484,708.33
McTigue Law LLP	$2,484,708.34
Zuckerman Spaeder LLP	$2,484,708.33
TOTAL	**$7,454,125.00**

EXPENSE ALLOCATION

Firm	Expenses
Keller Rohrback LLP, on behalf of itself and -Hutchings Barsamian Mandelcorn LLP	$342,270.63 $496.00

McTigue Law LLP, on behalf of itself and - Beins Axelrod PC - Richardson Patrick Westbrook & Brickman LLC - Feinberg Campbell & Zack PC	$41,412.90 $1,306.83 $7,456.66 $0.00
Zuckerman Spaeder LLP	$38,670.29
TOTAL	**$431,613.31**

1 Although the fee agreement with ERISA Counsel provides for a 9% allocation from the awarded fee, counsel in the ARTRS Action have determined to increase the allocation to 10% in light of the excellent work and contribution of ERISA Counsel.

EX. 13

ATTORNEY-CLIENT PRIVILEGE – ATTORNEY WORK PRODUCT

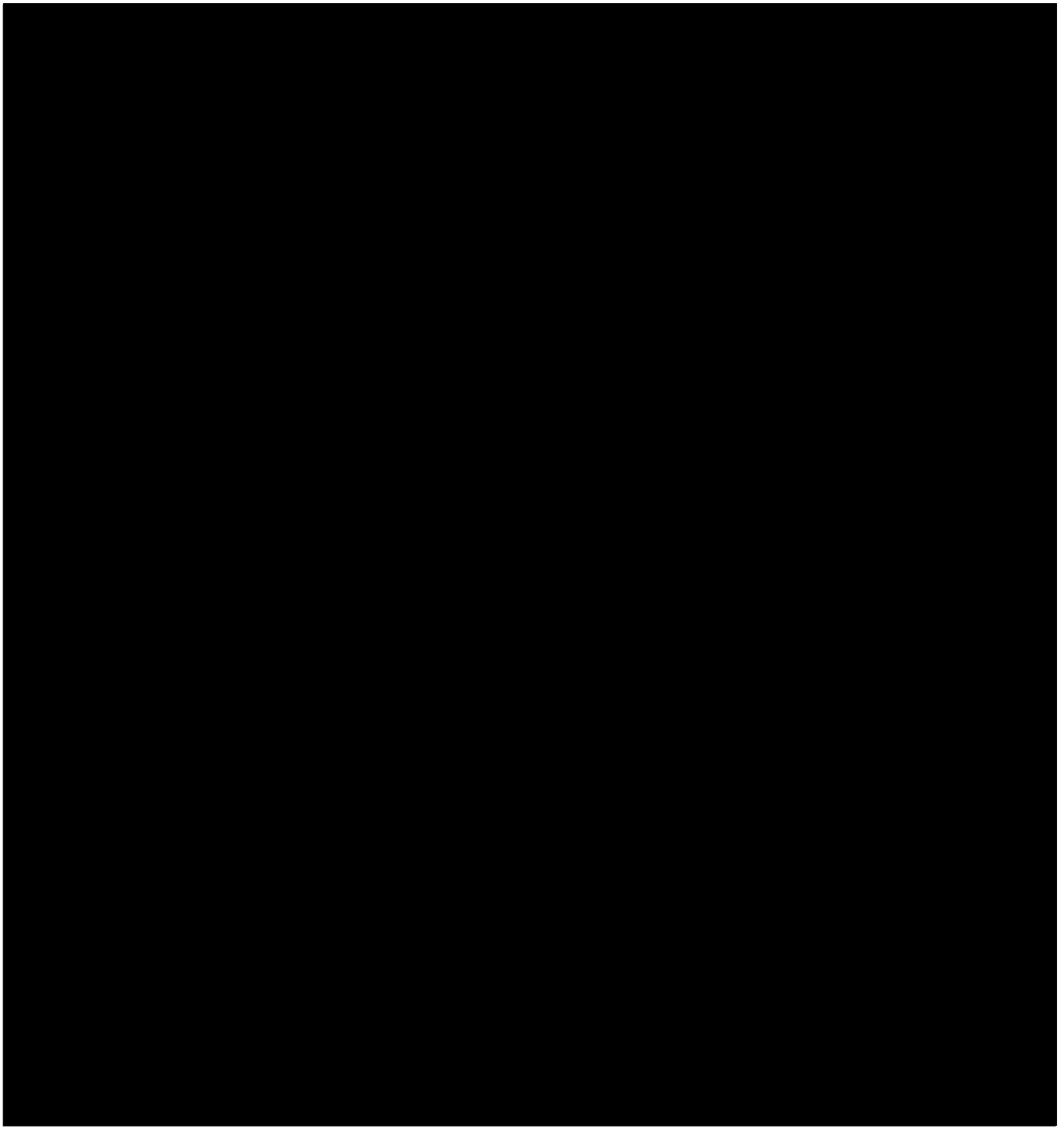
MEMORANDUM

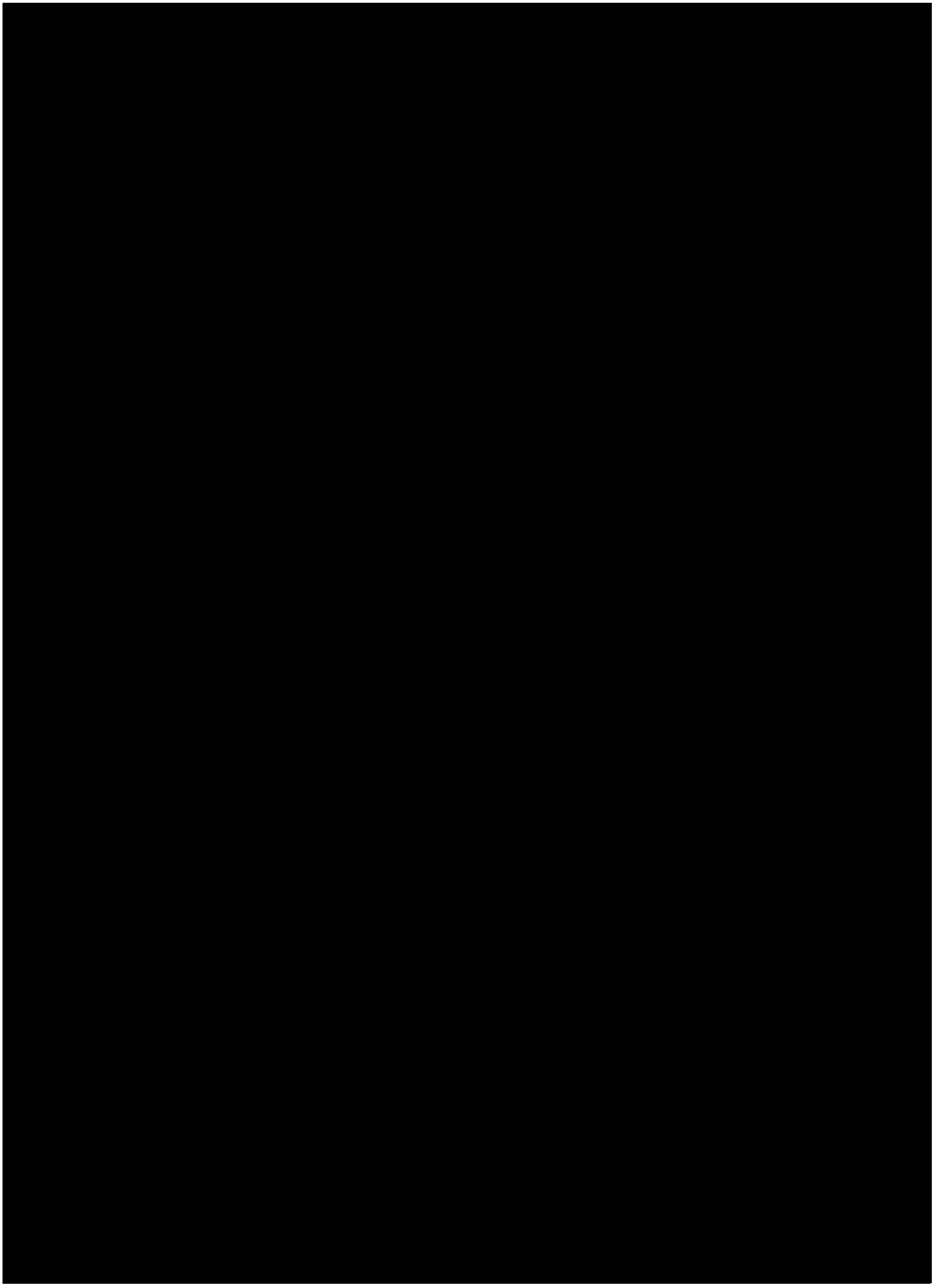
From: Maritza Bolano,

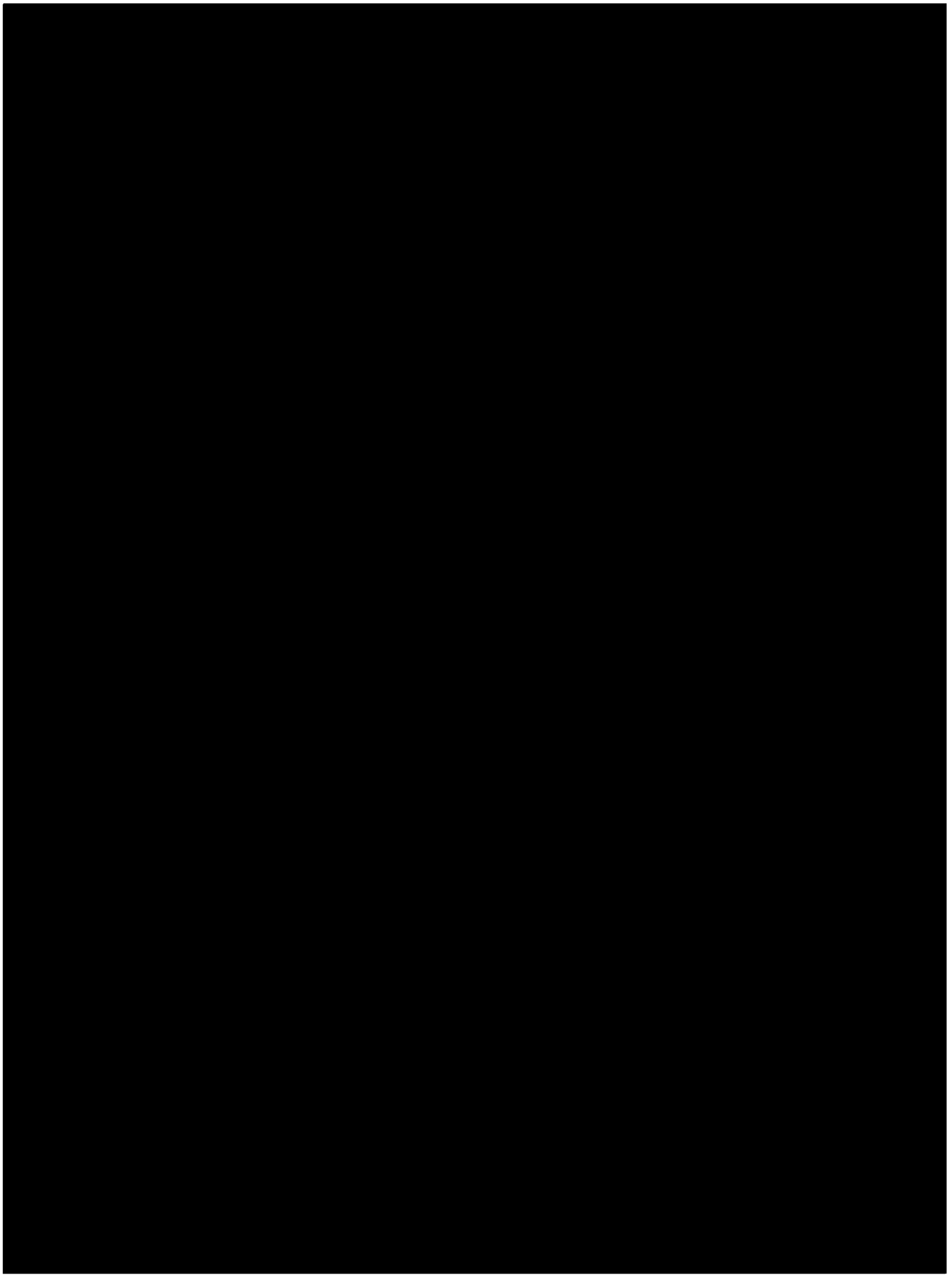
To: Files

CC: Todd S. Kussin

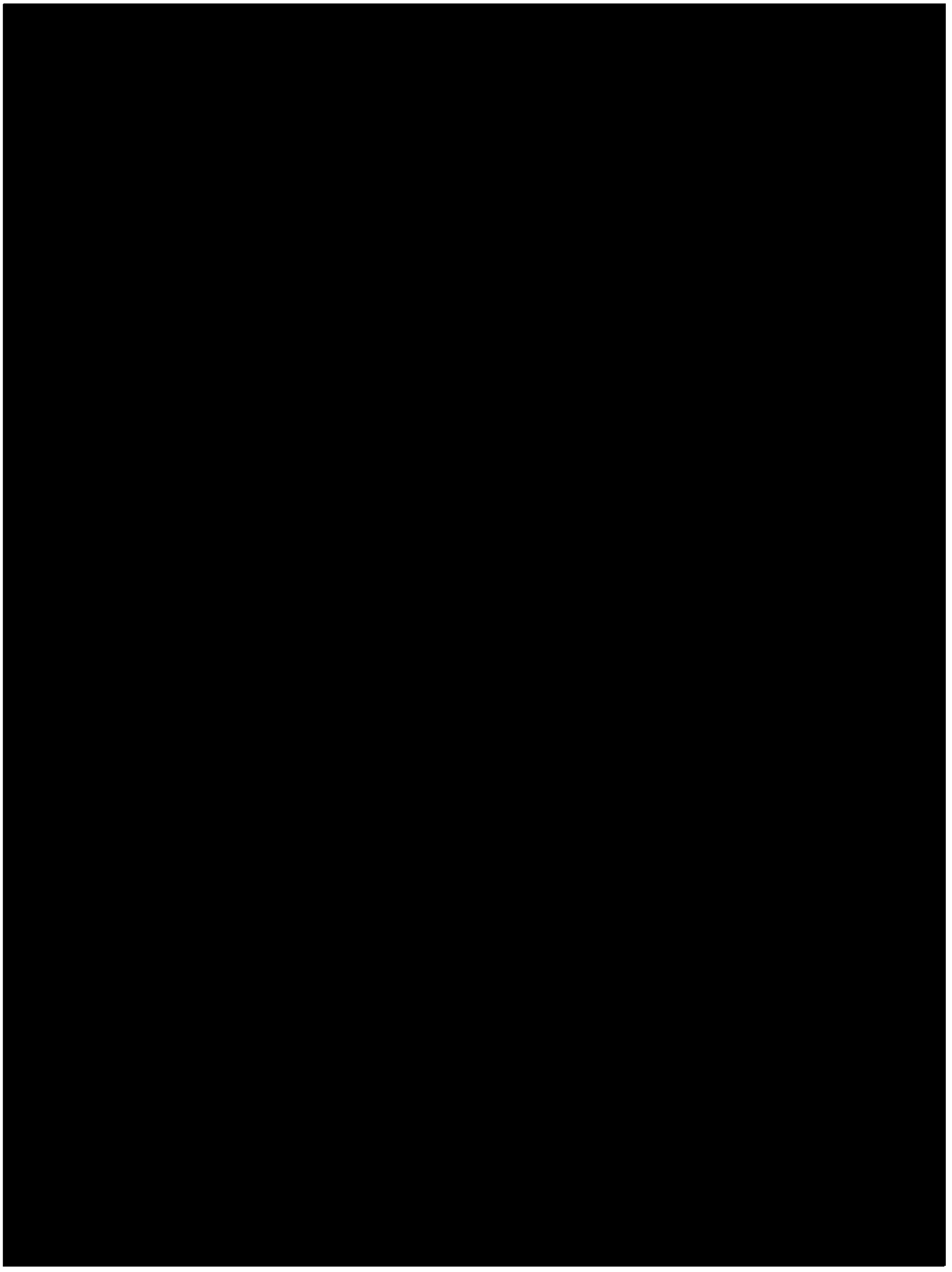
Re: Contracts/RFPs Topic - ATRS vs. State Street Class Action, No. 11-CV-10230 (MLW)

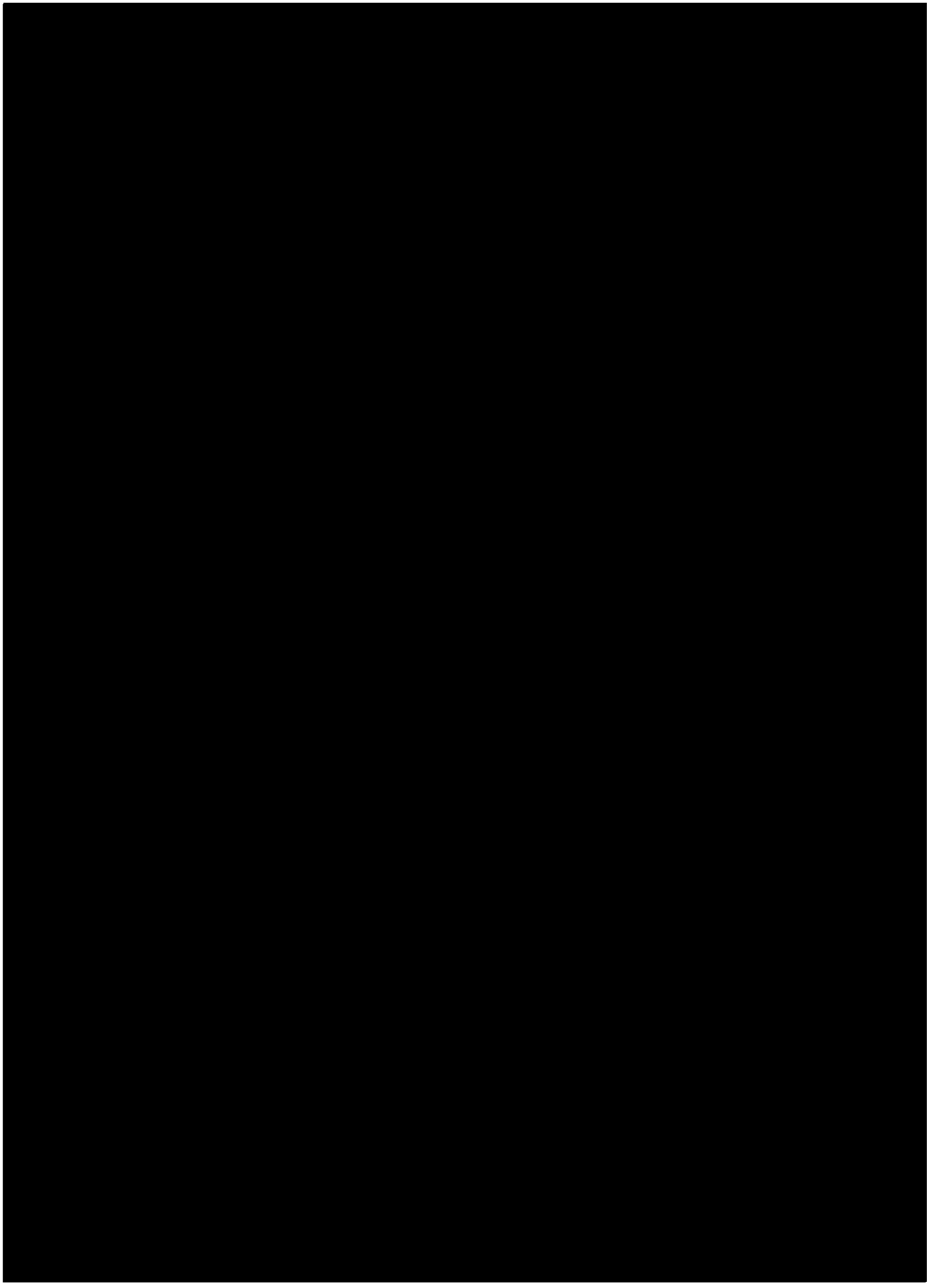






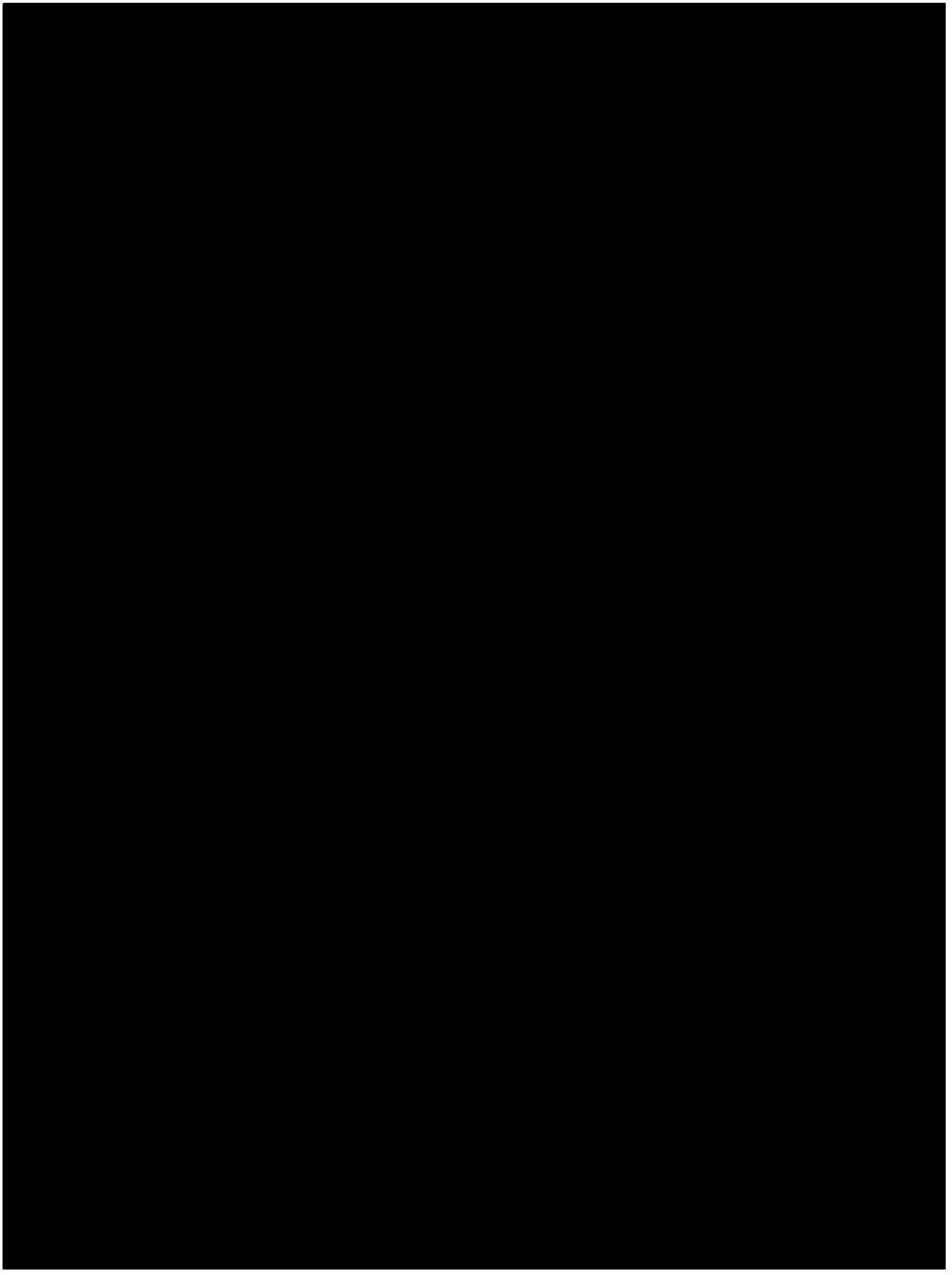
[redacted]

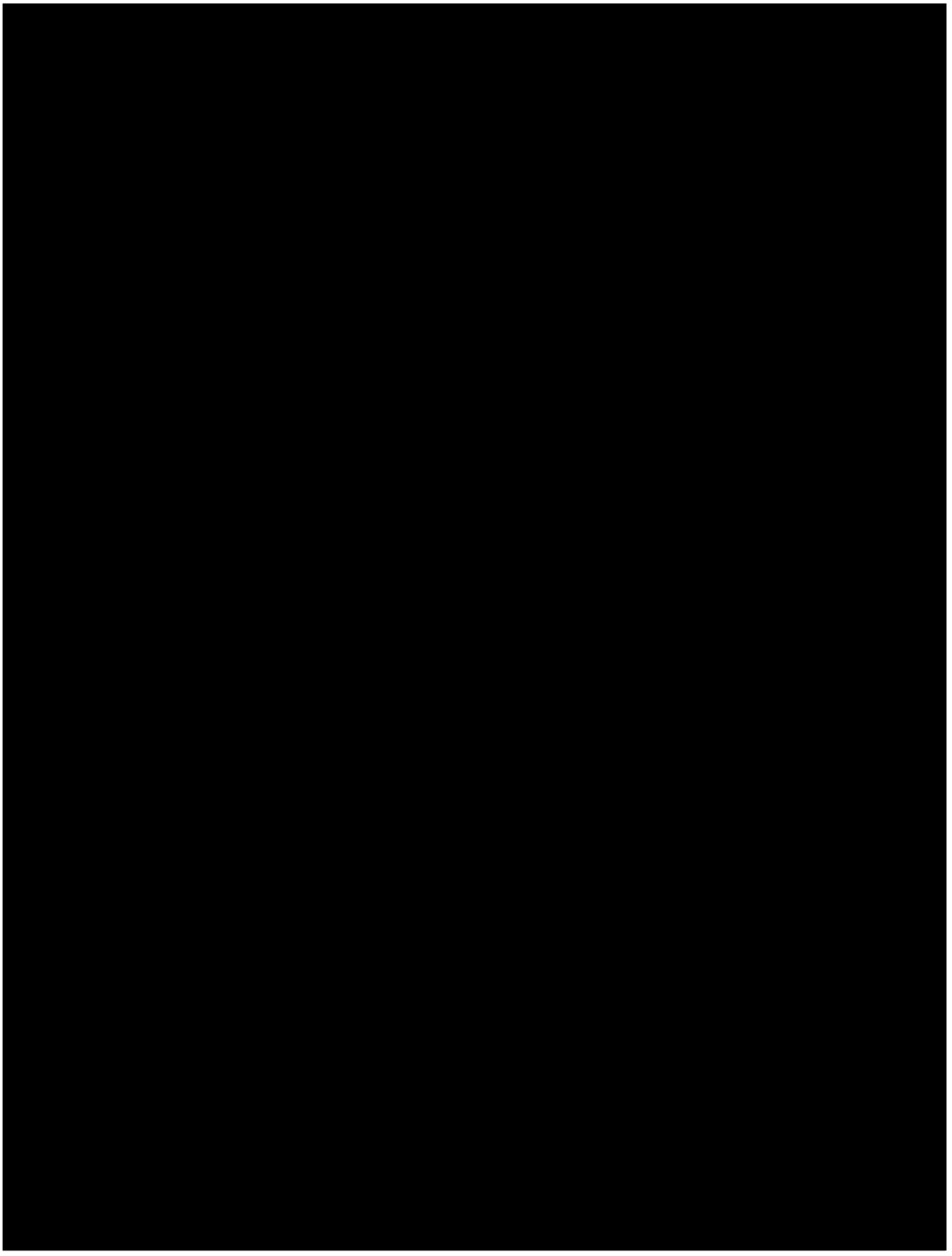


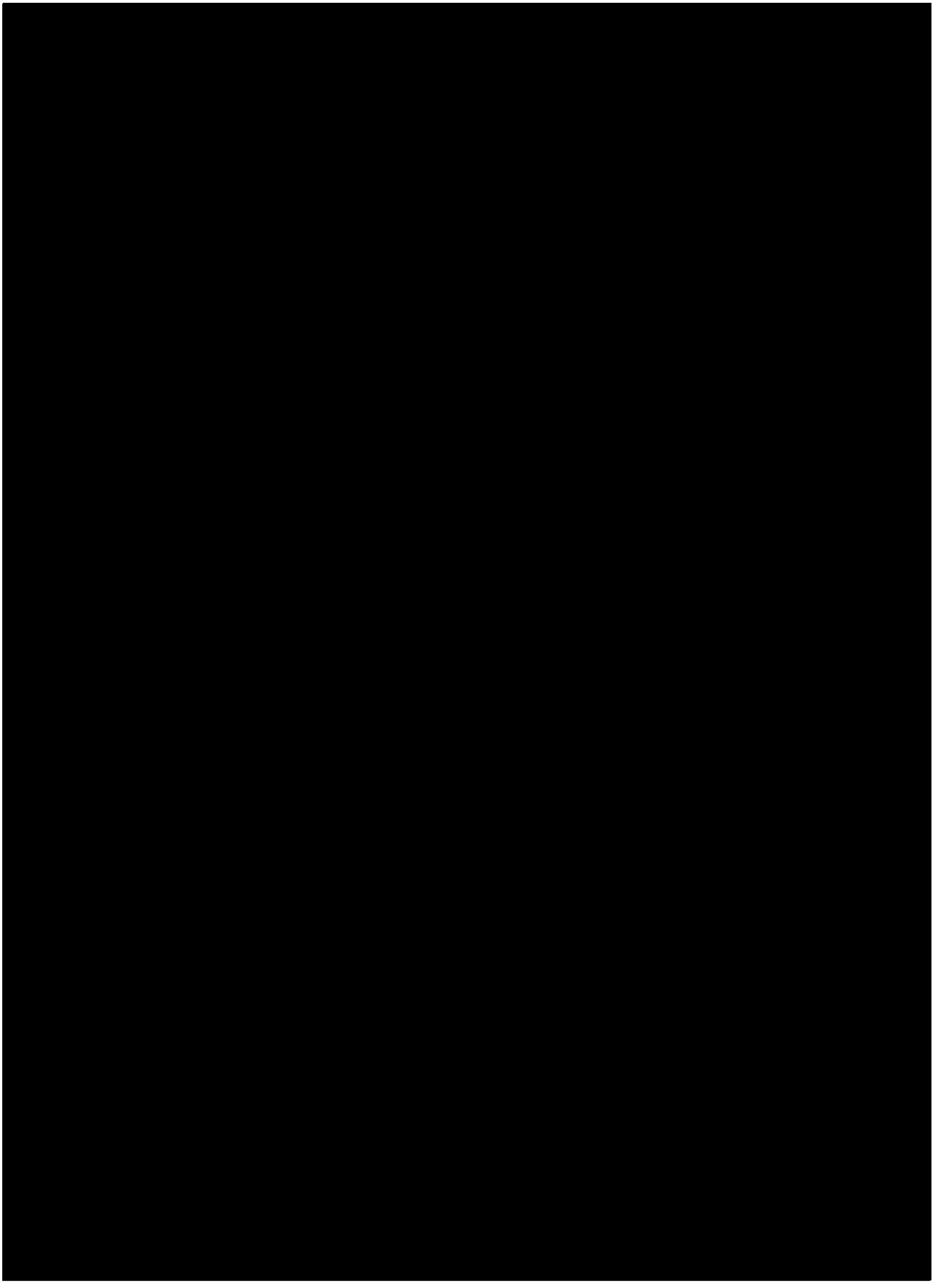


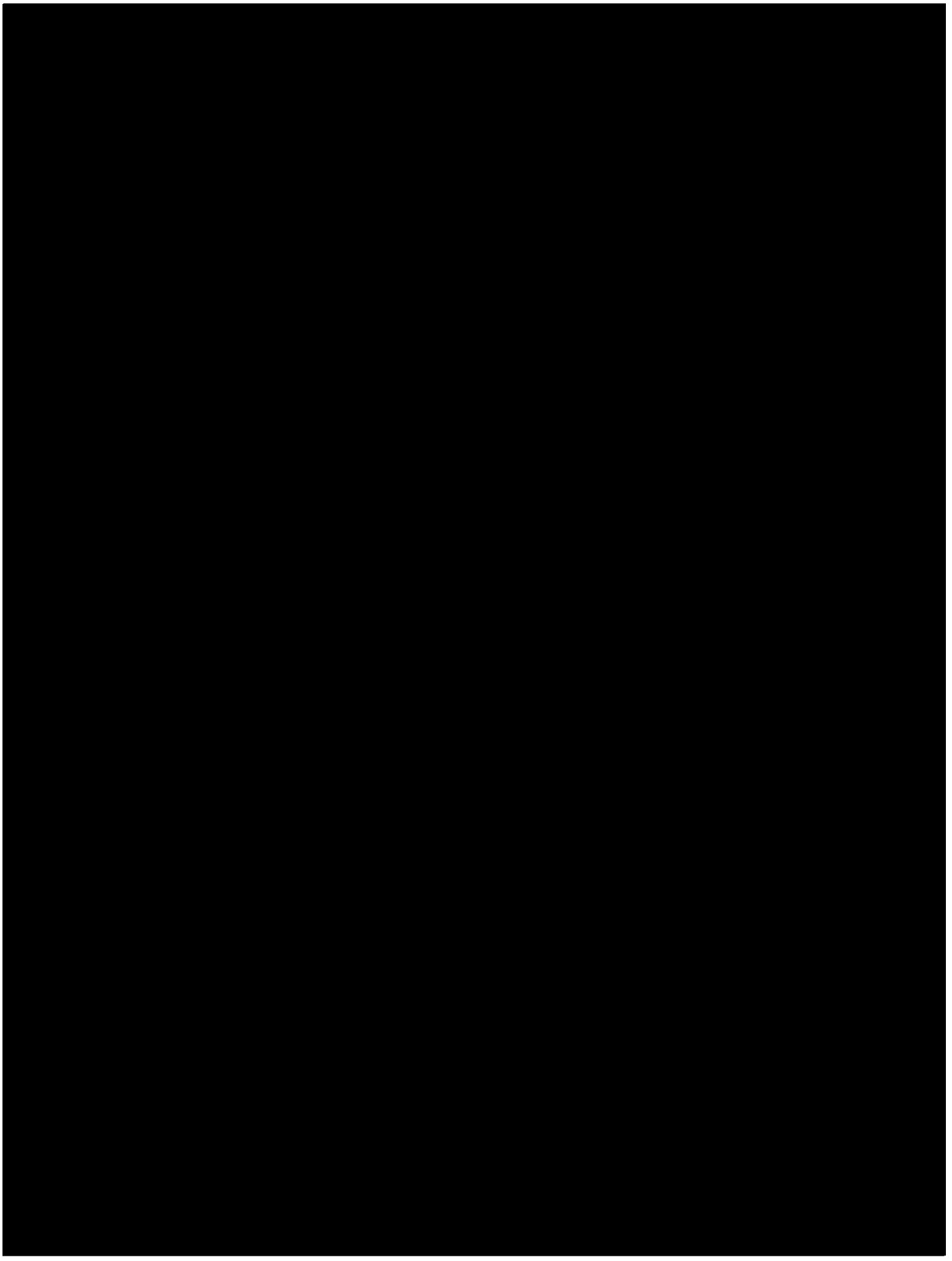
[redacted]

[redacted]

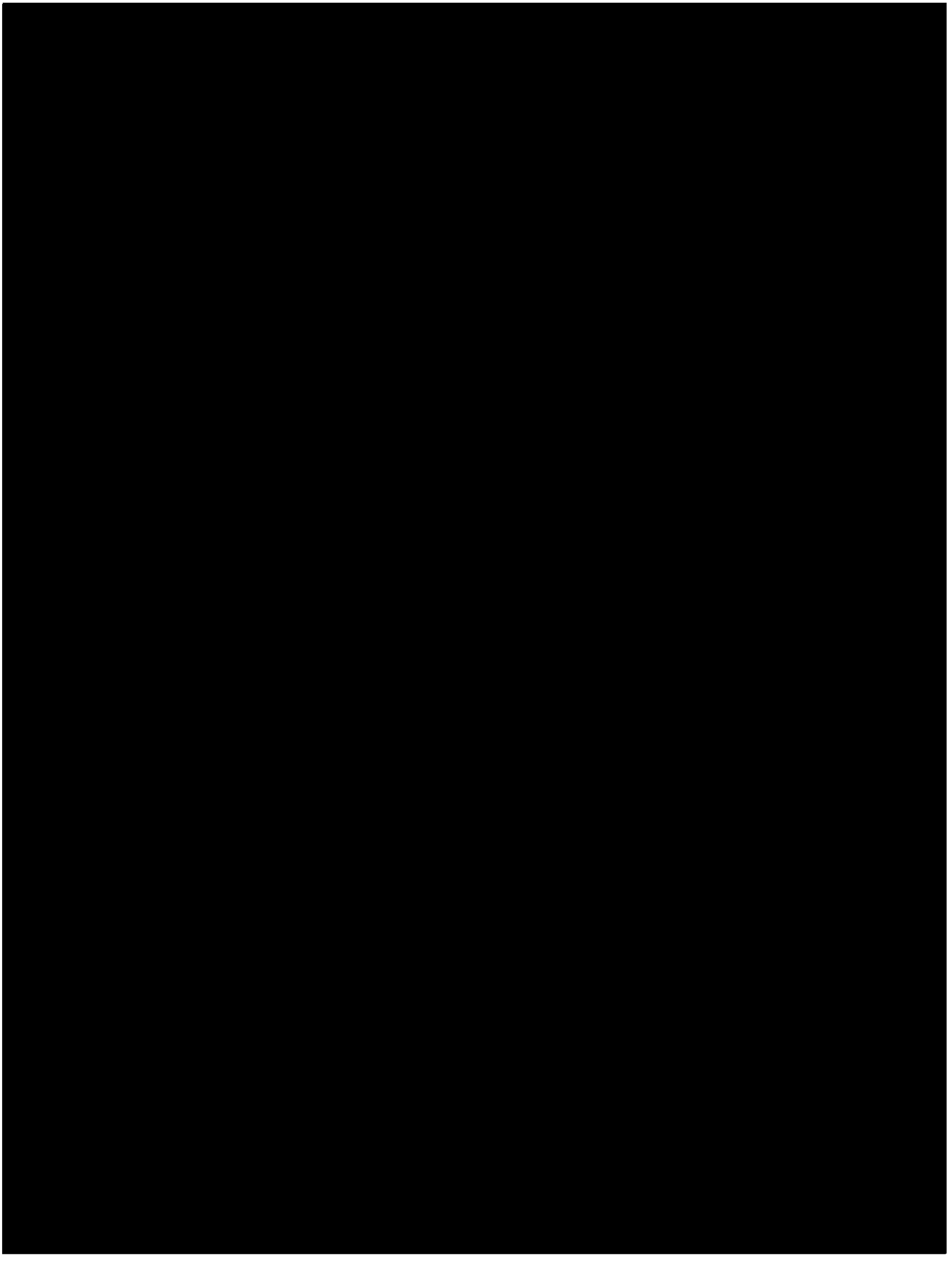


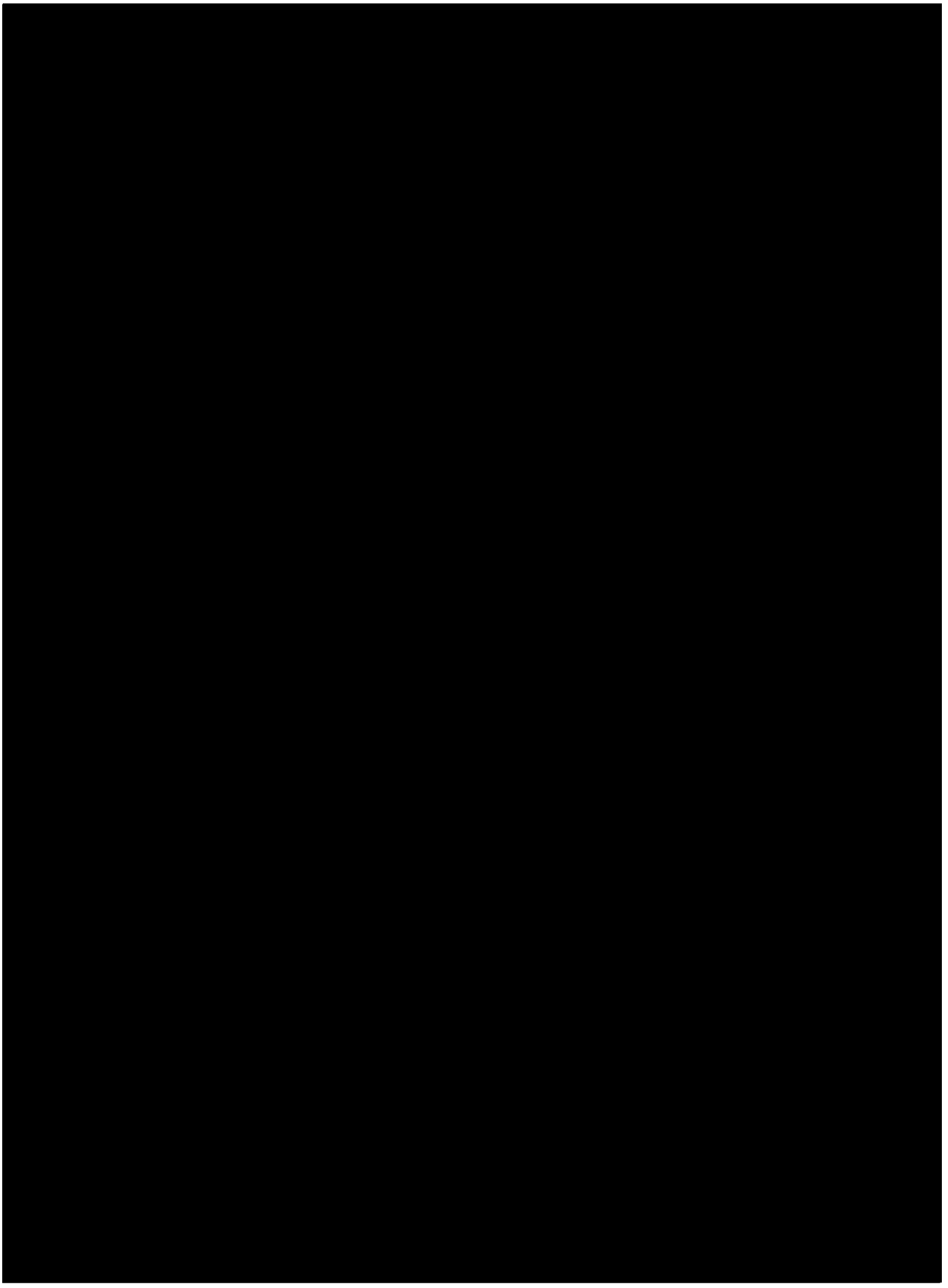


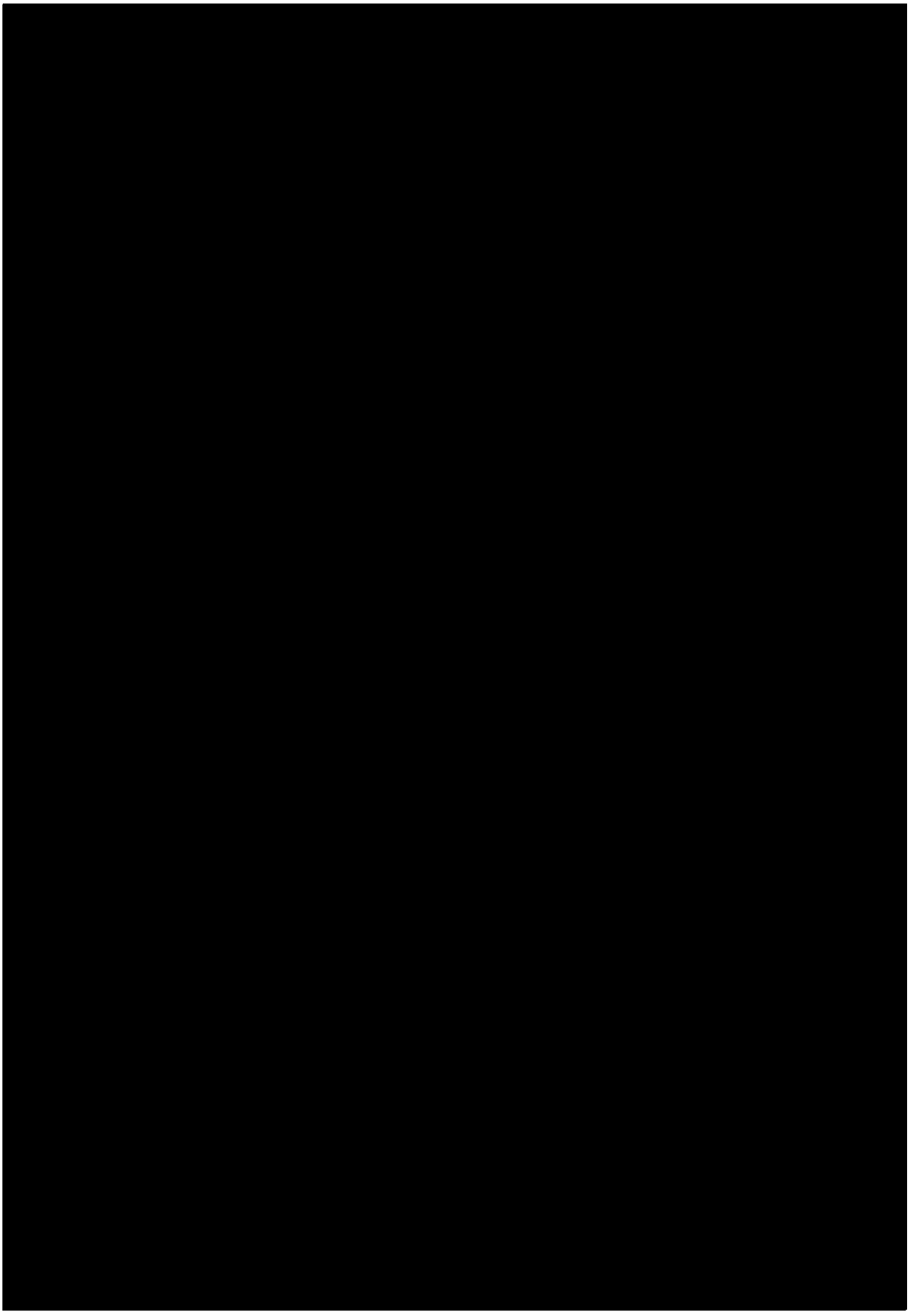


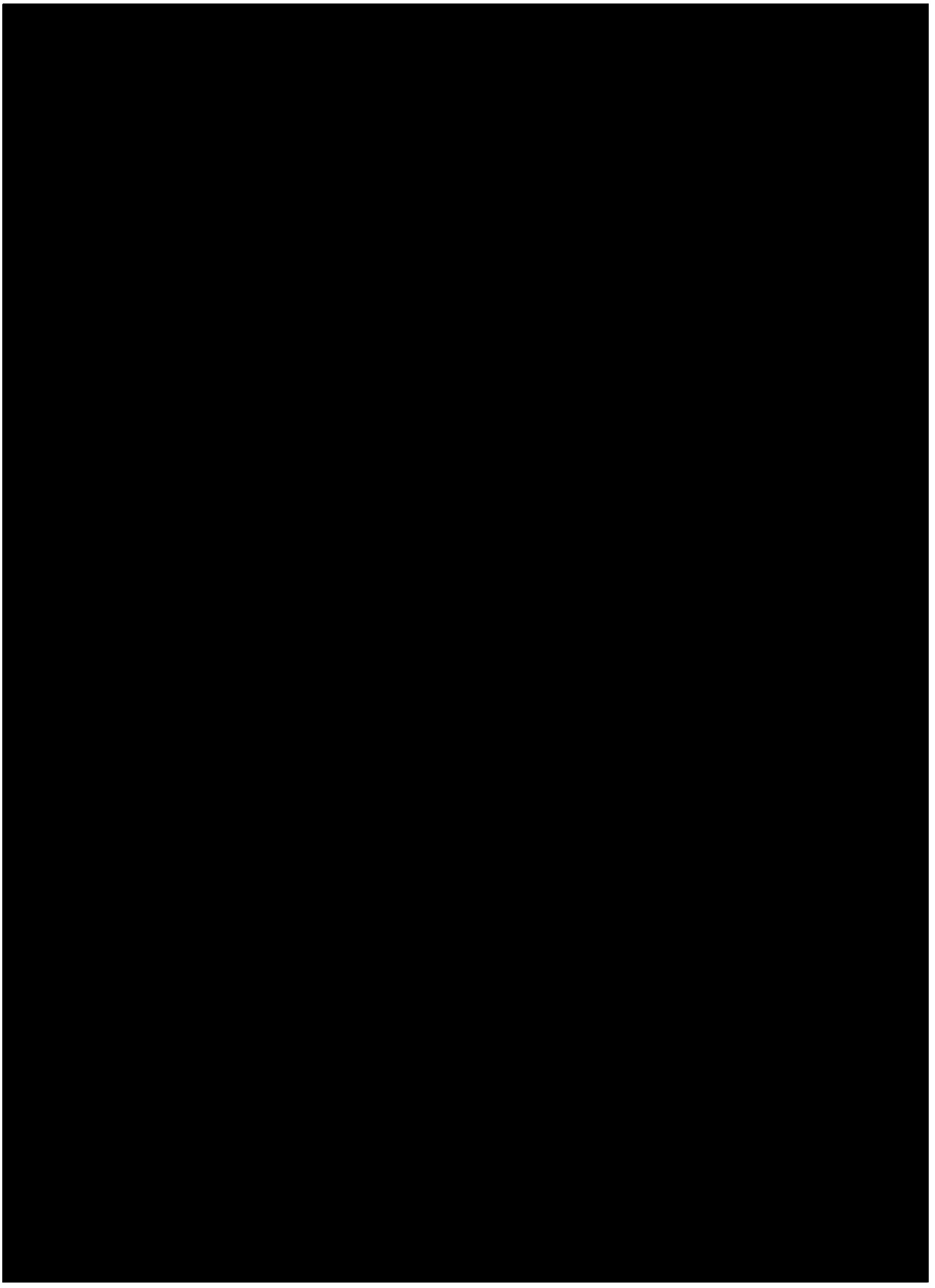


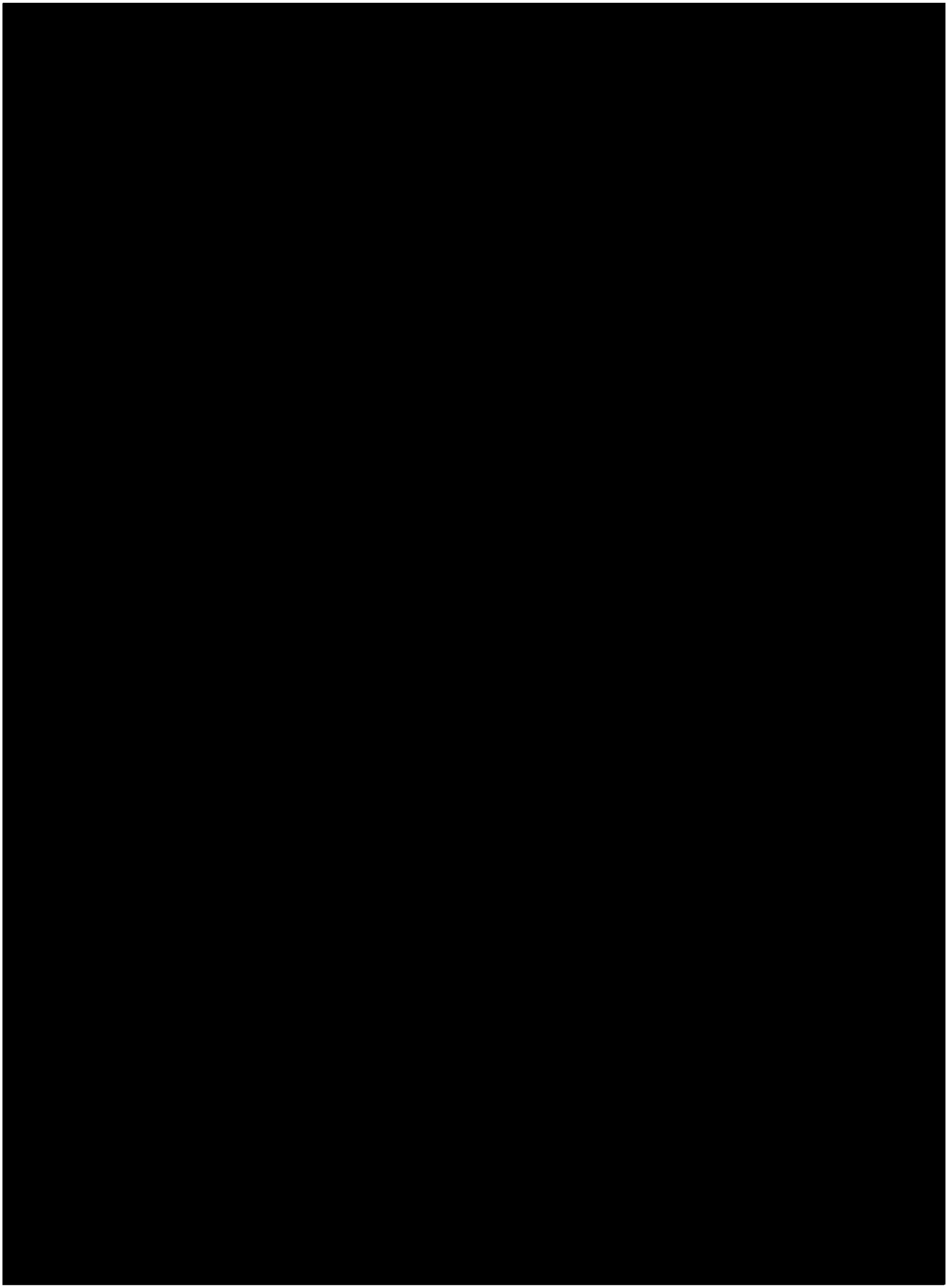
[redacted]

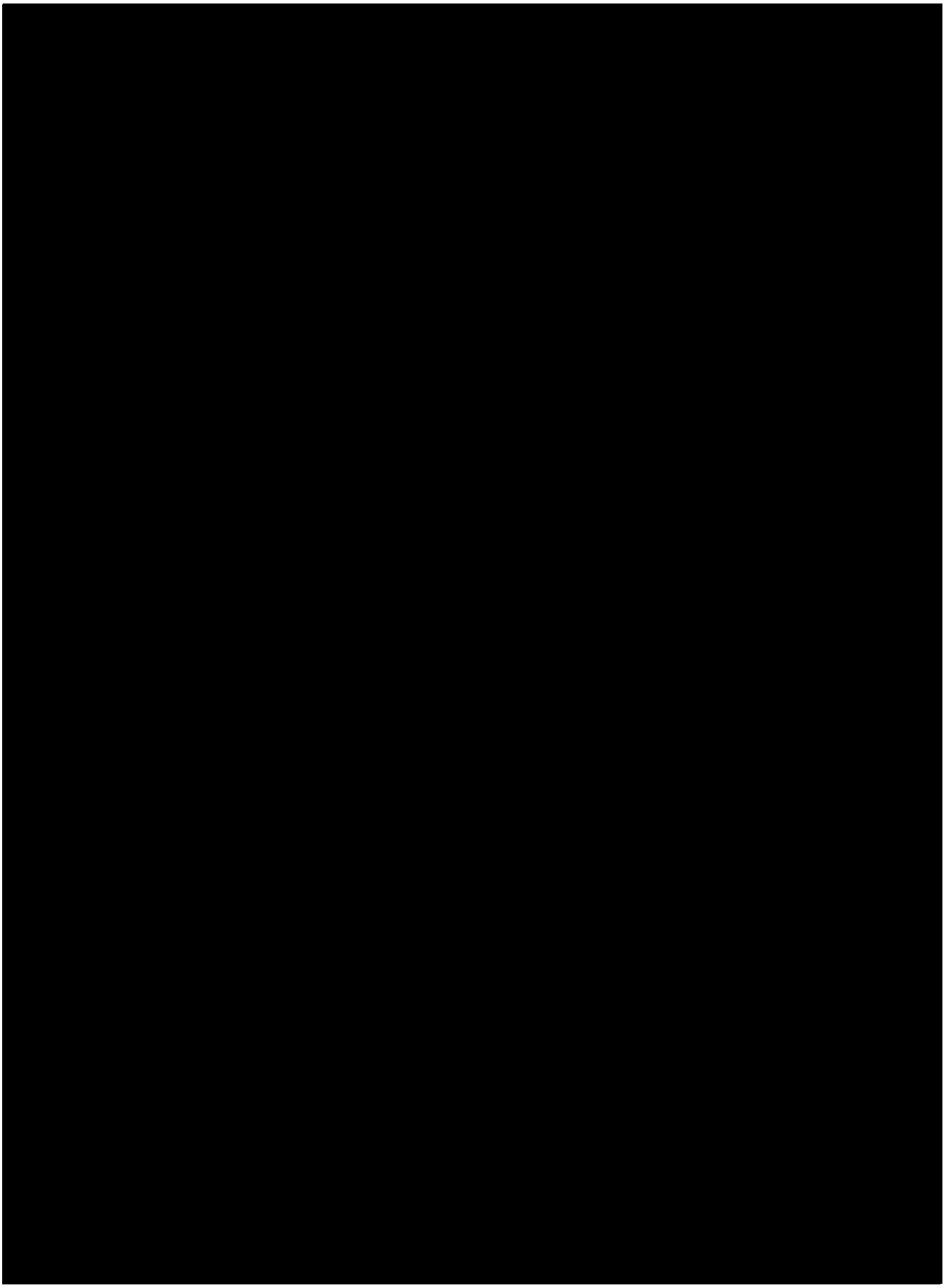


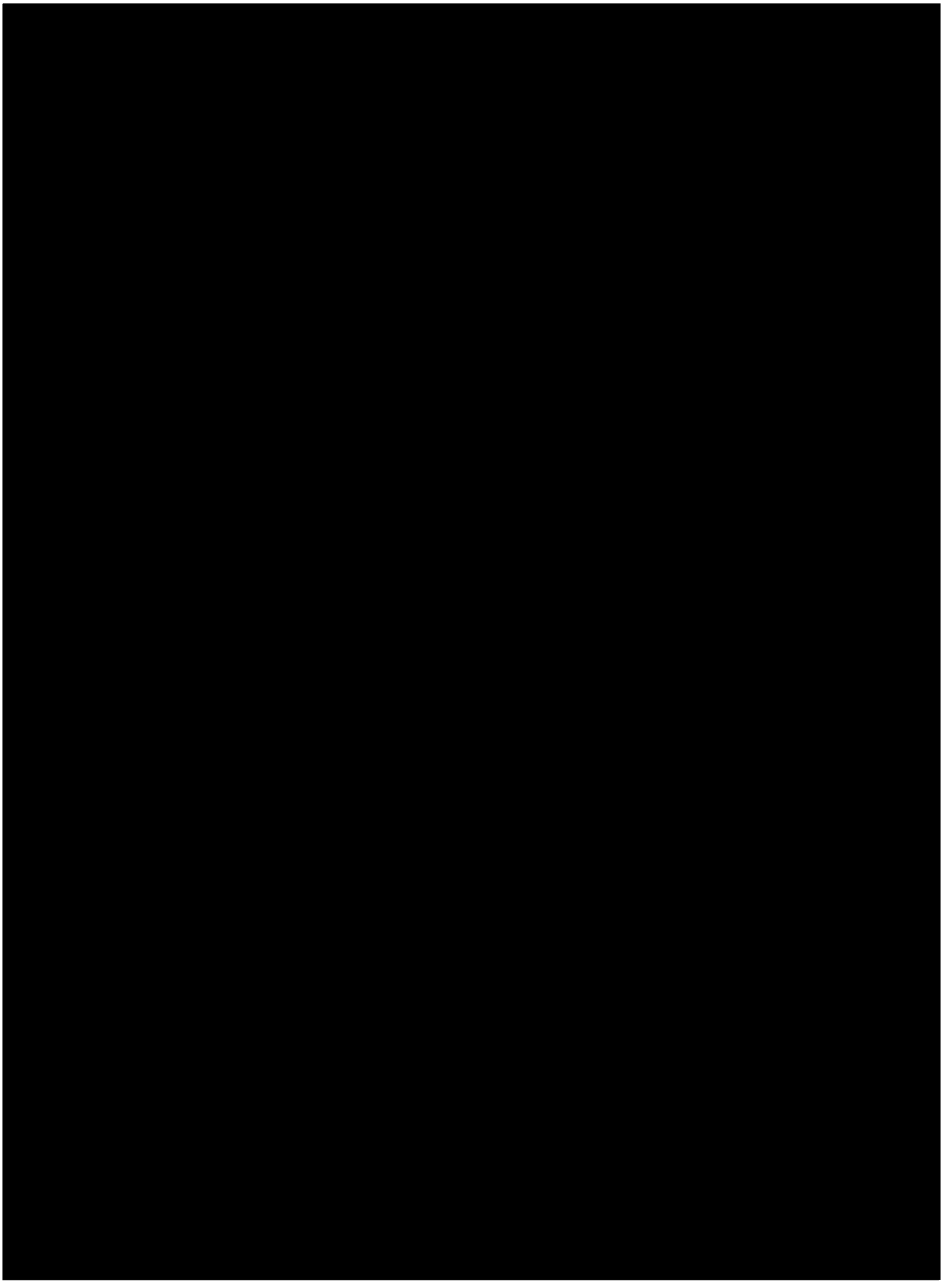


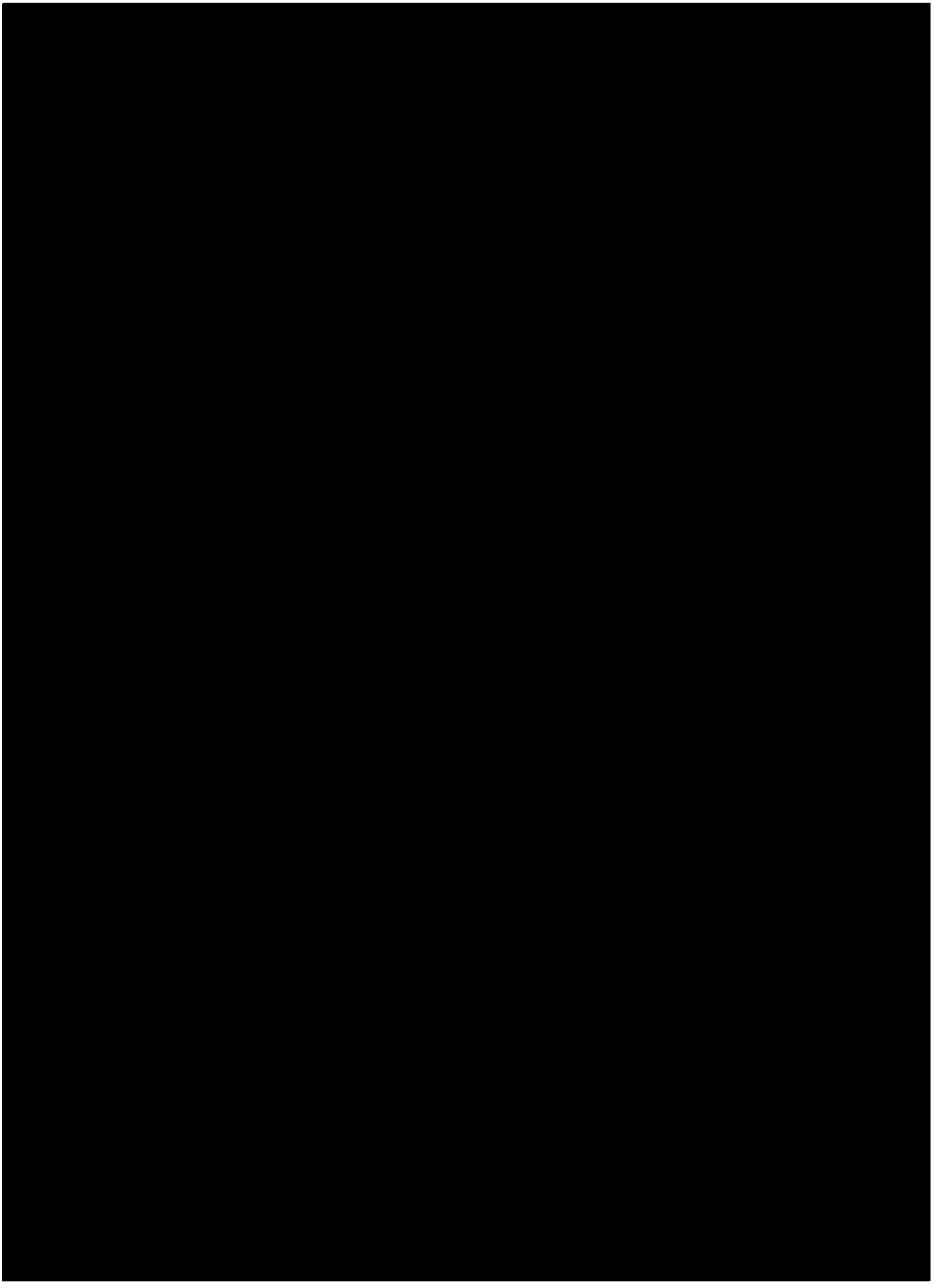




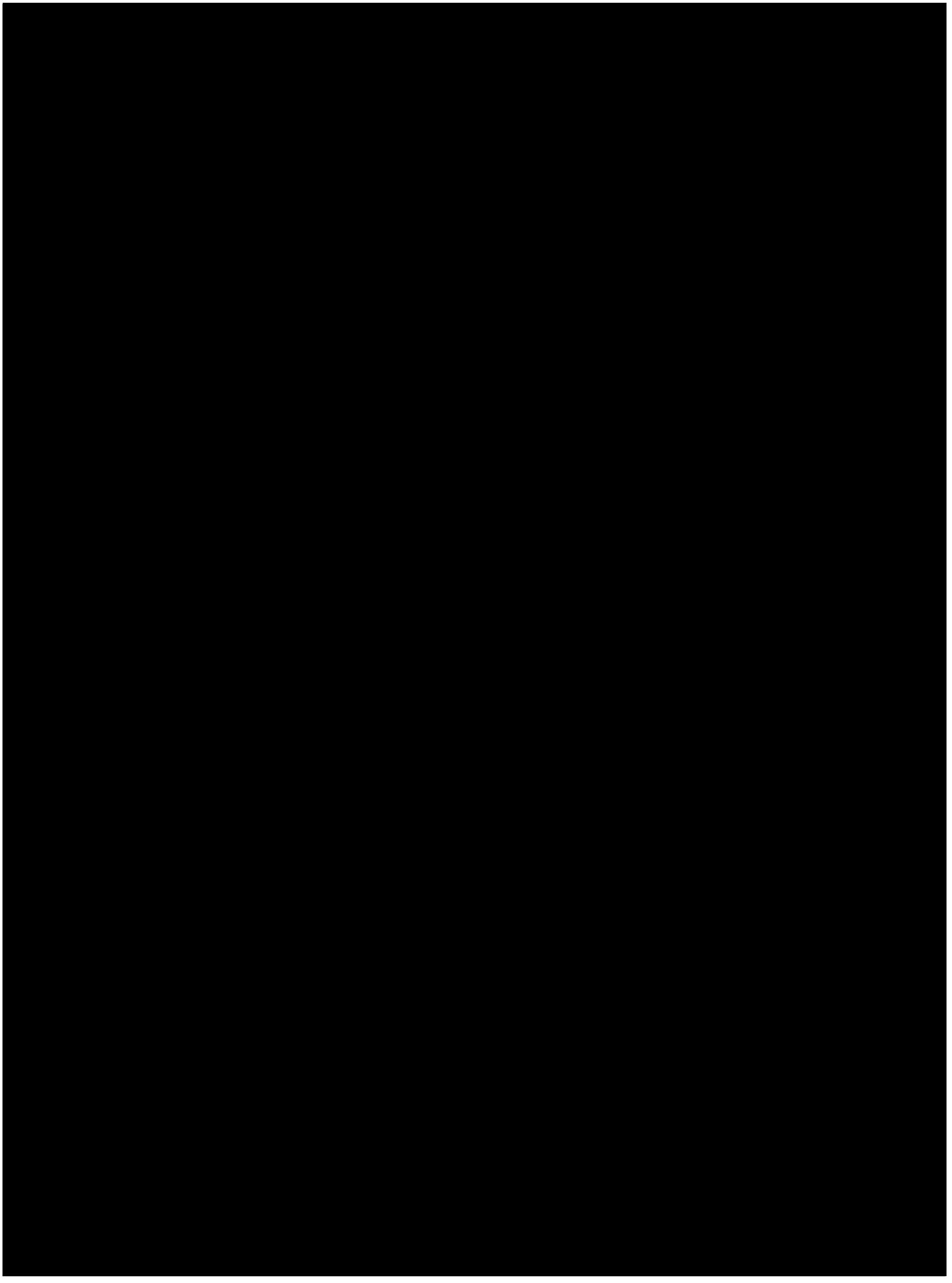


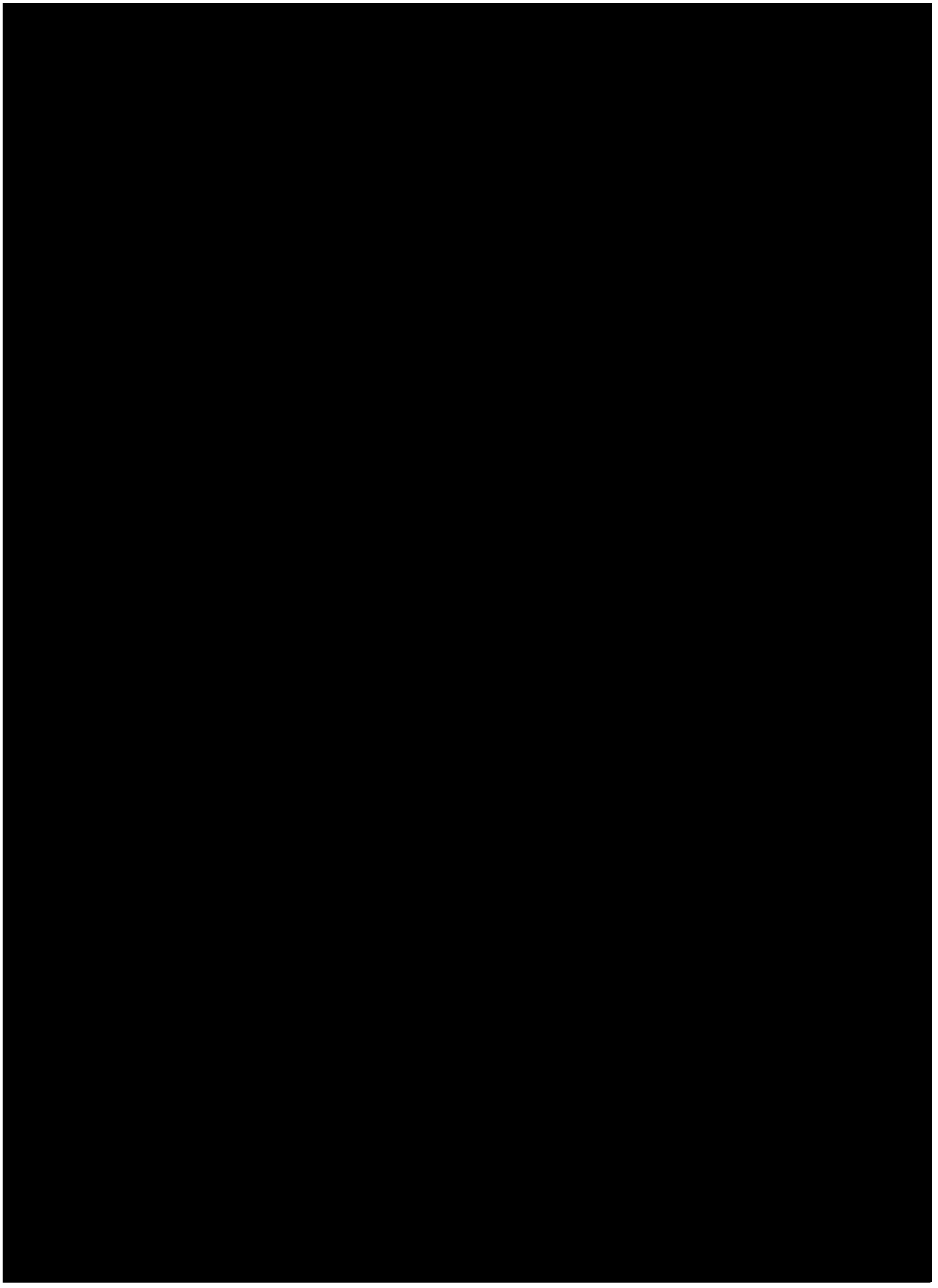


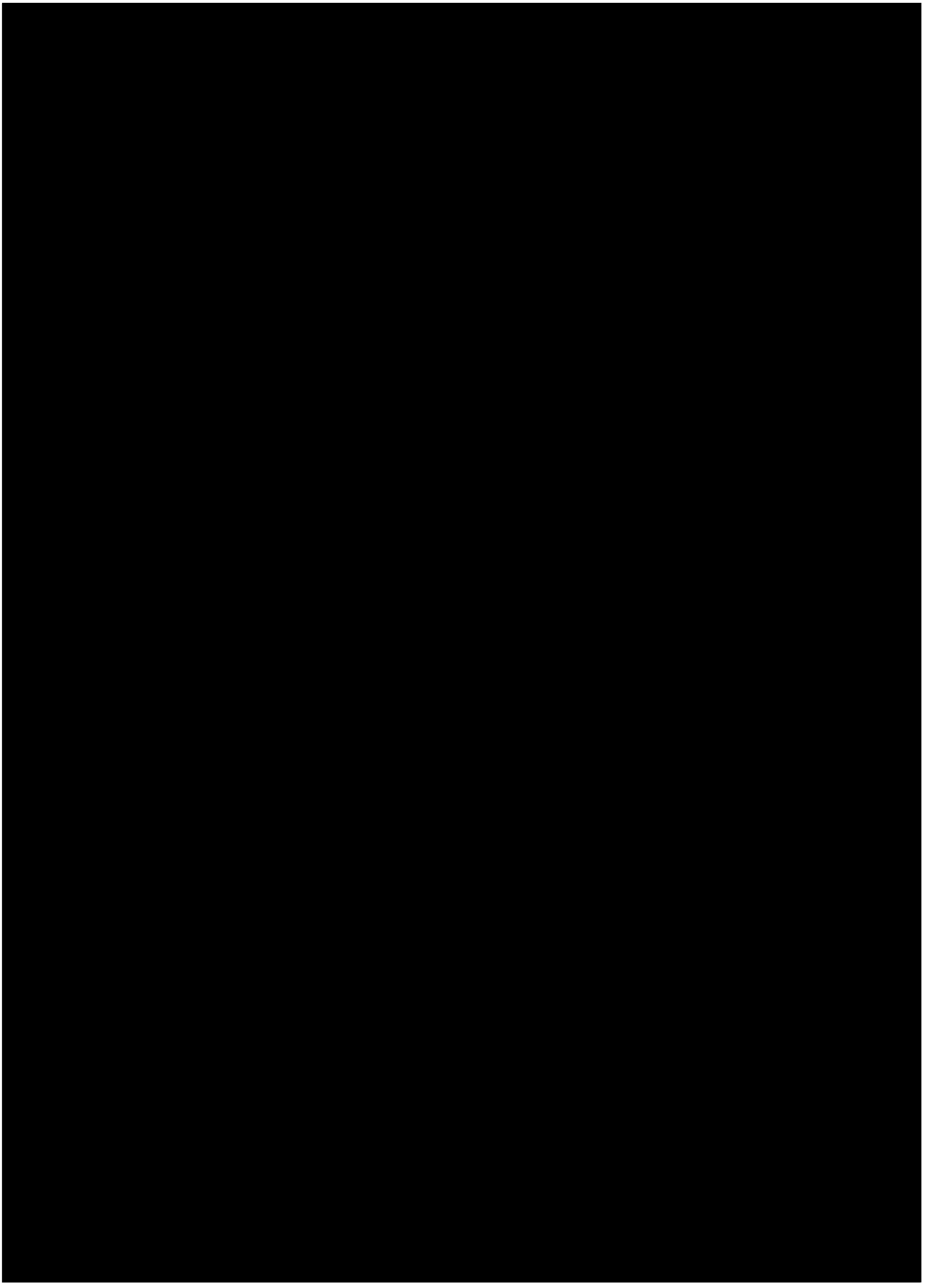


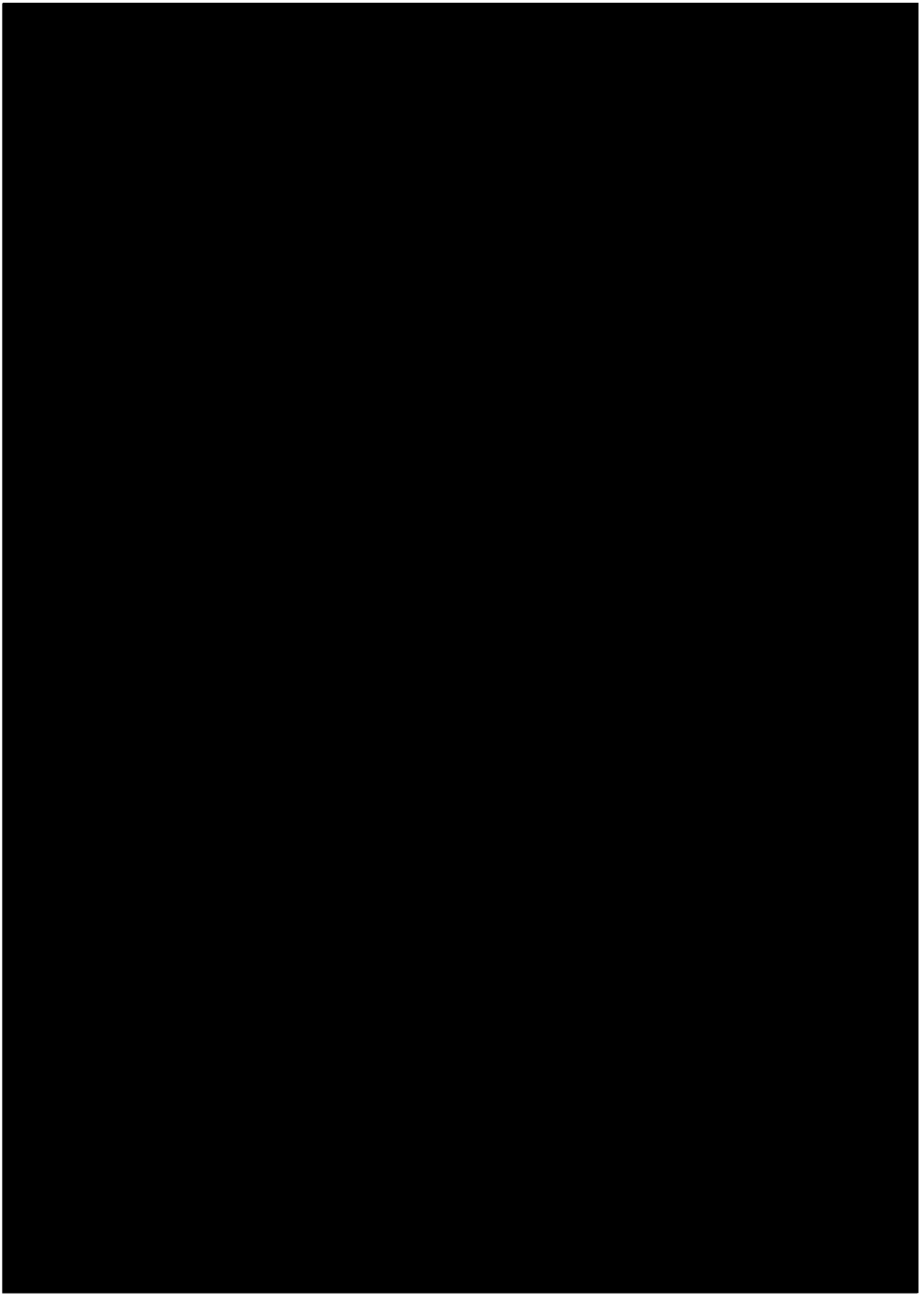


[redacted]









EX. 14

From: Michael Lesser
Sent: Wednesday, March 11, 2015 1:44 PM
To: Garrett Bradley
Cc: Michael Thornton; Evan Hoffman
Subject: Re: State street

He's looking into it.

On Mar 11, 2015, at 12:53 PM, Garrett Bradley <GBradley@tenlaw.com> wrote:

> Ask Rodgers
>
> **From:** Michael Lesser
> **Sent:** Wednesday, March 11, 2015 12:43 PM
> **To:** Garrett Bradley
> **Cc:** Michael Thornton; Evan Hoffman
> **Subject:** RE: State street
>
> The invoice and email date are 2/6. The invoice shows billing through 2/28. Did they bill for time before it was incurred?
>
> **From:** Garrett Bradley
> **Sent:** Wednesday, March 11, 2015 12:42 PM
> **To:** Michael Lesser
> **Cc:** Michael Thornton; Evan Hoffman
> **Subject:** Re: State street
>
> double count for what?
>
> Garrett
>
> On Mar 11, 2015, at 11:54 AM, Michael Lesser <MLesser@tenlaw.com> wrote:
>
> > Garrett: Just following up on the doc review recordkeeping. The attached invoice is dated 2/6/2015 (and was sent by e-mail on 2/6 as well) but includes billables through 2/28. Can you ask them to confirm whether these hours were billed for 2/6 – 2/28? I don't want us to double-count anything.
> >
> > Thanks,
> >
> > M
> >
> > **From:** Garrett Bradley
> > **Sent:** Friday, February 06, 2015 3:48 PM
> > **To:** Michael Thornton
> > **Cc:** Michael Lesser
> > **Subject:** Fwd: State street

First month bill. I have not heard a thing from Chiplock on how he is doing....He has not been playing nice in the sand box lately. I emailed him yesterday asking for a call with Belfi to discuss this. No response.

This is the best way to jack up the loadstar though.

Garrett

Begin forwarded message:

From: "Ng, Cindy" <CNg@labaton.com>
Date: February 6, 2015 at 3:44:56 PM EST
To: "Garrett J. Bradley" <gbradley@tenlaw.com>
Cc: Anastasia Maranian <AMaranian@tenlaw.com>, "Stroock, Naomi" <nstroock@labaton.com>, "Politano, Ray" <rpolitano@labaton.com>
Subject: RE: State street

Garrett,

Attached is the invoice regarding State Street document review.

Cindy Ng | Senior Accountant
140 Broadway, New York, New York 10005
T: (212) 907-0657 | F: (212) 883-7556
E: cng@labaton.com | W: www.labaton.com

<State Street - 1020347 (Feb 2015).pdf>

EX. 15

Message

From: Ng, Cindy [CNg@labaton.com]
Sent: 4/9/2015 3:49:35 PM
To: Garrett J. Bradley [gbradley@tenlaw.com]
CC: 'Anastasia Maranian' [AMaranian@tenlaw.com]; Stroock, Naomi [nstroock@labaton.com]; Politano, Ray [rpolitano@labaton.com]
Subject: RE: State street
Attachments: State Stree - 1020423 (April 2015).pdf

Garrett,

Attached is the April invoice regarding State Street document review.

Labaton Sucharow

Cindy Ng | Senior Accountant
140 Broadway, New York, New York 10005
T: (212) 907-0657 | F: (212) 883-7556

E: cng@labaton.com | W: www.labaton.com

Labaton Sucharow

Mr. Garrett Bradley
Thornton Law Firm LLP
100 Summer Street, 30th Floor
Boston, MA 02110

April 9, 2015
ID: 016576.0001
Invoice # 1020423

RE: State Street Corporation-Class Action

For Document Reviewer Services Rendered from April 1, 2015 through April 30, 2015.

Total Hours	Rates	Amount
1600.00	$50.00	$80,000.00
Adjustment - March 2015 (150.0 Hours)		$ 7,500.00

Invoice Amount	$87,500.00
Past Due Invoice#1020393 - 03/09/2015	$45,710.00
Total Amount Due	**$133,210.00**

Please make checks payable to Labaton Sucharow LLP

Expenses and disbursements, if any, recorded after date of statement will appear on a later statement
Tax Identification Number 13-1987846

EX. 16

Christopher J. Keller
Partner
212 907 0853 direct
212 883 7053 fax
email ckeller@labaton.com

May 4, 2011

VIA ELECTRONIC MAIL
Michael P. Thornton, Esq. (MThornton@tenlaw.com)
Garrett J. Bradley, Esq. (GBradley@tenlaw.com)
Thornton & Naumes LLP
100 Summer Street, 30th Floor
Boston, MA 02110

Steven E. Fineman, Esq. (sfineman@lchb.com)
Daniel P. Chiplock, Esq. (dchiplock@lchb.com)
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413

Richard M. Heimann, Esq. (rheimann@lchb.com)
Lexi J. Hazam, Esq. (lhazam@lchb.com)
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339

Re: *Arkansas Teacher Retirement System v. State Street Corporation*
Civil Action No. 11-cv-10230-MLW (D. Mass.)

Dear Counsel:

I am pleased we were able to come to terms and will be working together in this matter. I have outlined below the terms of the agreement we have reached.

Arkansas Teacher Retirement System ("Arkansas Teacher") will be represented in the action by Labaton Sucharow LLP ("Labaton Sucharow") as Lead Counsel, and Thornton & Naumes LLP ("Thornton & Naumes") and Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") will serve as additional counsel for Arkansas Teacher in this action.

Arkansas Teacher has made an application to the Court for appointment of its selection of Labaton Sucharow as Interim Lead Counsel. In the event that the Court appoints Labaton Sucharow as interim Lead Counsel and subsequently as Lead Counsel, we agree as follows:

We agree that our firms will act in good faith to divide the work so that each of the firms performs at least 20% of the work and each will receive at least 20% of the fees awarded in this matter. The remaining 40% of the fees awarded shall be allocated in good faith at the conclusion of the case based on each firms' actual time spent on this matter..

There is an "off the top" obligation to referring counsel of 6% of the fees awarded. In addition, we agree to exchange on a quarterly basis our then current lodestar reports showing quarterly and aggregate billings in this matter.

We also agree that any dispute arising under this agreement or in this case may not be litigated in court and that all such disputes or claims shall be resolved, upon election of any party, through binding arbitration conducted pursuant to the applicable rules of the American Arbitration Association in any jurisdiction in which any of the firms reside.

Please sign below indicating your agreement to these terms.

Very truly yours,

Christopher Keller, Esq.

Accepted and agreed by:

Thornton & Naumes LLP

_____ Date: _____

Michael P. Thornton, Esq.

Lieff Cabraser Heimann & Bernstein, LLP

_____ Date: _____

Steven E. Fineman, Esq.

EX. 17

From: Chiplock, Daniel P. <DCHIPLOCK@lchb.com>
Sent: Friday, August 28, 2015 7:04 PM
To: Sucharow, Lawrence
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Not to be difficult, but I don't see how that matters. It would seem that the respective lodestars, contributions, etc. are not terribly divergent. And not a skeptical judge, as far as we can tell. A very different situation, in other words, from BNYM (which I know doesn't involve you, Larry, but seems to be coloring this discussion).

On Aug 28, 2015, at 6:27 PM, Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>> wrote:

For one thing, we will know the actual fees awarded by the court.

Sent from my iPhone

On Aug 28, 2015, at 2:21 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:

I guess I don't understand the reluctance to square up the percentages. What don't we understand about the firm's respective contributions that we will understand better 3-4 months from now?

From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Friday, August 28, 2015 2:11 PM
To: Chiplock, Daniel P.
Cc: Sucharow, Lawrence; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I see no need for that at this time. It can even be done after final approval.

Garrett

On Aug 28, 2015, at 2:00 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
Those were the contours as I understood them, yes – after costs, 20% of the fee to be allocated to each of the three firms, with the remaining 40% to be allocated based on contributions to the outcome. I don't think anyone would dispute that Labaton as lead counsel should get more of that 40% than the other two firms. But it may be beneficial to figure out what the breakdown is going to be and get it down in writing now.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:50 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, agreement among our three firms it's that after payment of all of the council I was three firms show each receive 20% with the 40% balance to be determined at a later date. If this is the understanding you are referring to but I can't confirm it. Please advise.

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/>

<image002.gif><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.gif><https://twitter.com/LabatonSucharow> <image004.gif><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

OK, sounds good. I will also get you whatever edits I have to the settlement docs by noon.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 9:28 AM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I am speaking to Paine today at around 10 AM to both report to him and get his update.
I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.

Sent from my iPhone

On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
This looks OK to me, thanks. I'm happy to send it (after you've done the other redline) to Paine, if you like. Or someone else can, no matter.

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Thursday, August 27, 2015 3:27 PM
To: Lynn Sarko; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David

Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Dear all,

We've had some additional exchanges about the term sheet and, specifically, para 8(n). I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal. If you disagree, please let us know asap.

When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.

Thanks

<image001.jpg><http://labaton.com/>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 | F: (212) 883-7067
E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>

<image002.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.jpg><https://twitter.com/LabatonSucharow> <image004.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Zeiss, Nicole
Sent: Wednesday, August 26, 2015 5:09 PM
To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.

Thanks

<image005.jpg><http://labaton.com/>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 | F: (212) 883-7067
E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>

<image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image007.jpg><https://twitter.com/LabatonSucharow> <image008.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Sucharow, Lawrence
Sent: Wednesday, August 26, 2015 4:34 PM
To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Then we can probably forget my proposed changes.

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 4:26 PM
To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Sure. If it works for them – its fine with me

Lynn Lincoln Sarko
Managing Partner

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>; 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Can we leave para 8(n) the general way it is and protect the DOL through the express provision of para 12 limiting fees charged to ERISA allocation to $10.9 million?

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 3:42 PM
To: Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

David
Thanks for sending this. Sorry, I had misunderstood what you were saying on our call earlier today.

Two things:

1. I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down. So—question—can we get rid of the word "fees" in this paragraph—does it still work?

What do you think??

Lynn

Lynn Lincoln Sarko
Managing Partner

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Wednesday, August 19, 2015 2:59 PM
To: 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
Cc: Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>; Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
Subject: SST--Proposed Revision to Term Sheet for DOL Deal

All: The below reflects our proposed revisions to the Term Sheet (in red boldface) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet). Please comment. Thanks.

8(n). Plan of Allocation. . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court. However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.

12. Plaintiffs' Counsel's Attorneys' Fees and Expenses. Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award. Plaintiffs' Counsel shall may apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above. In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days. The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees. Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.

<image005.jpg><http://www.labaton.com/>
David J. Goldsmith | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0879 | F: (212) 883-7079
E: dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com> | W: www.labaton.com<http://www.labaton.com/>

<image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image006.jpg><https://twitter.com/LabatonSucharow> <image006.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

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 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.
<LCHB_iManage_1271399_1.DOC>
<LCHB_iManage_1271400_1.DOCX>

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.
<LCHB_iManage_1271399_1.DOC>
<LCHB_iManage_1271400_1.DOCX>

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 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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 18

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Friday, August 28, 2015 1:40 PM
To: Daniel P. Chiplock
Cc: Garrett J. Bradley; Michael Thornton; Robert L. Lieff
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Also, I believe that there are other cases and other agreements which are influencing people's desire to either reach agreement now or later.

I don't have a dog in the hunt and don't want to be drawn into it.

I apologize for any mistakes but I am not in a place where I can edit my emails so I'm just dictating them I'm hoping that spell correct doesn't fuck me up too much.&

Sent from my iPhone

On Aug 28, 2015, at 2:21 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> I guess I don't understand the reluctance to square up the percentages.& What don't we understand about the firm's respective contributions that we will understand better 3-4 months from now?
> &
>
> **From:** Garrett Bradley [mailto:GBradley@tenlaw.com]
> **Sent:** Friday, August 28, 2015 2:11 PM
> **To:** Chiplock, Daniel P.
> **Cc:** Sucharow, Lawrence; Michael Thornton; Lieff, Robert L.
> **Subject:** Re: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> I see no need for that at this time. & It can even be done after final approval.
>
> Garrett
>
> On Aug 28, 2015, at 2:00 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:
>
> > Those were the contours as I understood them, yes – after costs, 20% of the fee to be allocated to each of the three firms, with the remaining 40% to be allocated based on contributions to the outcome.& I don't think anyone would dispute that Labaton as lead counsel should get more of that 40% than the other two firms.& But it may be beneficial to figure out what the breakdown is going to be and get it down in writing now.
> > &
> >
> > **From:** Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> > **Sent:** Friday, August 28, 2015 1:50 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, agreement among our three firms it's that after payment of all of the council I was three firms show each receive 20% with the 40% balance to be determined at a later

date. If this is the understanding you are referring to but I can't confirm it. Please advise.

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> Mike, Garrett – Hope you're well – please see below.& If we can figure this out early next week that may help speed the process.
>
> Thanks,
> &
> Dan
> &
>
> **From:** Chiplock, Daniel P.
> **Sent:** Friday, August 28, 2015 1:33 PM
> **To:** 'Sucharow, Lawrence'
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> The purpose of my email was just to get your reaction, Larry, since these are your drafts.& Thank you for responding quickly, and for giving me your reaction.& I would love to include them so we can move forward promptly.& I'll re-send.&
> &
>
> **From:** Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> **Sent:** Friday, August 28, 2015 1:28 PM
> **To:** Chiplock, Daniel P.
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** Re: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore he sensual to any memorialization of that understanding. & If you more willing to resend your email and include them,we can see if there is any disagreement as to what our understanding is/was.
> Larry
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 1:10 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:
>
> > Larry and Nicole:
> > &
> > Attached are my redlines to the preliminary approval order and final judgment.& These edits are consistent with the Court's January 2012 order concerning leadership structure.&
> > &
> > I'm emailing just you (and copying Bob) so as to try not to make a big thing over this, but I do think it's appropriate to memorialize what the fee allocation amongst customer class counsel is going to be

(consistent with the understanding that the firms have been operating under for a couple years now) before we proceed much further.& & I think we'd be willing to support Lead Counsel having final authority over fee and expense allocations, etc., for purposes of the settlement stip, and thus present a united front against a perpetual troublemaker like McTigue—which should be in everyone's interest--provided we had some basic written comfort ourselves.& I don't think it's too early for that, given the interest in seeing the funds come in this year.
&
Thanks,
Dan
&

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Friday, August 28, 2015 9:53 AM
To: Chiplock, Daniel P.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Thank you!
&
&
&
&
&
&
&
&<image001.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image002.gif&>& &<image003.gif&>& &<image004.gif&>
&

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
OK, sounds good.& I will also get you whatever edits I have to the settlement docs by noon.
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]

Sent: Friday, August 28, 2015 9:28 AM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
I am speaking to Paine today at around 10 AM to both report to him and get his update.
I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.

Sent from my iPhone

On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> This looks OK to me, thanks.& I'm happy to send it (after you've done the other redline) to Paine, if you like.& Or someone else can, no matter.
> &
> **From:** Zeiss, Nicole [mailto:NZeiss@labaton.com]
> **Sent:** Thursday, August 27, 2015 3:27 PM
> **To:** Lynn Sarko; 'rlieff@lieff.com'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> **Cc:** Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> Dear all,
> &
> We've had some additional exchanges about the term sheet and, specifically, para 8(n).& I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal.& If you disagree, please let us know asap.
> &
> When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.
> &
> Thanks

&
&
&
&
&
&
&
&<image001.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image002.jpg&>& &<image003.jpg&>& &<image004.jpg&>
&

From: Zeiss, Nicole
Sent: Wednesday, August 26, 2015 5:09 PM
To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.
&
Thanks
&
&
&
&
&
&
&
&<image005.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& &<image007.jpg&>& &<image008.jpg&>
&

From: Sucharow, Lawrence
Sent: Wednesday, August 26, 2015 4:34 PM
To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Then we can probably forget my proposed changes.
&

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 4:26 PM
To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Sure.& & If it works for them – its fine with me
&

Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Lynn Sarko &<lsarko@KellerRohrback.com&>; Goldsmith, David &<dgoldsmith@labaton.com&>; 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>;

Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
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'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
David
Thanks for sending this.& Sorry, I had misunderstood what you were saying on our call earlier today.
&
Two things:
&
1.& I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
2. On paragraph 8(n)- the problem is the word “fees”—since the DOL has given us a hard number for ERISA fees—that won’t be going up or down.& & So—question—can we get rid of the word “fees” in this paragraph—does it still work?
&
What do you think??

&
Lynn
&
Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Wednesday, August 19, 2015 2:59 PM
To: 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; Lynn Sarko &<lsarko@KellerRohrback.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Sucharow, Lawrence &<LSucharow@labaton.com&>; Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: SST--Proposed Revision to Term Sheet for DOL Deal
&
All:& The below reflects our proposed revisions to the Term Sheet (in **red boldface**) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet).& Please comment.& Thanks.
&
&
8(n).& & & & & & & **Plan of Allocation**. & . . . The amount allocated to the ERISA Plans and Investment

Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court.& **However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.**
&

12.& & & & & & & & & **Plaintiffs' Counsel's Attorneys' Fees and Expenses.**& & & & & Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award.& Plaintiffs' Counsel ~~shall~~ **may** apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, **but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above.** & In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement,

and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days.& The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees.& Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.
&
&
&
&
&
&
&<image005.jpg&>
David J. Goldsmith | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0879 | F: (212) 883-7079
E: dgoldsmith@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& & &<image006.jpg&>& & &<image006.jpg&>
&

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.

&

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 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 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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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.

This message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 19

From: Michael Lesser
Sent: Sunday, August 30, 2015 1:05 PM
To: Evan Hoffman
Subject: Fwd: State Street

Begin forwarded message:

From: "Chiplock, Daniel P." <DCHIPLOCK@lchb.com>
Date: August 30, 2015 at 12:49:38 PM EDT
To: 'Michael Thornton' <MThornton@tenlaw.com>, Garrett Bradley <GBradley@tenlaw.com>
Cc: "Lieff, Robert L." <RLIEFF@lchb.com>, "rlieff@lieff.com" <rlieff@lieff.com>, Michael Lesser <MLesser@tenlaw.com>
Subject: RE: State Street

Excellent and I would expect and anticipate nothing less, Mike. I just know what some of our colleagues can do when presented with an easy target in order to hold up the process, and we don't want to do that. Thanks.

-----Original Message-----
From: Michael Thornton [mailto:MThornton@tenlaw.com]
Sent: Sunday, August 30, 2015 12:45 PM
To: Chiplock, Daniel P.; Garrett Bradley
Cc: Lieff, Robert L.; rlieff@lieff.com; Michael Lesser
Subject: Re: State Street

Thank you for the tip Dan. I did say something like that on the call, but preceded it by saying it was a guess and that I would have to ask Mike Lesser for the actual figure at that point which of course is not complete as with the other firms. I appreciate your concern and I guess I can only assure you that it generally our policy to truthful and accurate hour claims.

Original Message
From: Chiplock, Daniel P.
Sent: Sunday, August 30, 2015 12:24 PM
To: Garrett Bradley
Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com
Subject: RE: State Street

No problem. It may be tomorrow since I have to go back to archives.

In the meantime, while we're on the subject of credibility, I want to point out that we need to be consistent and credible with our lodestar reporting in State Street. We are gathering final lodestar reports now, but I heard third-hand that Mike recently said on a call (that I wasn't on) that Thornton Law Firm was showing $14 million. That number does not comport with the hours Mike Lesser told me for Thornton as of June 29 (around 12,750), which make more sense given

what we know about the work that was done. I am hopeful Mike T. simply misspoke or was guessing when he said $14 million and that we are not going to suddenly see an additional 12,000 hours mysteriously appear on Thornton Law Firm's behalf. I would expect that you would object if LCHB or Labaton tried something like that, and ERISA counsel certainly will (and tie up this process as long as possible) if they suspect anything remotely amiss on that front. Let's not make problems for ourselves that we don't need. Also recognize that your reviewers were all housed outside of your firm and their respective overhead and facilities expenses were paid for by others, which we were happy to do as a courtesy. Thanks.

-----Original Message-----
From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Sunday, August 30, 2015 10:43 AM
To: Chiplock, Daniel P.
Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com
Subject: Re: State Street

That would be helpful thank you.

Garrett

On Aug 30, 2015, at 10:30 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:

> I don't look past that point, Garrett. But you need to also recognize that you are only in the BNYM class case because of us.
>
> I guess I'll gather the emails etc concerning the assignments that were given to your firm. As if that's going to change your position.
>
> Sent from my iPhone
>
> On Aug 30, 2015, at 10:19 AM, Garrett Bradley <GBradley@tenlaw.com<mailto:GBradley@tenlaw.com>> wrote:
>
> Dan,
>
> Thanks for the email. I think we will have to agree to disagree as you keep looking past the fact that but for Mike Thornton you would not be in the state street case just like Labaton is not in BONY.
>
> Can you clarify what you mean by we did not "get the work done" as you indicated. That has never been specified and really should be to be deemed credible. Thanks.
>
> Garrett

On Aug 30, 2015, at 9:04 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:

Garrett,

Thanks for your email and I actually think it's useful so that Mike and Bob can participate in this.

This idea of "protection" in BNYM is where I think we keep talking past each other. The bottom line is that LCHB is the least protected of all in that case. This is the fact that has kept me up at night for 2.5 years while we've continued pouring lodestar into that case (because we had to). We invested the most in order to try to get a class certified there and to sufficiently man 110 depositions, defend counterclaims, etc., but if Judge Kaplan takes a negative view of the value of document review/analysis (our arguments to the contrary notwithstanding), then LCHB will get hit the hardest. You are totally shielded from this because you didn't invest in document review. In other words, LCHB has a real risk of actually losing money in BNYM. You have virtually no risk of that. If Thornton is not treated "fairly" in BNYM by the Court it will be because nobody (least of all LCHB) was treated "fairly." It's not clear to me what it is you expect in that circumstance.

The $10 million in State Street that you mention below also does not make up for LCHB's investment in that case. And we've certainly contributed our share to the result in State Street, having litigated BNYM (thus substantially increasing the value of State Street) and developed the ch. 93A theory (the most readily certifiable claim in State Street, and by far the most valuable).

Dan

From: Garrett Bradley [mailto:GBradley@tenlaw.com]

Sent: Friday, August 28, 2015 3:01 PM

To: Chiplock, Daniel P.

Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com<mailto:rlieff@lieff.com>

Subject: Re: State Street

Dan,

I tried to call you but you are out. I think these things are best discussed rather than emailed so please call my cell when you can 6174134892 as I do not have yours.

However a few points. I do not dismiss your efforts in Mellon but your guaranteed percentage was established years prior to a Mellon result. What I am pointing out is the inequities of our different positions. In Mellon, when we had created that case by developing the fx case all that we got was some work that resulted in $1.5 million in time. Also please elaborate on your statement that "the work was not getting done".

Now contrast that to state street where you had no client and no concept (and Mellon was years from setting) and Mike Thornton demands that you get a floor of 20% which is probably worth about $10 million.

You must agree you are in a much better position in state street than we are in Mellon. As I have said to Bob, we are only looking for a fair outcome in these matters. I think you would agree we have protected you better in state street than we are protected in Mellon. Once we have an idea of what our Mellon number looks like then we can discuss how to approach the balance of the 40% with Labaton .

Garrett

On Aug 28, 2015, at 2:34 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:

Garrett,

I know you didn't really mean to diminish LCHB's role in creating the result in BNY Mellon, at extraordinary risk to itself, which in turn doubled the value of State Street. You need to know that we advocated for you guys too, getting you a role in the BNYM class case (and pushing back against several co-counsel in the process) when you weren't actually owed one. I also gave your firm more assignments than others at the outset in BNYM, until it became clear that the work simply wasn't getting done. In other words, we've each tried to look out for the other in the past. This has been far from a one-way street.

As you know, Judge Kaplan controls everyone's fate in BNYM and LCHB has the most risk before him, having invested the most. We asked for a multiplier for your firm that is much larger than anyone else's, and I really, truly hope that he grants that request.

Thanks,

Dan

From: Garrett Bradley [mailto:GBradley@tenlaw.com]

Sent: Friday, August 28, 2015 2:18 PM

To: Lieff, Robert L.

Cc: Michael Thornton; Chiplock, Daniel P.; rlieff@lieff.com<mailto:rlieff@lieff.com>

Subject: Re: State Street

Bob,

I am driving but took a quick look at your email and pulled over to type this. I think you are misunderstood. I have not agreed that it would be equitable to split the balance of the forty percent the way you described below. What I have said is that may be a fair approach depending on the outcome of our fee in the Mellon matter. If we are treated fairly there, then we will do all we can to treat you fairly in the state street matter. As I have said before, because of Mike Thornton's advocacy, you are guaranteed at least 20% of the State Street case in which you have no client and did not develop the concept. Yet, we have no corresponding protection in the Mellon matter. Happy to discuss further at any time.

Garrett

On Aug 28, 2015, at 2:05 PM, Lieff, Robert L. <RLIEFF@lchb.com<mailto:RLIEFF@lchb.com>> wrote:

Garrett,

I called and suggested that we have a meeting together with the Labaton people to talk about putting in writing an understanding of the fee division in this case.

You, Mike and I have discussed the State Street fee division and have focused on the existing verbal understanding that was reached on November 9, 2010, with Chris Keller. We agreed that among the three firms we will each have a 20% interest in the fee with the balance to be divided later. Of course, we also have to factor in the 9% that ERISA counsel get pursuant to written agreement and a provision for Arkansas local counsel.

You and I have agreed that it would be equitable to divide the balance of the fee with Labaton getting 50% and each of our firms 25%. This would result in a fee division as follows:

Labaton 33.0 (20 + 13)

Thornton 26.5 (20 + 6.5)

Lieff Cabraser 26.5 (20 + 6.5)

ERISA 9.0

Arkansas Local 5.0

100.0%

If we put the above into an agreement among the three firms, that would certainly provide protection for everyone.

Bob

<image001.gif>

Robert L. Lieff
Of Counsel
rlieff@lchb.com<mailto:rlieff@lchb.com>
t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com<http://www.lieffcabraser.com>

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.

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.

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.

This message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 20

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. 21

From: Kravitz, Carl S. <ckravitz@zuckerman.com>
Sent: Saturday, August 22, 2015 2:59 PM
To: 'Lieff, Robert L.'; Sucharow, Lawrence
Cc: Michael Thornton; lsarko@kellerrohrback; Garrett J. Bradley; rlieff@lieff.com
Subject: RE: State Street

Thanks for the report. Not surprised that they have dug their heels in, but maybe DOL will compromise a little more. No harm in hoping.

<http://mm1.lettermark.net/zuckerman/card/ORBH_9.map>
[Description: Carl Kravitz 202.778.1873
ckravitz@zuckerman.com]<http://mm1.lettermark.net/zuckerman/card/ORBH_9.map>

-----Original Message-----
From: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Saturday, August 22, 2015 11:20 AM
To: Sucharow, Lawrence
Cc: Michael Thornton; lsarko@kellerrohrback; Kravitz, Carl S.; Garrett J. Bradley; rlieff@lieff.com
Subject: RE: State Street

I am uncertain as to whether we advised all of you of the results of our telephone call to Suzanne Riley. The call lasted one hour and Lynn and I did our best to convince a mid level government lawyer that compromise is the essence of negotiation without success. The problem is that she has no power to negotiate. We pushed for 290/10 split and she was at 280/20 with a willingness to agree to 282/18 , which was where we were when we began. She is going to speak to her superiors on Monday and we will talk to her one last time. Bob

---

From: Sucharow, Lawrence [LSucharow@labaton.com]
Sent: Friday, August 21, 2015 7:56 AM
To: Lieff, Robert L.
Cc: Michael Thornton; Lynn Sarko; Carl S. Kravitz; Garrett J. Bradley; rlieff@lieff.com
Subject: Re: State Street

I have no problem with you guys trying one additional time to secure a "better deal". I agree that consistency in the percentages is the best way forward and the only way of doing that is to give the DOL credit for a certain amount out of the 300 million and applying for an across the board percentage of 25% on the balance. This is what I thought we agreed to two conversations ago but I was taken aback in the recent conversation by the vehemence against the $18 million reduction which has been negotiated to to achieve the $10.5 million fee demand by DOL.
Obviously any number lower than 18 million is a benefit to us. In any event now that you set the call up you might as well take a crack at it (without fracturing the relationship).

Sent from my iPhone

> On Aug 21, 2015, at 10:17 AM, Lieff, Robert L. <RLIEFF@lchb.com> wrote:

>
> Larry, I think the most important aspect of this is to achieve consistency in the fee percentage between the customer class and the Erisa class. That is 25% for both. In order to accomplish this we need to reduce our settlement to $282 M and to let the DOL take credit for 18M. If we are to make one more stab at it then it would be to try to make our settlement $290M and the DOL 10M. This would give us a fee request of 72.5 rather that 70.5. Is this worth the effort of one more call? I gather that you and Carl are saying "no" and Mike is saying "yes". The structure of the settlement would be the same as BNYM where we have 14M that the DOL got not being included for purposes of our fee request. Lynn and I have a call scheduled with the DOL at 11 PDT We can make a soft pitch for an extra 8M (from 282 to 290) This has been turned down by the DOL before. As lead counsel do you want us to proceed or not? The important thing to me is consistency of the fee request at 25% and not the extra 8M.
> _____
> From: Michael Thornton [MThornton@tenlaw.com]
> Sent: Friday, August 21, 2015 6:36 AM
> To: Sucharow, Lawrence; Lieff, Robert L.; Lynn Sarko; Carl S. Kravitz; Garrett Bradley
> Subject: Re: State Street
>
> Larry, I think that most of us have long ago have become pragmatists. I think that the concern with the negotiations now is not that they are unfair, but that the result might be something that with "reverse engineering" show a significant disparity between the way ERISA funds and the non are treated. Then the judge might be tempted to go with the low percentage for all.
> The fact is the the DOL has left us at this point with no good choices. I don't think there is a downside to continue to negotiate.
>
> Original Message
> From: Sucharow, Lawrence
> Sent: Friday, August 21, 2015 8:10 AM
> To: Michael Thornton; Robert L. Lieff; Lynn Sarko; Carl S. Kravitz; Garrett Bradley
> Subject: State Street
>
> Guys:
> I just want to let you know that I woke up with a very bad feeling this morning on how we left our negotiations with the DOL.
>
> While I too am unhappy that they are seeking to restrict our fees, I also understand their need and desire to take some credit for what was achieved. It's unfair, It's wrong, but completely understandable.
>
> We had negotiated in good faith with them to a point where it would cost us $4.5 million from our maximum fees in order to have complete peace.
>
> To me, this is a relatively small price to pay in order to have a united front before the court and protect the balance of our fees. Indeed the differential we had negotiated between their offer and our last offer is only about $600,000 on fees of 70,000,000+.
>
> Now that the heat of our conversation has cooled down, I am asking everyone to reconsider renegotiating with the DOL and accepting their latest proposal.
>
> Larry
>
> Sent from my iPhone
>
>
> ***Privilege and Confidentiality Notice***

>
> 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.
>
>
> 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.
>
>
> 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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 22

From: Sucharow, Lawrence <LSucharow@labaton.com>
Sent: Wednesday, August 26, 2015 11:13 AM
To: Lynn Sarko; Robert L. Lieff; Daniel P. Chiplock; Michael Thornton; 'Kravitz, Carl S.'; Brian McTigue; Goldsmith, David; Garrett J. Bradley
Cc: Lynn Sarko
Subject: RE: State Street FX-- ERISA atty fees

Thanks for your and Bob's efforts.
&

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 11:30 AM
To: Sucharow, Lawrence; Robert L. Lieff; Daniel P. Chiplock; Michael Thornton; 'Kravitz, Carl S.'; Brian McTigue; Goldsmith, David; Garrett J. Bradley
Cc: Lynn Sarko
Subject: State Street FX-- ERISA atty fees
&
SUCCESS.
&
I am happy to report that we have a deal with the DOL on the amount of atty fees we can charge in the Class cases.
&
They have agreed that they are agreeable for us to charge the ERISA plans-& **$10.9 million atty fees**.& & To put it another way- that the settlement amount going to ERISA plans "**net of fees" will be $49.1 million**
&
They understand that we have not yet decided how we want to present the settlement—and they are agnostic on the structure.& & They would like to see how we are going to phrase it—to make sure that we are living up to this agreement---&
But they are fine with:
1.& We can ask the Court for whatever percentage fee we want- as long as the ERISA plans are only charged $10.9 million.
2.& We can phrase the settlement amount as whatever we want—although they are expecting us to say that the class **settlement amount was $300 million**.& However- if we want to say it is some lesser amount—or say that we are not seeking fees on the whole portion of the $60 million gross recovery- that is our business.
&
In other words—they & have given us a green light on how we describe it.& & & Based on this understanding they will not object to our fee application.
&
They also understand that "Litigation costs" will be charged pro rata on the whole $300 million.
&
Next step--- they would like to see how we are going to phrase this----- ie: by putting something in our term sheet- or them putting something in their term sheet- or some other writing, etc.
&
Now that we know the numbers—let's go back to a discussion of how we are going to present this in the papers.
&
One last thing—please caution everyone in your firms—that we should not start having separate discussion with the DOL on how to phrase the ERISA fee issue.& Once we come up with the language, I will volunteer to deal with the DOL.
&

But the bottom line—we have a deal for $10.9 million ERISA fees.& & & & Let's not discuss this on today's "plan of allocation call" at 2 pm Eastern.& & The DOL will be circulating a new dial in number for that call = as the current number doesn't work.

&

Lynn

&

Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com

&

&

EX. 23

Message

From: Damon Chargois [damon@cmhllp.com]
Sent: 4/25/2013 1:23:44 AM
To: Garrett J. Bradley [gbradley@tenlaw.com]
CC: Robert L. Lieff [RLIEFF@lchb.com]; Robert L. Lieff [rlieff@lieff.com]; Michael Thornton [MThornton@tenlaw.com]; Belfi, Eric J. [EBelfi@labaton.com]; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: Re: State street fee regarding local counsel

Thank you, Garrett. Agreed.

Sent from my iPhone

On Apr 24, 2013, at 8:08 PM, "Garrett Bradley" <GBradley@tenlaw.com> wrote:

> Bob,
>
> As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% guaranteed each with the balance to be decided upon at a later date. Obviously this may go up should Labaton receive an amount higher than 20%.
>
> We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), will be paid off the top with the balance of the overall fee 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
>
>
> _____
>
>
>
> This e-mail and any files transmitted with it are confidential and are
>
> intended solely for the use of the individual or entity to whom they are
> addressed. This communication may contain material protected by the
> attorney-client privilege. If you are not the intended recipient or the person
> responsible for delivering the e-mail to the intended recipient, be advised that
> you have received this e-mail in error and that any use, dissemination,
> forwarding, printing, or copying of this e-mail is strictly prohibited. If you
> have received this e-mail in error; please immediately notify us by telephone at
> (800) 431-4600. You will be reimbursed for reasonable costs incurred in
> notifying us.
>
>
>
> Please consider the environment before printing this email.

EX. 24

JOINT RESPONSE BY LABATON SUCHAROW LLP
AND CHARGOIS & HERRON, LLP

TO THE REQUEST FOR QUALIFICATIONS ("RFQ") FOR OUTSIDE LEGAL COUNSEL
SECURITIES LITIGATION, CLASS ACTION MONITORING AND ADVICE;
ASSET RECOVERY

July 30, 2008

LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone (212) 907-0700
Facsimile (212) 818-0477

Eric J. Belfi
Partner
Direct Dial (212) 907-0878
ebelfi@labaton.com

CHARGOIS & HERRON, LLP
2201 Timberloch Place
Suite 110
The Woodlands, Texas 77380
Telephone (281) 444-0604
Facsimile (281) 440-0124

Damon Chargois
Managing Partner
Dial (281) 444-0604
damon@cmhllp.com

5. Requested Information

5.2 *If with a firm, provide a description of your law firm, including historical background, number and location of firm offices, number of attorneys, and major areas of practice.*

Response of Labaton Sucharow

Labaton Sucharow LLP was established in 1963 in New York City. At the firm's inception, the majority of the practice was commercial work and less than half the work was contingent litigation. Labaton Sucharow began providing securities litigation consulting services to public pension plans in 1995, the year of the passage of the Private Securities Litigation Reform Act (PSLRA).

Currently, two-thirds of the firm's approximately 55 lawyers are dedicated to the prosecution of securities class actions, institutional investor "opt out" cases, and other shareholder actions. Labaton Sucharow has one office location where the services discussed herein would be performed. The firm is located at 140 Broadway, New York, NY 10005; Tel: (212) 907-0700. Labaton Sucharow currently has approximately 55 attorneys, 17 paralegals and 69 additional support staff. Class action securities litigation and related portfolio monitoring services represent Labaton Sucharow's principal practice area and source of revenue. The firm also maintains an active antitrust class action practice.

Response of Chargois & Herron

Chargois & Herron, LLP was established in 2005 by Timothy P. Herron and Damon J. Chargois after working together and separately in commercial, class action, mass tort and insurance defense litigation for fourteen (14) plus years. Both attorneys, along with partner, Che Williamson are licensed in all federal and state courts in Arkansas and Texas. Chargois & Herron began providing securities litigation services in 2006 and have been pleased to achieve significant monetary results for public pension plans since that time.

Currently, we have offices in Little Rock, Arkansas and The Woodlands, Texas with six full-time practicing attorneys who have held law licenses as follows: (Timothy Herron – 28 years), (Che Williamson – 18 years), (Kamran Masheyekh – 18 years), (Damon Chargois – 14 years), (Carlos Fernandez – 5 years) and (Kirk Chargois – 2 years). Our primary address is 2201 Timberloch Place, Suite 110, The Woodlands, Texas 77380; (281) 444-0604.

5.3 *State whether your response excludes any services contemplated by the RFQ set forth in the scope of services in section 3.2.*

Labaton Sucharow's and Chargois & Herron's responses do not exclude any services contemplated by the RFQ set forth in the scope of services in section 3.2.

5.4 *State whether your firm is able to conduct ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims) by reviewing the System's portfolio losses on a regular basis, investigating potential claims, preparing detailed reports of findings; and presenting the findings to ATRS.*

Response of Labaton Sucharow

Labaton Sucharow is committed to high-level client service. A major component of the litigation and client services that we propose to the ATRS is our portfolio monitoring program, that utilizes a full compliment of professional analyses as well as out proprietary software system called LPAS©.

We believe that a strong analysis and quick determination of possible financial exposure can be the first line of defense when corporate misconduct and fraud result in investment losses.

Identification In its Case Evaluation Group, Labaton Sucharow has assembled several attorneys and other professionals with decades of combined experience distilling information in the marketplace in an effort to uncover and investigate instances of potential securities fraud on behalf of our clients. Labaton Sucharow subscribes to and monitors sophisticated financial research services, including Bloomberg and Thomson Reuters, the same tools used by analysts at major financial services firms. We use these information services to monitor news coverage and market activity throughout the day to identify potential securities law violations and analyze the impact of the claims on our clients' portfolios. Among the other sources we monitor are: (i) the Federal Securities Law Reports published by CCH; (ii) the Securities Class Action Services database maintained by the Riskmetrics Group; (iii) Stanford Law School's Securities Class Action Clearinghouse; and (iv) other legal journals and newspapers.

The Group includes five attorneys, led by Christopher Keller, who have many years of experience performing this specialized function. The Group also includes two Wall Street analysts, several damages analysts, and private investigators formerly with the Federal Bureau of Investigation. This group has been pivotal to enhancing Labaton's institutional shareholder services by being able to marshall the critical facts necessary to prevail in complex securities class action litigation.

Analysis When a security suffers a significant decline in value or when litigation has been commenced against a company, we commence a multi-tiered analysis of the situation. The analysis includes early identification and assembly of facts, legal and factual analysis and ranking (using a proprietary grading system that allows us to objectively rate the facts), determination of the magnitude of the alleged fraud (in terms of class-wide damages), and investigation of non-public information and sources. This in-depth review yields a "grade" for the case that reflects our analysis of the strengths and weaknesses of the claim. This grade is based upon a number of factors, including the size of the company, evidence of intentional or reckless wrongdoing, the types of issues involved (including any earnings restatements or other accounting issues), whether there is an ongoing governmental investigation, the potential liability of third-party defendants such as auditors or underwriters, the solvency of the defendant, and whether there was a significant stock price decline in reaction to the alleged wrongdoing. The findings are captured in a summary report. An example of such a review is attached as **Exhibit A**.

Review of losses If we discover that the ATRS invested in a company that has engaged in allegedly fraudulent behavior, we quickly can assess the losses incurred. This loss amount is an estimated loss as limited by the PSLRA, which is not the same as your legally compensable damages. To that end, LPAS (further discussed in Section 5.5, below), allows us to quickly quantify our clients' financial exposure to the security at issue so that we may advise our clients on the strength of their position to pursue litigation, either individually or as a lead plaintiff on behalf of a class of investors. This assessment can be made as soon as a situation has been identified, depending on the data that is available to us, and is an essential component of the advice we could provide to the ATRS on the likelihood of its success were the ATRS to move to be appointed Lead Plaintiffs. Whether our advice is to pursue litigation or not, it is based on our client's true financial interest in the litigation and the merits of the case.

Reporting Included in our analysis of the case, is an analysis of the options available to our clients. If a case meets certain criteria, we will inform the ATRS about the issues involved in the case, and we may request that the ATRS research their holdings so that we can provide an analysis of the ATRS's financial exposure. On a case-by-case basis, we will provide a comprehensive legal analysis for the client's review. An example of such a review is attached as **Exhibit B**. Additionally we provide reports each quarter that recite our findings for the cases we have reviewed in prior periods and the results of our research. Please refer to **Exhibit C** for an example of a Quarterly Report.

Many institutional clients expect and receive regular oral or written updates concerning matters of potential interest. Typically, we would first discuss the issues of a specific case that we are analyzing with the ATRS before a report is submitted. However, other reports – primarily our quarterly reports and any urgent/time-sensitive matter that we are bringing to the ATRS's attention – might be transmitted via e-mail to our contact at the ATRS without a formal discussion beforehand. The decision to commence an action and overall litigation strategy are always made after close consultation between Labaton Sucharow and our client, and at a client's request, Labaton Sucharow will circulate drafts of court filings well in advance of filing dates for review and comment. Monitoring services will be handled by partner, Christopher Keller, and the overall relationship would be managed by partner, Eric Belfi. Matters connected to litigation would be managed by Mr. Belfi and chairman, Mr. Lawrence Sucharow. Please see **Exhibit D**, to view the full resume of each attorney.

Recommendation We are protective of our institutional clients and therefore proceed carefully before recommending legal action. Quite often, the results of our analysis indicate that it is not advisable for the client to participate as a lead plaintiff, because the amount of the loss is not significant or participating as a lead plaintiff may not be in the client's best interests for other reasons. If we determine that claims lack merit or are weak, we will so advise. A law firm cannot guarantee success in securities litigation, but according to the annual securities class actions study published by Cornerstone Research, for the past three years Labaton Sucharow, on a percentage basis, recovers more than any other plaintiffs' class action firm.

In any case, our recommendation will be an informed one, suited to the needs of the client. Labaton Sucharow recognizes that clients desire varying levels of involvement with these processes, and the firm certainly can provide training to effectively supervise and assist in these activities.

Response of Chargois & Herron

Chargois & Herron has six attorneys and three paralegals with decades of combined experience in monitoring and researching corporations and the market in analyzing conduct with an eye toward discovering possible impropriety. Additionally, we work closely with counsel in New York, including Labaton Sucharow, and California in order to stay abreast of trends and activities in the market. We are free to utilize their resources and they ours – at any time in an effort to provide the best service to our institutional investor clients.

Chargois & Herron owns an Alabama company called 270 Discovery Solutions which provides document research, indexing and computer inputting of the millions of items of information contained in the documents that are routinely produced – usually under court order – in securities class action litigation. Uniquely, our company is staffed almost entirely by licensed attorneys, numbering in excess of 25 attorneys. This puts Chargois & Herron in a unique and special position to handle any securities litigation matter, regardless of size.

5.5 *State whether your firm has the ability to monitor the ATRS portfolio in this regard through access to the ATRS custodial account, rather than requesting ATRS staff for information regarding securities holdings.*

Response of Labaton Sucharow

Yes, Labaton Sucharow has the ability to monitor the ATRS portfolio through access to the ATRS custodial account. We have relationships with all of the major custodial banks in the U.S. and have handled multiple systems when retrieving our clients' data. Therefore, the necessary information is gathered without intrusion into our clients' day-to-day business. At the outset, a minimal effort is required to set up the authorization and permissions for our access to the ATRS portfolio. Beyond that, our team handles the rest of the communications with the custodian and the retrieval of the ATRS portfolio records.

Labaton Sucharow has invested significant resources to develop and maintain an infrastructure and software program to accomplish this for our clients. Labaton Portfolio Analysis System (LPAS) is a unique and proprietary database management and software application that allows us to capture our clients' trading information and over time build a historical record of the transactions, housed in our internal, secure database. In particular, with access to our clients' historic trading records, LPAS allows us to monitor the data and identify eligible losses. When a new situation is identified, LPAS identifies matches between the securities owned by ATRS and will perform an analysis of their financial exposure, using court-approved evaluation models. Please see **Exhibit E** for a description of LPAS.

Additionally, Labaton Sucharow has access to comprehensive information with respect to securities class action settlements. The firm can provide this information to the ATRS's custodian bank at no charge and make all necessary forms available to the custodian.

Response of Chargois & Herron

Chargois & Herron has the ability to monitor the ATRS through access to the ATRS custodial account, rather than requesting ATRS staff for information regarding securities holdings.

5.6 *Subject to the consent of clients as required by applicable ethics rules, provide a listing of representative clients. Responses may, with the consent of the clients, include names and phone numbers of specific references. Subject to the clients' consent, identify specifically any pension plans or other major institutional investors, either private or public, to which you render or have rendered significant legal services concerning the relevant subject area(s) during the past year. If no clients consent, or if you elect not to request such consent, please so state and describe the representative clients in general terms to support your firm's qualification and experience to represent ATRS.*

Response of Labaton Sucharow

[redacted]

5.7 *Provide a very brief summary resume describing the education, legal or investment experience, recent speaking engagements, and a list of significant, relevant publications of the attorney or attorneys proposed to work as lead attorney(s).*

Response of Labaton Sucharow

The number and identity of the Labaton Sucharow and Chargois & Herron attorneys and other legal professionals who would be assigned to a securities litigation matter on behalf of the ATRS would vary depending on the size, complexity and issues in any given case. Assuming that a particular case involved complex accounting issues, large numbers of documents, and dozens of fact and expert witnesses, the team likely would be comprised of the following attorneys from Labaton Sucharow: Eric J. Belfi, Lawrence A. Sucharow, Thomas A. Dubbs, Christopher J. Keller, Zachary M. Ratzman, Ann E. Gittleman, and Krista T. Rosen; and Damon J. Chargois, Timothy P. Herron, Kamran Mashayekh, and Che D. Williamson from Chargois & Herron. To view the full resume of each attorney, please see **Exhibit D**.

Eric J. Belfi, a partner with the firm, is an accomplished litigator in a broad range of commercial matters. He concentrates his practice in the investigation and initiation of securities and shareholder class actions, with an emphasis on the representation of major international and domestic pension funds and other institutional investors. Prior to entering private practice, Mr. Belfi served as an Assistant Attorney General for the State of New York and an Assistant District Attorney for the County of Westchester, New York. As a prosecutor, Mr. Belfi investigated and prosecuted numerous white-collar criminal cases, including securities law violations. In this capacity, he presented hundreds of cases to the grand jury and obtained numerous felony convictions after jury trials.

Mr. Belfi is a regular speaker and author on issues surrounding securities litigation, with a focus on international institutional investors. He was invited to speak at the prestigious Eurosharehoders Annual Conference, in Brussels, in February 2008. Most recently, he spoke regarding securities class actions at the William H. Bowen School of Law at the University of Arkansas in June of 2008. Mr. Belfi is the co-author of *The Proportionate Trading Model: Real Science or Junk Science?* 52 Cleveland St. L.

Rev. 391 (2004-05) and "International Strategic Partnerships to Prosecute Securities Class Actions, Investment & Pensions Europe," *Investments & Pensions Europe*, 2005.

He received a B.A. from Georgetown University in 1992 and a J.D. from St. John's University School of Law in 1995.

Lawrence A. Sucharow, a nationally and peer recognized leader of the class action bar, is the chairman of Labaton Sucharow. In his capacity as chairman, he participates in developing the litigation and settlement strategies for virtually all of the class action cases Labaton Sucharow prosecutes. For more than three decades, Mr. Sucharow has devoted his practice to counseling clients and prosecuting cases on complex issues involving securities, antitrust, business transaction, product liability, and other class actions.

Mr. Sucharow is the co-author of "Executive Compensation -- Despite Reforms, Pay Is Less Transparent and Shareholder-Friendly Than in the Past," *New York Law Journal*, March 20, 2008, and "FIFO vs LIFO, Different ways to calculate shareholder losses for purposes of appointing lead plaintiff lead to different results," *Investment & Pensions Europe*, May 2006.

Mr. Sucharow earned a B.B.A., *cum laude*, from the Baruch School of the City College of the City University of New York in 1971 and a J.D., *cum laude*, from Brooklyn Law School in 1975.

Thomas A. Dubbs, a senior partner with the firm, specializes in the representation of institutional investors including pension funds in securities fraud and other types of litigation. A recognized leader in the field, Mr. Dubbs represented the first major private institutional investor to become a lead plaintiff in a class action under the Private Securities Litigation Reform Act. He was formerly Senior Vice President and Senior Litigation Counsel for Kidder, Peabody & Co. Incorporated ("Kidder") for seven years, where he represented Kidder in a variety of matters, including in many class actions. He is the only member of the plaintiffs' bar who has held a senior position at a major investment bank, and is, thus, uniquely able to advise on issues involving the underwriting process and due diligence requirements. Also, he is able to understand and anticipate the perspective and strategy of defense counsel in securities cases, a substantial tactical advantage in determining the proper approach to take in litigating, settling or trying a particular action.

Mr. Dubbs is the co-author of "US Focus: Time for Action," *Legal Week*, April 17, 2008. Mr. Dubbs frequently lectures to institutional investors and other groups such as the Government Finance Officers Association, the National Conference of Public Employee Retirement Systems and the Council of Institutional Investors. In March 2008, Mr. Dubbs participated in a roundtable discussion hosted by The Law Society in London regarding class actions lawsuits.

Mr. Dubbs received a B.A. and a J.D. from the University of Wisconsin in 1969 and 1974, respectively. In 1971, he earned an M.A. from the Fletcher School of Law and Diplomacy of Tufts University.

Christopher J. Keller, a partner with the firm, leads the firm's Case Evaluation Group and has been involved in investigating and initiating numerous securities class actions. He was a member of the trial team that successfully litigated the *In re Real Estate Associates Limited Partnership Litigation* in the United States District Court for the Central District of California. The six-week jury trial resulted in a landmark $184 million plaintiffs' verdict, which is one of the largest jury verdicts since the passage

of the Private Securities Litigation Reform Act of 1995. Most recently, he was instrumental in securing a $117.5 million settlement in *In re Mercury Interactive Securities Litigation*, which is one of the largest settlements to date in a securities options backdating class action.

Mr. Keller is the co-author of "Tellabs': PSLRA Pleading Test Comparative, Not Absolute," *New York Law Journal*, October 3, 2007, and "FIFO vs LIFO, Different ways to calculate shareholder losses for purposes of appointing lead plaintiff lead to different results," *Investment & Pensions Europe*, May 2006. Mr. Keller is a regular speaker at institutional investor gatherings. In June 2008, he spoke at a Continuing Legal Education course on subprime and mortgage related claims.

Mr. Keller received a B.S. from Adelphi University in 1993 and a J.D. from St. John's University School of Law in 1997.

Zachary M. Ratzman, Of Counsel to the firm, has been practicing in the area of securities fraud litigation for five years. Since early 2005, he has litigated the case *In re American International Group, Inc. Securities Litigation*, on behalf of three Ohio pension funds and a class of defrauded investors, and has played key roles in other noteworthy actions, including *In re Bristol-Myers Squibb Securities Litigation*. Prior to joining Labaton Sucharow, Mr. Ratzman practiced white-collar criminal defense and complex commercial litigation as an associate in the New York offices of Skadden Arps Slate Meagher & Flom LLP and Patterson Belknap Webb & Tyler LLP.

Mr. Ratzman received a B.A. from Ohio University, where he graduated *summa cum laude* and with Phi Beta Kappa honors. He earned a J.D. from the University of Michigan Law School, where he graduated, *magna cum laude,* and as a member of the Order of the Coif.

Ann E. Gittleman, an associate with the firm, is a Certified Public Accountant. Before becoming an attorney, she worked for PricewaterhouseCoopers LLP for more than two years, where she performed audits and interacted with governmental organizations, such as the SEC, IRS and Attorney General Office, in coordinating and facilitating investigations. As such, she is uniquely qualified to analyze complex fact patterns and utilize various principles of the accounting and auditing profession in actions involving accounting fraud.

Ms. Gittleman earned a B.S. and a B.A., both *magna cum laude*, from Bryant University in 1999, and received her J.D. from Brooklyn Law School in 2004, where she was a member of both the Moot Court Honor Society and the Securities Law Association.

Krista T. Rosen, an associate with the firm, focuses her practice in the area of securities class action litigation. She is a member of the team litigating the federal securities fraud class action against AIG, representing as Lead Plaintiff several Ohio pension funds.

Ms. Rosen earned a J.D. from the Benjamin N. Cardozo School of Law in 2006. During law school, she was selected to participate in the Securities Arbitration Clinic, where she represented investors in arbitration actions against securities brokers. Additionally, she served as the Articles Editor of the *Cardozo Law Review*. In March 2006, she was awarded third place in the 2005-2006 national writing competition sponsored by the Association of Securities and Exchange Commission Alumni (ASECA) for her Note entitled, *Staying in Court While Staying Discovery: Finding Exceptions for Government-Produced Documents Under the PSLRA.*

Damon J. Chargois was born on December 26, 1966. He was admitted to the Texas Bar on November 4, 1994, and the Arkansas Bar in 2006. Mr. Chargois received his undergraduate degree in English Literature in 1991 and received his Doctor of Jurisprudence from the University of Houston Law Center in May 1994. Mr. Chargois is licensed to practice in all Texas and Arkansas Courts, as well as Federal District Courts and the U.S. 5th Circuit Court of Appeals. Additionally, he has successfully tried a federal case to unanimous positive verdict that was subsequently affirmed by the 5th Circuit Court of Appeals and, then, had writ of certiorari denied by the U.S. Supreme Court, resulting in a final ruling affirming Mr. Chargois' verdict.

Mr. Chargois has handled a variety of class action and mass tort litigation cases, including a commercial, occupational, mass torts, including business transactions, products liability, pharmaceutical, class action, asbestos and benzene chemical exposures.

Upon graduating as class captain from his law school, Mr. Chargois worked as a corporate and insurance defense attorney in Dallas, Texas, with the law firm Cowles & Thompson, P.C., while also serving as criminal prosecutor for the townships of Rockwall, Rowlette, and Heath, Texas. In 1996, he became a mass tort plaintiff's trial lawyer, ultimately rising to Head of Litigation for national law firm Foster & Sear, L.L.P.

In 2004, the law firm Chargois & Herron was founded with Damon Chargois and Timothy P. Herron. In 2006, Chargois, Mashayekh & Herron was formed to specialize in commercial and class action lawsuits, and expand the firm's commercial and financial business interests. Mr. Chargois' practice is multi jurisdictional and he oversees litigation in several states on the federal and state level. He is a member of the State Bar of Texas Litigation Section, the American Association for Justice, and Texas Trial Lawyers Association. Chargois, Mashayekh & Herron has offices in the Woodlands, Texas; Little Rock, Arkansas; and New York, New York.

Mr. Chargois is a member of the Board of Directors for the University of Houston Law Alumni Foundation. Additionally, he is a member of the Advisory Board of Directors for Houston Achievement Place, a charity specializing in caring for the needs of at risk foster children. He has also served as a guest lecturer on a number of legal topics, including mass tort litigation and bankruptcy to the University of Arkansas—Little Rock Law School.

Timothy P. Herron was born in Hot Springs, Arkansas, on October 18, 1952. He was admitted to the Texas Bar in 1980. Mr. Herron did his undergraduate and graduate education at Texas Christian University receiving a Bachelor of Fine Arts in Speech and Communication in 1974 and a Master of Science in Speech and Communication in 1975. He taught as a professor at Samford University before being awarded a Fulbright Scholarship to attend Baylor Law School in Waco, Texas where he obtained his Juris Doctor Degree in 1980 (*cum laude*).

In law school, he was voted the most outstanding trial advocate in the nation and was on Baylor's national winning mock trial team. Mr. Herron began as an attorney with Baker & Botts in Houston in the employment litigation section. He left Baker Botts, to become a partner in the firm of Hope & Mays and later Crews & Herron in Conroe, Texas. In 1990, along with Don Wetzel, he formed the law firm of Wetzel & Herron which specialized in insurance defense and commercial litigation.

After representing mainly defense and commercial clients for eighteen years, Mr. Herron changed his practice to handle only plaintiffs' mass torts. In 1998, he started the law firm of Hissey Kientz &

Herron with Rob Kientz, and Mike Hissey, which since that time continues to handle mass tort litigation. Their cases include a wide range of occupational and mass torts, including asbestos and pharmaceutical litigation.

In 2004, the law firm Chargois & Herron was founded with Damon Chargois and Timothy P. Herron. In 2006, the firm expanded to specialize in commercial and class action lawsuits, and expand the firm's commercial and financial business interests. Mr. Herron's practice is multi jurisdictional and he oversees litigation in several states on the federal and state level. He is licensed in Texas and Arkansas. He is board certified in Civil Trial Litigation since 1989, is licensed to practice in the Federal Courts of Texas, and is a member of the State Bar of Texas in the Litigation Section and the AAJ and TTLA. In addition, he is chairman of the Unauthorized Practice of Law Committee of the State Bar of Texas, Region 5A. Chargois & Herron has offices in the Woodlands, Texas; Little Rock, Arkansas; and New York, New York.

Mr. Herron has expanded his business interests to include commercial banking and real estate. He was also involved in the founding of Post Oak Bank in Houston in 2003. He has been involved in the development and funding of commercial property development for the past four years in Texas, Oklahoma and Alabama.

Tim Herron has resided in Montgomery County, Texas for the past 26 years and has six children and one grandchild.

Kamran Mashayekh was admitted to the Texas State Bar on November 11, 1990. Mr. Mashayekh received his undergraduate degree in Political Science from Rice University in 1987 and received his Doctor of Jurisprudence from South Texas College of Law in August 1989.

In 2006, Kamran Mashayekh joined the law firm of Chargois & Herron to specialize in commercial and class action lawsuits and expand the firm's commercial and financial business interest. Mr. Mashayekh is fluent in English, Arabic, French and Spanish.

Che D. Williamson was born on November 25, 1964. She is married to Tim Herron and has 2 children and one grandchild. Ms. Williamson earned her Juris Doctor degree from South Texas College of Law in 1989. She has practiced law with her husband, Tim Herron since 1989. Ms. Williamson teaches mass torts at the William H. Bowen Law School at the University of Arkansas. She is also board certified in Civil Trial Litigation and holds a Ph.D. degree in criminal justice from Sam Houston State University and an L.L.M. in environmental law and policy from the University Houston Law School.

5.8 *Provide a very brief summary general description of your firm's practice in the subject matter areas covered by this RFQ, including the size and scope of the practice and any other resources of your firm which are relevant to your practice in those areas.*

Response by Labaton Sucharow

Labaton Sucharow has developed its expertise in prosecuting securities class actions over decades, and litigation on behalf of injured institutional and individual investors represents the firm's principal practice area. Since passage of the PSLRA, the firm has been appointed lead counsel on numerous occasions, including cases involving the largest investor losses and most egregious frauds, such as the current *Countrywide*, *American International Group* and *HealthSouth* litigations.

As noted above in response to question 5.4, Labaton Sucharow has a dedicated Case Evaluation Group comprised of attorneys and non-attorney professionals, who identify and evaluate cases of possible fraud, and who have developed proprietary criteria to rate such cases.

Labaton Sucharow has cultivated a specific expertise in enforcing accountability on the part of underwriters and accounting firms – entities that play an important role in the financial markets and, we believe, have special responsibility to ensure its proper functioning. One partner of the firm, who practiced for many years in the financial services sector, has made litigation against underwriters a principal focus of his practice with the firm. Two attorneys at Labaton Sucharow are certified public accountants, both with significant auditing experience. Their expertise in both law and accounting provides the firm a special capacity to identify and analyze accounting-related fraud, coordinate expert testimony, and effectively depose financial personnel.

The firm also highly values its non-attorney professionals, and believes that the close integration of their financial and investigative expertise with the firm's legal work provides Labaton Sucharow an unusual ability to build well-developed, thoroughly researched, and analytically rigorous cases and present them effectively to judges and juries.

Distinctively, the firm has a demonstrated willingness to go to trial when necessary. Since 2000, partners of the firm have served as lead or co-lead counsel in several major securities trials including, *In re Real Estate Associates Limited Partnerships Litigation*, No. 98-7035 (C.D. Cal.) and *Koppel v. 4987 Corp.*, 167 F.3d 125 (2d Cir. 1999). In the *Real Estate Associates* litigation, Lawrence Sucharow co-led a month-long jury trial that resulted in a $92 million compensatory award and a $92 million punitive damages award (later reduced to the maximum allowed under California law). In *Koppel*, the firm established a significant corporate governance precedent. We see our record of taking cases to trial as critical to our ability to negotiate credibly and forcefully on behalf of the institutions and classes we represent.

Finally, Labaton Sucharow strongly believes that shareholder litigation provides important public benefits by insuring fair and efficient public markets, regulating corporate governance, and controlling other deceptive conduct by public companies. The firm's senior partner, Edward Labaton, is a recognized authority on corporate governance issues, and is a member of the Advisory Committee of the University of Delaware's Weinberg Center for Corporate Governance and the New York City Bar Association's Task Force on the Role of Lawyers in Corporate Governance. He has also been President of the Institute for Law and Economic Policy since its founding.

Response by Chargois & Herron

Chargois & Herron has offices in Little Rock, Arkansas and The Woodlands, Texas, in addition to counsel affiliations with Labaton Sucharow in New York, Friedman Law Group in New York and Markun, Zussman & Compton in Los Angeles, California for the primary purpose of investigating and pursuing class action securities, commercial and consumer litigation which includes cases involving large investor losses and egregious fraud. Chargois & Herron has an attorney who dedicates a major portion of his work week watching the market, scouring financials and personally speaking with clients, financial experts and business leaders in our continuing effort to discover and root out fraud and misrepresentations by corporate wrongdoers.

5.9 *Provide a very brief summary description of not more than ten (10) significant transactions or cases in which your firm has provided extensive legal services involving pension funds or other institutional clients relating to the subject matter areas covered by this RFQ.*

Response by Labaton Sucharow

With respect to securities litigation, Labaton Sucharow has obtained substantial recoveries for institutional clients and associated classes in dozens of cases, and is recognized today as one of a small number of firms with the expertise and resources to prosecute the largest and most complex cases.

In one of the largest cases involving the recent subprime mortgage crisis, Labaton Sucharow serves as lead counsel representing Lead Plaintiffs the State of New York and the New York City Pension Funds (collectively, "the New York Funds") in *In re Countrywide Securities Litigation*, No. CV-07-5295 MRP (MANx) (C.D. Cal.), pending before U.S. District Judge Mariana R. Pfaelzer in the U.S. District Court for the Central District of California. This case is a consolidated class action asserting claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 against Countrywide Financial Corporation, certain of its current and former directors and officers, outside accountants, and underwriters of public offerings of Countrywide securities.

In *In re American International Group Inc. Securities Litigation*, Civ. No. 04-8141 (LTS) (S.D.N.Y.), Labaton Sucharow is lead counsel on behalf of Lead Plaintiffs the Ohio Public Employees Retirement System, and certain other Ohio state pension funds. Defendants include AIG, and its present and former senior executives, underwriters, auditor, and parties to various fraudulent transactions. In 2006, the court denied defendants' numerous motions to dismiss in substantially all respects. The document review will likely be one of the largest in the history of securities litigation; to date, we have reviewed more than 37 million pages of 40 million that defendants produced. Both fact depositions and class certification depositions have begun.

In *In re Mercury Interactive Corp. Securities Litigation*, Master File No. 05-3395, pending in the United States District Court for the Northern District of California, Labaton Sucharow is acting as co-lead counsel representing Lead Plaintiffs the Steamship Trade Association/International Longshoremen's Association Pension Fund, the City of Sterling Heights General Employees Retirement System, the City of Dearborn Heights Police and Fire Retirement System, and the Charter Township of Clinton Police & Fire Pension System. The allegations in Mercury concern backdated option grants used as unreported compensation to employees and officers of the Company. Mercury's former CEO, CFO, and General Counsel actively participated in and benefited from the options backdating scheme, which came at the expense of Mercury shareholders and the investing public. Labaton Sucharow and Hewlett-Packard's counsel reached an agreement in principle that will compensate injured plaintiffs in the total sum of $117.5 million, a figure representing the second largest known settlement or judgment in an options backdating suit to date. Labaton Sucharow and Hewlett-Packard's counsel executed a Stipulation of Settlement and the court granted preliminary approval of the settlement on June 2, 2008.

In *In re Bristol-Myers Squibb Securities Litigation*, Civ. No. 00-1990 (GEB) (D.N.J.), Labaton Sucharow, as sole lead counsel, prosecuted class claims on behalf of Lead Plaintiff, Longview Collective Fund of the Amalgamated Bank. The firm reviewed more than 5 million pages of documents, took 44 factual depositions and 18 expert depositions and defended 8 experts. The case settled in January 2006 for $185 million. The settlement also included the important public benefit of an agreement

by Bristol-Myers Squibb to post results of its clinical trials, including all adverse events, for a period of ten years.

In *In re HealthSouth Corp. Stockholder Litigation*, No. CV-03-BE-1501-S (N.D. Ala.), Labaton Sucharow represents Lead Plaintiffs the New Mexico State Investment Council and the New Mexico Educational Retirement Board and serves as co-lead counsel. The litigation alleges a broad scheme by the company's former senior managers in the largest securities fraud in the healthcare industry. In January 2007, the court approved a settlement valued at $445 million with HealthSouth Corporation and several of the Company's former officers and directors. The partial settlement, comprised of cash and HealthSouth securities, is one of the largest in history. Lead Plaintiffs continue their prosecution of the litigation against HealthSouth's former CEO, Ernst & Young, and UBS.

In *In re Waste Management, Inc. Securities Litigation*, Civ. No. H-99-2183 (S.D. Tex.), Labaton Sucharow was retained by the Connecticut Retirement Plans and Trust Funds. The litigation resulted in a $457 million settlement, one of the largest securities class action recoveries ever obtained. On behalf of its client and the Class, Labaton Sucharow secured substantial corporate governance enhancements, including measures designed to strengthen the role and independence of the defendant's audit committee, declassify its board of directors, and encourage and safeguard whistleblowers among the company's employees.

In *In re Real Estate Associates Limited Partnerships Litigation*, No. 98-7035 (C.D. Cal.), Labaton Sucharow litigated and tried this case to a jury verdict in federal court in California in late 2002. The firm obtained a precedent setting award of $92 million in compensatory damages under various legal theories, including violations of Section 14(a) of the Exchange Act. The jury also awarded an additional $92 million for punitive damages on a breach of fiduciary duty claim (which was later reduced by the court on a motion for remittitur). The case was eventually settled for more than 100% of claimed damages.

Labaton Sucharow also represents institutional investors in a number of individual securities actions. For example, in *In re Adelphia Communications Corp. Securities & Derivative Litigation*, Civ. No. 03 MD 1529 (LMM) (S.D.N.Y.), the firm represents the New York City Employees' Retirement System (and certain other New York City pension funds) and the Division of Investment of the New Jersey Department of the Treasury in separate individual actions against Adelphia's officers, auditors, underwriters, and lawyers. To date, Labaton Sucharow has fully resolved certain of the claims brought by New Jersey and New York City for amounts that significantly exceed the percentage of damages recovered by the Class. New Jersey and New York City continue to prosecute their claims against the remaining defendants. In *In re WorldCom Inc. Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.), Labaton Sucharow secured a substantial settlement in an individual action brought by our clients SunTrust Bank and Trusco Capital Management, Inc. against the former underwriters, auditors, and directors of WorldCom, Inc. In *In re Qwest Communications International Securities Litigation*, 01-cv-01451 (D. Col.), after a class action settlement was announced in September 2006, Labaton Sucharow was engaged by CalPERS to pursue all appropriate opt-out securities claims in connection with CalPERS' securities holdings in Qwest Communications Int'l Inc. We drafted complaints for use in both federal and state courts, obtained and extension of pre-existing polling agreement (which made it unnecessary for us to file complaints), represented CalPERS at two mediation sessions with Qwest and related defendants, and negotiated the final settlement

which was far greater than what CalPERS would have obtained in the class action and was proportional to the largest other opt-out settlement obtained against Qwest that we know of.

Response by Chargois & Herron

Chargois & Herron has represented a number of plaintiffs against corporations who have been proven to have acted fraudulently with respect to their shareholders or consumers.

In *Bristol County Retirement System vs. HCC Insurance Holdings, Inc.*, we served as liaison counsel representing the Massachusetts Public Pension Funds against HCC Holdings, Inc. arising out of its fraudulent options backdating practices we alleged. After almost two years of litigation, we are finalizing a significant settlement for our clients.

In *Holloway v. Countrywide*, we have co-counseled with Markun, Zussman & Compton against Countrywide arising out of its fraudulent subprime mortgage practices. Recently, our case received class certification status for the State of California.

Chargois & Herron owns an Alabama company called 270 Discovery Solutions which provides document research, indexing and computer inputting of the millions of items of information contained in the documents that are routinely produced – usually under court order – in securities class action litigation. Uniquely, our company is staffed almost entirely by licensed attorneys, numbering in excess of 25 attorneys. This puts Chargois & Herron in a unique and special position to handle any securities litigation matter, regardless of size.

5.10 *Please describe proposed billing arrangements, including contingency fees, for securities litigation. If other than contingency fees are contemplated, please state the range of hourly billing rates, by timekeeper status (paralegal, 1st to 3rd year associate, etc., staff attorney, shareholder or partner, of counsel, etc.), of all attorneys and paralegals proposed for assignment to ATRS matters. State what discount, if any, to these rates the firm proposes to provide to ATRS. While this RFQ primarily seeks the services of one lead attorney, the involvement of other firm attorneys may be required from time to time, depending on the matter.*

Response of Labaton Sucharow

Labaton Sucharow confirms that monitoring and evaluating services provided under this Proposal would be carried out at no cost to the ATRS.

The range of contingency fees that Labaton Sucharow proposes with respect to securities class actions (and individual actions) that we successfully resolve as litigation counsel for the ATRS is dependent on several factors anticipated at the beginning of the case, including the likelihood of success, the likely size of any settlement or judgment from any or all defendants. For example, in a case involving a solvent company, hundreds of millions of dollars in damages, and a defendant company that has admitted wrongdoing and/or filed a restatement, the proposed contingency fee would be at the low end of the proposed range. In a case involving smaller damages, no admission, no restatement, and potential difficulties in funding a settlement or a judgment, the risks of litigation would be greater and therefore the proposed attorneys' fees would be at the higher end of the range.

On the basis described above, Labaton Sucharow proposes a range of fees generally conforming to the following:

AMOUNT OF RECOVERY	STAGE OF LITIGATION: Initiation of action to completed briefing of motion to dismiss (or, if no such motion, initiation of discovery)	Thereafter, to completed briefing of motion for summary judgment (or, if no such motion, to completion of discovery)	Thereafter, to trial and entry of judgment	Thereafter (including appellate proceedings), to ultimate resolution
Up to $150 million	5-7%	12-17%	18-22%	21-24%
Greater than $150 million, up to $250 million	4-6%	7-10%	10-12%	12-14%
Greater than $250 million	4-6%	6-8%	8-9%	10%

Labaton Sucharow would offer legal services to the ATRS outside the scope of the "evaluation counsel" and "litigation counsel" functions discussed in the RFQ at the discounted hourly rates set forth below. These rates represent a discount of 40%-60% of the Firms' standard billing rates for their attorneys.

Eric J. Belfi
Lawrence A. Sucharow
Thomas A. Dubbs
Christopher J. Keller
Other Partners
} $350

Zachary M. Ratzman
Other Of Counsel
} $300

Ann E. Gittleman
Krista T. Rosen
Other Associates
} $250

Response by Chargois & Herron

Chargois & Herron, LLP confirms that monitoring and evaluating services provided under this Proposal would be carried out at no cost to the ATRS.

The range of contingency fees that Chargois & Herron proposes with respect to securities class actions (and individual actions) that we successfully resolve as litigation counsel for the ATRS is dependent on several factors anticipated at the beginning of the case, including the likelihood of success, the likely size of any settlement or judgment from any or all defendants. For example, in a case involving a solvent company, hundreds of millions of dollars in damages, and a defendant company that has admitted wrongdoing and/or filed a restatement, the proposed contingency fee would be at the low end of the proposed range. In a case involving smaller damages, no admission, no restatement, and potential difficulties in funding a settlement or a judgment, the risks of litigation would be greater and therefore the proposed attorneys' fees would be at the higher end of the range.

On the basis described above, Chargois & Herron proposes a range of fees generally conforming to the following:

AMOUNT OF RECOVERY	STAGE OF LITIGATION: Initiation of action to completed briefing of motion to dismiss (or, if no such motion, initiation of discovery)	Thereafter, to completed briefing of motion for summary judgment (or, if no such motion, to completion of discovery)	Thereafter, to trial and entry of judgment	Thereafter (including appellate proceedings), to ultimate resolution
Up to $150 million	5-7%	12-17%	18-22%	21-24%
Greater than $150 million, up to $250 million	4-6%	6-10%	10-12%	12-14%
Greater than $250 million	4-6%	4-6%	7-8½%	8-9½%

Chargois & Herron would offer legal services to the ATRS outside the scope of the "evaluation counsel" and "litigation counsel" functions discussed in the RFQ at the discounted hourly rates set forth below. These rates represent a discount of 40%-60% of the Firms' standard billing rates for their attorneys.

Damon J. Chargois
Tim Herron
Kamran Mashayekh
Che Williamson
(Partners) } $350

Kirk A. Chargois
Carlos A. Fernandez
(Associates) } $250

5.11 *State any inability to comply with terms of the engagement described in Section 3.3 of this RFQ. If any inability exists, be specific.*

For both Labaton Sucharow and Chargois & Herron, there are no inabilities to comply with the terms of the engagement described in Section 3.3 of this RFQ.

5.12 *Identify any known relationship, either business or personal, which you or a member of your firm has with any ATRS Board member, investment consultant, investment manager, or key employee. If aware of none, state "None." (A list of ATRS Board members, investment consultants, investment managers, and key employees can be provided upon request. A formal conflicts check will be required prior to contracting.)*

Labaton Sucharow and Chargois & Herron are not aware of any known relationships.

5.13 *Identify any relationship, either business or personal, which you or a member of your firm has with a person known to you to have substantial business dealings with ATRS or its real estate title-holding corporation.*

To the best of our knowledge, Labaton Sucharow and Chargois & Herron do not have any relationships, either business or personal, with a person who has substantial dealings with the ATRS or its real estate title-holding corporation.

5.14 *State whether you or any firm attorney proposed to provide services for this engagement has ever had a formal grievance or complaint lodged against him or her pursuant to the applicable disciplinary rules or has ever been sued for malpractice or any civil or criminal regulatory enforcement action in connection with any type of legal representation, and whether any such attorneys have been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution.*

Response by Labaton Sucharow

Labaton Sucharow (and its predecessor firms) have been in business for more than 45 years. For much of that time, the firm had a substantial general billable corporate practice as well as its contingent class action litigation practice. Labaton Sucharow currently has a very small general billable corporate practice. Throughout its existence, from time to time, issues have arisen which required notification of our malpractice insurance carrier. At the present time, the firm has provided notice of the following matters to its malpractice insurance carrier. (None of the matters of which our carrier has been notified involves class action litigation).

Labaton Sucharow is a defendant in a legal malpractice case brought by a former client who asserts the firm and others committed malpractice in representing him in civil and criminal matters, and that the firm inappropriately failed to compensate him in connection with a qui tam proceeding. The claim is for an unspecified amount of damages.

In a separate action, on March 19, 2008, the preliminary executors of the estate of Jack Maurer commenced an action in the Supreme Court of the State of New York against Labaton Sucharow, charging that the firm had committed malpractice in connection with estate planning services rendered in 2001. The firm has moved to dismiss and the motion is currently pending before the court.

Labaton Sucharow's attorneys have never been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution.

Response by Chargois & Herron

Chargois & Herron has never been sued for malpractice, nor had a formal grievance or complaint lodged against it nor had any civil or criminal regulatory enforcement action brought against it; however, Damon J. Chargois, individually has had a grievance in the Dillard's discrimination litigation and a grievance in asbestos litigation brought against him, but both have been and were dismissed

5.15 *For your response to this RFQ, please indicate the firm's or attorney's professional liability insurance limits within the following ranges, and the name of the carrier or carriers.*

Response of Labaton Sucharow

$5 million to $ 10 million

Labaton Sucharow's malpractice insurer is Lloyd's of London. Labaton Sucharow maintains professional malpractice insurance coverage in the amount of $10 million, representing both the

aggregate and per-claim annual policy limits and it is applied to the firm as a whole. Labaton Sucharow also maintains a fiduciary policy with a $2 million limit.

Response of Chargois & Herron
Under $5 million

Chargois & Herron's malpractice insurer is Texas Lawyers Insurance Exchange (TLIE). Chargois & Herron maintains professional malpractice insurance coverage in the amount of $1 million.

Indicate below the range or the deductible or any self-insured retention with respect to the foregoing insurance.

Response of Labaton Sucharow
Between $500,001 and $1 million

Labaton Sucharow's deductible is $1 million.

Response of Chargois & Herron
Between 0 and $100,000

Chargois & Herron's deductible is $25,000.

EX. 25

From:	Keller, Christopher J. </O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KELLERC>
Sent:	Monday, October 13, 2008 3:38 PM
To:	Belfi, Eric J. <EBelfi@labaton.com>; Bankston, Jennifer S. <jbankston@labaton.com>
Cc:	Sucharow, Lawrence <LSucharow@labaton.com>; Dubbs, Thomas <TDubbs@labaton.com>
Subject:	Arkansas Teachers RFQ 2008-2

Great news.

Christopher J. Keller, Esq.
Partner
Labaton Sucharow LLP
140 Broadway
New York, NY 10005
Phone: (212) 907-0853
Fax: (212) 883-7053
e-mail: ckeller@labaton.com
www.Labaton.com

-----Original Message-----
From: Belfi, Eric J.
Sent: Monday, October 13, 2008 1:57 PM
To: Keller, Christopher J.; Bankston, Jennifer S.
Cc: Sucharow, Lawrence; Dubbs, Thomas
Subject: Fw: Arkansas Teachers RFQ 2008-2

Please see communication from ATRS below.

I have reached out to Damon & Tim - it should not be an issue.

Eric J. Belfi
Partner
Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
Telephone: +1.212.907.0878
Facsimile: +1.212.883.7078
ebelfi@labaton.com
www.labaton.com

----- Original Message -----
From: Christa Clark <christac@artrs.gov>
To: Belfi, Eric J.
Cc: Tamara Henderson <tamarah@artrs.gov>
Sent: Mon Oct 13 12:20:49 2008
Subject: Arkansas Teachers RFQ 2008-2

I am pleased to inform you that subject to final approval of the Attorney General's office, ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system.

I would like to speak with you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.

If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or utilize them as independent contractors, if you deem is appropriate, on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conducive to a joint proposal.

Upon approval of the Attorney General, ATRS will send you a request for a form W-9, Arkansas Professional Services contract form, and State grant/contract disclosure form for your completion.

Please call me if you have a minute to discuss.

Regards,
--
Christa S. Clark
Chief Counsel
Arkansas Teacher Retirement System
1400 W. 3rd St.
Little Rock, AR 72201
(501) 682-1266 Direct
(501) 682-6326 Fax
(501) 590-2869 MOBILE
email: christac@artrs.gov

Thank you.

EX. 26

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/10/2010 12:59:55 PM
To: 'Tim Herron' [tim@cmhllp.com]; Damon Chargois [damon@cmhllp.com]
Subject: FW: Goldman Sachs
Attachments: Goldman Sachs Blue Ribbon Report (ATRS).pdf; Exhibit Nos. 1-9.pdf

---

From: Belfi, Eric J.
Sent: Monday, May 10, 2010 8:39 AM
To: 'George Hopkins'
Subject: RE: Goldman Sachs

Dear George:

Please find our Blue Ribbon Report for Goldman Sachs.

If you have any questions, do not hesitate to contact us.

Best regards,

Eric

From: Belfi, Eric J.
Sent: Thursday, April 22, 2010 9:54 AM
To: 'George Hopkins'
Subject: Goldman Sachs

George:

Please find our case report on Goldman Sachs. [redacted]

Since there are a number of outstanding issues with ATRS, please let us know if it would be beneficial for us to come down and met with you to go over everything.

Best regards,

Eric J. Belfi
Partner || Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
Telephone: +1.212.907.0878
Facsimile: +1.212.883.7078
ebelfi@labaton.com
<http://www.labaton.com/> www.labaton.com

EX. 27

From:	Belfi, Eric J. </O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE>
Sent:	Thursday, May 6, 2010 7:59 AM
To:	George Hopkins <georgeh@artrs.gov>
Bcc:	'Tim Herron' <tim@cmhllp.com>
Subject:	The Hartford - ATRS - REVISED
Attach:	HIG Litigation Update.pdf; The Hartford Investigative Update #1.pdf

Dear George:

Attached please find a memorandum summarizing the fruits of our internal research to date, particularly regarding evidence of scienter and areas of exploration into which our insurance and accounting experts are delving. Also attached hereto is our first investigative update, summarizing information provided by two confidential witnesses. We have a number of additional promising confidential witness leads, and look forward to providing ATRS with another progress update shortly, together with the initial findings of our experts.

Please do not hesitate to let me know if you have any questions relating to The Hartford securities class action -- or any other matters.

Best regards,

Eric J. Belfi
Partner | | Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
Telephone: +1.212.907.0878
Facsimile: +1.212.883.7078
ebelfi@labaton.com
www.labaton.com

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/17/2010 2:31:39 PM
To: tim@cmhllp.com; 'damon@cmhllp.com' [damon@cmhllp.com]
Subject: FW: Follow up

This is one, now we need [redacted]

-----Original Message-----
From: George Hopkins [mailto:georgeh@artrs.gov]
Sent: Sunday, May 16, 2010 3:51 PM
To: Brad Beckworth
Cc: Belfi, Eric J.; ATRS Laura Gilson
Subject: Re: Follow up

I think this is a great plan with a great team. Ghop ------Original Message------
From: Brad Beckworth
To: Ghop
Cc: Eric J. Belfi
Cc: ATRS Laura Gilson
Cc: Ghop
Subject: Re: Follow up
Sent: May 16, 2010 2:37 PM

Thanks George.

Eric and I talked and we are willing to work together. We will get the papers prepared and be in touch.

Have a nice rest of the weekend.

Brad Beckworth
Nix, Patterson & Roach LLP
205 Linda Drive
Daingerfield, Texas 75638
(903) 645-7333

On May 15, 2010, at 9:33 AM, "George Hopkins" <georgeh@artrs.gov> wrote:

> I think the decision is so close that I cannot make a choice between
> NP and Labaton. The strengths of both firms vary and the combined
> firms has great coverage of all concerns. So I have decided to ask
> the two firms to seek a joint filing on behalf of ATRS. I have added
> both contacts by this email. Let me know if each of you are willing
> to work with the other. Ghop ------Original Message------
> From: Brad Beckworth
> To: Ghop
> Subject: Follow up
> Sent: May 15, 2010 9:23 AM
>
> Hi George,
> It was good seeing you Wednesday. I know you had a busy day and
> appreciate you taking time out for us.
> I wanted to follow up and see where things stand regarding Hartford.
> We are a couple weeks out on the lead plaintiff deadline, so I want to
> make sure we are ready.
> I am available to talk this weekend if you'd like (903-235-7709)----I
> didn't want to call and bother you on a weekend.
>
> Otherwise, I will try you Monday.
>
> Take care,
> Brad
>
>
> Brad Beckworth
> Nix, Patterson & Roach LLP
> 205 Linda Drive
> Daingerfield, Texas 75638

> (903) 645-7333
>
>
>
> ATRS Executive Director

ATRS Executive Director

EX. 28

EX. 29

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/17/2010 6:41:39 PM
To: 'damon@cmhllp.com' [damon@cmhllp.com]; tim@cmhllp.com
Subject: Colonial
Attachments: 20100514163957.PDF

Here was the letter to George

From: Johnson, James
Sent: Friday, May 14, 2010 5:39 PM
To: Johnson, James
Subject:

Labaton Sucharow

Eric J. Belfi
Partner
212 907 0878 direct
212 883 7078 fax
email ebelfi@labaton.com

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

May 14, 2010

Via Email

George Hopkins, Executive Director
Arkansas Teachers Retirement System – Domestic
1400 West Third Street
Little Rock, AR 72201

Re: In re Colonial BancGroup, Inc. Sec. Litig.
Our File No. 016486.0001

Dear George:

I am writing to update you regarding recent developments in the *Colonial BancGroup* action.

[redacted]

Sincerely yours,

Eric

Eric J. Belfi

EX. 30

Message

From: /o=Goodkin Labaton Rudoff Sucharow/ou=First Administrative Group/cn=Recipients/cn=belfie [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/2/2013 9:03:50 PM
To: George Hopkins (georgeh@artrs.gov) [georgeh@artrs.gov]
BCC: Damon Chargois (damon@cmhllp.com) [damon@cmhllp.com]
Subject: Facebook Motion to Dismiss - Email 2 of 2
Attachments: 2013-04-30 DECLARATION of Andrew B. Clubok in Support MOTION to Dismiss Dkt 91.pdf

George:

Attached is the Declaration in support of the motion to dismiss.

Eric

EX. 31

Message

From: /o=Goodkin Labaton Rudoff Sucharow/ou=First Administrative Group/cn=Recipients/cn=belfie [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 10/23/2013 7:36:59 PM
To: Damon Chargois (damon@cmhllp.com) [damon@cmhllp.com]
Subject: In re Facebook Securities Litigation
Attachments: October 23, 2013 Ltr to ATRS.pdf; PowerPoint Presentation - Lead Plaintiffs' Opposition to the Motion to Dismiss.pdf; 2013-10-08 HEARING TRANSCRIPT Motion to Dismiss (WORD file) (1082701_1).DOC; Law 360 Article.pdf

Here is the letter to George Hopkins together with all the attachments.

EX. 32

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 7/24/2013 11:06:56 AM
To: George Hopkins [georgeh@artrs.gov]
BCC: Damon Chargois [damon@cmhllp.com]
Subject: Goldman

George:

We have been following the trial - some interesting testimony.

Share us on:
<http://twitter.com/share?text=Player%20In%20Goldman%20Deal%20Says%20She%20Was%20Misled%20About%20Abacus&url=http://www.law360.com/securities/articles/459453> Twitter
<http://www.facebook.com/share.php?u=http://www.law360.com/securities/articles/459453> Facebook
<http://www.linkedin.com/shareArticle?mini=true&url=http://www.law360.com/securities/articles/459453&summary=A+key+government+witness+in+the+fraud+trial+against+former+Goldman+Sachs+Group+Inc.+trader+Fabrice+Tourre+said+Tuesday+that+she+was+misled+about+the+allegedly+built-to-fail+Abacus+transaction%2C+though+stopped+short+of+saying+that+Tourre+himself+lied.&title=Player+In+Goldman+Deal+Says+She+Was+Misled+About+Abacus&source=Law360> LinkedInBy Richard Vanderford
<http://www.law360.com/securities/articles/459453?nl_pk=e815b2bc-ec37-4835-b586-99356fa52f10&utm_source=newsletter&utm_medium=email&utm_campaign=securities#comments> 0 Comments

Law360, New York (July 23, 2013, 7:25 PM ET) -- A key government witness in the fraud trial against former Goldman Sachs Group Inc <http://www.law360.com/companies/goldman-sachs-group-inc> . trader Fabrice Tourre said Tuesday that she was misled about the allegedly built-to-fail Abacus transaction, though stopped short of saying that Tourre himself lied.

Laura Schwartz, a former senior managing director at ACA Management LLC, said she was not told that a hedge fund that helped structure the Abacus transaction, Paulson & Co., had actually bet against it. ACA was formally in charge of picking a bundle of residential mortgage-backed securities that formed Abacus 2007-AC1, a collateralized debt obligation.

Paulson, which allegedly had significant influence on what RMBS were put into Abacus, made about $1 billion when the CDO collapsed along with the housing market, according to the U.S. Securities and Exchange Commission <http://www.law360.com/agencies/securities-and-exchange-commission> . The commission claims Tourre, the alleged "deal captain" for the Abacus deal, defrauded investors by failing to disclose Paulson's intention to go short and also tricked ACA.

Schwartz, though, said she was not directly lied to and did not explicitly blame Tourre for her misperception.

"I believed Paulson would be the equity investor in that transaction," Schwartz said.

But when asked where she got that belief, Schwartz responded that her early knowledge of the structure of the deal came from a meeting with Gail Kreitman, a Goldman salesperson when the Abacus deal was being worked out.

Kreitman, another SEC witness, has already testified that she believed Paulson was long on Abacus. She said she did not know who in particular at Goldman gave her that impression.

Schwartz stressed under SEC questioning that, whatever the source of her belief about Paulson's role in the transaction, ACA was allowed to maintain its misperception. No one at Goldman corrected Schwartz after, in an email to Krietman, she referred to Paulson's "equity perspective" on Abacus, Schwartz testified.

She added that Paulson was referred to as "transaction sponsor" in an email from Tourre, though later conceded that term has no specific definition in the financial world.

Schwartz told jurors that Paulson was given the opportunity to put forward RMBS for inclusion in Abacus. ACA would not have gone forward with the deal had it known the fund was an intended short investor, Schwartz said.

"If somebody only wanted to go short that means it was designed to fail and that was not something we would have done," Schwartz said.

Schwartz's testimony on that point echoed <http://www.law360.com/articles/459149/short-on-goldman-deal-kept-quiet-tourre-jury-told> that of her former boss, ex-ACA CEO Alan Roseman, who said knowledge of Paulson's intention to short would have stopped the transaction in its place.

On cross-examination, Schwartz conceded that ACA had detailed standards for deciding what RMBS were worthy of inclusion in a portfolio and would not have changed those standards based on input from a prospective investor.

"What if Joe had recommended it," Tourre's lawyer John P. Coffey asked, referring to the courtroom deputy. "Would that have affected whether it met the standards of being on the approved list?"

"No," Schwartz said.

"What if it's a long investor," Coffey said.

"No," she said.

Schwartz testimony is scheduled to resume Wednesday morning. Tourre is slated to testify Wednesday afternoon, according to U.S. District Judge Katherine B. Forrest, who is presiding over the case.

Goldman in 2010 agreed to pay $550 million to settle an SEC suit related to Abacus.

Tourre's lawyers have argued that he was one of many Goldman employees who had a hand in Abacus and that disclosures to clients were looked over by Goldman professionals.

Tourre is represented by Pamela R. Chepiga and Andrew Rhys Davies of Allen <http://www.law360.com/firms/allen-overy> & Overy LLP and the Law Office of John P. Coffey.

The case is SEC v. Goldman Sachs & Co. et al., case number 1:10-cv-03229 <http://www.law360.com/cases/4d43f5345002d10782000062> , in the U.S. District Court for the Southern District of New York.

--Editing by Andrew Park.

Related Articles

* <http://www.law360.com/articles/458711/tourre-did-nothing-wrong-goldman-exec-testifies?article_related_content=1> Tourre Did Nothing Wrong, Goldman Exec Testifies

Eric Belfi
Partner
Labaton Sucharow LLP
140 Broadway
New York, N.Y. 10005
o: 1.212.907.0878
c: 1.516.509.5236

EX. 33

Labaton Sucharow

Eric J. Belfi
Partner
212 907 0878 direct
212 883 7078 fax
ebelfi@labaton.com

September 24, 2010

VIA E-MAIL

Mr. George Hopkins
Arkansas Teacher Retirement System
1400 West Third Street
Little Rock, AR 72201

Re: State Street Corp.

Dear Mr. Hopkins:

We are pleased that Arkansas Teacher Retirement System ("Arkansas Teacher") has asked Labaton Sucharow LLP ("Labaton") to represent it and pursue claims against its custodian, State Street Corporation ("State Street" or the "Company") in connection with State Street's foreign currency ("FX") pricing misconduct. This representation includes the commencement of litigation against the Company's board of directors for breach of fiduciary duties. We would like to confirm our arrangements with respect to this matter.

Labaton will be paid a fee of between 22.5% and 30% of any recovery or benefit conferred on the shareholder class, subject to court approval, plus expenses which will be advanced by Labaton. Expenses subject to reimbursement may include, among other things, expert witness fees, photocopying, computer research, long distance telephone charges, fax charges, court fees, travel expenses and delivery charges. Labaton will also advance costs of Arkansas Teacher relating directly to the litigation, such as for travel. Arkansas Teacher shall have no obligation to pay any fee or expense related to the action. Typically, such fees or reimbursement of expenses are paid by or on behalf of State Street. If nothing is recovered, Arkansas Teacher shall owe Labaton no fees or expense reimbursement.

Labaton
Sucharow

Arkansas Teacher agrees that Labaton may divide fees with other attorneys for serving as local counsel, as referral fees, or for other services performed in connection with the litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting the prosecution of an action. The division of fees with other counsel is Labaton's sole responsibility and will not increase the fees payable upon a successful resolution of the litigation.

Labaton will keep Arkansas Teacher timely apprised of significant developments and decisions in the case. Labaton will provide periodic written reports on a regular basis and will notify Arkansas Teacher in advance regarding court appearances, depositions or other significant proceedings. Labaton will consult with Arkansas Teacher to discuss legal issues and strategies and will seek prior approval regarding significant decisions; specifically, those decisions concerning settlement or fee proposals. Labaton agrees to provide Arkansas Teacher with copies of all pleadings pertaining to this matter and will provide significant pleadings to Arkansas Teacher in advance of submission to the court. Labaton agrees to meet with Arkansas Teacher, or its representatives, to discuss this matter, as required.

Arkansas Teacher hereby provides Labaton with authority to execute documents and agreements relating directly to the litigation on its behalf and to collect and hold on its behalf monies paid to it by way of settlement. Arkansas Teacher also agrees to cooperate fully with Labaton in its handling of the claims. Arkansas Teacher will make its representatives available for consultation and legal proceedings, promptly supply information and documents requested in a truthful and complete fashion, refrain from negotiating and settling the matter without the participation of Labaton and notify Labaton of any change of address.

It is hereby expressly recognized that Arkansas Teacher may at some future time choose to move to be lead plaintiff in an unrelated shareholder case and choose a firm other than Labaton as counsel. In such a case, Arkansas Teacher agrees that it is not a conflict if Labaton is retained by another investor also seeking to be lead plaintiff and hereby waives any possible conflict.

If the terms of this engagement letter meet with Your approval, please sign below and where indicated on the enclosed copy. Return one fully executed copy to us, keeping the second copy for your files.

Labaton Sucharow

We are grateful for the opportunity to represent Arkansas Teacher in this matter, and look forward to the prospect of a favorable resolution.

Very truly yours,

Eric J. Belfi

AGREED TO AND ACCEPTED

this _____ day of _____, 2010

_____

George Hopkins
Executive Director

EX. 34

Labaton Sucharow

Eric J. Belfi
Partner
212 907 0878 direct
212 883 7078 fax
ebelfi@labaton.com

February 8, 2011

VIA E-MAIL

Mr. George Hopkins
Arkansas Teacher Retirement System
1400 West Third Street
Little Rock, AR 72201

Re: State Street Corporation

Dear Mr. Hopkins:

We are pleased that the Arkansas Teacher Retirement System ("Arkansas Teacher" or the "System") has agreed to retain Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") in connection with the pursuit of claims against the System's custodian, State Street Corporation ("State Street"), as a result of State Street's misconduct as it relates to the pricing of foreign currency ("FX") transactions. The Firm's representation includes the commencement of class litigation against State Street and certain of its subsidiaries and/or officers or directors for, among other potential viable claims, breaches of fiduciary and other duties (the "Litigation"). The following confirms our arrangement with respect to the Litigation.

Labaton Sucharow will prosecute this Litigation on a wholly contingent fee basis. In addition, any fee request will be based upon customary and ordinary fees for class actions and our lodestar and submitted to the Court for its approval. Labaton Sucharow will be entitled to receive only such fees as the Court determines to award, plus expenses, which will be advanced by the Firm. Expenses will include, among other things, expert witness fees, photocopying, computer research, long distance telephone charges, fax charges, court fees, travel expenses, and delivery charges. Labaton Sucharow will also advance any Arkansas Teacher's out-of-pocket costs relating directly to the Litigation, *e.g.*, travel costs.

Labaton Sucharow

Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting with the prosecution of the Litigation. Any division of fees among counsel will be Labaton Sucharow's sole responsibility and will not increase the fees payable by Arkansas Teacher or the Class upon a successful resolution of the Litigation.

Labaton Sucharow will keep Arkansas Teacher timely apprised of significant developments and, on a regular basis, will provide periodic written reports and will notify the System as to court appearances, depositions, and other significant proceedings in advance thereof. Labaton Sucharow will consult with Arkansas Teacher to discuss legal issues and strategies and will seek prior approval regarding significant decisions; specifically, decisions concerning settlement and fee proposals. Labaton Sucharow agrees to provide Arkansas Teacher with copies of all pleadings pertaining to the Litigation and will provide the System with significant pleadings in advance of submission to the court. Labaton Sucharow agrees to meet with the representatives of Arkansas Teacher to discuss this matter, from time to time as required.

Arkansas Teacher hereby provides Labaton Sucharow with authority to execute documents and agreements on its behalf relating directly to the Litigation. Arkansas Teacher also agrees to cooperate fully with the Firm in its handling of the Litigation. Arkansas Teacher will make its representatives available for consultation and legal proceedings, promptly supply information and documents requested in a truthful and complete fashion, refrain from negotiating and settling the matter without the participation of the Firm, and will notify Labaton Sucharow of any change of address and other administration changes relevant to the Firm's representation.

In the event that the Court does not certify the class and the Litigation is prosecuted individually, on behalf of Arkansas Teacher, Labaton Sucharow's fee will be negotiated in good faith based upon customary and ordinary fees for individual actions and our lodestar (the "Negotiated Fee"). Labaton Sucharow acknowledges that the Negotiated Fee will be subject to approval by the Arkansas Teacher's Board.

If the terms of this engagement letter meet with Arkansas Teacher's approval, please sign below where indicated on the enclosed copy. Please return one fully executed copy to us, and retain the second copy for the System's files.

We are grateful for the opportunity to represent Arkansas Teacher in this matter, and look forward to the prospect of a favorable resolution.

Labaton Sucharow

Very truly yours,

Eric J. Belfi

Eric J. Belfi

AGREED TO AND ACCEPTED

this ____ day of _____, 2011

_____

George Hopkins
Executive Director

EX. 35

Labaton Sucharow

Eric J. Belfi
Partner
212 907 0878 direct
212 883 7078 fax
ebelfi@labaton.com

February 8, 2011

VIA E-MAIL

Mr. George Hopkins
Arkansas Teacher Retirement System
1400 West Third Street
Little Rock, AR 72201

Re: State Street Corporation

Dear Mr. Hopkins:

We are pleased that the Arkansas Teacher Retirement System ("Arkansas Teacher" or the "System") has agreed to retain Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") in connection with the pursuit of claims against the System's custodian, State Street Corporation ("State Street"), as a result of State Street's misconduct as it relates to the pricing of foreign currency ("FX") transactions. The Firm's representation includes the commencement of class litigation against State Street and certain of its subsidiaries and/or officers or directors for, among other potential viable claims, breaches of fiduciary and other duties (the "Litigation"). The following confirms our arrangement with respect to the Litigation.

Labaton Sucharow will prosecute this Litigation on a wholly contingent fee basis. In addition, any fee request will be based upon customary and ordinary fees for class actions and our lodestar and submitted to the Court for its approval. Labaton Sucharow will be entitled to receive only such fees as the Court determines to award, plus expenses, which will be advanced by the Firm. Expenses will include, among other things, expert witness fees, photocopying, computer research, long distance telephone charges, fax charges, court fees, travel expenses, and delivery charges. Labaton Sucharow will also advance any Arkansas Teacher's out-of-pocket costs relating directly to the Litigation, *e.g.*, travel costs.

Labaton Sucharow

Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting with the prosecution of the Litigation. Any division of fees among counsel will be Labaton Sucharow's sole responsibility and will not increase the fees payable by Arkansas Teacher or the Class upon a successful resolution of the Litigation.

Labaton Sucharow will keep Arkansas Teacher timely apprised of significant developments and, on a regular basis, will provide periodic written reports and will notify the System as to court appearances, depositions, and other significant proceedings in advance thereof. Labaton Sucharow will consult with Arkansas Teacher to discuss legal issues and strategies and will seek prior approval regarding significant decisions; specifically, decisions concerning settlement and fee proposals. Labaton Sucharow agrees to provide Arkansas Teacher with copies of all pleadings pertaining to the Litigation and will provide the System with significant pleadings in advance of submission to the court. Labaton Sucharow agrees to meet with the representatives of Arkansas Teacher to discuss this matter, from time to time as required.

Arkansas Teacher hereby provides Labaton Sucharow with authority to execute documents and agreements on its behalf relating directly to the Litigation. Arkansas Teacher also agrees to cooperate fully with the Firm in its handling of the Litigation. Arkansas Teacher will make its representatives available for consultation and legal proceedings, promptly supply information and documents requested in a truthful and complete fashion, refrain from negotiating and settling the matter without the participation of the Firm, and will notify Labaton Sucharow of any change of address and other administration changes relevant to the Firm's representation.

In the event that the Court does not certify the class and the Litigation is prosecuted individually, on behalf of Arkansas Teacher, Labaton Sucharow's fee will be negotiated in good faith based upon customary and ordinary fees for individual actions and our lodestar (the "Negotiated Fee"). Labaton Sucharow acknowledges that the Negotiated Fee will be subject to approval by the Arkansas Teacher's Board.

If the terms of this engagement letter meet with Arkansas Teacher's approval, please sign below where indicated on the enclosed copy. Please return one fully executed copy to us, and retain the second copy for the System's files.

We are grateful for the opportunity to represent Arkansas Teacher in this matter, and look forward to the prospect of a favorable resolution.

Labaton Sucharow

Very truly yours,

Eric J. Belfi

Eric J. Belfi

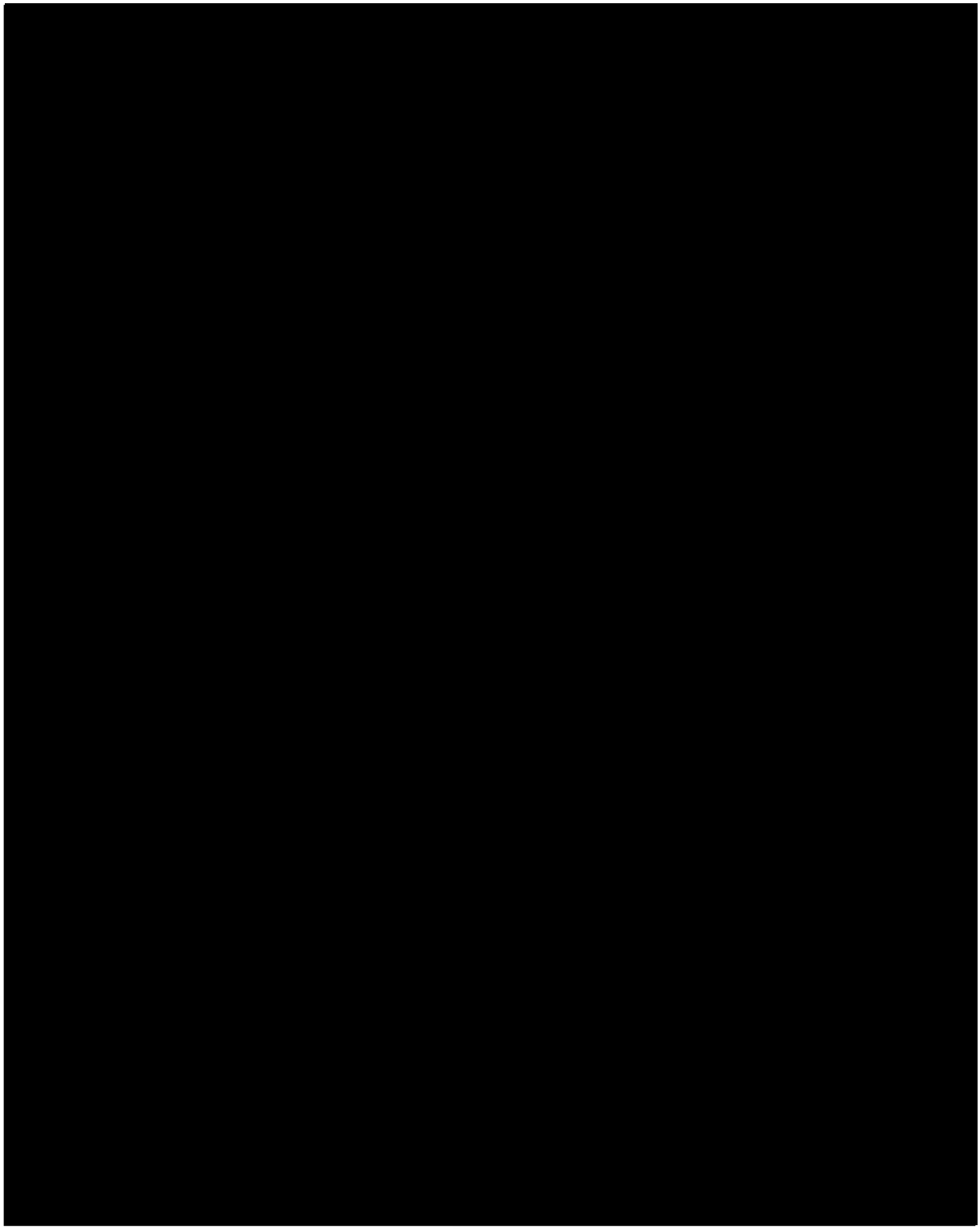
AGREED TO AND ACCEPTED

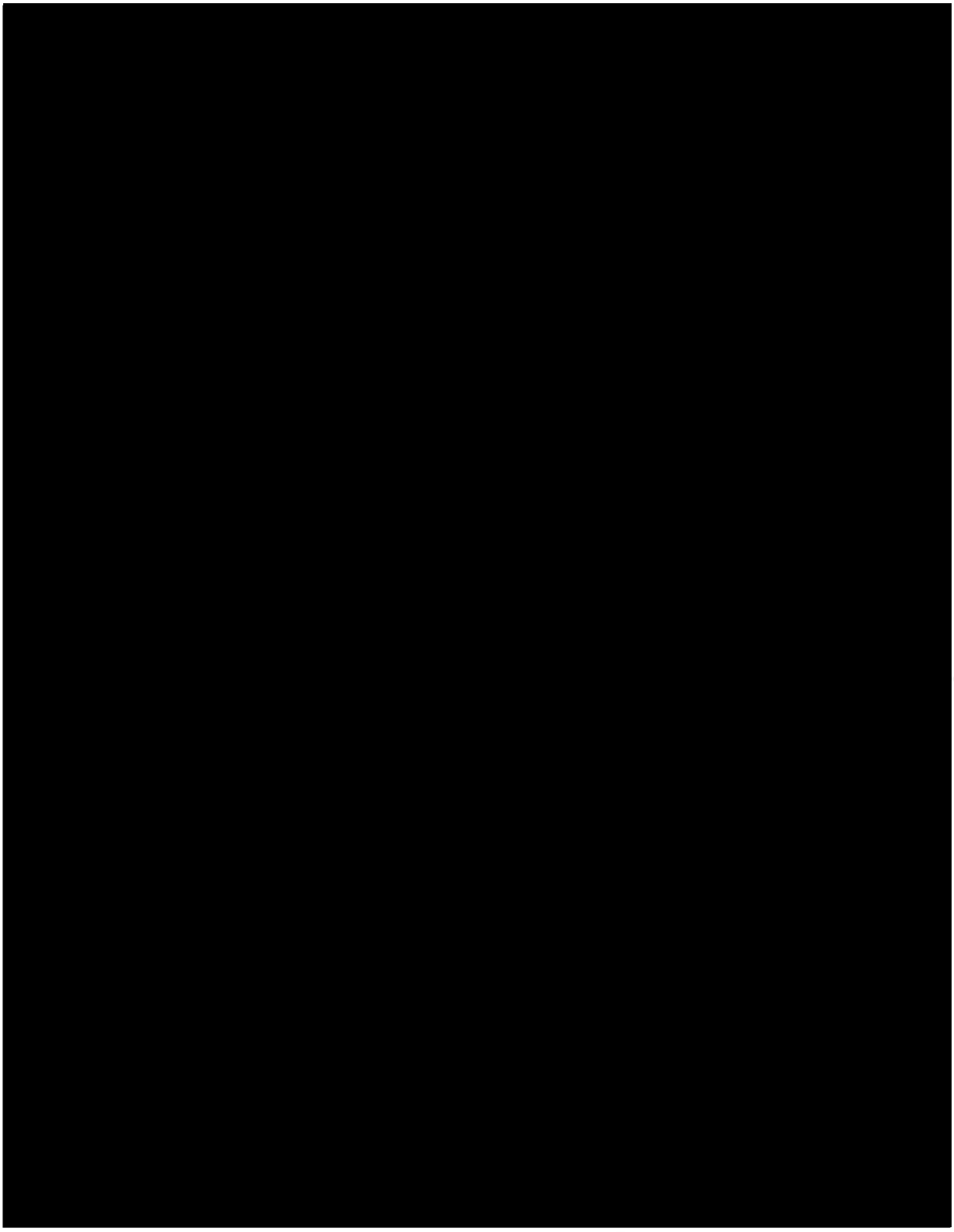
this ____ day of _____, 2011

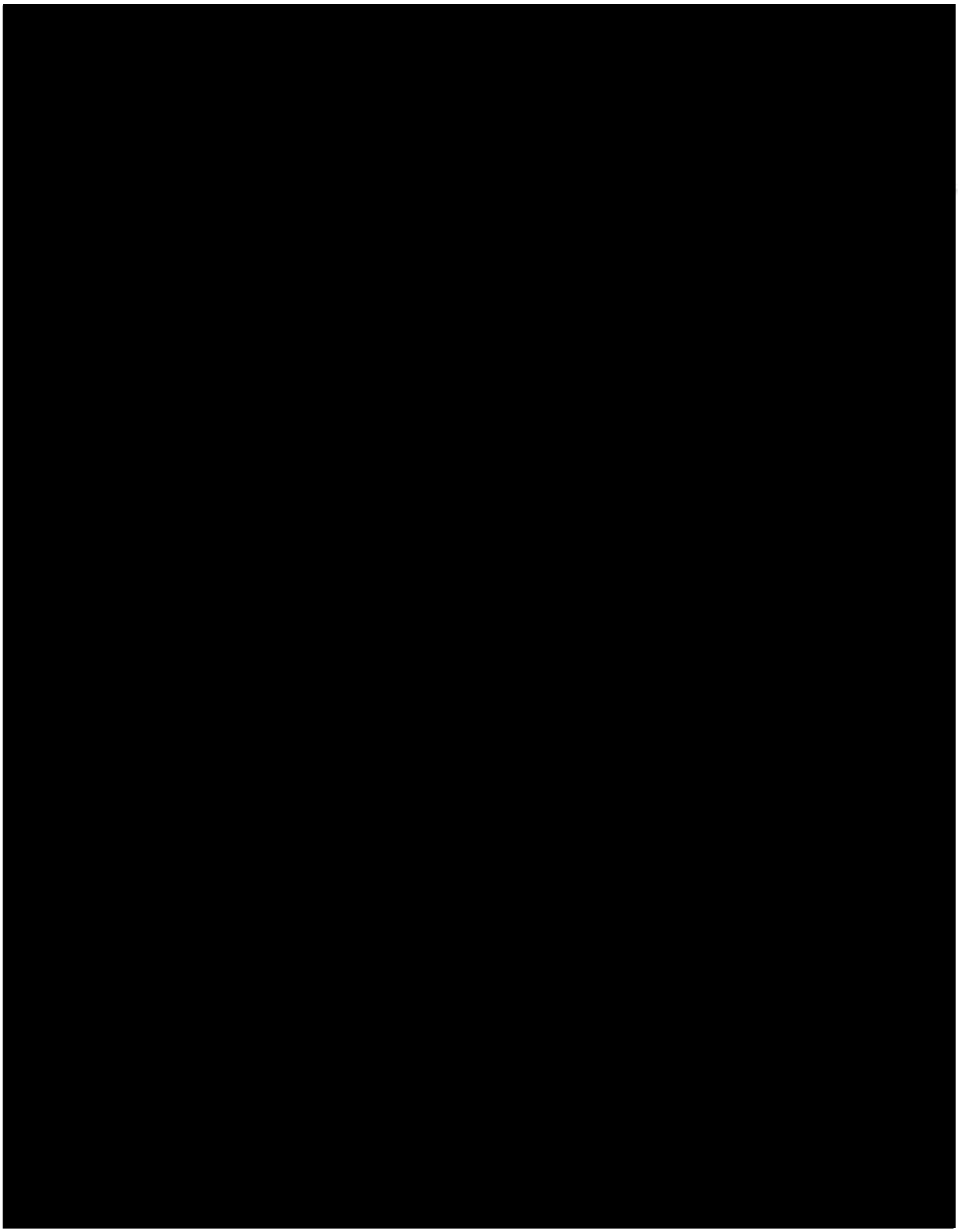
_____

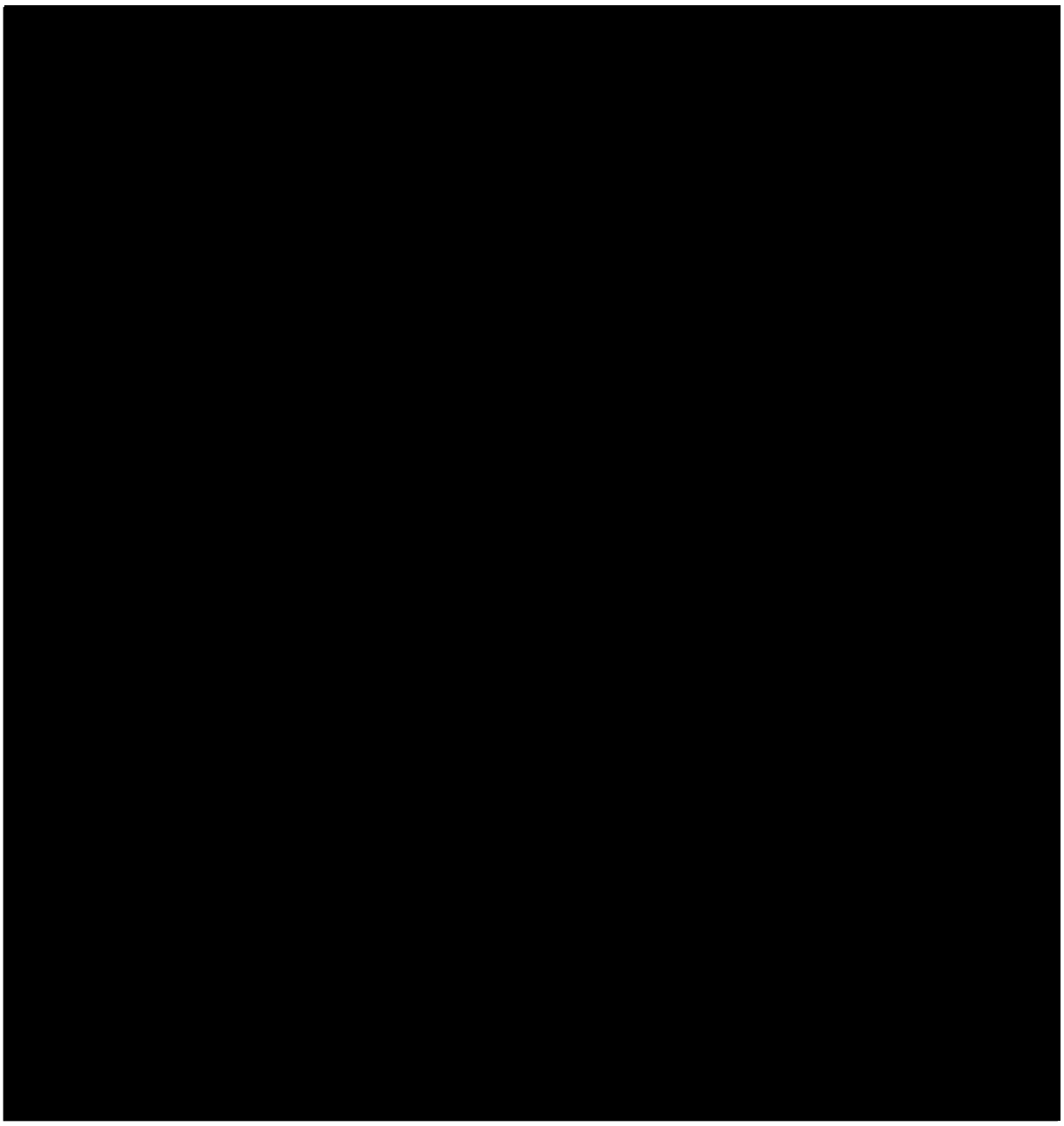
George Hopkins
Executive Director

EX. 36









EX. 37

Message

From: Damon Chargois [damon@cmhllp.com]
Sent: 4/25/2013 1:23:44 AM
To: Garrett J. Bradley [gbradley@tenlaw.com]
CC: Robert L. Lieff [RLIEFF@lchb.com]; Robert L. Lieff [rlieff@lieff.com]; Michael Thornton [MThornton@tenlaw.com]; Belfi, Eric J. [EBelfi@labaton.com]; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: Re: State street fee regarding local counsel

Thank you, Garrett. Agreed.

Sent from my iPhone

On Apr 24, 2013, at 8:08 PM, "Garrett Bradley" <GBradley@tenlaw.com> wrote:

> Bob,
>
> As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% guaranteed each with the balance to be decided upon at a later date. Obviously this may go up should Labaton receive an amount higher than 20%.
>
> We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), will be paid off the top with the balance of the overall fee 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
>
>
> _____
>
>
>
> This e-mail and any files transmitted with it are confidential and are
>
> intended solely for the use of the individual or entity to whom they are
> addressed. This communication may contain material protected by the
> attorney-client privilege. If you are not the intended recipient or the person
> responsible for delivering the e-mail to the intended recipient, be advised that
> you have received this e-mail in error and that any use, dissemination,
> forwarding, printing, or copying of this e-mail is strictly prohibited. If you
> have received this e-mail in error; please immediately notify us by telephone at
> (800) 431-4600. You will be reimbursed for reasonable costs incurred in
> notifying us.
>
>
>
> Please consider the environment before printing this email.

EX. 38

Message

From: Belfi, Eric J. [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=BELFIE]
Sent: 5/6/2013 11:50:34 AM
To: Robert L. Lieff [RLIEFF@lchb.com]; Garrett J. Bradley [gbradley@tenlaw.com]; =SMTP:rlieff@lieff.com; Michael Thornton [MThornton@tenlaw.com]
CC: =SMTP:damon@cmhllp.com; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: RE: State street fee regarding local counsel

We are in full agreement.

Eric

-----Original Message-----
From: Lieff, Robert L. [mailto:RLIEFF@lchb.com]
Sent: Wednesday, April 24, 2013 9:18 PM
To: Garrett J. Bradley; Robert L. Lieff; Michael Thornton; Belfi, Eric J.
Cc: Damon Chargois Esq.; Keller, Christopher J.; Daniel P. Chiplock
Subject: RE: State street fee regarding local counsel

I am in full agreement. Bob

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: Wednesday, April 24, 2013 6:07 PM
To: Lieff, Robert L.; Robert L. Lieff; Michael Thornton; Eric Belfi
Cc: Damon Chargois Esq.; Christopher J. Keller Esq.; Chiplock, Daniel P.
Subject: State street fee regarding local counsel

Bob,

As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% guaranteed each with the balance to be decided upon at a later date. Obviously this may go up should Labaton receive an amount higher than 20%.

We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), will be paid off the top with the balance of the overall fee 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. 39

From: Chiplock, Daniel P. <DCHIPLOCK@lchb.com>
Sent: Friday, August 28, 2015 3:02 PM
To: 'Sucharow, Lawrence'
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

If the Arkansas and ERISA fees didn't come off the top, I guess the split would look like this:
&
Labaton& - 20%
LCHB – 20%
Thornton – 20%
ERISA – 9%
Arkansas – 5%
Labaton/LCHB/Thornton – 26%
&
&
If the Arkansas and ERISA fees do come off the top, I guess the split looks like this:
&
ERISA – 9%
Arkansas – 5%
Labaton – 17.2%
LCHB – 17.2%
Thornton – 17.2%
Labaton/LCHB/Thornton – 34.4%
&
&
I'm not the math wizard, so please correct me if anyone comes up with different figures.
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 3:27 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
Just my own thinking on this but I think the deal with them would be that their percentage does come off the top (although what the top is is another question). I can't imagine how else it would be calculated since all the other fees are two customer counsel.

Sent from my iPhone

On Aug 28, 2015, at 2:11 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> Actually one wrinkle I'm not sure about is how ERISA and local Arkansas counsel fits in – I had thought that their payments would not come off the top and therefore would not result in a reduction of each customer firm's 20% - do you know what I mean?& You may be saying something different from that below, which may be why it'd be useful to iron it out.
> &

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:59 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
Dan sorry for that last email that I didn't spellcheck.&
Basically what I'm trying to say is I understand the basic agreement to be that after payment of all other counsel, our three firms shall each receive 20%, with the distribution of the balance of 40% to be determined later.
&
If that is the agreement you are referring to, I can confirm it. Let me know.&
Larry

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> Mike, Garrett – Hope you're well – please see below.& If we can figure this out early next week that may help speed the process.
>
> Thanks,
> &
> Dan
> &
>
> **From:** Chiplock, Daniel P.
> **Sent:** Friday, August 28, 2015 1:33 PM
> **To:** 'Sucharow, Lawrence'
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> The purpose of my email was just to get your reaction, Larry, since these are your drafts.& Thank you for responding quickly, and for giving me your reaction.& I would love to include them so we can move forward promptly.& I'll re-send.&
> &
>
> **From:** Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> **Sent:** Friday, August 28, 2015 1:28 PM
> **To:** Chiplock, Daniel P.
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** Re: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore he sensual to any memorialization of that understanding. & If you more willing to resend your email and include them,we can see if there is any disagreement as to what our understanding is/was.
> Larry
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 1:10 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:
>
>> Larry and Nicole:
>> &

Attached are my redlines to the preliminary approval order and final judgment.& These edits are consistent with the Court's January 2012 order concerning leadership structure.&
&
I'm emailing just you (and copying Bob) so as to try not to make a big thing over this, but I do think it's appropriate to memorialize what the fee allocation amongst customer class counsel is going to be (consistent with the understanding that the firms have been operating under for a couple years now) before we proceed much further.& & I think we'd be willing to support Lead Counsel having final authority over fee and expense allocations, etc., for purposes of the settlement stip, and thus present a united front against a perpetual troublemaker like McTigue—which should be in everyone's interest--provided we had some basic written comfort ourselves.& I don't think it's too early for that, given the interest in seeing the funds come in this year.
&
Thanks,
Dan
&

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Friday, August 28, 2015 9:53 AM
To: Chiplock, Daniel P.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Thank you!
&
&
&
&
&
&
&
&<image001.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image002.gif&>& &<image003.gif&>& &<image004.gif&>
&

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
OK, sounds good.& I will also get you whatever edits I have to the settlement docs by noon.
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 9:28 AM
To: Chiplock, Daniel P.

Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
I am speaking to Paine today at around 10 AM to both report to him and get his update.
I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.

Sent from my iPhone

On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> This looks OK to me, thanks.& I'm happy to send it (after you've done the other redline) to Paine, if you like.& Or someone else can, no matter.
> &
> ---
> **From:** Zeiss, Nicole [mailto:NZeiss@labaton.com]
> **Sent:** Thursday, August 27, 2015 3:27 PM
> **To:** Lynn Sarko; 'rlieff@lieff.com'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> **Cc:** Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> Dear all,
> &
> We've had some additional exchanges about the term sheet and, specifically, para 8(n).& I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal.& If you disagree, please let us know asap.
> &
> When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.
> &
> Thanks
> &
> &
> &
> &
> &
> &
> &
> &<image001.jpg&>
> **Nicole M. Zeiss | Partner**
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 |& F: (212) 883-7067
> E: nzeiss@labaton.com& |& W: www.labaton.com

&
&<image002.jpg&>& &<image003.jpg&>& &<image004.jpg&>
&

From: Zeiss, Nicole
Sent: Wednesday, August 26, 2015 5:09 PM
To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.
&
Thanks
&
&
&
&
&
&
&
&<image005.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& &<image007.jpg&>& &<image008.jpg&>
&

From: Sucharow, Lawrence
Sent: Wednesday, August 26, 2015 4:34 PM
To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Then we can probably forget my proposed changes.
&

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 4:26 PM
To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.

Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Sure.& & If it works for them – its fine with me
&
Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Lynn Sarko &<lsarko@KellerRohrback.com&>; Goldsmith, David &<dgoldsmith@labaton.com&>; 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
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'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
David
Thanks for sending this.& Sorry, I had misunderstood what you were saying on our call earlier today.
&
Two things:
&

1.& I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down.& & So—question—can we get rid of the word "fees" in this paragraph—does it still work?
&
What do you think??
&
Lynn
&
Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Wednesday, August 19, 2015 2:59 PM
To: 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; Lynn Sarko &<lsarko@KellerRohrback.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Sucharow, Lawrence &<LSucharow@labaton.com&>; Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: SST--Proposed Revision to Term Sheet for DOL Deal
&
All:& The below reflects our proposed revisions to the Term Sheet (in **red boldface**) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet).& Please comment.& Thanks.
&
&

8(n).& & & & & & & **Plan of Allocation**. & . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement

Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court.& **However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.**

&

12.& & & & & & & & **Plaintiffs' Counsel's Attorneys' Fees and Expenses.**& & & & & Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award.& Plaintiffs' Counsel ~~shall~~ **may** apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, **but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above.** & In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days.& The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees.& Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.

&

&

&

&

&

&
&<image005.jpg&>
David J. Goldsmith | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0879 | F: (212) 883-7079
E: dgoldsmith@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& & &<image006.jpg&>& & &<ima
ge006.jpg&>
&

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.

&

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 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 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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 40

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. 41

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

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.

EX. 42

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
&

&
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.
&

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.

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. 43

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 [redacted]it appe

---

That helps, Eric. Thank you

Sent from my iPhone

> On Oct 18, 2014, at 12:14 PM, "Belfi, Eric J." <EBelfi@labaton.com> wrote:
>
> [redacted]
>
> -----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 [redacted]it appe
>
> [redacted]
>
> Sent from my iPhone
>
>> On Oct 18, 2014, at 11:08 AM, "Belfi, Eric J." <EBelfi@labaton.com> wrote:
>>
>> Damon:
>>
>> [redacted]
>>
>> 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 [redacted]it appe
>>
>> [redacted]

>>
>> [redacted]

>>
>> [redacted]

>>
>>
>>
>>
>>
>>
>>
>>
>>
>> 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. 44

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 December 10, 2016, I caused the foregoing letter to be filed through the ECF system in the above captioned matter, and caused a true and correct copy to be served upon counsel of record for all participating defendants identified on the Electronic Mail Notice List.

/s/ David J. Goldsmith
David J. Goldsmith

EX. 45

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.

Case 1:11-cv-10230-MLW Document 147 Filed 12/06/12 Page 7 of 37

"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.

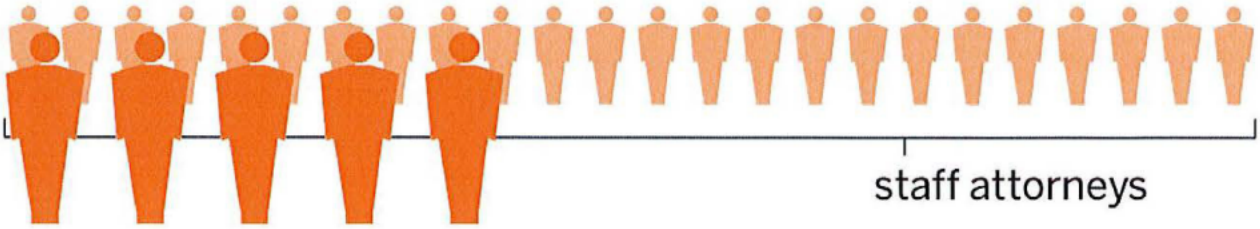
Case 1:11-cv-10230-MLW Document 147 Filed 02/06/17 Page 29 of 37
Comments

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.

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

EX. 46

Labaton Sucharow
11/21/2016 6:45 PM

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. 47

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

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 October 10, 2016, I caused the foregoing letter to be filed through the ECF system in the above-captioned matter, and caused a true and correct copy to be served upon the registered participants identified on the Notice 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 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

EXHIBIT C

T: 313-872-1100
F: 313-872-1101

Case Manager
Donna V nson
JAMS
400 Rena ssance Center
26th F oor
Detro t, MI 48243
313-872-1100 Phone
313-872-1101 Fax
Ema :
dv nson@jamsadr com

"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.) jo ns JAMS fo ow ng 26 years of d st ngu shed serv ce on the federa bench as a Un ted States D str ct Judge for the Eastern D str ct of M ch gan, nc ud ng seven years as that Court s Ch ef Judge.

Wh e on the bench, Judge Rosen had w de exper ence n fac tat ng sett ements between part es n a great many cases, nc ud ng h gh y comp ex Mu t -D str ct L t gat on (MDL) matters and c ass act ons. Most recent y, the Judge served as the Ch ef Jud c a Med ator for the Detro t Bankruptcy case—the argest, most comp ex mun c pa bankruptcy n our nat on s h story—wh ch resu ted n an agreed upon, consensua p an of adjustment n just 17 months.

Pr or to tak ng the bench, the Judge was a Sen or Partner at the aw f rm of M er, Canf e d, Paddock and Stone where he was a tr a awyer spec a z ng n commerc a , emp oyment and const tut ona t gat on.

*Read **counsel comments** about Judge Rosen's skills and style as a neutral.*

ADR Experience and Qualifications
Judge Rosen has extens ve exper ence n the reso ut on of comp ex d sputes n the fo ow ng areas:

- Ant trust
- Bankruptcy (Mun c pa)
- Bus ness/Commerc a
- C ass Act on/Mass Tort
- Emp oyment/FMLA
- C v R ghts/§1983
- Inte ectua Property
- Rea Property
- Secur t es
- Spec a Master/D scovery Referee

Representative Matters

- **Antitrust**
  - *Cason-Merenda v. Detroit Medical Center*, No. 06-15601 (Nurse wage case)
  - *In re Northwest Airlines Corp., et al*., Ant trust L t gat on, No. 96-74711 (H dden-c ty t cket ng case)
- **Arbitration**
  - *Quixtar Inc. v. Brady*, No. 08-14346, and *Amway Global v. Woodward*, No. 09-12946 (Address ng arb trab ty of d sputes and conf rmat on of arb trator's award)
- **Bankruptcy**
  - *In re: City of Detroit* (Chapter 9 mun c pa bankruptcy)
  - *United States v. City of Detroit* (Detro t water and sewer case) (Med ated sett ements)
- **Class Action/Mass Tort**
  - *Tankersley v. Ameritech Publishing, Inc.* (FLSA co ect ve act on and Ru e 23 c ass act on)
  - *Marquis v. Tecumseh Products Co*., No. 99-75971 (C ass act on a eg ng sexua harassment at manufactur ng p ant)
  - *In re Rio Hair Naturalizer Products*, MDL 1055 (Mu t -d str ct product ab ty act on)

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 (Po ce ra d of party w th underage dr nk ng)
  - *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 (Veh c e occupant sensors patent)
  - *Lear Automotive Dearborn, Inc. v. Johnson Controls, Inc.*, No. 04-73461 (Remote-contro garage door opener patent)
- **Real Property**
  - *United States v. Certain Land Situated in the City of Detroit* (Detro t Internat ona Br dge and condemnat on 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*, Der vat ve & "ERISA" L t gat on, MDL 1725 (Mu t -d str ct secur t es fraud/ERISA act on)

Honors, Memberships, and Professional Activities

- W de y pub shed on a w de range of top cs nc ud ng, c v procedure, ev dence, due process, cr m na aw, abor aw and ega advert s ng, nc ud ng:
  - Co-Author, *Federal Civil Trials and Evidence*, The Rutter Group Pract ce Gu de, 1999-Present
  - Co-Author, *Federal Employment Litigation*, The Rutter Group Pract ce Gu de, 2006-2016
  - Co-Author, *Michigan Civil Trials and Evidence*, The Rutter Group M ch gan Pract ce Gu de, 2008-2016
  - Contr but ng Ed tor, *Federal Civil Procedure Before Trial*, The Rutter Group Pract ce Gu de, 2008-2016
- Co-Cha r, Jud c a Eva uat on Comm ttee for the U.S. D str ct Court for the Eastern D str ct of M ch gan, 1983-1988
- Adjunct Professor, Ev dence:
  - Un vers ty of M ch gan Law Schoo , 2008
  - Wayne State Un vers ty Law Schoo , 1992-Present
  - Un vers ty of Detro t-Mercy Law Schoo , 1994-1996
  - Thomas M. Coo ey Law Schoo , 2004-2013
- U.S. Representat ve, Un ted States Department of State s Ru e of Law Program n Moscow, Russ a; Tb s , Georg a; Be j ng, Ch na; Ca ro, Egypt, Hebrew Un vers ty (Jerusa em); and Ma ta
- Jud c a Consu tant, Un ted States Departments of State and Just ce m ss ons to Tha and and the Ukra ne
- Member, S xth C rcu t Jud c a Counc , 2009-2015
- Member, Board of D rectors, Federa Judges Assoc at on, 1996-2002
- Member on the Board of D rectors of severa char tab e organ zat ons, nc ud ng: Focus: HOPE; the Detro t Symphony Orchestra; the Commun ty Foundat on of Southeastern M ch gan and the M ch gan Chapter of the Federa st Soc ety
- Member, Board of Adv sors, George Wash ngton Un vers ty Law Schoo , 2005-Present
- Member, U.S. Jud c a Conference, Comm ttee on Cr m na Law, 1995-2001
- Found ng Member, M ch gan Inte ectua Property Inn of Court

Selected Articles About the Detroit Bankruptcy

- *Howes: Detroit Bankruptcy Kudos Widely Shared*, Detro t News, February 26, 2015.
- *Detroit Bankruptcy Shows Mediation Can Get the Job Done*, Detro t Free Press, January 18, 2015.
- *Detroit Bankruptcy Pros Write Off Millions in Fees*, Detro t Free Press, December 11, 2014.
- *How Detroit Was Reborn*, Detro t Free Press, Spec a Sect on, November 9, 2014.
- *Judge, A Mediator in Bankruptcy, Sees Hope for Detroit*, Detro t Free Press, November 9, 2014.

- *Finding $816 Million, and Fast, to Save Detroit*, The New York T mes, November 7, 2014.
- Judge Rosen s Tough Tack on Cred tors He ped Speed Detro t Bankruptcy Case, Cra n s Detro t Bus ness, November 6, 2014.
- *Mediator in Detroit Bankruptcy Walks Fine Line Between City, Creditors*, The Wa Street Journa , February 14, 2014.
- *How Mediation Has Put Detroit Bankruptcy on the Road to Resolution*, Detro t Free Press, February, 2, 2014.
- *Detroit Emerges From Nation's Largest Municipal Bankruptcy*, Los Ange es T mes, November 10, 2014.

Background and Education

- Un ted States D str ct Judge, Eastern D str ct of M ch gan (Detro t), 1990-2017
  - Ch ef Judge, 2009-2015
  - Judge by Des gnat on, Un ted States Court of Appea s for the S xth C rcu t, Repeated Appo ntments
- Sen or Partner, M er, Canf e d, Paddock and Stone, spec a z ng n commerc a , emp oyment, rea property, and const tut ona t gat on, 1979-1990
- J.D., George Wash ngton Un vers ty Law Schoo , 1979
- Leg s at ve Ass stant, Un ted States Senate, Sen. Robert P. Gr ff n (R-MI), 1974-1979
- B.A., Sen or Fe ow, Po t ca Sc ence Ka amazoo Co ege, 1973

Disclaimer

Th s page s for genera nformat on purposes. JAMS makes no representat ons or warrant es regard ng ts accuracy or comp eteness. Interested persons shou d conduct the r own research regard ng nformat on on th s webs te before dec d ng to use JAMS, nc ud ng nvest gat on and research of JAMS neutra s. See More

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. 48

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. 49

[November 2017]

STEPHEN GILLERS

Elihu Root Professor of Law
(vice dean 1999-2004)
New York University
School of Law
40 Washington Square South
New York, NY 10012

(212) 998-6264 (tel)
(212) 995-4658 (fax)
stephen.gillers@nyu.edu

AREAS OF TEACHING Regulation of Lawyers and Professional Responsibility
Evidence; Law and Literature; Media Law

PRIOR COURSES Civil Procedure, Agency, Advocacy of Civil Claims, Federal Courts

PUBLICATIONS

BOOKS AND ANTHOLOGIES:

Regulation of Lawyers: Problems of Law and Ethics (Aspen Law & Business, 11th ed., December 2017). The first edition of this popular casebook was published in 1985. Norman Dorsen was a co-author on the first two editions. Stephen Gillers is the sole author of the third through ninth editions. The first four editions were published by Little, Brown & Co., which then sold its law book publishing operation to Aspen.

Regulation of Lawyers: Statutes and Standards (with Roy Simon and Andrew Perlman) (Aspen Law & Business) This is a compilation with editorial comment. The first volume was published in 1989. Updated versions have been published annually thereafter. As of the 2009 edition, Andrew Perlman has joined as a co-editor.

"The Legal Industry of Tomorrow Arrived Yesterday: How Lawyers Must Respond," in The Relevant Lawyer (ABA 2015).

Regulation of the Legal Profession (Aspen 2009). This is 400+ page book in the Aspen "Essentials" series explains ethics rules and laws governing American lawyers and judges.

PUBLICATIONS (continued)

Investigating the FBI (co-Editor with P. Watters) (Doubleday, 1973; Ballantine, 1974)

None of Your Business: Government Secrecy in America (co-Editor with N. Dorsen) (Viking, 1974; Penguin, 1975).

Getting Justice: The Rights of People (Basic Books, 1971; revised paperback, New American Library, May 1973).

I'd Rather Do It Myself: How to Set Up Your Own Law Firm (Law Journal Press, 1977).

Looking At Law School: A Student Guide From the Society of American Law Teachers (editor and contributor) (Taplinger, 1977; NAL, 1977; revised ed., NAL, 1984; third ed., NAL, 1990).

The Rights of Lawyers and Clients (Avon, 1979).

"Four Policemen in London and Amsterdam," in R. Schrank (ed.) American Workers Abroad (MIT Press, 1979).

"Dispute Resolution in Prison: The California Experience," and "New Faces in the Neighborhood Mediating the Forest Hills Housing Dispute," both in R. Goldmann (ed.) Roundtable Justice: Case Studies in Conflict Resolution (Westview Press, 1980).

"The American Legal Profession," in A. Morrison (ed.), Fundamentals of American Law (Oxford University Press 1996).

The Elsinore Appeal: People v. Hamlet (St. Martin's Press 1996). This book contains the text of Hamlet together with briefs and oral argument for and against affirmance of Prince Hamlet's (imaginary) murder convictions. The book arose out of a symposium sponsored by the Association of the Bar of the City of New York.

“In the Pink Room,” in Legal Ethics: Law Stories (D. Rhode & D. Luban, eds.) (Foundation Press, 2006) (also published as a freestanding monograph).

PUBLICATIONS (continued)

ARTICLES:

Uniform Legal Ethics Rules? No – An Elusive Dream Not Worth the Chase, 22 The Professional Lawyer __ (2014)

The Two-Year Law Degree: Undesireable but Perhaps Unavoidable, 2013 N.Y.U. J. Legis. & Pub. Pol'y Quorum 4 (2013)

How To Make Rules for Lawyers: The Professional Responsibility of the Legal Profession, 40 Pepperdine L. Rev. 365 (2013) (Symposium issue on *The Lawyer of the Future*).

A Profession, If You Can Keep It: How Information Technology and Fading Borders Are Reshaping the Law Marketplace and What We Should Do About It, 63 Hastings L.J. 953 (2012)

Guns, Fruit, Drugs, and Documents: A Criminal Defense Lawyer's Responsibility for Real Evidence, 63 Stan. L. Rev. 813 (2011)

Is Law (Still) An Honorable Profession?, 19 Professional Lawyer 23 (2009)(based on a talk at Central Synagogue in Manhattan).

Professional Identity: 2011 Michael Franck Award Acceptance Speech, 21 Professional Lawyer 6 (2011).

Choosing and Working with Estate and Foundation Counsel to Secure an Artistic and Philanthropic Legacy, in The Artist as Philanthropist, volume 2, page 293 (The Aspen Institute Program on Philanthropy and Social Innovation 2010)

Virtual Clients: An Idea in Search of a Theory (with Limits), 42 Valparaiso L. Rev. 797 (2008) (Tabor lecture).

The "Charles Stimson" Rule and Three Other Proposals to Protect Lawyers From Lawyers, 36 Hofstra L. Rev. 323 (2007)

A Tendency to Deprave and Corrupt: The Transformation of American Obscenity Law from *Hicklin* to *Ulysses II*, 85 Washington U. L. Rev. 215 (2007)

Some Problem with Model Rule 5.6(a), Professional Lawyer (ABA 2007 Symposium Issue).

Monroe Freedman's Solution to the Criminal Defense Lawyer's Trilemma Is Wrong as a Matter of Policy and Constitutional Law, 34 Hofstra L. Rev. 821 (2006)

ARTICLES
(continued)

"In the Pink Room," TriQuarterly 124.

Free the Lawyers: A Proposal to Permit No-Sue Promises in Settlement Agreements, 18 Georgetown J. Legal Ethics 291 (2005) (with Richard W. Painter).

Lessons from the Multijurisdictional Practice Commission: The Art of Making Change, 44 Ariz. L. Rev. 685 (2002).

Speak No Evil: Settlement Agreements Conditioned On Noncooperation Are Illegal and Unethical, 31 Hofstra L. Rev. 1 (2002) (reprinted at 52 Defense L.J. 769 (2003)).

"If Elected, I Promise [_____]"–What Should Judicial Candidates Be Allowed to Say? 35 Ind. L. Rev. 735 (2002).

Legal Ethics: Art or Theory?, 58 Annual Survey Am. L. 49 (2001).

The Anxiety of Influence, 27 Fla. St. L. Rev. 123 (1999) (discussing rules that restrict multidisciplinary practice.

Can a Good Lawyer Be a Bad Person? 2 J. Inst. Study of Legal Ethics 131 (1999) (paper delivered at conference "Legal Ethics: Access to Justice" at Hofstra University School of Law, April 5-7, 1998).

More About Us: Another Take on the Abusive Use of Legal Ethics Rules, 11 Geo. J. Legal Ethics 843 (1998).

Caveat Client: How the Proposed Final Draft of the Restatement of the Law Governing Lawyers Fails to Protect Unsophisticated Consumers in Fee Agreements With Lawyers, 10 Geo. J. Legal Ethics 581 (1997).

Participant, Ethical Issues Arising From Congressional Limitations on Legal Services Lawyers, 25 Fordham Urban Law Journal 357 (1998) (panel discussion).

The Year: 2075, the Product: Law, 1 J. Inst. Study of Legal Ethics 285 (1996) (paper delivered on the future of the legal profession at Hofstra University Law School's conference "Legal Ethics: The Core Issues").

Getting Personal, 58 Law & Contemp. Probs. 61 (Summer/Autumn 1995) (contribution to symposium on teaching legal ethics).

ARTICLES
(continued)

Against the Wall, 43 J. Legal Ed. 405 (1993) (ethical considerations for the scholar as advocate).

Participant, Disqualification of Judges (The Sarokin Matter): Is It a Threat to Judicial Independence?, 58 Brooklyn L. Rev. 1063 (1993) (panel discussion).

The New Old Idea of Professionalism, 47 The Record of the Assoc Bar of the City of N.Y. 147 (March 1992).

The Case of Jane Loring-Kraft: Parent, Lawyer, 4 Geo. J. Legal Ethics 115 (1990).

Taking L.A. Law More Seriously, 98 Yale L.J. 1607 (1989) (contribution to symposium on popular legal culture).

Protecting Lawyers Who Just Say No, 5 Ga. St. L. Rev. 1 (1988) (article based on Henry J. Miller Distinguished Lecture delivered at Georgia State University College of Law).

Model Rule 1.13(c) Gives the Wrong Answer to the Question of Corporate Counsel Disclosure, 1 Geo. J. Legal Ethics 289 (1987).

The Compelling Case Against Robert H. Bork, 9 Cardozo L. Rev. 33 (1987).

Ethics That Bite: Lawyers' Liability to Third Parties, 13 Litigation 8 (Winter 1987).

Can a Good Lawyer Be a Bad Person?, 84 Mich. L. Rev. 1011 (1986).

Proving the Prejudice of Death-Qualified Juries After Adams v. Texas: An Essay Review of Life in the Balance, 47 Pitt. L. Rev. 219 (1985), cited in Lockhart v. McCree, 476 U.S. 162, 197, 201 (1986) (Marshall, J., dissenting).

What We Talked About When We Talked About Ethics: A Critical View of the Model Rules, 46 Ohio St. L.J. 243 (1985).

The Quality of Mercy: Constitutional Accuracy at the Selection Stage of Capital Sentencing, 18 U.C. Davis L. Rev. 1037 (1985).

Berger Redux, 92 Yale L.J. 731 (1983) (Review of Death Penalties by Raoul Berger).

ARTICLES
(continued)

Selective Incapacitation: Does It Offer More or Less?, 38 The Record of the Assoc. Bar City of N.Y. 379 (1983).

Great Expectations: Conceptions of Lawyers at the Angle of Entry, 33 J. Legal Ed. 662 (1983).

Perspectives on the Judicial Function in Criminal Justice (Monograph, Assoc. Bar City of N.Y., 1982).

Deciding Who Dies, 129 U. Pa. L. Rev. 1 (1980) (quoted and cited as "valuable" in Spaziano v. Florida, 468 U.S. 447, 487 n.33 (1984) (Stevens, J., dissenting); also cited in Zant v. Stephens, 462 U.S. 862, 878 n.17, 879 n.19 (1983); Lockhart v. McCree, 476 U.S. 162, 191 (1986) (Marshall, J., dissenting); Callins v. Collins, 114 S.Ct. 1127, 1134 n.4 (1994) (Blackmun, J., dissenting); and Harris v. Alabama, 115 S.Ct. 1031, 1038-39 (1995) (Stevens, J., dissenting).

Numerous articles in various publications, including The New York Times, The Nation, American Lawyer, The New York Law Journal, The National Law Journal, Newsday, and the ABA Journal. See below for selected bibliography.

AWARDS

2015 Recipient of the American Bar Foundation Outstanding Scholar Award for dedication to the regulation of and ethics in the legal profession.

2011 Recipient, Michael Franck Award. Michael Franck Award from the ABA's Center for Professional Responsibility. The Award is given annually for "significant contributions to the work of the organized bar….noteworthy scholarly contributions made in academic settings, [and] creative judicial or legislative initiatives undertaken to advance the professionalism of lawyers…are also given consideration."

DVDS

"Adventures in Legal Ethics and Further Adventures in Legal Ethics": videotape of thirteen dramatic vignettes professionally produced and directed and raising issues of legal ethics. Author, Producer. (1994)

"Dinner at Sharswood's Café," a videotape raising legal ethics issues. Author, Producer. (1996)

"Amanda Kumar's Case," a 38-minute story raising more than two dozen legal ethics issues. Author. (1998)

TRIBUTES

To Honorable Gus J. Solomon, printed at 749 Federal Supplement LXXXI and XCII (1991).

Truth, Justice, and White Paper, 27 Harv. Civ. R. Civ. Lib. L. Rev. 315 (1992) (to Norman Dorsen).

Irving Younger: Scenes from the Public Life, 73 Minn. L. Rev. 797 (1989).

OTHER TEACHING

Visiting Professor of Law, Harvard Law School, Winter 1988 Semester;

Adjunct Professor of Law, Yeshiva University, Cardozo Law School, Spring 1986, Spring 1987, and Fall 1988 Semesters.
Course: The Legal Profession.

Adjunct Associate Professor of Law, Brooklyn Law School, 1976-78.

PRIOR EMPLOYMENT

1973 - 1978
Private practice of law
Warner and Gillers, P.C. (1975-78)

1974 - 1978
Executive Director
Society of American Law Teachers, Inc.

1971 - 1973
Executive Director, Committee for
Public Justice

1969 - 1971
Associate, Paul, Weiss, Rifkind,
Wharton & Garrison

1968 - 1969
Judicial Clerk to Chief Judge
Gus J. Solomon, Federal District Court
for the District of Oregon, Portland, Oregon

SELECTED TESTIMONY

Testimony on "Nomination of Sandra Day O'Connor to the Supreme Court of the United States", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 1st Sess., Sept. 11, 1981.

Testimony on S. 2216, "Habeas Corpus Reform Act of 1982", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 2d Sess., April 1, 1982.

Testimony on H.R. 5679, "Criminal Code Revision Act of 1981", Hearings, before the House of Representatives, Committee on the Judiciary, 97th Congress, 2d Sess., April 22, 1982.

Testimony on S. 653, "Habeas Corpus Procedures Amendment Act of 1981", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 1st Sess., November 13, 1981.

Testimony on S. 8875 and A. 11279, "A Proposed Code of Evidence for the State of New York", before Senate and Assembly Codes and Judiciary Committees, February 25, 1983.

Testimony before A.B.A. Commission on Women in the Profession, Philadelphia, February 6, 1988.

Testimony on the nomination of William Lucas to be Assistant Attorney General for Civil Rights, before the Senate Committee on the Judiciary, 101st Congress, 1st Sess., July 20, 1989.

Testimony on the nomination of Vaughn Walker to be United States District Judge for the Northern District of California, before the Senate Committee on the Judiciary, 101st Congress, 1st Sess., November 9, 1989.

PUBLIC LECTURES (partial list)

Tabor Lecture, Valparaiso University School of Law, April 12, 2007. This event consisted of two lectures. A public lecture was entitled "Here's the Gun: A Lawyer's Responsibility for Real Evidence." The Bench and Bar lecture, which will be published in the school's law review, is entitled "Virtual Clients: An Idea in Search of a Theory (With Limits)."

Paul M. Van Arsdell, Jr., Memorial Lecture, University of Illinois, College of Law, March 7, 2005: "Do Lawyers Share Moral Responsibility for Torture at Guantanamo and Abu Ghraib?"

Howard Lichtenstein Distinguished Professorship of Legal Ethics Lecture Series, "In Praise of Confidentiality (and Its Exceptions)," delivered at Hofstra University School of Law, November 12, 2003.

Henry J. Miller Distinguished Lecture, Georgia State University College of Law, May 11, 1988. "Protecting Lawyers Who Just Say No."

First Annual South Carolina Bar Foundation Lecture, April 9, 1992, University of South Carolina Law School, Columbia, South Carolina. "Is the Legal Profession Dead? Yearning to Be Special in an Ordinary Age."

Philip B. Blank Memorial Forum on Attorney Ethics, Pace University School of Law, April 8, 1992. "The Owl and the Fox: The Transformation of Legal Work in a Commodity Culture."

Speaker on Judicial Ethics, ABA Appellate Judges' Seminar and Flaschner Judicial Institute, September 29, 1993, Boston, Massachusetts.

Baker-McKenzie Ethics Lecture, Loyola University Chicago School of Law, October 13, 1993, Chicago, Illinois ("Bias Issues in Legal Ethics: Two Unfinished Dramas").

The Sibley Lecture, University of Georgia School of Law, Athens, Georgia, November 10, 1993 ("Telling Stories in School: The Pedagogy of Legal Ethics").

Participant, "Ethics in America" series (to be) broadcast on PBS 2007, produced by Columbia University Seminars on Media and Society.

Participant, "Ethics in America" series, broadcast on PBS February and March 1989, produced by Columbia University Seminars on Media and Society.

Participant, "The Constitution: That Delicate Balance, Part II" series, broadcast on PBS February and March 1992, produced by Columbia University Seminars on Media and Society.

Lecturer on legal ethics and allied subjects in the U.S. and abroad at hundreds of seminars, CLE events, and conferences organized by private law firms, corporate law departments, the District of Columbia, Second, Fourth, Sixth, Ninth and Federal Circuit Judicial Conferences; American Bar Association; Federal Bar Council; New York State Judiciary; New York City Corporation Counsel; American Museum of Natural History; Practicing Law Institute; Law Journal Seminars; state, local and specialty bar associations (including in Oregon, Nebraska, Illinois, New York, New Jersey, Pennsylvania, Rhode Island, Vermont, and Georgia); corporate law departments; law schools; and law firms.

LEGAL AND PUBLIC SERVICE ACTIVITIES

Member, ABA 20/20 Commission, 2009- 2013 (appointed by the ABA President to study the future of lawyer regulation).

Chair, American Bar Association Center for Professional Responsibility, Policy Implementation Committee, 2004-2008 (Member 2002-2010).

Member, American Bar Association Commission on Multijurisdictional Practice, 2000-2002.

Consultant, Task Force on Lawyer Advertising of the New York State Bar Association (2005).

Retained by the New Jersey Supreme Court, in connection with the Court's review of the lawyer disciplinary system in New Jersey, to provide an "analysis of the strengths and weaknesses of California's 'centralized' disciplinary system" and to "report on the quality, efficiency, timeliness, and cost effectiveness of the California system...both on its own and compared with the system recommended for New Jersey by the Ethics Commission." Report filed December 1993. Oral presentation to the Court, March 1994.

Reporter, Appellate Judges Conference, Commission on Judicial participation in the American Bar Association, (October 1990-August 1991).

Member, David Dinkins Mayoral Transition Search Committee (Legal and Law Enforcement, 1989).

Member, Committee on the Profession, Association of the Bar of the City of New York (1989-1992)

Member, Executive Committee of Professional Responsibility Section, Association of American Law Schools (1985-1991).

Chair, 1989-90 (organized and moderated Section presentation at 1990 AALS Convention on proposals to change the ABA Code of Judicial Conduct).

Counsel, New York State Blue Ribbon Commission to Review Legislative Practices in Relation to Political Campaign Activities of Legislative Employees (1987-88).

Administrator, Independent Democratic Judicial Screening Panel, New York State Supreme Court (1981).

Member, Departmental Disciplinary Committee, First Judicial Department (1980 - 1983).

Member, Committee on Professional and Judicial Ethics, Association of the Bar of the City of New York (1979 - 1982).

BAR MEMBERSHIPS STATE:

New York (1968)

FEDERAL:

United States Supreme Court (1972);
Second Circuit (1970);
Southern District of New York (1970);
Eastern District of New York (1970)

LEGAL EDUCATION J.D. cum laude, NYU Law School, 1968
Order of the Coif (1968)
Dean's List (1966-68)
University Honors Scholar (1967-68)

PRELEGAL EDUCATION B.A. June 1964, City University of New York (Brooklyn College)

DATE OF BIRTH November 3, 1943

OTHER ARTICLES (Selected Bibliography 1978-present)

1. Carter and the Lawyers, The Nation, July 22-29, 1978.

2. Standing Before the Bar, Bearing Gifts, New York Times, July 30, 1978.

3. Judgeships on the Merits, The Nation, September 22, 1979.

4. Entrapment, Where Is Thy Sting?, The Nation, February 23, 1980.

5. Advice and Consent, New York Times, September 12, 1981.

6. Lawyers' Silence: Wrong . . . , New York Times, February 14, 1983.

7. The Warren Court - It Still Lives, The Nation, September 17, 1983.

8. Burger's Warren Court, New York Times, September 25, 1983.

9. "I Will Never Forget His Face!", New York Times, April 21, 1984.

10. Warren Court's Landmarks Still Stand, Newsday, July 29, 1984.

11. Von Bulow, And Other Soap Operas, New York Times, May 5, 1985.

12. Statewide Study of Sanctions Needed for Lawyers' Misconduct, New York Law Journal, June 6, 1985.

13. Preventing Unethical Behavior - Something New in Model Rules, New York Law Journal, August 30, 1985.

14. Proposed Model Rules Superior to State's Code, New York Law Journal, October 21, 1985.

15. Five Ways Proposed to Improve Lawyer Discipline in New York, New York Law Journal, January 8, 1986.

16. Poor Man, Poor Lawyer, New York Times, February 28, 1986.

17. Proposals To Repair Cracks in Ethical Legal Behavior, New York Law Journal, April 17, 1986.

18. Unethical Conduct: How to Deter It Through Education, Bar Leader (May/June 1986).

19. The New Negotiation Ethics - Or Did Herb's Lawyer Do Wrong? New York Law Journal, June 2, 1986.

20. The Real Stakes in Tort Reform, The Nation, July 19-26, 1986.

21. Bernhardt Goetz: Vigilante Or Victim?, Toronto Star, September 10, 1986.

22. The Message That the Goetz Trial Will Send, Newsday, August 31, 1986.

23. Amending the Ethics Code - Solicitation, Pre-Paid Plans, Fees, New York Law Journal, November 10, 1986.

24. Amending the Ethics Code - Conflicts of Interest, Screening, New York Law Journal, November 12, 1986.

25. Amending the Ethics Code - Confidentiality and Other Matters, New York Law Journal,

November 13, 1986.

26. No-Risk Arbs Meet Risk Justice, New York Times, November 23, 1986.

27. The Meese Lie, The Nation, February 21, 1987.

28. Amending State Ethics Code - Conflicts of Interest Gone Awry, New York Law Journal, May 18, 1987.

29. "The Lawyers Said It Was Legal," New York Times, June 1, 1987.

30. Feminists vs. Civil Libertarians, New York Times, November 8, 1987.

31. Lessons for the Next Round in Picking a Justice, Newsday, November 11, 1987.

32. We've Winked For Too Long, National Law Journal, December 21, 1987 (judicial membership in exclusionary clubs).

33. No More Meeses, New York Times, May 1, 1988.

34. In Search of Roy Cohn, ABA Journal, June 1, 1988 (book review).

35. Do Brawley Lawyers Risk Serious Discipline?, New York Law Journal, June 22, 1988.

36. Have the Brawley Lawyers Broken the Law?, New York Times, July 2, 1988.

37. Report Demonstrates Why Meese is Unfit to Be Attorney General, Atlanta Journal and Constitution, July 24, 1988.

38. Ethical Questions for Prosecutors in Corporate-Crime Investigations, New York Law Journal, September 6, 1988.

39. Restoring Faith at Justice, National Law Journal, November 21, 1988.

40. Is Bush Repeating Rockefeller's Folly?, New York Times, September 11, 1989.

41. Standards Time, The Nation, January 29, 1990 (on the subject of legislative ethics).

42. Abused Children vs. The Bill of Rights, New York Times, August 3, 1990.

43. Words Into Deeds: Counselor, Can You Spare a Buck?, ABA Journal, November 1990.

44. Bad Apples, ABA Journal at 96 (March 1991) (book review).

45. The Gotti Lawyers and the Sixth Amendment, New York Law Journal, August 12, 1991.

46. Justice or Just Us? The Door to Dan Quayle's Courthouse Only Swings One Way, ABA

Journal (June 1992) at 109.

47. Fighting Words (What was once comical is now costly), ABA Journal (August 1992) at 102.

48. Sensitivity Training: A New Way to Sharpen Your Skills At Spotting Ethics Conflicts, ABA Journal (October 1992) at 107.

49. Under Color of Law: Second Circuit Expands Section 1983 Liability for Government Lawyers, ABA Journal (December 1992) at 121.

50. Cleaning Up the S&L Mess: Courts Are Taking the Duty to Investigate Seriously, ABA Journal (February 1993) at 93.

51. All Non-Refundable Fee Agreements Are Not Created Equal, New York Law Journal (February 3, 1993) at 1. (Analyzing appellate decision prohibiting non-refundable fees.)

52. The Packwood Case: The Senate Is Also on Trial, The Nation (March 29, 1993) at 404.

53. Conflict of Laws: Real-World Rules for Interstate Regulation of Practice, ABA Journal (April 1993) at 111.

54. Packwood II, The Nation (May 10, 1993) at 617.

55. Generation Gap, ABA Journal (June 1993) at 101. (On the use of a boycott in response to the Colorado anti-gay initiative.)

56. Future Shocks, ABA Journal (August 1993) at 104. (Looking back on the practice of law in the 21st century from the year 2103.)

57. A Rule Without a Reason, ABA Journal (October 1993) at 118. (Criticism of the prohibition in Rule 5.6(b) against a lawyer agreeing not to restrict future practice in connection with a settlement.)

58. Too Old to Judge?, ABA Journal (December 1993) at 94. (Supreme Court justices have life tenure. Maybe they should not.)

59. Truth or Consequences, ABA Journal (February 1994) at 103. (Discovery obligations.)

60. "Ethical Cannons," in Symposium - Twenty Years of Change, Litigation (Fall 1993).

61. Stretched Beyond the Limit, Legal Times (March 21, 1994) at 37. (Analysis of the office of Counsel to the President in light of Bernard Nussbaum's resignation.) [Same article was reprinted in the Connecticut Law Tribune, the Fulton County (Atlanta) Daily Report, and the Recorder (San Francisco).]

62. Putting Clients First, ABA Journal (April 1994) at 111. (Discussing cases on lawyers' fiduciary duty.)

63. Grisham's Law, The Nation (April 18, 1994) at 509. (The effect of popular culture on Whitewater reporting.)

64. The Elsinore Appeal: "People v. Hamlet", New York Law Journal (October 11, 1994) at 3. (Brief for Appellee, State of Denmark). (This was a mock appeal from Hamlet's conviction for the murder of Claudius, Polonius, Ophelia, Laertes, Rosencrantz & Gildenstern, held at the Association of the Bar of the City of New York on October 11, 1994.)

65. Billing for Costs and Disbursements: What Law Firms Can Charge and Clients Can Expect, monograph published 1995 by Pitney Bowes Management Services.

66. Clinton Has A Right To Privacy, N.Y. Times, 12/21/95, at ____.

67. "'Filegate' Was Bad Enough. Now This?," N.Y. Times, 7/5/96, at A23. (Article criticizing proposal to privatize certain security investigations of government personnel.)

68. "Whitewater: How to Build a Case Using a Tainted Witness," Los Angeles Times, 2/16/97, at M1.

69. "Hillary Clinton Loses Her Rights," New York Times, 5/4/97, at E15.

70. "Shakespeare on Trials," IV Federal Bar Council News 16 (June 1997).

71. "Florida Backs Out On a Deal," New York Times, 10/10/97, at A23.

72. "The Perjury Loophole," New York Times, 2/18/98, at A21 (discussion of perjury in connection with Kenneth Starr's investigation of President Clinton).

73. "Any Method to Ginsburg's Madness?" Los Angeles Times, 3/15/98, at M1 (discussion of William Ginsburg's public defense of Monica Lewinsky).

74. "Whitewater Made Easy," The Nation, 6/1/98, at 8.

75. "A Highly Strategic Legal Chess Game," Los Angeles Times, June 7, 1998, at M1 (Starr-Clinton legal maneuvers).

76. "To Sleep . . . Perchance, to Dream," New York Law Journal, July 8, 1998, at 2. (Humorous article about bored jurors.)

77. "Clinton Is No Ordinary Witness," New York Times, 7/28/98, at A15.

78. "The High Cost of an Ethical Bar," The American Lawyer, July/August 1998, at 87.

79. "Clinton's Choice: Tell Truth or Dare to Gamble," Los Angeles Times, August 2, 1998, at M1.

80. "Accurate Lies: The Legal World of Oxymorons," Los Angeles Times, August 30, 1998, at M1.

81. "A Fool For a Client?" The American Lawyer, October 1998, at 74. (President Clinton's legal representation in the Lewinsky representation.)

82. "The Presidency: Out to End Clinton's Mess and Be Happy," Los Angeles Times, October 4, 1998, at M1.

83. "Protecting Their Own," The American Lawyer, November 1998, at 118.

84. "Can't We All Just Practice Together: Taking Down 'Trade Barriers' on Lawyers Here and Abroad," Legal Times, November 9, 1998, at 32.

85. "Beyond the Impeachment Spectacle," Los Angeles Times, November 22, 1998, at M1.

86. "The Perjury Precedent," New York Times, December 28, 1998, at A27.

87. "From the Same Set of Facts: A Tale of Two Stories," Los Angeles Times, January 17, 1999, at M1 (about the Clinton impeachment trial).

88. "The Decline and Fall of Kenneth Starr," Los Angeles Times, February 7, 1999, at M1.

89. "The Truth About Impeachment," The American Lawyer, March 1999, p. 131.

90. "The Double Standard," New York Times Book Review, March 21, 1999, at 13 (review of *No Equal Justice* by David Cole).

91. "Four Officers, One Likely Strategy," New York Times, Saturday, April 3, 1999, at A15.

92. "The Man in the Middle: Did George Ventura Step Over the Ethical Line?" The American Lawyer, May 1999, p. 80 (discussion of lawyer whistleblowing in light of *State v. George Ventura*). (Reprinted as "Whistleblower, Esq." in New York Law Journal, May 26, 1999 at page 2.)

93. "Your Client Is A Corporation – Are Its Affiliates Clients Too?" The New York Professional Responsibility Report, May 1999 , at 1.

94. "Job Talk (Scenes from the Academic Life)," The American Lawyer, July 1999, at 161. (Satire about law school hiring.)

95. "The Other Y2K Crisis," The Nation, July 26/August 2, 1999, at 4 (editorial about the year 2000 electoral races).

96. "Walking the Confidentiality Tightrope," ACCA Docket 20 (September/October 1999) (remarks at ACCA's national conference in 1998).

97. "Things Old & New – The Code Amendments," New York Professional Responsibility Report (September 1999), at 1.

98. "Clinton's Chance to Play the King," New York Times, Sept. 20, 1999 at A17.

99. "Overprivileged," American Lawyer, October 1999 at 37. (Discussion of First Amendment protection for journalists.)

100. "Controlling Conflicts Between Old and New Clients," New York Professional Responsibility Report, January 2000 at 3.

101. "How To Spank Bad Lawyers," American Lawyer, February 2000 at 41.

102. "A Weak Case, But a Brave Prosecution," New York Times, Wednesday, March 1, 2000 at A23 (the Diallo case).

103. "Conflicts of Interest in Malpractice Cases," New York Professional Responsibility Report, March 2000 at 1.

104. "The Court's Picayune Power," New York Times, Thursday, April 20, 2000 at A29.

105. "Some Misrepresentations Among Corporate Lawyers," New York Professional Responsibility Report, June 2000 at 1.

106. "Was Hubbell Case About Getting Justice or Getting Even?" Los Angeles Times, June 18, 2000 at M2 (comment on the U.S. Supreme Court's decision in *United States v. Hubbell*, decided June 5, 2000).

107. "Who Owns the Privilege After a Merger?" New York Professional Responsibility Report, July 2000 at 1.

108. "Fighting the Future," The American Lawyer, July 2000 at 55.

109. "Campus Visits Deconstructed," Newsweek: How To Get Into College, 2001 Edition at 46.

110. "The Court Should Boldly Take Charge," New York Times, Tuesday, November 21, 2000 at A25 (Florida's presidential election recount).

111. "Who Says the Election Has a Dec. 12 Deadline?" New York Times, Saturday, December 2, 2000 at A19.

112. "Motive Is Everything in the Marc Rich Pardon," New York Times, Saturday, February 17, 2001.

113. "For Justice To Be Blind, Must Judges Be Mute?" New York Times, Sunday, March 4, 2001 at Section 4, page 3.

114. "Should Supreme Court Justices Have Life Tenure?" Reprinted in *The Supreme Court and Its Justices* (Choper J., ed.) (ABA 2001).

115. Professionalism Symposium, 52 South Carolina L. Rev. 55 (2001) (closing remarks).

116. "No Lawyers To Call," New York Times, Monday, December 3, 2001 at A19 (ethical and constitutional obligations that will prevent lawyers from participating in military tribunals).

117. "Let Judicial Candidates Speak," New York Times, Thursday, March 28, 2002 at A31.

118. "The Flaw in the Andersen Verdict," New York Times, Tuesday, June 18, 2002 at A23.

119. "Why Judges Should Make Court Documents Public," New York Times, Saturday, November 30, 2002 at A17.

120. "It's an MJP World," ABA Journal, December 2002 at 51.

121. "Upholding the Law as Pretrial Publicity Goes Global," New York Times, Sunday, April 27, 2003, Sec. 4 at 14.

122. "Court-Sanctioned Secrets Can Kill," Los Angeles Times, Wednesday, May 14, 2003 (reprinted May 15, 2003 in Newsday).

123. "Make a List," New York Times, June 11, 2003 at 31 (advocating changes in the methods of judicial selection).

124. "Conflicted About Martha?" American Lawyer (September 2003) (analysis of Martha Stewart indictment).

125. "The Prudent Jurist," Legal Affairs, January/February 2004.

126. "On Knowing the Basic Rules of Advocacy," New York Times, February 8, 2004, Sec. 4 at 2 (cross-examination in the Martha Stewart trial).

127. "The Prudent Jurist," Legal Affairs, March/April 2004.

128. "Scalia's Flawed Judgment," The Nation, April 19, 2004 at 21.

129. "Scholars, Hucksters, Copycats, Frauds," Washington Post, April 25, 2004 at B3 (Outlook) (discussion of ethics of academics who put their names on newspaper opinion pieces written by industry).

130. "The Prudent Jurist," Legal Affairs, May/June 2004 at 17.

131. "Multijurisdictional Practice of Law: Merging Theory With Practice," 73 The Bar Examiner 28 (May 2004).

132. "Tortured Reasoning," American Lawyer (July 2004) (analysis of government lawyer memos addressing the application of various treaties and laws to the treatment of Afghan prisoners).

133. "Paying the Price of a Good Defense," New York Times, August 13, 2004.

134. "Improper Advances: Talking Dream Jobs with the Judge Out of Court," Slate.com, August17, 2005 (with D. Luban and S. Lubet).

135. "Roberts' Bad Decision," Los Angeles Times, September. 13, 2005 (with D. Luban and S. Lubet).

136. "No Privilege for Miers," The Nation, November 7, 2005

137. "Senators, Don't Rubber-Stamp," USA Today, January 5, 2006 at 13A (discussing the Senate's advise and consent responsibility in connection with Alito nomination).

138. Ethics Column, American Lawyer, page 61 (January 2006) (with Deborah Rhode).

139. Ethics Column, American Lawyer, page 63 (April 2006) (with Deborah Rhode).

140. "Bush Postpones 2008 Election," The Nation, August 14/21, 2006 (satire).

141. "Free the Ulysses Two: Joyce's First U.S. Publishers Were Convicted of Obscenity. It's Time to Clear Them." The Nation, February 19, 2007.

142. "Twenty Years of Legal Ethics: Past, Present, and Future," 20 Georgetown J. Legal Ethics 321 (2007) (symposium celebrating the 20th anniversary of the journal).

143. "The Torture Memos," The Nation, April 28, 2008.

144. "Bar None," American Lawyer (October 2008) (globalization of law practice and how it will effect regulation of the bar).

145. 2011 Michael Franck Award Acceptance Speech, 21 Professional Lawyer 6 (2011).

146. "Time to Adapt to a Different Marketplace," New York Law Journal, March 27, 2012.

147. "The Supreme Court Needs a Code of Ethics," Politico (Aug. 8, 2013) (with Charles Geyh).

EX. 50

Message

From: Zeiss, Nicole [/O=GOODKIN LABATON RUDOFF SUCHAROW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ZEISSN]
Sent: 12/7/2016 5:01:27 PM
To: Ng, Cindy [CNg@labaton.com]
CC: Goldsmith, David [dgoldsmith@labaton.com]
Subject: final work on letter to Citibank

Damon's allocation should come out of our IOLA. It is fine for that to happen on Friday.

Thanks

From: Zeiss, Nicole
Sent: Wednesday, December 07, 2016 11:30 AM
To: Ng, Cindy
Cc: Goldsmith, David
Subject: Chargois wire instructions are below

Below are his wire instructions, looks like they match the W-9 and undertaking. Sorry to be all over the place but I have to ask Larry something about whether Damon should be paid out of the Citibank escrow account

From: Belfi, Eric J.
Sent: Wednesday, December 07, 2016 8:58 AM
To: Zeiss, Nicole
Subject: Re: Damon

Please use this:

Wells Fargo Bank NA

121000248

Damon J. Chargois

ss#[redacted]

Routing [redacted]

Acct. [redacted]

Wells Fargo

420 Montgomery Street

San Francisco, CA 94104

He needs a new undertaking for Damon Chargois, Esq.

Eric Belfi

Partner

Labaton Sucharow LLP

140 Broadway

New York, N.Y. 10005

o: 1.212.907.0878

c: 1.516.509.5236

On Dec 7, 2016, at 5:01 AM, Zeiss, Nicole <NZeiss@labaton.com> wrote:

Hi again, we have to pull the trigger on this this am so Cindy can finalize the bank letter. Thanks

Sent from my BlackBerry 10 smartphone.

From: Zeiss, Nicole

Sent: Tuesday, December 6, 2016 11:18 AM

To: Belfi, Eric J.

Subject: Damon

I spoke with David. Do you think we will have time to process his allocation once he wants it, or will it be a rush? If it will be a rush, then I want to tell accounting to bring the money into our IOLA. Otherwise, it can stay in the settlement fund, but it will take some hoops to get it out (Keller AND Larry signature).

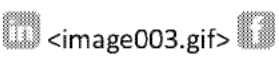
Labaton Sucharow

Nicole M. Zeiss | Partner

140 Broadway, New York, New York 10005

T: (212) 907-0867 | F: (212) 883-7067

E: nzeiss@labaton.com | W: www.labaton.com



EX. 51

From: Bradley, Garrett J.
Sent: Friday, August 28, 2015 5:53 PM
To: Keller, Christopher J.
Cc: Sucharow, Lawrence
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I agree. They will threaten their own fee app which I say would invalidate the agreement we have.

Garrett

On Aug 28, 2015, at 4:42 PM, Keller, Christopher J. <ckeller@labaton.com> wrote:

> We should talk this through. The court absolutely need not understand what the allocation of fees is amongst counsel so that should not be included in any document to be filed with the court. I have to say, I am quite overwhelmed with the size genitals lief has in this case in which they have a no client or title. That said, an agreement on allocation will not happen until the fees are actually in and need to be distributed.
>
> Christopher Keller
> Partner || Labaton Sucharow LLP
> 140 Broadway
> New York, NY 10005
> 212-907-0853
>
> On Aug 28, 2015, at 2:49 PM, Sucharow, Lawrence <LSucharow@labaton.com> wrote:
>
> > See entire email stream
> >
> > Sent from my iPhone
> >
> > Begin forwarded message:
> >
> > **From:** "Sucharow, Lawrence" <LSucharow@labaton.com>
> > **Date:** August 28, 2015 at 2:39:27 PM EDT
> > **To:** "Daniel P. Chiplock" <DCHIPLOCK@lchb.com>
> > **Cc:** "Garrett J. Bradley" <gbradley@tenlaw.com>, Michael Thornton <MThornton@tenlaw.com>, "Robert L. Lieff" <RLIEFF@lchb.com>
> > **Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal**
> >
> > Also, I believe that there are other cases and other agreements which are influencing people's desire to either reach agreement now or later.
> >
> > I don't have a dog in the hunt and don't want to be drawn into it.
> >
> > I apologize for any mistakes but I am not in a place where I can edit my emails so I'm just dictating them I'm hoping that spell correct doesn't fuck me up too much.

EX. 52

From: Michael Lesser
Sent: Monday, June 29, 2015 6:26 PM
To: Chiplock, Daniel P.
Cc: Evan Hoffman
Subject: STT Hours

Dan: Since case inception, Thornton has the following:

-Thornton doc review external (Thornton reviewers working Lieff + Labaton paid by Thornton) = 8,889.25
-Thornton doc review internal = 1,262.5
-Mike Lesser: 1243.2
-Evan Hoffman: 827.6
-Mike Thornton: 502.1
-Garrett Bradley: ---

Garrett is still working on this time, but this should be enough to give you the flavor; we do not have a large crew of folks (like Labaton and Lieff) behind these numbers, so this is mostly it for us. Of course, as we complete the detailed task coding and whatnot - we are still scrubbing and clarifying our records and these numbers may alter – but not too much, I expect. I never received lodestar from the ERISA firms. I thought I had sent you the Labaton stuff, but will send again in a minute. They have 29,000.

M

Michael A. Lesser, Esq.
Thornton Law Firm LLP
100 Summer St., 30th Floor
Boston, MA 02110
617-720-1333
800-431-4600
mlesser@tenlaw.com

EX. 53

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 EMPLOYEES SAVINGS AND PROFIT SHARING PLAN, on behalf of itself and JAMES PEHOUSHEK-STRANGELAND, and all others similarly situated, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-11698 MLW

DECLARATION OF GEORGE HOPKINS

I, George Hopkins, hereby declare under penalty of perjury:

1. Since December 29, 2008, I have served as Executive Director of the Arkansas Teacher Retirement System ("ATRS"). I am also a lawyer, and I understand the importance of a sworn declaration.

2. ATRS is the class representative in the above-captioned matter.

3. At all times during this matter, in ATRS' role as class representative I have been the primary contact between ATRS and attorneys for Labaton Sucharow ("Labaton") who represent ATRS. The majority of my communication with Labaton has been through Labaton partner Eric Belfi.

4. Labaton has done an outstanding job representing ATRS in this matter. I am very pleased with the result that Labaton helped obtain for the class. Personally, I am not aware of another law firm that could have worked as tenaciously or produced as good a result on behalf of the class as Labaton did.

5. Labaton has also represented ATRS in several other matters. In my opinion, Labaton's attorneys are talented and hard-working.

6. The fee awarded by the Court to the attorneys representing the class in this matter, including Labaton, was about 25% of the total $300 million settlement fund. Given the excellent result that Labaton helped obtain in this case, and Labaton's exceptional work representing the class throughout this case, I believe that 25% of the total settlement fund was a fair and reasonable fee award. I strongly believe that Labaton earned it.

7. I myself was not aware of Labaton's fee-sharing agreement with the Chargois & Herron law firm, or with Damon Chargois, until approximately August or September 2017.

8. I now understand that Labaton has had a fee-sharing agreement with Chargois & Herron for a number of years. I understand that, according to this agreement, Chargois & Herron believes that it is entitled to up to 20% of any fee Labaton earns as class counsel when representing ATRS as named Plaintiff. I further understand that this agreement was reached between Labaton and Chargois & Herron largely because attorneys at Chargois & Herron facilitated an introduction between ATRS and Labaton. This occurred prior to my service as Executive Director of ATRS.

9. I understand that, in the context of this matter, the "Customer Class Law Firms" – Labaton and the two other firms representing the "Customer Class," Lieff Cabraser Heimann & Bernstein, LLP and the Thornton Law Firm LLP – agreed that the three firms would fund from their respective fee awards Chargois & Herron's portion of the fee, equivalent to 5.5% of the total fee award, rather than Labaton paying 20% of its portion of the fee. I understand that, as a result of this agreement, Chargois & Herron received $4.1 million in connection with this matter.

10. In the past, Eric Belfi expressly offered to discuss with me how the plaintiffs' lawyers divide up the attorneys' fees awarded by the court. I told Mr. Belfi that I did not want to know the specifics of fee allocations between Labaton and other attorneys. I also told Mr. Belfi that if I ever wanted to know the details of Labaton's fee-sharing agreements, I would ask him. Those were my instructions, and I believe that a lawyer should follow the client's instructions.

11. My primary focus was, and has been, the amount awarded to the class, and the aggregate amount of attorney's fees. Once the aggregate attorney's fee award has been established by the Court, I am not concerned with how that aggregate fee is distributed among lawyers or law firms, because – in my view – those distributions do not affect the class.

12. Moreover, I have no interest in becoming a referee between various law firms, including local counsel. I believe that my knowledge of and involvement with fee agreements between attorneys would inevitably distract from my focus, which is protecting the class.

13. My time on this matter was extensive, and it was appropriately spent on staying very involved, including throughout the lengthy mediation process, in matters that helped protect the interests of the class.

14. Because of my instructions to Mr. Belfi regarding my desire not to know or otherwise be involved with the specifics of Labaton's fee agreements, I do not feel misled by the fact that I was unaware of Labaton's agreement with Chargois & Herron. In fact, I believe that Mr. Belfi and Labaton were following my express instructions.

15. In my view, this payment had no effect on the interests of the class. Moreover, because Labaton believed that it had an obligation to share its fee with Chargois & Herron, I understand that the Labaton lawyers would feel the need to fulfill that obligation. Although I'm sorry to see Labaton and the other Customer Class Law Firms lose any portion of their own fee, I do not object to the $4.1 million payment, paid by the Customer Class Law Firms from their own fee award, to Chargois & Herron in this matter.

16. Given my clear instructions to Mr. Belfi, I have no problem with the fact that the details of Labaton's agreement with, and payment to, Chargois & Herron were not explained to me. I am now aware of that specific agreement, the parameters of which I describe above. I now ratify that agreement, with full knowledge of it.

17. I am ratifying Labaton's fee-sharing agreement with Chargois & Herron because I do not object to it. My ratification of Labaton's agreement with Chargois & Herron is not a result of pressure from anybody, nor is it a result of any desire to avoid: inconvenience in

obtaining new counsel; alienating ATRS' current counsel; any change in the quality of ATRS' representation in this matter; ATRS' position in this matter being affected; or any other reason.

I declare under the pains and penalties of perjury under the laws of the United States of America and the State of Arkansas that the foregoing is true and correct. Executed this 15th day of March, 2018 in Little Rock, Arkansas.

George Hopkins

George Hopkins

EX. 54

From: Keller, Christopher J. <ckeller@labaton.com>
Sent: Monday, May 23, 2011 6:36 PM
To: Garrett Bradley
Subject: #755904 v1 - Letter Agreement -- State Street
Attachments: G79C01!.DOC

What do you think of this?


Please consider the environment before printing this email.

Christopher J. Keller
Partner
212 907 0853 direct
212 883 7053 fax
email ckeller@labaton.com

May 4, 2011

VIA ELECTRONIC MAIL
Michael P. Thornton, Esq. (MThornton@tenlaw.com)
Garrett J. Bradley, Esq. (GBradley@tenlaw.com)
Thornton & Naumes LLP
100 Summer Street, 30th Floor
Boston, MA 02110

Steven E. Fineman, Esq. (sfineman@lchb.com)
Daniel P. Chiplock, Esq. (dchiplock@lchb.com)
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413

Richard M. Heimann, Esq. (rheimann@lchb.com)
Lexi J. Hazam, Esq. (lhazam@lchb.com)
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339

Re: *Arkansas Teacher Retirement System v. State Street Corporation*
Civil Action No. 11-cv-10230-MLW (D. Mass.)

Dear Counsel:

I am pleased we were able to come to terms and will be working together in this matter. I have outlined below the terms of the agreement we have reached.

Arkansas Teacher Retirement System ("Arkansas Teacher") will be represented in the action by Labaton Sucharow LLP ("Labaton Sucharow") as Lead Counsel, and Thornton & Naumes LLP ("Thornton & Naumes") and Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") will serve as additional counsel for Arkansas Teacher in this action.

Arkansas Teacher has made an application to the Court for appointment of its selection of Labaton Sucharow as Interim Lead Counsel. In the event that the Court appoints Labaton Sucharow as interim Lead Counsel and subsequently as Lead Counsel, we agree as follows:

We agree that our firms will act in good faith to divide the work so that each of the firms performs at least 20% of the work and each will receive at least 20% of the fees awarded in this matter. The remaining 40% of the fees awarded shall be allocated in good faith at the conclusion of the case based on each firms' actual time spent on this matter..

There is an "off the top" obligation to referring counsel of 6% of the fees awarded. In addition, we agree to exchange on a quarterly basis our then current lodestar reports showing quarterly and aggregate billings in this matter.

We also agree that any dispute arising under this agreement or in this case may not be litigated in court and that all such disputes or claims shall be resolved, upon election of any party, through binding arbitration conducted pursuant to the applicable rules of the American Arbitration Association in any jurisdiction in which any of the firms reside.

Please sign below indicating your agreement to these terms.

Very truly yours,

Christopher Keller, Esq.

Accepted and agreed by:

Thornton & Naumes LLP

_____ Date: _____

Michael P. Thornton, Esq.

Lieff Cabraser Heimann & Bernstein, LLP

_____ Date: _____

Steven E. Fineman, Esq.

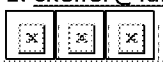
EX. 55

From: Bradley, Garrett J.
Sent: Tuesday, June 21, 2016 11:13 AM
To: Stocker, Michael W.
Cc: Belfi, Eric J.; Keller, Christopher J.
Subject: Re: State Street

I think they should be two separate conversations by different people. I'll take a run at state street.

Garrett

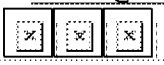
On Jun 21, 2016, at 11:10 AM, Stocker, Michael W. <MStocker@labaton.com> wrote:

> So we are talking about have a global conversation at the same time as dealing with state street? Or start with state street, talk about how fact specific it is, and then reach future deals later (but soon)? I think that's risky, and that he will use state street for leverage.
>
> **From:** Belfi, Eric J.
> **Sent:** Tuesday, June 21, 2016 11:06 AM
> **To:** Keller, Christopher J.; Stocker, Michael W.
> **Cc:** Bradley, Garrett J.
> **Subject:** RE: State Street
> I agree on the historical stuff but for the future cases, I think we discussed something lower like 5% of lodestar and 10%. I also think we need to be a time limit on the agreement so we can reevaluate the situation.
>
> **From:** Keller, Christopher J.
> **Sent:** Tuesday, June 21, 2016 11:04 AM
> **To:** Belfi, Eric J. <EBelfi@labaton.com>; Stocker, Michael W. <MStocker@labaton.com>
> **Cc:** Bradley, Garrett J. <GBradley@labaton.com>
> **Subject:** RE: State Street
> We can't appear to be arbitrary. If we have a new deal for him then we have to discuss it. State Street can be a one off since it's not a securities class action and there are other relevant unique attributes. I like the idea of bringing him to the current best deal and that is 10% of our lodestar and 20% of our gravy. In most cases that will lead to a referral of about 15% and protects us in cases like spectrum where we only got a .7 on our time.
>
> 
>
>
> **Christopher J. Keller** | **Partner**
> 140 Broadway, New York, New York 10005
> T: (212) 907-0853 | F: (212) 883-7053
> E: ckeller@labaton.com | W: www.labaton.com
>
> 
>
> **From:** Belfi, Eric J.
> **Sent:** Tuesday, June 21, 2016 11:00 AM
> **To:** Keller, Christopher J.; Stocker, Michael W.
> **Cc:** Bradley, Garrett J.
> **Subject:** RE: State Street

I do not have a problem with that. However, we need to deal with other issue soon – it does not make sense to leave it outstanding.
We also have to deal with Spectrum. Since we are getting .68 on our time, should we reduce him to 14 percent – I will call to discuss this issue with him.

From: Keller, Christopher J.
Sent: Tuesday, June 21, 2016 10:58 AM
To: Stocker, Michael W. <MStocker@labaton.com>
Cc: Bradley, Garrett J. <GBradley@labaton.com>; Belfi, Eric J. <EBelfi@labaton.com>
Subject: RE: State Street
I'm fine with that

Christopher J. Keller | **Partner**
140 Broadway, New York, New York 10005
T: (212) 907-0853 | F: (212) 883-7053
E: ckeller@labaton.com | W: www.labaton.com



From: Stocker, Michael W.
Sent: Tuesday, June 21, 2016 10:45 AM
To: Keller, Christopher J.
Cc: Bradley, Garrett J.; Belfi, Eric J.
Subject: State Street
Chris I think Garrett should have a friendly convo with Damon just about SS without alluding directly to the global issues. I think it is not a good idea to inject the other stuff into this conversation.
When we get to the harder stuff I can go with whoever to talk about the rules, but let's wait for this to clear.

Michael W. Stocker | **Partner**
140 Broadway, New York, New York 10005
T: (212) 907-0882 | F: (212) 883-7082
E: mstocker@labaton.com | W: www.labaton.com

EX. 56

Message

From: Damon Chargois [damon@cmhllp.com]
Sent: 4/25/2013 1:23:44 AM
To: Garrett J. Bradley [gbradley@tenlaw.com]
CC: Robert L. Lieff [RLIEFF@lchb.com]; Robert L. Lieff [rlieff@lieff.com]; Michael Thornton [MThornton@tenlaw.com]; Belfi, Eric J. [EBelfi@labaton.com]; Keller, Christopher J. [ckeller@labaton.com]; Daniel P. Chiplock [DCHIPLOCK@lchb.com]
Subject: Re: State street fee regarding local counsel

Thank you, Garrett. Agreed.

Sent from my iPhone

On Apr 24, 2013, at 8:08 PM, "Garrett Bradley" <GBradley@tenlaw.com> wrote:

> Bob,
>
> As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% guaranteed each with the balance to be decided upon at a later date. Obviously this may go up should Labaton receive an amount higher than 20%.
>
> We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), will be paid off the top with the balance of the overall fee 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
>
>
> _____
>
>
>
> This e-mail and any files transmitted with it are confidential and are
>
> intended solely for the use of the individual or entity to whom they are
> addressed. This communication may contain material protected by the
> attorney-client privilege. If you are not the intended recipient or the person
> responsible for delivering the e-mail to the intended recipient, be advised that
> you have received this e-mail in error and that any use, dissemination,
> forwarding, printing, or copying of this e-mail is strictly prohibited. If you
> have received this e-mail in error; please immediately notify us by telephone at
> (800) 431-4600. You will be reimbursed for reasonable costs incurred in
> notifying us.
>
>
>
> Please consider the environment before printing this email.

EX. 57

Message

From: Lieff, Robert L. [RLIEFF@lchb.com]
Sent: 4/25/2013 1:17:49 AM
To: Garrett Bradley [GBradley@tenlaw.com]; Robert L. Lieff [rlieff@lieff.com]; Michael Thornton [MThornton@tenlaw.com]; Eric Belfi [ebelfi@labaton.com]
CC: Damon Chargois Esq. [damon@cmhllp.com]; Christopher J. Keller Esq. [ckeller@labaton.com]; Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]
Subject: RE: State street fee regarding local counsel

I am in full agreement. Bob

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. 58

From: Garrett Bradley
Sent: Thursday, August 6, 2015 9:01 AM
To: Robert L. Lieff
Cc: Michael Thornton
Subject: Fee discussions

Bob,

I was thinking about our call this morning yesterday while working out and I thought it might be helpful to put things in writing so everyone can see what we at Thornton are thinking. As I have said, before we start being equal in state street we need to be on an even par in both cases. What I mean by that is, even though you had no client, jurisdiction or concept Mike Thornton went and fought for you, and Lieff the entity, by using his influence with Labaton to get you 20% of state street. As I said yesterday, who was looking out for his interests in Mellon? Where was the corresponding deal? There was discussion of the same deal when we were in CA but Hausfield, who you brought in, did not sign and then we got sent to the MDL. Then you brought in Ohio for leverage in the MDL and Mike asked you what our fee interests were. I know because I was pressing him on it. He told me you said "we are in it together". Let's put some numbers behind what I am saying.

Because of Mike's advocacy, and only Mike's advocacy, you have a minimum in State street.We both know what that number is will be subject to many factors. But even in a low scenario of a $60 million fee it could break down as follows:

$60 million fee:

$5,400,000 to Erisa
$3,000,000 to arkansas local

That leaves $51,600,000. For the sake of argument let's say Labaton sticks with the "we want half" that leaves $25,800,000. Under the deal we each get 20% of the $51,600,000 which is $10,320,000 each which equals $20,640,000. Leaving a balance of $5,160,000.

Your position is you want to give us 10% of Mellon but an equal split of the residual (and discussion with Labaton of coming off their "we want half"). In Mellon you have $20million in Lodestar and you want to get $30million. So we would get $2-3 million (plus our lodestar) in mellon only to give it back to you in state street by splitting the residual balance $5,160,000 50/50? Would you agree to this under these circumstances?

Here is how I propose we get to par. We fought for you to get at least $10,320,000 in state street and here is how I believe you should reciprocate:

Our lodestar $1.5 million- $2.5 million depending on Judge 20% of Lieff fee $4million-$6million depending on Judge (if you get Kessler to cover some that is your business) What we have or likely will get total from relator cases $1.5-$2 million

Gives us between $7 million and $9.5 million.

This gets us close enough to par with your $10,320,000 in state street. Then this is a basis for us to fight to get Labaton lower and certainly fair enough for us to split what ever the residual is. In our conversation, you keep trying to make up what you give us in Mellon back in state street and respectfully, that is unacceptable.

Also you raised that Chiplock said everything we provided in Mellon was already public. It was public because of our filings in Virginia and Florida (which were copied by Kessler, a point we will need to make in our own fee application). You also said Dan was considering his own fee application in State Street. The difference is we have real story to tell Judge Kaplan. We did what he said, we changed an industry and the federal investigations followed not the other way around. Lief can't tell a similar story to Judge Wolf in state street. Also, we would have to take the position, and I suspect Labaton would as well, that if you do that the deal we have is invalidated.

I really do not want to have to do my own fee application as my friends at Lieff may get hurt and I don't want that. However I do want them to recall we are friends and hope they treat us accordingly. I see no need to meet with Chiplock/Lesser but am happy to meet with you and Steve Fineman on Tuesday of next week perhaps for an early drink to see if we can come to a resolution and continue to work together on new projects in the future. Mike T is available as well. Together our firms have done great work and I hope we can equally be respected for that. Thanks for your time and effort.

Garrett

EX. 59

Message

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: 8/6/2015 2:00:35 PM
To: Lieff, Robert L. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RLIEFF]
CC: Michael Thornton [MThornton@tenlaw.com]
Subject: Fee discussions

Bob,

I was thinking about our call this morning yesterday while working out and I thought it might be helpful to put things in writing so everyone can see what we at Thornton are thinking. As I have said, before we start being equal in state street we need to be on an even par in both cases. What I mean by that is, even though you had no client, jurisdiction or concept Mike Thornton went and fought for you, and Lieff the entity, by using his influence with Labaton to get you 20% of state street. As I said yesterday, who was looking out for his interests in Mellon? Where was the corresponding deal? There was discussion of the same deal when we were in CA but Hausfield, who you brought in, did not sign and then we got sent to the MDL. Then you brought in Ohio for leverage in the MDL and Mike asked you what our fee interests were. I know because I was pressing him on it. He told me you said "we are in it together". Let's put some numbers behind what I am saying.

Because of Mike's advocacy, and only Mike's advocacy, you have a minimum in State street.We both know what that number is will be subject to many factors. But even in a low scenario of a $60 million fee it could break down as follows:

$60 million fee:

$5,400,000 to Erisa
$3,000,000 to arkansas local

That leaves $51,600,000. For the sake of argument let's say Labaton sticks with the "we want half" that leaves $25,800,000. Under the deal we each get 20% of the $51,600,000 which is $10,320,000 each which equals $20,640,000. Leaving a balance of $5,160,000.

Your position is you want to give us 10% of Mellon but an equal split of the residual (and discussion with Labaton of coming off their "we want half"). In Mellon you have $20million in Lodestar and you want to get $30million. So we would get $2-3 million (plus our lodestar) in mellon only to give it back to you in state street by splitting the residual balance $5,160,000 50/50? Would you agree to this under these circumstances?

Here is how I propose we get to par. We fought for you to get at least $10,320,000 in state street and here is how I believe you should reciprocate:

Our lodestar $1.5 million- $2.5 million depending on Judge
20% of Lieff fee $4million-$6million depending on Judge (if you get Kessler to cover some that is your business)
What we have or likely will get total from relator cases $1.5-$2 million

Gives us between $7 million and $9.5 million.

This gets us close enough to par with your $10,320,000 in state street. Then this is a basis for us to fight to get Labaton lower and certainly fair enough for us to split what ever the residual is. In our conversation, you keep trying to make up what you give us in Mellon back in state street and respectfully, that is unacceptable.

Also you raised that Chiplock said everything we provided in Mellon was already public. It was public because of our filings in Virginia and Florida (which were copied by Kessler, a point we will need to make in our own fee application). You also said Dan was considering his own fee application in State Street. The difference is we have real story to tell Judge Kaplan. We did what he said, we changed an industry and the federal investigations followed not the other way around. Lief can't tell a similar story to Judge Wolf in state street. Also, we would have to take the position, and I suspect Labaton would as well, that if you do that the deal we have is invalidated.

I really do not want to have to do my own fee application as my friends at Lieff may get hurt and I don't want that. However I do want them to recall we are friends and hope they treat us accordingly. I see no need to meet with Chiplock/Lesser but am happy to meet with you and Steve Fineman on Tuesday of next week perhaps for an early drink to see if we can come to a resolution and continue to work together on new projects in the future. Mike T is available as well. Together our firms have done great work and I hope we can equally be respected for that. Thanks for your time and effort.

Garrett

EX. 60

Message

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: 8/28/2015 6:17:58 PM
To: Lieff, Robert L. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RLIEFF]
CC: Michael Thornton [MThornton@tenlaw.com]; Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]; rlieff@lieff.com
Subject: Re: State Street

Bob,
I am driving but took a quick look at your email and pulled over to type this. I think you are misunderstood. I have not agreed that it would be equitable to split the balance of the forty percent the way you described below. What I have said is that may be a fair approach depending on the outcome of our fee in the Mellon matter. If we are treated fairly there, then we will do all we can to treat you fairly in the state street matter. As I have said before, because of Mike Thornton's advocacy, you are guaranteed at least 20% of the State Street case in which you have no client and did not develop the concept. Yet, we have no corresponding protection in the Mellon matter. Happy to discuss further at any time.

Garrett

On Aug 28, 2015, at 2:05 PM, Lieff, Robert L. <RLIEFF@lchb.com> wrote:
Garrett,

I called and suggested that we have a meeting together with the Labaton people to talk about putting in writing an understanding of the fee division in this case.

You, Mike and I have discussed the State Street fee division and have focused on the existing verbal understanding that was reached on November 9, 2010, with Chris Keller. We agreed that among the three firms we will each have a 20% interest in the fee with the balance to be divided later. Of course, we also have to factor in the 9% that ERISA counsel get pursuant to written agreement and a provision for Arkansas local counsel.

You and I have agreed that it would be equitable to divide the balance of the fee with Labaton getting 50% and each of our firms 25%. This would result in a fee division as follows:

Labaton	33.0	(20 + 13)
Thornton	26.5	(20 + 6.5)
Lieff Cabraser	26.5	(20 + 6.5)
ERISA	9.0	
Arkansas Local	5.0	
	100.0%	

If we put the above into an agreement among the three firms, that would certainly provide protection for everyone.

Bob

<image001.gif>

Robert L. Lieff
Of Counsel
rlieff@lchb.com

t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com

EX. 61

From: Chiplock, Daniel P. <DCHIPLOCK@lchb.com>
Sent: Sunday, August 30, 2015 12:50 PM
To: Michael Thornton; Garrett Bradley
Cc: Lieff, Robert L.; rlieff@lieff.com; Michael Lesser
Subject: RE: State Street

Excellent and I would expect and anticipate nothing less, Mike. I just know what some of our colleagues can do when presented with an easy target in order to hold up the process, and we don't want to do that. Thanks.

-----Original Message-----
From: Michael Thornton [mailto:MThornton@tenlaw.com]
Sent: Sunday, August 30, 2015 12:45 PM
To: Chiplock, Daniel P.; Garrett Bradley
Cc: Lieff, Robert L.; rlieff@lieff.com; Michael Lesser
Subject: Re: State Street

Thank you for the tip Dan. I did say something like that on the call, but preceded it by saying it was a guess and that I would have to ask Mike Lesser for the actual figure at that point which of course is not complete as with the other firms. I appreciate your concern and I guess I can only assure you that it generally our policy to truthful and accurate hour claims.

Original Message
From: Chiplock, Daniel P.
Sent: Sunday, August 30, 2015 12:24 PM
To: Garrett Bradley
Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com
Subject: RE: State Street

No problem. It may be tomorrow since I have to go back to archives.

In the meantime, while we're on the subject of credibility, I want to point out that we need to be consistent and credible with our lodestar reporting in State Street. We are gathering final lodestar reports now, but I heard third-hand that Mike recently said on a call (that I wasn't on) that Thornton Law Firm was showing $14 million. That number does not comport with the hours Mike Lesser told me for Thornton as of June 29 (around 12,750), which make more sense given what we know about the work that was done. I am hopeful Mike T. simply misspoke or was guessing when he said $14 million and that we are not going to suddenly see an additional 12,000 hours mysteriously appear on Thornton Law Firm's behalf. I would expect that you would object if LCHB or Labaton tried something like that, and ERISA counsel certainly will (and tie up this process as long as possible) if they suspect anything remotely amiss on that front. Let's not make problems for ourselves that we don't need. Also recognize that your reviewers were all housed outside of your firm and their respective overhead and facilities expenses were paid for by others, which we were happy to do as a courtesy. Thanks.

-----Original Message-----
From: Garrett Bradley [mailto:GBradley@tenlaw.com]
Sent: Sunday, August 30, 2015 10:43 AM
To: Chiplock, Daniel P.
Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com
Subject: Re: State Street

That would be helpful thank you.

Garrett

> On Aug 30, 2015, at 10:30 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:
>
> I don't look past that point, Garrett. But you need to also recognize that you are only in the BNYM class case because of us.
>
> I guess I'll gather the emails etc concerning the assignments that were given to your firm. As if that's going to change your position.
>
> Sent from my iPhone
>
> On Aug 30, 2015, at 10:19 AM, Garrett Bradley <GBradley@tenlaw.com<mailto:GBradley@tenlaw.com>> wrote:
>
> Dan,
>
> Thanks for the email. I think we will have to agree to disagree as you keep looking past the fact that but for Mike Thornton you would not be in the state street case just like Labaton is not in BONY.
>
> Can you clarify what you mean by we did not "get the work done" as you indicated. That has never been specified and really should be to be deemed credible. Thanks.
>
> Garrett
>
> On Aug 30, 2015, at 9:04 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
>
> Garrett,
>
> Thanks for your email and I actually think it's useful so that Mike and Bob can participate in this.
>
> This idea of "protection" in BNYM is where I think we keep talking past each other. The bottom line is that LCHB is the least protected of all in that case. This is the fact that has kept me up at night for 2.5 years while we've continued pouring lodestar into that case (because we had to). We invested the most in order to try to get a class certified there and to sufficiently man 110 depositions, defend counterclaims, etc., but if Judge Kaplan takes a negative view of the value of document review/analysis (our arguments to the contrary notwithstanding), then LCHB will get hit the hardest. You are totally shielded from this because you didn't invest in document review. In other words, LCHB has a real risk of actually losing money in BNYM. You have virtually no risk of that. If Thornton is not treated "fairly" in BNYM by the Court it will be because nobody (least of all LCHB) was treated "fairly." It's not clear to me what it is you expect in that circumstance.
>
> The $10 million in State Street that you mention below also does not make up for LCHB's investment in that case. And we've certainly contributed our share to the result in State Street, having litigated BNYM (thus substantially increasing the value of State Street) and developed the ch. 93A theory (the most readily certifiable claim in State Street, and by far the most valuable).
>
> Dan
>
> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
> Sent: Friday, August 28, 2015 3:01 PM

> To: Chiplock, Daniel P.
> Cc: Lieff, Robert L.; Michael Thornton; rlieff@lieff.com<mailto:rlieff@lieff.com>
> Subject: Re: State Street
>
> Dan,
>
> I tried to call you but you are out. I think these things are best discussed rather than emailed so please call my cell when you can 6174134892 as I do not have yours.
>
> However a few points. I do not dismiss your efforts in Mellon but your guaranteed percentage was established years prior to a Mellon result. What I am pointing out is the inequities of our different positions. In Mellon, when we had created that case by developing the fx case all that we got was some work that resulted in $1.5 million in time. Also please elaborate on your statement that "the work was not getting done".
>
> Now contrast that to state street where you had no client and no concept (and Mellon was years from setting) and Mike Thornton demands that you get a floor of 20% which is probably worth about $10 million.
>
> You must agree you are in a much better position in state street than we are in Mellon. As I have said to Bob, we are only looking for a fair outcome in these matters. I think you would agree we have protected you better in state street than we are protected in Mellon. Once we have an idea of what our Mellon number looks like then we can discuss how to approach the balance of the 40% with Labaton .
>
> Garrett
>
> On Aug 28, 2015, at 2:34 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
> Garrett,
>
> I know you didn't really mean to diminish LCHB's role in creating the result in BNY Mellon, at extraordinary risk to itself, which in turn doubled the value of State Street. You need to know that we advocated for you guys too, getting you a role in the BNYM class case (and pushing back against several co-counsel in the process) when you weren't actually owed one. I also gave your firm more assignments than others at the outset in BNYM, until it became clear that the work simply wasn't getting done. In other words, we've each tried to look out for the other in the past. This has been far from a one-way street.
>
> As you know, Judge Kaplan controls everyone's fate in BNYM and LCHB has the most risk before him, having invested the most. We asked for a multiplier for your firm that is much larger than anyone else's, and I really, truly hope that he grants that request.
>
> Thanks,
>
> Dan
>
> From: Garrett Bradley [mailto:GBradley@tenlaw.com]
> Sent: Friday, August 28, 2015 2:18 PM
> To: Lieff, Robert L.
> Cc: Michael Thornton; Chiplock, Daniel P.; rlieff@lieff.com<mailto:rlieff@lieff.com>
> Subject: Re: State Street
>
> Bob,
> I am driving but took a quick look at your email and pulled over to type this. I think you are misunderstood. I have not agreed that it would be equitable to split the balance of the forty percent the way you described below. What I have said is that may be a fair approach depending on the outcome of our fee in the Mellon matter. If we are treated fairly

there, then we will do all we can to treat you fairly in the state street matter. As I have said before, because of Mike Thornton's advocacy, you are guaranteed at least 20% of the State Street case in which you have no client and did not develop the concept. Yet, we have no corresponding protection in the Mellon matter. Happy to discuss further at any time.
>
> Garrett
>
> On Aug 28, 2015, at 2:05 PM, Lieff, Robert L. <RLIEFF@lchb.com<mailto:RLIEFF@lchb.com>> wrote:
> Garrett,
>
> I called and suggested that we have a meeting together with the Labaton people to talk about putting in writing an understanding of the fee division in this case.
>
> You, Mike and I have discussed the State Street fee division and have focused on the existing verbal understanding that was reached on November 9, 2010, with Chris Keller. We agreed that among the three firms we will each have a 20% interest in the fee with the balance to be divided later. Of course, we also have to factor in the 9% that ERISA counsel get pursuant to written agreement and a provision for Arkansas local counsel.
>
> You and I have agreed that it would be equitable to divide the balance of the fee with Labaton getting 50% and each of our firms 25%. This would result in a fee division as follows:
>
> Labaton 33.0 (20 + 13)
> Thornton 26.5 (20 + 6.5)
> Lieff Cabraser 26.5 (20 + 6.5)
> ERISA 9.0
> Arkansas Local 5.0
> 100.0%
>
> If we put the above into an agreement among the three firms, that would certainly provide protection for everyone.
>
> Bob
>
> <image001.gif>
>
> Robert L. Lieff
> Of Counsel
> rlieff@lchb.com<mailto:rlieff@lchb.com>
> t 415.956.1000
> f 415.956.1008
> Lieff Cabraser Heimann & Bernstein, LLP
> 275 Battery Street, 29th Floor
> San Francisco, CA 94111-3339
> www.lieffcabraser.com<http://www.lieffcabraser.com>
>
>
>
>
>
>
> 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 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.

EX. 62

From: Chiplock, Daniel P. <DCHIPLOCK@lchb.com>
Sent: Friday, August 28, 2015 3:02 PM
To: 'Sucharow, Lawrence'
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

If the Arkansas and ERISA fees didn't come off the top, I guess the split would look like this:
&
Labaton& - 20%
LCHB – 20%
Thornton – 20%
ERISA – 9%
Arkansas – 5%
Labaton/LCHB/Thornton – 26%
&
&
If the Arkansas and ERISA fees do come off the top, I guess the split looks like this:
&
ERISA – 9%
Arkansas – 5%
Labaton – 17.2%
LCHB – 17.2%
Thornton – 17.2%
Labaton/LCHB/Thornton – 34.4%
&
&
I'm not the math wizard, so please correct me if anyone comes up with different figures.
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 3:27 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
Just my own thinking on this but I think the deal with them would be that their percentage does come off the top (although what the top is is another question). I can't imagine how else it would be calculated since all the other fees are two customer counsel.

Sent from my iPhone

On Aug 28, 2015, at 2:11 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> Actually one wrinkle I'm not sure about is how ERISA and local Arkansas counsel fits in – I had thought that their payments would not come off the top and therefore would not result in a reduction of each customer firm's 20% - do you know what I mean?& You may be saying something different from that below, which may be why it'd be useful to iron it out.
> &

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:59 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
Dan sorry for that last email that I didn't spellcheck.&
Basically what I'm trying to say is I understand the basic agreement to be that after payment of all other counsel, our three firms shall each receive 20%, with the distribution of the balance of 40% to be determined later.
&
If that is the agreement you are referring to, I can confirm it. Let me know.&
Larry

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> Mike, Garrett – Hope you're well – please see below.& If we can figure this out early next week that may help speed the process.
>
> Thanks,
> &
> Dan
> &
>
> **From:** Chiplock, Daniel P.
> **Sent:** Friday, August 28, 2015 1:33 PM
> **To:** 'Sucharow, Lawrence'
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> The purpose of my email was just to get your reaction, Larry, since these are your drafts.& Thank you for responding quickly, and for giving me your reaction.& I would love to include them so we can move forward promptly.& I'll re-send.&
> &
>
> **From:** Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> **Sent:** Friday, August 28, 2015 1:28 PM
> **To:** Chiplock, Daniel P.
> **Cc:** Zeiss, Nicole; Lieff, Robert L.
> **Subject:** Re: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore he sensual to any memorialization of that understanding. & If you more willing to resend your email and include them,we can see if there is any disagreement as to what our understanding is/was.
> Larry
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 1:10 PM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:
>
> > Larry and Nicole:
> > &

Attached are my redlines to the preliminary approval order and final judgment.& These edits are consistent with the Court's January 2012 order concerning leadership structure.&
&
I'm emailing just you (and copying Bob) so as to try not to make a big thing over this, but I do think it's appropriate to memorialize what the fee allocation amongst customer class counsel is going to be (consistent with the understanding that the firms have been operating under for a couple years now) before we proceed much further.& & I think we'd be willing to support Lead Counsel having final authority over fee and expense allocations, etc., for purposes of the settlement stip, and thus present a united front against a perpetual troublemaker like McTigue—which should be in everyone's interest--provided we had some basic written comfort ourselves.& I don't think it's too early for that, given the interest in seeing the funds come in this year.
&
Thanks,
Dan
&

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Friday, August 28, 2015 9:53 AM
To: Chiplock, Daniel P.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Thank you!
&
&
&
&
&
&
&
&<image001.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image002.gif&>& &<image003.gif&>& &<image004.gif&>
&

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
OK, sounds good.& I will also get you whatever edits I have to the settlement docs by noon.
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 9:28 AM
To: Chiplock, Daniel P.

Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
&
I am speaking to Paine today at around 10 AM to both report to him and get his update.
I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.

Sent from my iPhone

On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. &<DCHIPLOCK@lchb.com&>wrote:

> This looks OK to me, thanks.& I'm happy to send it (after you've done the other redline) to Paine, if you like.& Or someone else can, no matter.
> &
> ---
> **From:** Zeiss, Nicole [mailto:NZeiss@labaton.com]
> **Sent:** Thursday, August 27, 2015 3:27 PM
> **To:** Lynn Sarko; 'rlieff@lieff.com'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> **Cc:** Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
> **Subject:** RE: SST--Proposed Revision to Term Sheet for DOL Deal
> &
> Dear all,
> &
> We've had some additional exchanges about the term sheet and, specifically, para 8(n).& I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal.& If you disagree, please let us know asap.
> &
> When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.
> &
> Thanks
> &
> &
> &
> &
> &
> &
> &
> &<image001.jpg&>
> **Nicole M. Zeiss | Partner**
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 |& F: (212) 883-7067
> E: nzeiss@labaton.com& |& W: www.labaton.com

&
&<image002.jpg&>& &<image003.jpg&>& &<image004.jpg&>
&

From: Zeiss, Nicole
Sent: Wednesday, August 26, 2015 5:09 PM
To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.
&
Thanks
&
&
&
&
&
&
&
&<image005.jpg&>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 |& F: (212) 883-7067
E: nzeiss@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& &<image007.jpg&>& &<image008.jpg&>
&

From: Sucharow, Lawrence
Sent: Wednesday, August 26, 2015 4:34 PM
To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Then we can probably forget my proposed changes.
&

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 4:26 PM
To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.

Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
Sure.& & If it works for them – its fine with me
&
Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Lynn Sarko &<lsarko@KellerRohrback.com&>; Goldsmith, David &<dgoldsmith@labaton.com&>; 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
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'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
&
David
Thanks for sending this.& Sorry, I had misunderstood what you were saying on our call earlier today.
&
Two things:
&

1.& I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down.& & So—question—can we get rid of the word "fees" in this paragraph—does it still work?
&
What do you think??
&
Lynn
&
Lynn Lincoln Sarko
Managing Partner
&
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com
&

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Wednesday, August 19, 2015 2:59 PM
To: 'rlieff@lieff.com' &<rlieff@lieff.com&>; Daniel P. Chiplock &<DCHIPLOCK@lchb.com&>; Michael Thornton &<MThornton@tenlaw.com&>; Garrett J. Bradley &<gbradley@tenlaw.com&>; Michael Lesser &<MLesser@tenlaw.com&>; 'Evan Hoffman' &<EHoffman@tenlaw.com&>; Lynn Sarko &<lsarko@KellerRohrback.com&>; 'Kravitz, Carl S.' &<ckravitz@zuckerman.com&>; 'Brian McTigue' &<bmctigue@mctiguelaw.com&>
Cc: Sucharow, Lawrence &<LSucharow@labaton.com&>; Zeiss, Nicole &<NZeiss@labaton.com&>; Rogers, Michael H. &<MRogers@labaton.com&>
Subject: SST--Proposed Revision to Term Sheet for DOL Deal
&
All:& The below reflects our proposed revisions to the Term Sheet (in **red boldface**) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet).& Please comment.& Thanks.
&
&

8(n).& & & & & & & **Plan of Allocation**. & . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement

Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court.& **However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.**

&

12.& & & & & & & & **Plaintiffs' Counsel's Attorneys' Fees and Expenses.**& & & & & Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award.& Plaintiffs' Counsel ~~shall~~ **may** apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, **but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above.** & In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days.& The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees.& Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.

&

&

&

&

&

&
&<image005.jpg&>
David J. Goldsmith | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0879 | F: (212) 883-7079
E: dgoldsmith@labaton.com& |& W: www.labaton.com
&
&<image006.jpg&>& & &<image006.jpg&>& & &<ima
ge006.jpg&>
&

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.

&

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 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 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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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.

&<LCHB_iManage_1271399_1.DOC&>

&<LCHB_iManage_1271400_1.DOCX&>

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 message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 63

Message

From: Garrett Bradley [GBradley@tenlaw.com]
Sent: 8/28/2015 8:04:28 PM
To: Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]
CC: Sucharow, Lawrence [LSucharow@labaton.com]; Michael Thornton [MThornton@tenlaw.com]; Lieff, Robert L. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RLIEFF]
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

The Arkansas fee is still being negotiated but we hope to have it down to 5%.

Garrett

On Aug 28, 2015, at 4:02 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:
If the Arkansas and ERISA fees didn't come off the top, I guess the split would look like this:

Labaton - 20%
LCHB – 20%
Thornton – 20%
ERISA – 9%
Arkansas – 5%
Labaton/LCHB/Thornton – 26%

If the Arkansas and ERISA fees do come off the top, I guess the split looks like this:

ERISA – 9%
Arkansas – 5%
Labaton – 17.2%
LCHB – 17.2%
Thornton – 17.2%
Labaton/LCHB/Thornton – 34.4%

I'm not the math wizard, so please correct me if anyone comes up with different figures.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 3:27 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Just my own thinking on this but I think the deal with them would be that their percentage does come off the top (although what the top is is another question). I can't imagine how else it would be calculated since all the other fees are two customer counsel.

Sent from my iPhone

On Aug 28, 2015, at 2:11 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:
Actually one wrinkle I'm not sure about is how ERISA and local Arkansas counsel fits in – I had thought that their payments would not come off the top and therefore would not result in a reduction of each customer firm's 20% - do you know what I mean? You may be saying something different from that below, which may be why it'd be useful to iron it out.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:59 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Dan sorry for that last email that I didn't spellcheck.
Basically what I'm trying to say is I understand the basic agreement to be that after payment of all other counsel, our three firms shall each receive 20%, with the distribution of the balance of 40% to be determined later.

If that is the agreement you are referring to, I can confirm it. Let me know.
Larry

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:
Mike, Garrett – Hope you're well – please see below. If we can figure this out early next week that may help speed the process.

Thanks,

Dan

From: Chiplock, Daniel P.
Sent: Friday, August 28, 2015 1:33 PM
To: 'Sucharow, Lawrence'
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

The purpose of my email was just to get your reaction, Larry, since these are your drafts. Thank you for responding quickly, and for giving me your reaction. I would love to include them so we can move forward promptly. I'll re-send.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:28 PM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore he sensual to any memorialization of that understanding. If you more willing to resend your email and include them,we can see if there is any disagreement as to what our understanding is/was.

Larry

Sent from my iPhone

On Aug 28, 2015, at 1:10 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:
Larry and Nicole:

Attached are my redlines to the preliminary approval order and final judgment. These edits are consistent with the Court's January 2012 order concerning leadership structure.

I'm emailing just you (and copying Bob) so as to try not to make a big thing over this, but I do think it's appropriate to memorialize what the fee allocation amongst customer class counsel is going to be (consistent with the understanding that the firms have been operating under for a couple years now) before we proceed much further. I think we'd be willing to support Lead Counsel having final authority over fee and expense allocations, etc., for purposes of the settlement stip, and thus present a united front against a perpetual troublemaker like McTigue—which should be in everyone's interest--provided we had some basic written comfort ourselves. I don't think it's too early for that, given the interest in seeing the funds come in this year.

Thanks,
Dan

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Friday, August 28, 2015 9:53 AM
To: Chiplock, Daniel P.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Thank you!

<image001.jpg>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 | F: (212) 883-7067
E: nzeiss@labaton.com | W: www.labaton.com

<image002.gif> <image003.gif> <image004.gif>

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

OK, sounds good. I will also get you whatever edits I have to the settlement docs by noon.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 9:28 AM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I am speaking to Paine today at around 10 AM to both report to him and get his update.
I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.

Sent from my iPhone

On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com> wrote:
This looks OK to me, thanks. I'm happy to send it (after you've done the other redline) to Paine, if you like. Or someone else can, no matter.

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Thursday, August 27, 2015 3:27 PM
To: Lynn Sarko; 'rlieff@lieff.com'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Dear all,

We've had some additional exchanges about the term sheet and, specifically, para 8(n). I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal. If you disagree, please let us know asap.

When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.

Thanks

<image001.jpg>
Nicole M. Zeiss | **Partner**
140 Broadway, New York, New York 10005
T: (212) 907-0867 | F: (212) 883-7067
E: nzeiss@labaton.com | W: www.labaton.com

<image002.jpg> <image003.jpg> <image004.jpg>

From: Zeiss, Nicole
Sent: Wednesday, August 26, 2015 5:09 PM
To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.

Thanks

<image005.jpg>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 | F: (212) 883-7067
E: nzeiss@labaton.com | W: www.labaton.com

<image006.jpg> <image007.jpg> <image008.jpg>

From: Sucharow, Lawrence
Sent: Wednesday, August 26, 2015 4:34 PM
To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Then we can probably forget my proposed changes.

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 4:26 PM
To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Sure. If it works for them – its fine with me

Lynn Lincoln Sarko
Managing Partner

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Lynn Sarko <lsarko@KellerRohrback.com>; Goldsmith, David <dgoldsmith@labaton.com>; 'rlieff@lieff.com' <rlieff@lieff.com>; Daniel P. Chiplock <DCHIPLOCK@lchb.com>; Michael Thornton <MThornton@tenlaw.com>; Garrett J. Bradley <gbradley@tenlaw.com>; Michael Lesser <MLesser@tenlaw.com>; 'Evan Hoffman' <EHoffman@tenlaw.com>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com>; 'Brian McTigue' <bmctigue@mctiguelaw.com>
Cc: Zeiss, Nicole <NZeiss@labaton.com>; Rogers, Michael H. <MRogers@labaton.com>
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

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'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

David
Thanks for sending this. Sorry, I had misunderstood what you were saying on our call earlier today.

Two things:

1. I do think the language you proposed for paragraph 12 works—but just change it to $10.9 million.
2. On paragraph 8(n)- the problem is the word "fees"—since the DOL has given us a hard number for ERISA fees—that won't be going up or down. So—question—can we get rid of the word "fees" in this paragraph—does it still work?

What do you think??

Lynn

Lynn Lincoln Sarko
Managing Partner

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

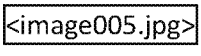
Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Wednesday, August 19, 2015 2:59 PM
To: 'rlieff@lieff.com' <rlieff@lieff.com>; Daniel P. Chiplock <DCHIPLOCK@lchb.com>; Michael Thornton <MThornton@tenlaw.com>; Garrett J. Bradley <gbradley@tenlaw.com>; Michael Lesser <MLesser@tenlaw.com>; 'Evan Hoffman' <EHoffman@tenlaw.com>; Lynn Sarko <lsarko@KellerRohrback.com>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com>; 'Brian McTigue' <bmctigue@mctiguelaw.com>
Cc: Sucharow, Lawrence <LSucharow@labaton.com>; Zeiss, Nicole <NZeiss@labaton.com>; Rogers, Michael H. <MRogers@labaton.com>
Subject: SST--Proposed Revision to Term Sheet for DOL Deal

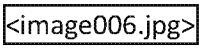
All: The below reflects our proposed revisions to the Term Sheet (in red boldface) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet). Please comment. Thanks.

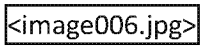
8(n). **Plan of Allocation**. . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court. However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.

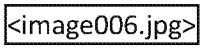
12. **Plaintiffs' Counsel's Attorneys' Fees and Expenses.** Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award. Plaintiffs' Counsel ~~shall~~ may apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, but in no event shall more than Ten Million **Nine** Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above. In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days. The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees. Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.



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







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 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.
<LCHB_iManage_1271399_1.DOC>
<LCHB_iManage_1271400_1.DOCX>

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.
<LCHB_iManage_1271399_1.DOC>
<LCHB_iManage_1271400_1.DOCX>

This message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 64

Message

From: Lieff, Robert L. [RLIEFF@lchb.com]
Sent: 8/28/2015 7:34:19 PM
To: Chiplock, Daniel P. [/O=LCHB/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCHIPLOCK]
CC: rlieff@lieff.com
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

1.4% of $70 Million (if we're lucky) or $1Million. That assumes 34.4% (also if we're lucky).

From: Chiplock, Daniel P.
Sent: Friday, August 28, 2015 11:52 AM
To: Lieff, Robert L.
Cc: 'rlieff@lieff.com'
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Yes, it seems to result in our respective fees being a couple million dollars lower. Oh well.

From: Lieff, Robert L.
Sent: Friday, August 28, 2015 2:40 PM
To: Chiplock, Daniel P.
Cc: 'rlieff@lieff.com'; Lieff, Robert L.
Subject: FW: SST--Proposed Revision to Term Sheet for DOL Deal

Dan - If you take ERISA and Arkansas local off the top, you end up with the following:

Labaton	34.4			
Thornton	25.8			
Lieff Cabraser	25.8			
ERISA		9.0		
Arkansas Local	5.0			
			100.0	

This is still predicated on dividing the remaining 25/25. Labaton and Thornton have not agreed to that as you can see from Garrett's email of 2:17pm EDT.

Bob

From: Chiplock, Daniel P.
Sent: Friday, August 28, 2015 11:12 AM
To: 'Sucharow, Lawrence'
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Actually one wrinkle I'm not sure about is how ERISA and local Arkansas counsel fits in - I had thought that their payments would not come off the top and therefore would not result in a reduction of each customer firm's 20% - do you know what I mean? You may be saying something different from that below, which may be why it'd be useful to iron it out.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:59 PM
To: Chiplock, Daniel P.
Cc: Garrett J. Bradley; Michael Thornton; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

Dan sorry for that last email that I didn't spellcheck.
Basically what I'm trying to say is I understand the basic agreement to be that after payment of all other counsel, our three firms shall each receive 20%, with the distribution of the balance of 40% to be determined later.

If that is the agreement you are referring to, I can confirm it. Let me know.
Larry

Sent from my iPhone

On Aug 28, 2015, at 1:39 PM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:

Mike, Garrett – Hope you're well – please see below. If we can figure this out early next week that may help speed the process.

Thanks,

Dan

From: Chiplock, Daniel P.
Sent: Friday, August 28, 2015 1:33 PM
To: 'Sucharow, Lawrence'
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

The purpose of my email was just to get your reaction, Larry, since these are your drafts. Thank you for responding quickly, and for giving me your reaction. I would love to include them so we can move forward promptly. I'll re-send.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 1:28 PM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lieff, Robert L.
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I don't know why you left the Thornton firm off this email since they are party to any understanding we have and are therefore 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/>

<image002.gif><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.gif><https://twitter.com/LabatonSucharow>
<image004.gif><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
Sent: Friday, August 28, 2015 9:29 AM
To: Sucharow, Lawrence
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

OK, sounds good. I will also get you whatever edits I have to the settlement docs by noon.

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Friday, August 28, 2015 9:28 AM
To: Chiplock, Daniel P.
Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal

I am speaking to Paine today at around 10 AM to both report to him and get his update.
I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.

Sent from my iPhone

On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
This looks OK to me, thanks. I' m happy to send it (after you' ve done the other redline) to Paine, if you like. Or someone else can, no matter.

From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
Sent: Thursday, August 27, 2015 3:27 PM
To: Lynn Sarko; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Dear all,

We' ve had some additional exchanges about the term sheet and, specifically, para 8(n). I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal. If you disagree, please let us know asap.

When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.

Thanks

<image001.jpg><http://labaton.com/>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 | F: (212) 883-7067
E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>

<image002.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.jpg><https://twitter.com/LabatonSucharow>
<image004.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Zeiss, Nicole
Sent: Wednesday, August 26, 2015 5:09 PM
To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.

Thanks

<image005.jpg><http://labaton.com/>
Nicole M. Zeiss | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0867 | F: (212) 883-7067
E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>

<image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image007.jpg><https://twitter.com/LabatonSucharow>
<image008.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

From: Sucharow, Lawrence
Sent: Wednesday, August 26, 2015 4:34 PM
To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Then we can probably forget my proposed changes.

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 4:26 PM
To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Sure. If it works for them - its fine with me

Lynn Lincoln Sarko
Managing Partner

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>

From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
Sent: Wednesday, August 26, 2015 1:25 PM
To: Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>; 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

Can we leave para 8(n) the general way it is and protect the DOL through the express provision of para 12 limiting fees charged to ERISA allocation to $10.9 million?

From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
Sent: Wednesday, August 26, 2015 3:42 PM
To: Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
Cc: Sucharow, Lawrence; Zeiss, Nicole; Rogers, Michael H.
Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal

David
Thanks for sending this. Sorry, I had misunderstood what you were saying on our call earlier today.

Two things:

1. I do think the language you proposed for paragraph 12 works–but just change it to $10.9 million.
2. On paragraph 8(n)- the problem is the word "fees"–since the DOL has given us a hard number for ERISA fees–that won't be going up or down. So–question–can we get rid of the word "fees" in this paragraph–does it still work?

What do you think??

Lynn

Lynn Lincoln Sarko
Managing Partner

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>

From: Goldsmith, David [mailto:dgoldsmith@labaton.com]
Sent: Wednesday, August 19, 2015 2:59 PM
To: 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
Cc: Sucharow, Lawrence <LSucharow@labaton.com<mailto:LSucharow@labaton.com>>; Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
Subject: SST--Proposed Revision to Term Sheet for DOL Deal

All: The below reflects our proposed revisions to the Term Sheet (in red boldface) to reflect the imminent deal with the DOL on fees and expenses as certain of us discussed this morning (DOL has advised that they want the deal memorialized in the Term Sheet). Please comment. Thanks.

8(n). Plan of Allocation. . . . The amount allocated to the ERISA Plans and Investment Companies and other Settlement Class Members shall be increased or decreased by their proportional share (with respect to the Class Settlement Amount) of any interest, costs (including costs of notice and administration), expenses (including taxes), and fees and expenses of Plaintiffs' Counsel obtained or paid pursuant to permission of the Court. However, notice and administration expenses attributable solely to the claims of Class Members categorized as Group Trusts shall be paid solely out of the ERISA allocation, and the cost of any ERISA Independent Fiduciary shall be borne solely by SSBT and shall not be paid out of the Class Settlement Amount.

12. Plaintiffs' Counsel's Attorneys' Fees and Expenses. Plaintiffs' Counsel's attorneys' fees and expenses, as awarded by the Court, shall be paid from the Class Escrow Account immediately upon award by the Court into an escrow account governed by an escrow agreement between Interim Lead Counsel, SSBT and a bank or other institution agreed upon by SSBT and Interim Lead Counsel (the "Interim Lead Counsel Escrow Account"), notwithstanding any appeals of the Settlement or the fee and expense award. Plaintiffs' Counsel shall may apply for their fees and expenses and any service awards for Plaintiffs against the entire Class Settlement Amount, but in no event shall more than Ten Million Nine Hundred Thousand Dollars ($10,900,000.00) in fees be paid out of the $60 million portion of the Class Settlement Amount allocated to ERISA Plans, as referenced in Paragraph 8(n) above. In the event that the Effective Date does not occur or SSBT promptly provides written notice representing in good faith that the Effective Date has not and cannot occur due to developments with the DOJ Settlement, DOL Settlement, and/or SEC Settlement and explaining the grounds for the notice, Plaintiffs' Counsel severally shall be obliged to pay to SSBT all amounts paid to them from the Interim Lead Counsel Escrow Account within fourteen (14) business days. The prevailing party in any action to collect any amount due under this

paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees. Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.

<image005.jpg><http://www.labaton.com/>
David J. Goldsmith | Partner
140 Broadway, New York, New York 10005
T: (212) 907-0879 | F: (212) 883-7079
E: dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com> | W: www.labaton.com<http://www.labaton.com/>

<image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image006.jpg><https://twitter.com/LabatonSucharow>
<image006.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>

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 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.
<LCHB_iManage_1271399_1.DOC>
<LCHB_iManage_1271400_1.DOCX>

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.
<LCHB_iManage_1271399_1.DOC>
<LCHB_iManage_1271400_1.DOCX>

This message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

EX. 65

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/>
>

> <image002.gif><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.gif><https://twitter.com/LabatonSucharow>
<image004.gif><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Chiplock, Daniel P. [mailto:DCHIPLOCK@lchb.com]
> Sent: Friday, August 28, 2015 9:29 AM
> To: Sucharow, Lawrence
> Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> OK, sounds good. I will also get you whatever edits I have to the settlement docs by noon.
>
> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> Sent: Friday, August 28, 2015 9:28 AM
> To: Chiplock, Daniel P.
> Cc: Zeiss, Nicole; Lynn Sarko; rlieff@lieff.com<mailto:rlieff@lieff.com>; Michael Thornton; Garrett J. Bradley; Michael Lesser; Evan Hoffman; Kravitz, Carl S.; Brian McTigue; Rogers, Michael H.; Goldsmith, David
> Subject: Re: SST--Proposed Revision to Term Sheet for DOL Deal
>
> I am speaking to Paine today at around 10 AM to both report to him and get his update.
> I'll report back and advise whether we should send the revised term sheet. I expect we should but let's hold off for another hour.
>
> Sent from my iPhone
>
> On Aug 28, 2015, at 9:19 AM, Chiplock, Daniel P. <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>> wrote:
> This looks OK to me, thanks. I'm happy to send it (after you've done the other redline) to Paine, if you like. Or someone else can, no matter.
>
> From: Zeiss, Nicole [mailto:NZeiss@labaton.com]
> Sent: Thursday, August 27, 2015 3:27 PM
> To: Lynn Sarko; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Chiplock, Daniel P.; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Rogers, Michael H.; Sucharow, Lawrence; Goldsmith, David
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Dear all,
>
> We've had some additional exchanges about the term sheet and, specifically, para 8(n). I believe the attached draft resolves those issues and that there is consensus that the attached accurately reflects the basic DOL fee deal. If you disagree, please let us know asap.
>
> When someone wants to send this to Paine, or the DOL, I will need a run a different redline for them.
>
> Thanks
>
>
>
>
>
>
>
> <image001.jpg><http://labaton.com/>
> Nicole M. Zeiss | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 | F: (212) 883-7067
> E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> <image002.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image003.jpg><https://twitter.com/LabatonSucharow>
<image004.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Zeiss, Nicole
> Sent: Wednesday, August 26, 2015 5:09 PM
> To: Sucharow, Lawrence; Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>

> Attached is the term sheet showing the changes discussed below, plus one additional change to para 8(n) that might help.
>
> Thanks
>
>
>
>
>
>
>
> <image005.jpg><http://labaton.com/>
> Nicole M. Zeiss | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0867 | F: (212) 883-7067
> E: nzeiss@labaton.com<mailto:nzeiss@labaton.com> | W: www.labaton.com<http://www.labaton.com/>
>
> <image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image007.jpg><https://twitter.com/LabatonSucharow>
<image008.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
> From: Sucharow, Lawrence
> Sent: Wednesday, August 26, 2015 4:34 PM
> To: Lynn Sarko; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Then we can probably forget my proposed changes.
>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 4:26 PM
> To: Sucharow, Lawrence; Goldsmith, David; 'rlieff@lieff.com<mailto:rlieff@lieff.com>'; Daniel P. Chiplock; Michael Thornton; Garrett J. Bradley; Michael Lesser; 'Evan Hoffman'; 'Kravitz, Carl S.'; 'Brian McTigue'
> Cc: Zeiss, Nicole; Rogers, Michael H.
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Sure. If it works for them – its fine with me
>
> Lynn Lincoln Sarko
> Managing Partner
>
> Keller Rohrback L.L.P.
> 1201 Third Avenue, Suite 3200
> Seattle, WA 98101
>
> Phone: (206) 623-1900
> Fax: (206) 623-3384
> E-mail: lsarko@kellerrohrback.com<mailto:lsarko@kellerrohrback.com>
>
> From: Sucharow, Lawrence [mailto:LSucharow@labaton.com]
> Sent: Wednesday, August 26, 2015 1:25 PM
> To: Lynn Sarko <lsarko@KellerRohrback.com<mailto:lsarko@KellerRohrback.com>>; Goldsmith, David <dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com>>; 'rlieff@lieff.com<mailto:rlieff@lieff.com>' <rlieff@lieff.com<mailto:rlieff@lieff.com>>; Daniel P. Chiplock <DCHIPLOCK@lchb.com<mailto:DCHIPLOCK@lchb.com>>; Michael Thornton <MThornton@tenlaw.com<mailto:MThornton@tenlaw.com>>; Garrett J. Bradley <gbradley@tenlaw.com<mailto:gbradley@tenlaw.com>>; Michael Lesser <MLesser@tenlaw.com<mailto:MLesser@tenlaw.com>>; 'Evan Hoffman' <EHoffman@tenlaw.com<mailto:EHoffman@tenlaw.com>>; 'Kravitz, Carl S.' <ckravitz@zuckerman.com<mailto:ckravitz@zuckerman.com>>; 'Brian McTigue' <bmctigue@mctiguelaw.com<mailto:bmctigue@mctiguelaw.com>>
> Cc: Zeiss, Nicole <NZeiss@labaton.com<mailto:NZeiss@labaton.com>>; Rogers, Michael H. <MRogers@labaton.com<mailto:MRogers@labaton.com>>
> Subject: RE: SST--Proposed Revision to Term Sheet for DOL Deal
>
> Can we leave para 8(n) the general way it is and protect the DOL through the express provision of para 12 limiting fees charged to ERISA allocation to $10.9 million?
>
> From: Lynn Sarko [mailto:lsarko@KellerRohrback.com]
> Sent: Wednesday, August 26, 2015 3:42 PM

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

fourteen (14) business days. The prevailing party in any action to collect any amount due under this paragraph shall be entitled to recover interest and all of its costs of collection, including attorneys' fees. Should the fee and expense award be reduced by the Court or on appeal, all such fees and expenses received by Plaintiffs' Counsel in excess of those that are ultimately approved shall be repaid to the Class Escrow Account, along with interest at the Class Escrow Account rate of interest.
>
>
>
>
>
>
> <image005.jpg><http://www.labaton.com/>
> David J. Goldsmith | Partner
> 140 Broadway, New York, New York 10005
> T: (212) 907-0879 | F: (212) 883-7079
> E: dgoldsmith@labaton.com<mailto:dgoldsmith@labaton.com> | W:
www.labaton.com<http://www.labaton.com/>
>
> <image006.jpg><http://www.linkedin.com/company/labaton-sucharow-llp>
<image006.jpg><https://twitter.com/LabatonSucharow>
<image006.jpg><https://www.facebook.com/pages/Labaton-Sucharow-LLP/443111702425065>
>
>
> ***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.
>
>
>
>
> 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 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 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.
> <LCHB_iManage_1271399_1.DOC>
> <LCHB_iManage_1271400_1.DOCX>
>
>
> 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.
> <LCHB_iManage_1271399_1.DOC>
> <LCHB_iManage_1271400_1.DOCX>
>
>
> 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.
>
>
> 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.
>
>
> 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.

EX. 66

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

---

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.

EX. 67

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. 68

[March 2018]

STEPHEN GILLERS

Elihu Root Professor of Law
(vice dean 1999-2004)
New York University
School of Law
40 Washington Square South
New York, NY 10012

(212) 998-6264 (tel)
(212) 995-4658 (fax)
stephen.gillers@nyu.edu

AREAS OF TEACHING Regulation of Lawyers and Professional Responsibility
Evidence; Law and Literature; Media Law

PRIOR COURSES Civil Procedure, Agency, Advocacy of Civil Claims, Federal Courts

PUBLICATIONS

BOOKS AND ANTHOLOGIES:

Journalism Under Fire: Protecting the Future of Investigative Reporting (Columbia University Press, forthcoming 2018)

Regulation of Lawyers: Problems of Law and Ethics (Aspen Law & Business, 11th ed., December 2017). The first edition of this popular casebook was published in 1985. Norman Dorsen was a co-author on the first two editions. Stephen Gillers is the sole author of the third through ninth editions. The first four editions were published by Little, Brown & Co., which then sold its law book publishing operation to Aspen.

Regulation of Lawyers: Statutes and Standards (with Roy Simon and Andrew Perlman) (Aspen Law & Business) This is a compilation with editorial comment. The first volume was published in 1989. Updated versions have been published annually thereafter. As of the 2009 edition, Andrew Perlman has joined as a co-editor.

"The Legal Industry of Tomorrow Arrived Yesterday: How Lawyers Must Respond," in The Relevant Lawyer (ABA 2015).

Regulation of the Legal Profession (Aspen 2009). This is 400+ page book in the Aspen "Essentials" series explains ethics rules and laws governing American lawyers and judges.

PUBLICATIONS (continued)

Investigating the FBI (co-Editor with P. Watters) (Doubleday, 1973; Ballantine, 1974)

None of Your Business: Government Secrecy in America (co-Editor with N. Dorsen) (Viking, 1974; Penguin, 1975).

Getting Justice: The Rights of People (Basic Books, 1971; revised paperback, New American Library, May 1973).

I'd Rather Do It Myself: How to Set Up Your Own Law Firm (Law Journal Press, 1977).

Looking At Law School: A Student Guide From the Society of American Law Teachers (editor and contributor) (Taplinger, 1977; NAL, 1977; revised ed., NAL, 1984; third ed., NAL, 1990).

The Rights of Lawyers and Clients (Avon, 1979).

"Four Policemen in London and Amsterdam," in R. Schrank (ed.) American Workers Abroad (MIT Press, 1979).

"Dispute Resolution in Prison: The California Experience," and "New Faces in the Neighborhood Mediating the Forest Hills Housing Dispute," both in R. Goldmann (ed.) Roundtable Justice: Case Studies in Conflict Resolution (Westview Press, 1980).

"The American Legal Profession," in A. Morrison (ed.), Fundamentals of American Law (Oxford University Press 1996).

The Elsinore Appeal: People v. Hamlet (St. Martin's Press 1996). This book contains the text of Hamlet together with briefs and oral argument for and against affirmance of Prince Hamlet's (imaginary) murder convictions. The book arose out of a symposium sponsored by the Association of the Bar of the City of New York.

"In the Pink Room," in Legal Ethics: Law Stories (D. Rhode & D. Luban, eds.) (Foundation Press, 2006) (also published as a freestanding monograph).

PUBLICATIONS (continued)

ARTICLES:

A Rule to Forbid Bias and Harassment in Law Practice: A Guide for State Courts Considering Model Rule 8.4(g), 30 Geo. J. Legal Ethics 195 (2017);

Uniform Legal Ethics Rules? No – An Elusive Dream Not Worth the Chase, 22 The Professional Lawyer #2 (2014)

The Two-Year Law Degree: Undesireable but Perhaps Unavoidable, 2013 N.Y.U. J. Legis. & Pub. Pol'y Quorum 4 (2013)

How To Make Rules for Lawyers: The Professional Responsibility of the Legal Profession, 40 Pepperdine L. Rev. 365 (2013) (Symposium issue on *The Lawyer of the Future*).

A Profession, If You Can Keep It: How Information Technology and Fading Borders Are Reshaping the Law Marketplace and What We Should Do About It, 63 Hastings L.J. 953 (2012)

Guns, Fruit, Drugs, and Documents: A Criminal Defense Lawyer's Responsibility for Real Evidence, 63 Stan. L. Rev. 813 (2011)

Is Law (Still) An Honorable Profession?, 19 Professional Lawyer 23 (2009)(based on a talk at Central Synagogue in Manhattan).

Professional Identity: 2011 Michael Franck Award Acceptance Speech, 21 Professional Lawyer 6 (2011).

Choosing and Working with Estate and Foundation Counsel to Secure an Artistic and Philanthropic Legacy, in The Artist as Philanthropist, volume 2, page 293 (The Aspen Institute Program on Philanthropy and Social Innovation 2010)

Virtual Clients: An Idea in Search of a Theory (with Limits), 42 Valparaiso L. Rev. 797 (2008) (Tabor lecture).

The "Charles Stimson" Rule and Three Other Proposals to Protect Lawyers From Lawyers, 36 Hofstra L. Rev. 323 (2007)

A Tendency to Deprave and Corrupt: The Transformation of American Obscenity Law from *Hicklin* to *Ulysses II*, 85 Washington U. L. Rev. 215 (2007)

Some Problem with Model Rule 5.6(a), Professional Lawyer (ABA 2007 Symposium Issue).

(continued)

Monroe Freedman's Solution to the Criminal Defense Lawyer's Trilemma Is Wrong as a Matter of Policy and Constitutional Law, 34 Hofstra L. Rev. 821 (2006)

Free the Lawyers: A Proposal to Permit No-Sue Promises in Settlement Agreements, 18 Georgetown J. Legal Ethics 291 (2005) (with Richard W. Painter).

Lessons from the Multijurisdictional Practice Commission: The Art of Making Change, 44 Ariz. L. Rev. 685 (2002).

Speak No Evil: Settlement Agreements Conditioned On Noncooperation Are Illegal and Unethical, 31 Hofstra L. Rev. 1 (2002) (reprinted at 52 Defense L.J. 769 (2003)).

"If Elected, I Promise [ ]"–What Should Judicial Candidates Be Allowed to Say? 35 Ind. L. Rev. 735 (2002).

Legal Ethics: Art or Theory?, 58 Annual Survey Am. L. 49 (2001).

The Anxiety of Influence, 27 Fla. St. L. Rev. 123 (1999) (discussing rules that restrict multidisciplinary practice.

Can a Good Lawyer Be a Bad Person? 2 J. Inst. Study of Legal Ethics 131 (1999) (paper delivered at conference "Legal Ethics: Access to Justice" at Hofstra University School of Law, April 5-7, 1998).

More About Us: Another Take on the Abusive Use of Legal Ethics Rules, 11 Geo. J. Legal Ethics 843 (1998).

Caveat Client: How the Proposed Final Draft of the Restatement of the Law Governing Lawyers Fails to Protect Unsophisticated Consumers in Fee Agreements With Lawyers, 10 Geo. J. Legal Ethics 581 (1997).

Participant, Ethical Issues Arising From Congressional Limitations on Legal Services Lawyers, 25 Fordham Urban Law Journal 357 (1998) (panel discussion).

The Year: 2075, the Product: Law, 1 J. Inst. Study of Legal Ethics 285 (1996) (paper delivered on the future of the legal profession at Hofstra University Law School's conference "Legal Ethics: The Core Issues").

Getting Personal, 58 Law & Contemp. Probs. 61 (Summer/Autumn 1995) (contribution to symposium on teaching legal ethics).

ARTICLES
(continued)

Against the Wall, 43 J. Legal Ed. 405 (1993) (ethical considerations for the scholar as advocate).

Participant, Disqualification of Judges (The Sarokin Matter): Is It a Threat to Judicial Independence?, 58 Brooklyn L. Rev. 1063 (1993) (panel discussion).

The New Old Idea of Professionalism, 47 The Record of the Assoc Bar of the City of N.Y. 147 (March 1992).

The Case of Jane Loring-Kraft: Parent, Lawyer, 4 Geo. J. Legal Ethics 115 (1990).

Taking L.A. Law More Seriously, 98 Yale L.J. 1607 (1989) (contribution to symposium on popular legal culture).

Protecting Lawyers Who Just Say No, 5 Ga. St. L. Rev. 1 (1988) (article based on Henry J. Miller Distinguished Lecture delivered at Georgia State University College of Law).

Model Rule 1.13(c) Gives the Wrong Answer to the Question of Corporate Counsel Disclosure, 1 Geo. J. Legal Ethics 289 (1987).

The Compelling Case Against Robert H. Bork, 9 Cardozo L. Rev. 33 (1987).

Ethics That Bite: Lawyers' Liability to Third Parties, 13 Litigation 8 (Winter 1987).

Can a Good Lawyer Be a Bad Person?, 84 Mich. L. Rev. 1011 (1986).

Proving the Prejudice of Death-Qualified Juries After Adams v. Texas: An Essay Review of Life in the Balance, 47 Pitt. L. Rev. 219 (1985), cited in Lockhart v. McCree, 476 U.S. 162, 197, 201 (1986) (Marshall, J., dissenting).

What We Talked About When We Talked About Ethics: A Critical View of the Model Rules, 46 Ohio St. L.J. 243 (1985).

The Quality of Mercy: Constitutional Accuracy at the Selection Stage of Capital Sentencing, 18 U.C. Davis L. Rev. 1037 (1985).

Berger Redux, 92 Yale L.J. 731 (1983) (Review of Death Penalties by Raoul Berger).

ARTICLES
(continued)

Selective Incapacitation: Does It Offer More or Less?, 38 The Record of the Assoc. Bar City of N.Y. 379 (1983).

Great Expectations: Conceptions of Lawyers at the Angle of Entry, 33 J. Legal Ed. 662 (1983).

Perspectives on the Judicial Function in Criminal Justice (Monograph, Assoc. Bar City of N.Y., 1982).

Deciding Who Dies, 129 U. Pa. L. Rev. 1 (1980) (quoted and cited as "valuable" in Spaziano v. Florida, 468 U.S. 447, 487 n.33 (1984) (Stevens, J., dissenting); also cited in Zant v. Stephens, 462 U.S. 862, 878 n.17, 879 n.19 (1983); Lockhart v. McCree, 476 U.S. 162, 191 (1986) (Marshall, J., dissenting); Callins v. Collins, 114 S.Ct. 1127, 1134 n.4 (1994) (Blackmun, J., dissenting); and Harris v. Alabama, 115 S.Ct. 1031, 1038-39 (1995) (Stevens, J., dissenting).

"In the Pink Room," TriQuarterly 124.

Lowering the Bar: How Lawyer Discipline in New York Fails to Protect the Public, 17 J. Legis. & Public Policy 485 (2014)

Numerous articles in various publications, including The New York Times, The Nation, American Lawyer, The New York Law Journal, The National Law Journal, Newsday, and the ABA Journal. See below for selected bibliography.

AWARDS

2015 Recipient of the American Bar Foundation Outstanding Scholar Award for dedication to the regulation of and ethics in the legal profession.

2011 Recipient, Michael Franck Award. Michael Franck Award from the ABA's Center for Professional Responsibility. The Award is given annually for "significant contributions to the work of the organized bar….noteworthy scholarly contributions made in academic settings, [and] creative judicial or legislative initiatives undertaken to advance the professionalism of lawyers…are also given consideration."

DVDS

"Adventures in Legal Ethics and Further Adventures in Legal Ethics": videotape of thirteen dramatic vignettes professionally produced and directed and raising issues of legal ethics. Author, Producer. (1994)

"Dinner at Sharswood's Café," a videotape raising legal ethics issues. Author, Producer. (1996)

"Amanda Kumar's Case," a 38-minute story raising more than two dozen legal ethics issues. Author. (1998)

TRIBUTES

To Honorable Gus J. Solomon, printed at 749 Federal Supplement LXXXI and XCII (1991).

Truth, Justice, and White Paper, 27 Harv. Civ. R. Civ. Lib. L. Rev. 315 (1992) (to Norman Dorsen).

Irving Younger: Scenes from the Public Life, 73 Minn. L. Rev. 797 (1989).

OTHER TEACHING

Visiting Professor of Law, Harvard Law School, Winter 1988 Semester;

Adjunct Professor of Law, Yeshiva University, Cardozo Law School, Spring 1986, Spring 1987, and Fall 1988 Semesters.
Course: The Legal Profession.

Adjunct Associate Professor of Law, Brooklyn Law School, 1976-78.

PRIOR EMPLOYMENT

1973 - 1978
Private practice of law
Warner and Gillers, P.C. (1975-78)

1974 - 1978
Executive Director
Society of American Law Teachers, Inc.

1971 - 1973
Executive Director, Committee for
Public Justice

1969 - 1971
Associate, Paul, Weiss, Rifkind,
Wharton & Garrison

1968 - 1969
Judicial Clerk to Chief Judge
Gus J. Solomon, Federal District Court
for the District of Oregon, Portland, Oregon

SELECTED TESTIMONY

Testimony on "Nomination of Sandra Day O'Connor to the Supreme Court of the United States", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 1st Sess., Sept. 11, 1981.

Testimony on S. 2216, "Habeas Corpus Reform Act of 1982", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 2d Sess., April 1, 1982.

Testimony on H.R. 5679, "Criminal Code Revision Act of 1981", Hearings, before the House of Representatives, Committee on the Judiciary, 97th Congress, 2d Sess., April 22, 1982.

Testimony on S. 653, "Habeas Corpus Procedures Amendment Act of 1981", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 1st Sess., November 13, 1981.

Testimony on S. 8875 and A. 11279, "A Proposed Code of Evidence for the State of New York", before Senate and Assembly Codes and Judiciary Committees, February 25, 1983.

Testimony before A.B.A. Commission on Women in the Profession, Philadelphia, February 6, 1988.

Testimony on the nomination of William Lucas to be Assistant Attorney General for Civil Rights, before the Senate Committee on the Judiciary, 101st Congress, 1st Sess., July 20, 1989.

Testimony on the nomination of Vaughn Walker to be United States District Judge for the Northern District of California, before the Senate Committee on the Judiciary, 101st Congress, 1st Sess., November 9, 1989.

PUBLIC LECTURES (partial list)

Tabor Lecture, Valparaiso University School of Law, April 12, 2007. This event consisted of two lectures. A public lecture was entitled "Here's the Gun: A Lawyer's Responsibility for Real Evidence." The Bench and Bar lecture, which will be published in the school's law review, is entitled "Virtual Clients: An Idea in Search of a Theory (With Limits)."

Paul M. Van Arsdell, Jr., Memorial Lecture, University of Illinois, College of Law, March 7, 2005: "Do Lawyers Share Moral Responsibility for Torture at Guantanamo and Abu Ghraib?"

Howard Lichtenstein Distinguished Professorship of Legal Ethics Lecture Series, "In Praise of Confidentiality (and Its Exceptions)," delivered at Hofstra University School of Law, November 12, 2003.

Henry J. Miller Distinguished Lecture, Georgia State University College of Law, May 11, 1988. "Protecting Lawyers Who Just Say No."

First Annual South Carolina Bar Foundation Lecture, April 9, 1992, University of South Carolina Law School, Columbia, South Carolina. "Is the Legal Profession Dead? Yearning to Be Special in an Ordinary Age."

Philip B. Blank Memorial Forum on Attorney Ethics, Pace University School of Law, April 8, 1992. "The Owl and the Fox: The Transformation of Legal Work in a Commodity Culture."

Speaker on Judicial Ethics, ABA Appellate Judges' Seminar and Flaschner Judicial Institute, September 29, 1993, Boston, Massachusetts.

Baker-McKenzie Ethics Lecture, Loyola University Chicago School of Law, October 13, 1993, Chicago, Illinois ("Bias Issues in Legal Ethics: Two Unfinished Dramas").

The Sibley Lecture, University of Georgia School of Law, Athens, Georgia, November 10, 1993 ("Telling Stories in School: The Pedagogy of Legal Ethics").

Participant, "Ethics in America" series (to be) broadcast on PBS 2007, produced by Columbia University Seminars on Media and Society.

Participant, "Ethics in America" series, broadcast on PBS February and March 1989, produced by Columbia University Seminars on Media and Society.

Participant, "The Constitution: That Delicate Balance, Part II" series, broadcast on PBS February and March 1992, produced by Columbia University Seminars on Media and Society.

Lecturer on legal ethics and allied subjects in the U.S. and abroad at hundreds of seminars, CLE events, and conferences organized by private law firms, corporate law departments, the District of Columbia, Second, Fourth, Sixth, Ninth and Federal Circuit Judicial Conferences; American Bar Association; Federal Bar Council; New York State Judiciary; New York City Corporation Counsel; American Museum of Natural History; Practicing Law Institute; Law Journal Seminars; state, local and specialty bar associations (including in Oregon, Nebraska, Illinois, New York, New Jersey, Pennsylvania, Rhode Island, Vermont, and Georgia); corporate law departments; law schools; and law firms.

LEGAL AND PUBLIC SERVICE ACTIVITIES

Member, ABA 20/20 Commission, 2009- 2013 (appointed by the ABA President to study the future of lawyer regulation).

Chair, American Bar Association Center for Professional Responsibility, Policy Implementation Committee, 2004-2008 (Member 2002-2010).

Member, American Bar Association Commission on Multijurisdictional Practice, 2000-2002.

Consultant, Task Force on Lawyer Advertising of the New York State Bar Association (2005).

Retained by the New Jersey Supreme Court, in connection with the Court's review of the lawyer disciplinary system in New Jersey, to provide an "analysis of the strengths and weaknesses of California's 'centralized' disciplinary system" and to "report on the quality, efficiency, timeliness, and cost effectiveness of the California system...both on its own and compared with the system recommended for New Jersey by the Ethics Commission." Report filed December 1993. Oral presentation to the Court, March 1994.

Reporter, Appellate Judges Conference, Commission on Judicial participation in the American Bar Association, (October 1990-August 1991).

Member, David Dinkins Mayoral Transition Search Committee (Legal and Law Enforcement, 1989).

Member, Committee on the Profession, Association of the Bar of the City of New York (1989-1992)

Member, Executive Committee of Professional Responsibility Section, Association of American Law Schools (1985-1991).

Chair, 1989-90 (organized and moderated Section presentation at 1990 AALS Convention on proposals to change the ABA Code of Judicial Conduct).

Counsel, New York State Blue Ribbon Commission to Review Legislative Practices in Relation to Political Campaign Activities of Legislative Employees (1987-88).

Administrator, Independent Democratic Judicial Screening Panel, New York State Supreme Court (1981).

Member, Departmental Disciplinary Committee, First Judicial Department (1980 - 1983).

Member, Committee on Professional and Judicial Ethics, Association of the Bar of the City of New York (1979 - 1982).

BAR MEMBERSHIPS STATE:

New York (1968)

FEDERAL:

United States Supreme Court (1972);
Second Circuit (1970);
Southern District of New York (1970);
Eastern District of New York (1970)

LEGAL EDUCATION J.D. cum laude, NYU Law School, 1968
Order of the Coif (1968)
Dean's List (1966-68)
University Honors Scholar (1967-68)

PRELEGAL EDUCATION B.A. June 1964, City University of New York (Brooklyn College)

DATE OF BIRTH November 3, 1943

OTHER ARTICLES (Selected Bibliography 1978-present)

1. Carter and the Lawyers, The Nation, July 22-29, 1978.
2. Standing Before the Bar, Bearing Gifts, New York Times, July 30, 1978.
3. Judgeships on the Merits, The Nation, September 22, 1979.
4. Entrapment, Where Is Thy Sting?, The Nation, February 23, 1980.
5. Advice and Consent, New York Times, September 12, 1981.

6. Lawyers' Silence: Wrong . . . , New York Times, February 14, 1983.

7. The Warren Court - It Still Lives, The Nation, September 17, 1983.

8. Burger's Warren Court, New York Times, September 25, 1983.

9. "I Will Never Forget His Face!", New York Times, April 21, 1984.

10. Warren Court's Landmarks Still Stand, Newsday, July 29, 1984.

11. Von Bulow, And Other Soap Operas, New York Times, May 5, 1985.

12. Statewide Study of Sanctions Needed for Lawyers' Misconduct, New York Law Journal, June 6, 1985.

13. Preventing Unethical Behavior - Something New in Model Rules, New York Law Journal, August 30, 1985.

14. Proposed Model Rules Superior to State's Code, New York Law Journal, October 21, 1985.

15. Five Ways Proposed to Improve Lawyer Discipline in New York, New York Law Journal, January 8, 1986.

16. Poor Man, Poor Lawyer, New York Times, February 28, 1986.

17. Proposals To Repair Cracks in Ethical Legal Behavior, New York Law Journal, April 17, 1986.

18. Unethical Conduct: How to Deter It Through Education, Bar Leader (May/June 1986).

19. The New Negotiation Ethics - Or Did Herb's Lawyer Do Wrong? New York Law Journal, June 2, 1986.

20. The Real Stakes in Tort Reform, The Nation, July 19-26, 1986.

21. Bernhardt Goetz: Vigilante Or Victim?, Toronto Star, September 10, 1986.

22. The Message That the Goetz Trial Will Send, Newsday, August 31, 1986.

23. Amending the Ethics Code - Solicitation, Pre-Paid Plans, Fees, New York Law Journal, November 10, 1986.

24. Amending the Ethics Code - Conflicts of Interest, Screening, New York Law Journal, November 12, 1986.

25. Amending the Ethics Code - Confidentiality and Other Matters, New York Law Journal,

November 13, 1986.

26. No-Risk Arbs Meet Risk Justice, New York Times, November 23, 1986.

27. The Meese Lie, The Nation, February 21, 1987.

28. Amending State Ethics Code - Conflicts of Interest Gone Awry, New York Law Journal, May 18, 1987.

29. "The Lawyers Said It Was Legal," New York Times, June 1, 1987.

30. Feminists vs. Civil Libertarians, New York Times, November 8, 1987.

31. Lessons for the Next Round in Picking a Justice, Newsday, November 11, 1987.

32. We've Winked For Too Long, National Law Journal, December 21, 1987 (judicial membership in exclusionary clubs).

33. No More Meeses, New York Times, May 1, 1988.

34. In Search of Roy Cohn, ABA Journal, June 1, 1988 (book review).

35. Do Brawley Lawyers Risk Serious Discipline?, New York Law Journal, June 22, 1988.

36. Have the Brawley Lawyers Broken the Law?, New York Times, July 2, 1988.

37. Report Demonstrates Why Meese is Unfit to Be Attorney General, Atlanta Journal and Constitution, July 24, 1988.

38. Ethical Questions for Prosecutors in Corporate-Crime Investigations, New York Law Journal, September 6, 1988.

39. Restoring Faith at Justice, National Law Journal, November 21, 1988.

40. Is Bush Repeating Rockefeller's Folly?, New York Times, September 11, 1989.

41. Standards Time, The Nation, January 29, 1990 (on the subject of legislative ethics).

42. Abused Children vs. The Bill of Rights, New York Times, August 3, 1990.

43. Words Into Deeds: Counselor, Can You Spare a Buck?, ABA Journal, November 1990.

44. Bad Apples, ABA Journal at 96 (March 1991) (book review).

45. The Gotti Lawyers and the Sixth Amendment, New York Law Journal, August 12, 1991.

46. Justice or Just Us? The Door to Dan Quayle's Courthouse Only Swings One Way, ABA

Journal (June 1992) at 109.

47. Fighting Words (What was once comical is now costly), ABA Journal (August 1992) at 102.

48. Sensitivity Training: A New Way to Sharpen Your Skills At Spotting Ethics Conflicts, ABA Journal (October 1992) at 107.

49. Under Color of Law: Second Circuit Expands Section 1983 Liability for Government Lawyers, ABA Journal (December 1992) at 121.

50. Cleaning Up the S&L Mess: Courts Are Taking the Duty to Investigate Seriously, ABA Journal (February 1993) at 93.

51. All Non-Refundable Fee Agreements Are Not Created Equal, New York Law Journal (February 3, 1993) at 1. (Analyzing appellate decision prohibiting non-refundable fees.)

52. The Packwood Case: The Senate Is Also on Trial, The Nation (March 29, 1993) at 404.

53. Conflict of Laws: Real-World Rules for Interstate Regulation of Practice, ABA Journal (April 1993) at 111.

54. Packwood II, The Nation (May 10, 1993) at 617.

55. Generation Gap, ABA Journal (June 1993) at 101. (On the use of a boycott in response to the Colorado anti-gay initiative.)

56. Future Shocks, ABA Journal (August 1993) at 104. (Looking back on the practice of law in the 21st century from the year 2103.)

57. A Rule Without a Reason, ABA Journal (October 1993) at 118. (Criticism of the prohibition in Rule 5.6(b) against a lawyer agreeing not to restrict future practice in connection with a settlement.)

58. Too Old to Judge?, ABA Journal (December 1993) at 94. (Supreme Court justices have life tenure. Maybe they should not.)

59. Truth or Consequences, ABA Journal (February 1994) at 103. (Discovery obligations.)

60. "Ethical Cannons," in Symposium - Twenty Years of Change, Litigation (Fall 1993).

61. Stretched Beyond the Limit, Legal Times (March 21, 1994) at 37. (Analysis of the office of Counsel to the President in light of Bernard Nussbaum's resignation.) [Same article was reprinted in the Connecticut Law Tribune, the Fulton County (Atlanta) Daily Report, and the Recorder (San Francisco).]

62. Putting Clients First, ABA Journal (April 1994) at 111. (Discussing cases on lawyers' fiduciary duty.)

63. Grisham's Law, The Nation (April 18, 1994) at 509. (The effect of popular culture on Whitewater reporting.)

64. The Elsinore Appeal: "People v. Hamlet", New York Law Journal (October 11, 1994) at 3. (Brief for Appellee, State of Denmark). (This was a mock appeal from Hamlet's conviction for the murder of Claudius, Polonius, Ophelia, Laertes, Rosencrantz & Gildenstern, held at the Association of the Bar of the City of New York on October 11, 1994.)

65. Billing for Costs and Disbursements: What Law Firms Can Charge and Clients Can Expect, monograph published 1995 by Pitney Bowes Management Services.

66. Clinton Has A Right To Privacy, N.Y. Times, 12/21/95, at ____.

67. "'Filegate' Was Bad Enough. Now This?," N.Y. Times, 7/5/96, at A23. (Article criticizing proposal to privatize certain security investigations of government personnel.)

68. "Whitewater: How to Build a Case Using a Tainted Witness," Los Angeles Times, 2/16/97, at M1.

69. "Hillary Clinton Loses Her Rights," New York Times, 5/4/97, at E15.

70. "Shakespeare on Trials," IV Federal Bar Council News 16 (June 1997).

71. "Florida Backs Out On a Deal," New York Times, 10/10/97, at A23.

72. "The Perjury Loophole," New York Times, 2/18/98, at A21 (discussion of perjury in connection with Kenneth Starr's investigation of President Clinton).

73. "Any Method to Ginsburg's Madness?" Los Angeles Times, 3/15/98, at M1 (discussion of William Ginsburg's public defense of Monica Lewinsky).

74. "Whitewater Made Easy," The Nation, 6/1/98, at 8.

75. "A Highly Strategic Legal Chess Game," Los Angeles Times, June 7, 1998, at M1 (Starr-Clinton legal maneuvers).

76. "To Sleep . . . Perchance, to Dream," New York Law Journal, July 8, 1998, at 2. (Humorous article about bored jurors.)

77. "Clinton Is No Ordinary Witness," New York Times, 7/28/98, at A15.

78. "The High Cost of an Ethical Bar," The American Lawyer, July/August 1998, at 87.

79. "Clinton's Choice: Tell Truth or Dare to Gamble," Los Angeles Times, August 2, 1998, at M1.

80. "Accurate Lies: The Legal World of Oxymorons," Los Angeles Times, August 30, 1998, at M1.

81. "A Fool For a Client?" The American Lawyer, October 1998, at 74. (President Clinton's legal representation in the Lewinsky representation.)

82. "The Presidency: Out to End Clinton's Mess and Be Happy," Los Angeles Times, October 4, 1998, at M1.

83. "Protecting Their Own," The American Lawyer, November 1998, at 118.

84. "Can't We All Just Practice Together: Taking Down 'Trade Barriers' on Lawyers Here and Abroad," Legal Times, November 9, 1998, at 32.

85. "Beyond the Impeachment Spectacle," Los Angeles Times, November 22, 1998, at M1.

86. "The Perjury Precedent," New York Times, December 28, 1998, at A27.

87. "From the Same Set of Facts: A Tale of Two Stories," Los Angeles Times, January 17, 1999, at M1 (about the Clinton impeachment trial).

88. "The Decline and Fall of Kenneth Starr," Los Angeles Times, February 7, 1999, at M1.

89. "The Truth About Impeachment," The American Lawyer, March 1999, p. 131.

90. "The Double Standard," New York Times Book Review, March 21, 1999, at 13 (review of *No Equal Justice* by David Cole).

91. "Four Officers, One Likely Strategy," New York Times, Saturday, April 3, 1999, at A15.

92. "The Man in the Middle: Did George Ventura Step Over the Ethical Line?" The American Lawyer, May 1999, p. 80 (discussion of lawyer whistleblowing in light of *State v. George Ventura*). (Reprinted as "Whistleblower, Esq." in New York Law Journal, May 26, 1999 at page 2.)

93. "Your Client Is A Corporation – Are Its Affiliates Clients Too?" The New York Professional Responsibility Report, May 1999 , at 1.

94. "Job Talk (Scenes from the Academic Life)," The American Lawyer, July 1999, at 161. (Satire about law school hiring.)

95. "The Other Y2K Crisis," The Nation, July 26/August 2, 1999, at 4 (editorial about the year 2000 electoral races).

96. "Walking the Confidentiality Tightrope," ACCA Docket 20 (September/October 1999) (remarks at ACCA's national conference in 1998).

97. "Things Old & New – The Code Amendments," New York Professional Responsibility Report (September 1999), at 1.

98. "Clinton's Chance to Play the King," New York Times, Sept. 20, 1999 at A17.

99. "Overprivileged," American Lawyer, October 1999 at 37. (Discussion of First Amendment protection for journalists.)

100. "Controlling Conflicts Between Old and New Clients," New York Professional Responsibility Report, January 2000 at 3.

101. "How To Spank Bad Lawyers," American Lawyer, February 2000 at 41.

102. "A Weak Case, But a Brave Prosecution," New York Times, Wednesday, March 1, 2000 at A23 (the Diallo case).

103. "Conflicts of Interest in Malpractice Cases," New York Professional Responsibility Report, March 2000 at 1.

104. "The Court's Picayune Power," New York Times, Thursday, April 20, 2000 at A29.

105. "Some Misrepresentations Among Corporate Lawyers," New York Professional Responsibility Report, June 2000 at 1.

106. "Was Hubbell Case About Getting Justice or Getting Even?" Los Angeles Times, June 18, 2000 at M2 (comment on the U.S. Supreme Court's decision in *United States v. Hubbell*, decided June 5, 2000).

107. "Who Owns the Privilege After a Merger?" New York Professional Responsibility Report, July 2000 at 1.

108. "Fighting the Future," The American Lawyer, July 2000 at 55.

109. "Campus Visits Deconstructed," Newsweek: How To Get Into College, 2001 Edition at 46.

110. "The Court Should Boldly Take Charge," New York Times, Tuesday, November 21, 2000 at A25 (Florida's presidential election recount).

111. "Who Says the Election Has a Dec. 12 Deadline?" New York Times, Saturday, December 2, 2000 at A19.

112. "Motive Is Everything in the Marc Rich Pardon," New York Times, Saturday, February 17, 2001.

113. "For Justice To Be Blind, Must Judges Be Mute?" New York Times, Sunday, March 4, 2001 at Section 4, page 3.

114. "Should Supreme Court Justices Have Life Tenure?" Reprinted in *The Supreme Court and Its Justices* (Choper J., ed.) (ABA 2001).

115. Professionalism Symposium, 52 South Carolina L. Rev. 55 (2001) (closing remarks).

116. "No Lawyers To Call," New York Times, Monday, December 3, 2001 at A19 (ethical and constitutional obligations that will prevent lawyers from participating in military tribunals).

117. "Let Judicial Candidates Speak," New York Times, Thursday, March 28, 2002 at A31.

118. "The Flaw in the Andersen Verdict," New York Times, Tuesday, June 18, 2002 at A23.

119. "Why Judges Should Make Court Documents Public," New York Times, Saturday, November 30, 2002 at A17.

120. "It's an MJP World," ABA Journal, December 2002 at 51.

121. "Upholding the Law as Pretrial Publicity Goes Global," New York Times, Sunday, April 27, 2003, Sec. 4 at 14.

122. "Court-Sanctioned Secrets Can Kill," Los Angeles Times, Wednesday, May 14, 2003 (reprinted May 15, 2003 in Newsday).

123. "Make a List," New York Times, June 11, 2003 at 31 (advocating changes in the methods of judicial selection).

124. "Conflicted About Martha?" American Lawyer (September 2003) (analysis of Martha Stewart indictment).

125. "The Prudent Jurist," Legal Affairs, January/February 2004.

126. "On Knowing the Basic Rules of Advocacy," New York Times, February 8, 2004, Sec. 4 at 2 (cross-examination in the Martha Stewart trial).

127. "The Prudent Jurist," Legal Affairs, March/April 2004.

128. "Scalia's Flawed Judgment," The Nation, April 19, 2004 at 21.

129. "Scholars, Hucksters, Copycats, Frauds," Washington Post, April 25, 2004 at B3 (Outlook) (discussion of ethics of academics who put their names on newspaper opinion pieces written by industry).

130. "The Prudent Jurist," Legal Affairs, May/June 2004 at 17.

131. "Multijurisdictional Practice of Law: Merging Theory With Practice," 73 The Bar Examiner 28 (May 2004).

132. "Tortured Reasoning," American Lawyer (July 2004) (analysis of government lawyer memos addressing the application of various treaties and laws to the treatment of Afghan prisoners).

133. "Paying the Price of a Good Defense," New York Times, August 13, 2004.

134. "Improper Advances: Talking Dream Jobs with the Judge Out of Court," Slate.com, August17, 2005 (with D. Luban and S. Lubet).

135. "Roberts' Bad Decision," Los Angeles Times, September. 13, 2005 (with D. Luban and S. Lubet).

136. "No Privilege for Miers," The Nation, November 7, 2005

137. "Senators, Don't Rubber-Stamp," USA Today, January 5, 2006 at 13A (discussing the Senate's advise and consent responsibility in connection with Alito nomination).

138. Ethics Column, American Lawyer, page 61 (January 2006) (with Deborah Rhode).

139. Ethics Column, American Lawyer, page 63 (April 2006) (with Deborah Rhode).

140. "Bush Postpones 2008 Election," The Nation, August 14/21, 2006 (satire).

141. "Free the Ulysses Two: Joyce's First U.S. Publishers Were Convicted of Obscenity. It's Time to Clear Them." The Nation, February 19, 2007.

142. "Twenty Years of Legal Ethics: Past, Present, and Future," 20 Georgetown J. Legal Ethics 321 (2007) (symposium celebrating the 20th anniversary of the journal).

143. "The Torture Memos," The Nation, April 28, 2008.

144. "Bar None," American Lawyer (October 2008) (globalization of law practice and how it will effect regulation of the bar).

145. 2011 Michael Franck Award Acceptance Speech, 21 Professional Lawyer 6 (2011).

146. "Time to Adapt to a Different Marketplace," New York Law Journal, March 27, 2012.

147. "The Supreme Court Needs a Code of Ethics," Politico (Aug. 8, 2013) (with Charles Geyh).

EX. 234

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 EMPLOYEES SAVINGS AND PROFIT SHARING PLAN, on behalf of itself and JAMES PEHOUSHEK-STRANGELAND, and all others similarly situated, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-11698 MLW

EXPERT REPORT OF WILLIAM B. RUBENSTEIN

1. I am the Sidley Austin Professor of Law at Harvard Law School and a leading national expert on class action law generally and class action fees in particular.[1] The law firm Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") has retained me to provide my expert opinion in response to the class action aspects of Professor Stephen Gillers's *Ethical Report for Special Master Gerald E. Rosen* (hereafter "Gillers Report"), dated February 23, 2018, and his subsequent deposition testimony, provided on March 20–21. Based on my review of these materials and the record in this case,[2] I state the following three opinions:

- ***Rule 23 does not require disclosure of fee allocation agreements absent judicial order, courts rarely order disclosure or involve themselves in fee allocation, and the Court in this case issued no such order.*** (Part I, *infra*). Rule 23(h) governs the procedures for fee awards to class counsel in class action cases. Rule 23(h)(1) states that the fee petition must be made according to the provisions of Rule 54(d)(2). Rule 54(d)(2) states that a fee petitioner must disclose "the terms of any agreement about fees for the services for which the claim is made," only "if the court so orders." Class action practice accords with the letter of the law. For purposes of this Report, I undertook an empirical review of all class action settlements in cases filed in this District in the past seven years. In the 127 settlements identified, I found not a single order requiring disclosure of fee agreements and only a handful of cases in which the Court even addressed fee agreements in any way. In this case, Judge Wolf did not utilize his authority to order disclosure of fee agreements.

- ***Professor Gillers's four attempts to advocate around the text of Rules 23 and 54 are unconvincing.*** (Part II, *infra*). Professor Gillers proposes a modified reading of Rules 23/54, requiring class counsel affirmatively to identify lawyers receiving a fee allocation whose identities may be unknown to the Court. The text of the

[1] In a report that I submitted to the Special Master on July 31, 2017, I provided my qualifications to serve as an expert and disclosed my prior relationship to this case and these firms, *see* Expert Declaration of William B. Rubenstein 3–12 (July 31, 2017). I therefore do not repeat that information here. The primary addition to my c.v. since that time is that the United States District Court for the Eastern District of Pennsylvania appointed me to serve as the court's expert witness on certain attorney's fees issues in the NFL concussion litigation, a task that I completed this winter. *See In re National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323-AB, ECF No. 8376 (Sept. 14, 2017).

[2] A list of the documents that I have reviewed is attached as Exhibit A.

applicable rules does not support this reading, no court has ever articulated it, it is at odds with an understanding of class action practice, and it requires a tortured use of the English language to defend. Similarly, Professor Gillers provides a set of six random snippets of class action law to argue that the principles underlying class action practice require disclosure of fee agreements absent judicial request. Although the principles themselves are largely unobjectionable, they do not magically reverse the language of Rule 54. This is particularly true in that the class action experts who drafted Rule 23(h) were well aware of these principles, yet struck the balance between the court's duty to absent class members and class counsel's representational authority by adopting the letter of Rule 54. Professor Gillers's Report implies that the Court investigated the fee allocation at the fairness hearing, triggering duties of disclosure and candor; he conceded at his deposition that the Court did not do so explicitly and his efforts to show that the Court did so implicitly are unconvincing. Finally, Professor Gillers argues that federal common law/equity required Lieff Cabraser to have sensed wrong-doing, inquired into the Chargois Arrangement,[3] and then reported it to the Court; but when presented with the facts surrounding Lieff Cabraser's actual knowledge in real time, Professor Gillers conceded that the firm lacked the information to detect wrong-doing and hence no investigatory duty – which would have been futile in any case – or disclosure obligation attached. In short, given Labaton's communications concerning Chargois's relationship to and work on the case, Lieff Cabraser simply had no reason to question the veracity of Chargois's fee allocation.

- ***Rule 23 does not require disclosure of fee allocation agreements in the class's notice.*** (Part III, *infra*). Rule 23(e)(1) requires a court to provide notice to the class of a proposed class action settlement and Rule 23(h)(1) requires notice to the class of a proposed fee petition. Neither section requires provision of fee *allocation* agreements to the class. In a case in which the Court did not require disclosure of fee agreements under Rule 54(d)(2), counsel had no duty to supply fee allocation information to the class.

2. I am a strong proponent of transparency in the class action fee process and a strong believer that the more information the Court has, the better for the class. I am equally committed to the rule of law, that is, to not confusing my preference for what the law should be

[3] This phase is a defined term in Professor Gillers's report. Gillers Report at 33 ("As consideration for Chargois' efforts, Belfi and Keller agreed to pay Chargois' firm, Chargois & Herron, a maximum 20% of any attorney's fees received by Labaton in any litigation involving an institutional investor for whom Chargois had facilitated the introduction, including ATRS (hereinafter 'the Chargois Arrangement').").

with the reality of what the law is. Current class action law and practice simply do not support the conclusion that Lieff Cabraser had an obligation to disclose the limited (and ultimately inaccurate) information it had about the Chargois Arrangement to the Court or to the class, absent an order requiring disclosure of fee agreements.

I.
RULE 23 DOES NOT REQUIRE DISCLOSURE OF FEE AGREEMENTS ABSENT JUDICIAL ORDER AND JUDGE WOLF ISSUED NO SUCH ORDER IN THIS CASE

3. Fees in class action cases of this magnitude proceed in two phases: *first*, the court awards an aggregate fee to all class counsel following the filing of a motion, notice to and possible objection by the class, and a hearing; *second*, the aggregate fee is allocated among the lawyers whose work benefitted the class.[4] While the court has complete authority over both the aggregate fee and the ultimate allocation, judges almost invariably leave allocation to lead counsel's initial discretion, saving judicial intervention for those instances in which the lawyers are unable to agree on an allocation.[5]

---

[4] *See* William B. Rubenstein, 5 *Newberg on Class Actions* § 15:23 (5th ed. 2014 & Supp. 2018) (hereafter "Rubenstein, *Newberg on Class Actions*").

[5] Such deference is typically premised on expertise. *See, e.g.*, *In re High Sulfur Content Gasoline Prod. Liab. Litig.*, 517 F.3d 220, 234 (5th Cir. 2008) ("It is likely that lead counsel may be in a better position than the court to evaluate the contributions of all counsel seeking recovery of fees."). Courts are also content to permit counsel to self-allocate because the job is a messy one. *See* William B. Rubenstein, *Divvying Up the Pot: Who Divides Aggregate Fee Awards, How, and How Publicly?*, 1 Class Action Attorney Fee Digest 127 (May 2007) ("But once the aggregate fee has been awarded, to whom does it go and who decides? Technically, the court has the power to decide which plaintiff attorneys get what amount of money. But no judge in her right mind wants to undertake this task, particularly in cases involving large numbers of plaintiff attorneys."). Yet judicial involvement is occasionally necessary, particularly as lead counsel is not a disinterested allocator. *See In re Diet Drugs Prod. Liab. Litig*., 401 F.3d 143, 173 (3d Cir. 2005) (Ambro, J., concurring) ("[C]ounsel have inherent conflicts. They make recommendations on their own fees and thus have a financial interest in the outcome. How much deference is due the fox who recommends how to divvy up the chickens?").

4. Fee agreements may arise in either phase.[6] At the fee-setting stage, there may be agreements between the class representative and class counsel (particularly in cases governed by the Private Securities Litigation Reform Act of 1995 (PSLRA)),[7] or agreements between class counsel and the defendants,[8] that may be pertinent in setting the aggregate fee. At the allocation stage, there may be agreements between and among the lawyers whose work generated the class's recovery;[9] indeed, if the lawyers are able to allocate the fee among themselves without judicial involvement, the allocation accord itself is effectively an agreement about fees.

5. Rule 23(h), enacted in 2003, provides clear guidance to these fee processes.[10] It mandates notice and opportunity to be heard to the class for the aggregate fee-setting,[11] as the class's interests are directly at stake. And it leaves allocation and other fee agreements to the lawyers, absent a judicial order requiring disclosure. Specifically, Rule 23 adopts the procedures of Rule 54(d)(2), as applicable.[12] Both Rule 23[13] and Rule 54[14] require a fee claim to be made

---

[6] *See* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:12 (describing range of agreements).

[7] Class counsel's retainer agreement with an individual class representative is rarely pertinent to their final fee given the general lack of sophistication of most class representatives. *See* Rubenstein, 5 *Newberg on Class Actions, supra* note 4, at § 15:74. In PSLRA cases, however, the class representatives (called "lead plaintiffs") are often large institutional investors who are statutorily charged with selecting class counsel (called "lead counsel") and who sometimes negotiate sophisticated fee agreements with class counsel; courts are more likely to respect such agreements when taxing the class for counsel's fee. *Id.* at § 15:75.

[8] These are often called "clear sailing agreements." *See* Rubenstein, 4 *Newberg on Class Actions, supra* note 4, at § 13:9. For a discussion of courts' deference to them, *see id.* at § 15:76.

[9] *See* Rubenstein, 5 *Newberg on Class Actions, supra* note 4, at § 15:23.

[10] Fed. R. Civ. P. 23(h).

[11] Fed. R. Civ. P. 23(h)(1).

[12] *Id.* ("A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets.").

by motion. Rule 54(d)(2)(B) sets forth the required content of a fee motion, including the requirement that the motion must "disclose, ***if the court so orders***, the terms of any agreement about fees for the services for which the claim is made."[15] 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.

6. Occasionally, local district court rules mandate disclosure of fee agreements,[16] but this is rare: even the Northern District of California – which has elaborate procedural guidance governing class action settlement approval, including the requirement that counsel submit their lodestar for cross-check purposes – does not mandate disclosure of fee-sharing agreements.[17] The District of Massachusetts has no local rule on point – indeed, no local rule regarding class

---

[13] *Id.* ("[A] claim for an award must be made by motion under Rule 54(d)(2) . . . .").

[14] Fed. R. Civ. P. 54(d)(2)(A) ("A claim for attorney's fees . . . must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.").

[15] Fed. R. Civ. P. 54(d)(2)(B)(iv) (emphasis added).

[16] *See, e.g.*, S.D.N.Y. Civ. R. 23.1 ("Fees for attorneys or others shall not be paid upon recovery or compromise in a class action or a derivative action on behalf of a corporation except as allowed by the Court after a hearing upon such notice as the Court may direct. The notice shall include a statement of the names and addresses of the applicants for such fees and the amounts requested respectively and shall disclose any fee sharing agreements with anyone."); D. Ariz. Civ. R. 54.2(d) ("Unless otherwise ordered, the following documentation shall be attached to each memorandum of points and authorities filed in support of a motion for award of attorneys' fees and related non-taxable expenses . . . . A complete copy of any written fee agreement, or a full recitation of any oral fee agreement, must be attached to the supporting memorandum. If no fee agreement exists, then counsel must attach a statement to that effect."); *see also id.* at 54.2(j)(6) (applying general documentation rule to class actions).

[17] *See* U.S. District Court for the Northern District of California, *Procedural Guidance for Class Action Settlements*, *available at* https://www.cand.uscourts.gov/ClassActionSettlementGuidance (last accessed Mar. 23, 2018).

action practice (or Rule 54) at all.[18] Some judges also maintain standing rules for litigation in their courtroom that could, in theory, address this topic. Judge Wolf has no such rules.[19]

7. In practice, judges rarely order disclosure of agreements as to fees.[20] To confirm that statement for purposes of this Report, my research assistants and I conducted an empirical investigation of the dockets in all class action cases filed in this District since February 2, 2011 (the date on which this action was filed).[21] Among the 1,226 dockets we reviewed, 127 reached a class action settlement. In those 127 class action settlements, we found not a single judicial order requiring that the lawyer disclose fee agreements under Rule 54(d)(2). In fact, other than reference to clear sailing agreements,[22] agreements as to fees were referenced in only about five cases altogether. In one case, the Magistrate Judge asked the lawyers during a conference if "there [was] any fee agreement with anybody in this case," to which class counsel responded by noting that they had entered into a contingency-fee agreement with the named plaintiff that they could submit if the court desired; we found no evidence that the court followed up on this matter, and class counsel received the fees it requested. In another case, the plaintiffs' attorneys disclosed *sua sponte* that two class counsel firms that were jointly representing one of the named

---

[18] *See* Local Rules of the United States District Court for the District of Massachusetts, *available at* http://www.mad.uscourts.gov/general/pdf/LC/2017%20LOCAL%20RULES%20-%20effective%20July%202017.pdf (last accessed on March 23, 2018).

[19] *See* Judge Wolf, Mark L. – "Chambers Procedures/Standing Orders/Sample Orders: N/A," *available at* http://www.mad.uscourts.gov/boston/wolf.htm (last accessed on March 23, 2018).

[20] I have urged them to change this practice. *See* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:12 (stating that "[w]hile 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" and discussing policy rationale in support of disclosure).

[21] A full explanation of the method of the study and results is attached as Exhibit B.

[22] *See* note 8, *supra*.

plaintiffs had agreed to evenly divide their fees regardless of their individual lodestars; we again found no evidence that the court followed up on this matter, and the court granted class counsel's fee petition for the amount requested without commenting on the agreement. The final three cases were the Massachusetts, New Hampshire, and Rhode Island versions of 46 state-wide class actions against Sprint litigated by the same group of attorneys. Class counsel in all three cases disclosed that the group of firms that had settled the entire set of cases with the defendant had agreed to share a portion of the fee awards they received from each individual action. The courts in all three cases signed near-identical fee-approval agreements and do not appear to have inquired further about the fee-sharing agreement. Although it is possible that we missed some information in reviewing more than 1,000 dockets in a short period of time, I am confident that our data provide empirical support for the conclusion that courts rarely request fee allocation agreements and that class counsel do not typically volunteer fee allocation agreements without specific instruction from the court. This conclusion is further supported by the fact that a search in Westlaw for the operative legal rule – 54(d)(2)(B)(iv) – turns up 13 cases, only two of which contain the words "class action;" one is the Second Circuit's decision in the *Bernstein* case discussed below,[23] and the other denies a motion by a class member seeking disclosure of lead counsel's fee agreements with the lead plaintiffs.[24]

[23] *See* note 42, *infra*.

[24] *In re MGM Mirage Sec. Litig.*, No. 2:09-CV-1558-GMN-VCF, 2016 WL 344503, at *2 (D. Nev. Jan. 27, 2016) ("In light of Lead Plaintiffs' unanimous declarations that each Lead Plaintiff agrees to Lead Counsel's 25% contingent fee, any benefit derived from production of Lead Counsel's retainer agreements is outweighed by the cost and delay associated with producing the retainer agreements. CoPERA's request for Lead Counsel's retainer agreements is denied.").

8. Applying class action law and practice to the facts of this case, it is inarguable that:

- Rule 23(h)(2) and Rule 54(d)(2) require disclosure of fee agreements only upon judicial order.
- The District of Massachusetts maintains no local rule that mandates disclosure of agreements as to fees.
- Judge Wolf has no standing order in his Court that mandates disclosure of agreements as to fees.
- Judge Wolf made no Rule 23/54 order mandating disclosure of agreements as to fees.

9. Given the governing legal structure, the absence of any local rule, standing order, or specific Rule 23/54 judicial order requiring disclosure of fee agreements, it is my first expert opinion that the parties settling this case generally, and Lieff Cabraser in particular, complied with the requirements of Rule 23 as to disclosure of fee agreements.

II.
PROFESSOR GILLERS'S ATTEMPTS TO ADVOCATE AROUND THE TEXT OF RULES 23 AND 54 ARE UNCONVINCING

10. Professor Gillers attempts to evade application of the clear mandate of Rules 23(h)(2)/54(b)(2) in four distinct ways: (a) by advocating that it does not apply to non-identified counsel; (b) by advocating that background principles trump reliance on the terms of the Rules; (c) by advocating that the Court, at the fairness hearing, implicitly solicited allocation information; and (d) by advocating that some general common law/equity principles required Lieff Cabraser to discern problems with, inquire into, and thence disclose the Chargois Arrangement. None of these efforts is convincing.

(A)
Rules 23/54 Do Not Distinguish Between Identified and Non-identified Counsel

11. Professor Gillers initially acknowledges, as he must, the clear text of Rule 23(h) and Rule 54, but he then aims to qualify the text's application with the following modifier:

> While there may not have been a duty under Rules 23 and 54 to disclose the division of fees among those lawyers *whom the Court knew about*, and so could inquire, the Court could not be expected to ask counsel about a division of fees with Chargois, a lawyer who had not appeared in the case and whom it did not know about. Labaton's construction of its obligation under Rule 54(d)(2), endorsed by its expert, would impose on the Court the affirmative responsibility to ask: "Is anyone else getting any portion of the attorney's fees you are asking me to award and whose existence you have not revealed?"[25]

As is evident from this text, Professor Gillers is obviously offering an interpretation of Rule 54(d)(2), specifically, that the Rule does not require the disclosure of fee agreements among known counsel absent judicial order, but that it places on class counsel an affirmative obligation to disclose fee agreements between known and unknown counsel in all circumstances. Five aspects of this approach, and the passage above, are telling.

a. *First,* Professor Gillers himself repudiated this entire argument at his deposition, disclaiming any reliance on Rule 54 "as the source of authority or obligation to disclose participation of a lawyer whom the Court does not know about."[26]

---

[25] Gillers Report at 67 (emphasis in original).

[26] The full colloquy reads:

> Q: All right. What are the circumstances under Rule 54 which specifically says under (d)(2)(B) that disclosure is only required if the Court orders it -- what are the circumstances, if any, in which you say that disclosure is required even if the Court didn't order it?
>
> A: 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.

b. *Second*, it is not surprising that Professor Gillers repudiated his reliance on Rule 54 as the source of this argument, as neither the text of Rule 23 nor that of Rule 54 contains the qualifier for which Professor Gillers once advocated.

c. *Third*, Professor Gillers does not cite a single case that supports the modifier that he once proposed.

d. *Fourth*, Professor Gillers's desired qualifier embodied a misunderstanding of class action law. It wrongly assumed that a class action court generally knows the identities of most of the lawyers who work on a class action case, likely because Professor Gillers assumes class counsel's lodestar is routinely submitted to a court at the fee stage. But in about 80% of class action cases, courts award fees according to the percentage method and in about half of those cases, courts do not ask for and counsel do not supply the lawyers' lodestar[27] – that is, the names of all of the timekeepers in the case, the hours they spent on the matter, and their hourly rates.[28] Thus, in nearly 40% of class action cases, courts are not provided the names of lawyers who worked on the case and who might, on that ground, be in line to receive a portion of the award. Moreover, class action fee awards are sometimes allocated to other lawyers, such as

---

Gillers Dep. 114:23–115:7, Mar. 20, 2018 [hereinafter Gillers Dep.]. Under questioning from counsel for the Special Master, Professor Gillers repeated the concession. *See id.* at 349:11–13 ("Q: All right. How about Rule 54? Was your opinion based on that? A: No.").

[27] *See* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:67 (stating that courts use a pure percentage approach in 37.8% of cases and a percentage approach with a lodestar cross-check in 42.8% of cases) (reporting on data from Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 272 (2010)).

[28] Courts do not ask and counsel do not supply their lodestar because most circuits explicitly provide district courts with discretion as to whether to perform such a "lodestar cross-check" in percentage award cases. *See* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:88 (surveying circuit approaches).

those who helped fund the case or whose work prior to the class action helped secure the class's relief.[29] Even if counsel submit a lodestar for cross-check purposes, these lawyers may not appear there. There are, therefore, a variety of situations in which the identities of counsel sharing in a fee award are routinely unknown to the class action court. This fact renders Gillers' once-proposed modifier peculiar: as the class court often does not know the identity of many lawyers working on the case, the obvious question an interested court would ask is, "Who all is sharing in the fee?," not, "Who is sharing in the fee that I don't know about?" Put differently, a theatre-goer would understand that she could identify the actors during the play but that she would need a playbill to identify the crew. So too, 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. Class action law and practice thus belie the new qualifier for which Professor Gillers once advocated, but no longer defends.[30]

e. *Fifth*, Professor Gillers's once-proposed modifier is tendentiously framed in two critical respects. He initially writes, "While there may not have been a duty under Rules 23 and 54 to disclose the division of fees among those lawyers *whom the Court knew about*, and

[29] *See* Fed. R. Civ. P. 23(h) advisory committee's note to 2003 amendment ("In some situations, there may be a basis for making an award to other counsel whose work produced a beneficial result for the class, such as attorneys who acted for the class before certification but were not appointed class counsel, or attorneys who represented objectors to a proposed settlement under Rule 23(e) or to the fee motion of class counsel. Other situations in which fee awards are authorized by law or by agreement of the parties may exist."). *See generally* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:22.

[30] For a further discussion of the facts in this paragraph, *see* ¶ 13(a), *infra*.

so could inquire . . . ."[31] This is an odd phrase because it implies that a court can ask the lawyers how a fee is being allocated among lawyers identified but somehow would be unduly burdened if it had to make the more general inquiry as to who *all* is getting a fee. But in fact the latter locution – "How are the fees being allocated?" – is actually a far simpler and more natural one than Gillers's baseline – "How is the fee being allocated among the lawyers who have appeared in the case?" Professor Gillers then writes: "Is anyone else getting any portion of the attorney's fees you are asking me to award and *whose existence you have not revealed*?" This, too, is tendentiously framed as it implies a (non-existent) obligation on the part of class counsel to "reveal" information and suggests that class counsel is otherwise "hiding" information. Written less argumentatively – "Is anyone other than class counsel getting any portion of the attorney's fees you are asking me to award whose existence I might not know of?" or, more naturally and simply, "How are the fees being allocated?" – the question perfectly captures the "affirmative responsibility" that Rule 23(h) and Rule 54(d)(2) do in fact "impose" upon a court. Absent Professor Gillers's tortured approach, it is really not much of an imposition for a court to ask, "How are the fees being allocated?" as Rule 54(d)(2) proposes.

f. In short, the modified Rule 23(h)/54(b)(2) for which Professor Gillers advocated in writing, he himself has now repudiated and, in any case, is not the letter of those Rules, is not supported by a single case, does not comport with a sound understanding of class action practice, and requires peculiar linguistic contortions to defend.

[31] Gillers Report at 67 (emphasis in original).

(B)
Background Principles Do Not Reverse the Language of Rules 23/54

12. Equally unconvincing is Professor Gillers's second attempt to advocate around the text of Rules 23 and 54, an effort that relies upon the principles underlying class action law. Specifically, under a heading entitled "Federal Case Law Contradicts Labaton's Narrow View of its Disclosure Obligations to the Court,"[32] Professor Gillers provides snippets from six random[33] class action cases to set out four generic principles of class action law:

1. "Case law, including cases from the District of Massachusetts, amply supports recognition of the Court's fiduciary duty to protect the class and the Court's reliance on counsel to be forthcoming with the information the Court needs in order to do so."[34]

2. "Private agreements among counsel do not bind the Court, which can ignore them if they reward those who did little or nothing to serve the class."[35]

3. "[A] court [is not] bound to honor the retainer agreement between counsel and the named class members."[36]

---

[32] Gillers Report at 68.

[33] Two of the cases are district court decisions from this District (one from 2005, one from 2015), three are circuit court cases from other circuits (a Second Circuit case from 1987, a Third Circuit case from 2005, and a Ninth Circuit case from 1997), and the sixth is a 1980 district court case from a different judicial district. Professor Gillers does not acknowledge that most of these cases arise from inapposite legal and factual settings and he does not discuss the many other cases that interpret the rules less capaciously than these snippets imply. Moreover, not one of these cases is either a Supreme Court case or a First Circuit case that would have provided controlling precedent governing the lawyers in this case.

[34] *Id.* at 68–70. *See generally* Rubenstein, 4 *Newberg on Class Actions*, *supra* note 4, at § 13:40 ("Fiduciary role of court").

[35] Gillers Report at 68–70. *See generally* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:23 ("[I]t is axiomatic that the court has the ultimate authority to determine how the aggregate fee is to be allocated among counsel.")

[36] Gillers Report at 68–70. *See generally* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:74 (reviewing law on deference to the fee arrangement embodied in an individual retainer agreement executed between counsel and the named plaintiff and reporting that "Courts have rejected this approach—with a few exceptions discussed below—on the grounds that such fee

4. "Federal case law also recognizes the special danger of conflicts between a lawyer and her client at the fee-determination stage in common fund cases."[37]

While – with one caveat[38] – the principles themselves are anodyne, Professor Gillers's use of them to reverse the language of Rule 54(d)(2) is anything but.

a. *First*, Professor Gillers's advocacy once again ignores the fact that the framers of Rule 23(h) were well aware of the principles set forth in his random set of snippets, yet chose to have Rule 23(h) cross-reference Rule 54(d).[39] 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 arrangements confidential absent an explicit judicial order to the contrary.

---

agreements are largely irrelevant to a court's evaluation of the reasonableness of a proposed fee.").

[37] Gillers Report at 70–71. *See generally* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:15 (discussing class members' right to object to fees and importance of safeguarding processes for objections).

[38] Professor Gillers's first principle states that, "Case law, including cases from the District of Massachusetts, amply supports recognition of the Court's fiduciary duty to protect the class and *the Court's reliance on counsel to be forthcoming with the information the Court needs in order to do so*." Gillers Report at 68 (emphasis added). He presents only two cases that address the highlighted second part of this sentence, regarding counsel's responsibility to the court: the Southern District of New York's 1980 decision in *Lewis v. Teleprompter* and the Second Circuit's 1987 *Agent Orange* decision which quotes *Lewis*. Neither is from this District. It is not quite precise, therefore, to conclude either that this proposition is supported by cases from this District or that it is "amply" supported.

[39] Fed. R. Civ. P. 23(h) advisory committee's note to 2003 amendment ("Courts have also given weight to agreements among the parties regarding the fee motion, and to agreements between class counsel and others about the fees claimed by the motion. Rule 54(d)(2)(B) provides: 'If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.' The agreement by a settling party not to oppose a fee application up to a certain amount, for example, is worthy of consideration, but the court remains responsible to determine a reasonable fee. 'Side agreements' regarding fees provide at least perspective pertinent to an appropriate fee award.").

b. *Second*, Professor Gillers's advocacy position is illogical, as demonstrated by the following example. Assume a posted traffic sign explicitly states that the speed limit is 35 miles per hour, yet a police officer arrests a driver for travelling at 25 miles per hour and explains that (1) she has a duty to protect the public; (2) cars are dangerous; (3) a driver's belief about what is reasonable does not trump that duty and need not be deferred to; (4) the driver's interests may conflict with those of pedestrians and other drivers. While the officer's points are pertinent, no one alone – nor the combination of the four – is sufficient to trump the explicitly posted speed limit, *i.e.*, the balance struck by the governing regulatory authority. So too here: the applicable federal rule states in no uncertain terms that class counsel must provide agreements to the Court ***if the court so orders***. The presence of four underlying principles guiding judicial review no more trump that explicit federal rule than do the principles underlying automobile safety trump a posted speed limit.

c. *Third*, a review of the language of the cases from which Professor Gillers draws his snippets makes his argument even more far-fetched than the history and logic suggest. Professor Gillers's central case is the Second Circuit's 1987 decision in the *Agent Orange* litigation.[40] In that decision, the Second Circuit articulates the precise duty for which Professor Gillers advocates: "in all future class actions counsel must inform the court of the existence of a fee-sharing agreement at the time it is formulated."[41] Yet oddly, in extracting his snippets, Professor Gillers does not even quote this language. He likely omitted that specific language because it just as likely is based on local rules in the Second Circuit, not on his general

[40] Professor Gillers testified that his methodology in selecting these particular snippets started from this case and involved reading cases it cited and cases citing it. Gillers Dep. 244:1–12.

[41] *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 216, 226 (2d Cir. 1987).

principles,[42] and because it certainly is not controlling of practice in the First Circuit. But what that means is that the structure of this argument is, "If you read these six random snippets you'll see that they create a generalized duty to disclose, but please ignore the one sentence in the key case that literally creates a specific duty to disclose." If merely stating the structure of this

[42] In the *Agent Orange* case, a local rule (then 5(a), now 23.1) compelled disclosure of fee agreements, but Judge Weinstein initially waived its application to the case. *In re Agent Orange Prod. Liab. Litig*., 597 F. Supp. 740, 869 (E.D.N.Y. 1984). When a pertinent agreement later surfaced, he opined that the local rules should be altered to compel disclosure of fee agreements at their inception, not just at the time of the fee petition. *In re Agent Orange Prod. Liab. Litig*., 611 F. Supp. 1452, 1464 (E.D.N.Y. 1985) ("The fee application notice requirements of Local Rule 5(a) were waived in this class action '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.' At the time the court allowed this waiver it was unaware of the existence of the PMC's fee-sharing arrangement. Disclosure of a fee-sharing agreement at the beginning of every class action is preferable to disclosure after settlement on application for attorney fees. Based on the Agent Orange PMC agreement problems, the Board of Judges of the United States District Court for the Eastern District of New York has unanimously agreed at one of its regular monthly meetings that Local Rule 5 should be modified to require early notice. This amendment will minimize fee-sharing problems in future litigations."). The Second Circuit then embraced this aspect of Judge Weinstein's opinion. *In re Agent Orange Prod. Liab. Litig*., 818 F.2d 216, 226 (2d Cir. 1987) ("We do agree with the district court's ruling that in all future class actions counsel must inform the court of the existence of a fee sharing agreement at the time it is formulated. This holding may well diminish many of the dangers posed to the rights of the class."). The local rule was briefly repealed as it applied to class actions, leading the Second Circuit to hold that, "Federal Rule 23(h) . . . does not mandate automatic disclosure of all fee-sharing arrangements in class actions." *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 138 n.2 (2d Cir. 2016). After *Bernstein*, the Southern and Eastern Districts re-enacted the local disclosure rule, *see* note 16, *supra*.

This history – which fully contradicts Professor Gillers's belief that *Agent Orange* "preceded the adoption of a local rule," Gillers Dep. 124:4-7; 347:15-22 – provides fair evidence that the rule-makers and judges in the Second Circuit do not understand *Agent Orange*'s key sentence to mandate disclosure absent an applicable rule. If they did, surely the Second Circuit would have noted that fact in the *Bernstein* decision and the local rule-makers would have either cited *Agent Orange* in enacting local rule 23.1 or not enacted 23.1 since it would be unnecessary if anyone thought *Agent Orange* stood for the principle absent a local rule. This is particularly true in light of the fact that Congress's 2003 enactment of Rule 23(h)(2), adopting Rule 54(d)(2)'s approach, post-dates *Agent Orange* and hence would, in any case, displace a common law approach to the contrary.

argument does not suffice to refute it, our class action jurisprudence has achieved terminal silliness.[43]

d. Again, not surprisingly, when pressed on his authority for a disclosure requirement within federal law at his deposition, Professor Gillers could offer only *Agent Orange* and was forced to concede that there is no applicable precedent in the First Circuit, no local rules in the federal courts here, no standing orders, and no order in this case.[44] Put simply, Professor Gillers could find no existing federal authority for his disclosure requirement that would apply to the lawyers in this case generally, and to Lieff Cabraser in particular.

e. In sum, the class action principles that Professor Gillers culls from a random sample of class action cases are important, to be sure, but underlying principles do not reverse the clear language of explicit rules.

(C)
The Court Did Not Solicit Fee Allocation Information At the Fairness Hearing

13. Professor Gillers makes two separate suggestions in his written report that the Court, at the final approval hearing, asked for fee allocation information and that counsel, in failing to provide it, thereby violated professional responsibility rules (and perhaps certain amorphous federal law norms).[45] Professor Gillers concedes that Judge Wolf never explicitly

[43] *Cf. Romer v. Evans*, 517 U.S. 620, 639 (1996) (Scalia, J., dissenting) ("If merely stating this alleged 'equal protection' violation does not suffice to refute it, our constitutional jurisprudence has achieved terminal silliness.").

[44] Gillers Dep. 130:1–133:22.

[45] While Professor Gillers often premises these points on the rules of professional responsibility, in other places he implies – with a remarkable lack of precision – that these principles arise from "federal common law and the judge's equity jurisdiction and authority." Gillers Dep. at 351:24–352:1. I can only assume from this statement that he is alluding to the snippets of class action law that he provided in his written report.

inquired into how the fees were to be allocated,[46] but he nonetheless creatively interprets two passages in the fairness hearing transcript as fee allocation discussions. The first of these arguments misunderstands class action practice and the second misrepresents the record.

a. Professor Gillers states:

> In [] courtroom statements and submissions to the Court, class counsel offered information about the fees they would request *and the identities of the law firms who would share in those fees* . . . The Court could assume that the lawyers who were going to participate in the fee it was asked to award were the lawyers who appeared before it because no other lawyer was identified. But here, that assumption would be wrong. In order for class counsel's statements and submissions to the Court not to mislead the Court through omission, Rule 3.3 required them to disclose to the Court the Chargois Arrangement and their intention to pay Chargois more than $4 million from the class recovery.[47]

Professor Gillers's statement that class counsel offered information about "who would share in the fees," implies that counsel provided fee allocation information to the Court. In reaching that conclusion, Professor Gillers appears to confuse the submission of class counsel's lodestar for cross-check purposes in a percentage award case with a fee allocation submission. The former apprises the court about who worked on the case,[48] but its function is not to apprise the court of,

---

[46] *See* Gillers Dep. 143:16–144:1 ("Q. Have you reviewed the hearing transcripts in this case? A. Read them, yes. Q. And from that review you are aware that at no time did the judge pose any inquiry as to how counsel were dividing fees, even among those who were disclosed - - A. Yes. Q. -- correct? A. -- I'm aware of that."); *see also id.* at 147:4–11 ("Q. And then when you say by omission, that is, there was misrepresentation by omission, are you stating that in your memory of your review of the hearing that Judge Wolf asked about the allocation -- not between ERISA funds and customer class members but allocation among the attorneys? Is it your memory he asked? A. No, it's not."); *see also id.* at 176:23–177:4 ("Q. Okay. Just so that we're clear, there is nowhere in the transcript where Judge Wolf instructs or orders or directs that class counsel disclose the existence of any underlying referral fee agreements, correct? A. In that language, no, you're correct.").

[47] Gillers Report at 72 (emphasis added).

[48] As discussed below, *see* note 63, *infra*, a lodestar cross-check submission may not reflect the time of all the lawyers who worked on the case. In this case, for example, Lead Counsel did not

and hence it need not reflect, how the fees will be allocated once awarded. In allocating fees among counsel, each lawyer's relative lodestar may be pertinent, but it is rarely controlling,[49] and, as noted above,[50] lawyers who do not appear in the lodestar cross-check submission may nonetheless be eligible for a portion of the fee. Thus his conclusion that "[i]n order for class counsel[] . . . not to mislead the Court through omission" they were "required to disclose to the Court the Chargois Arrangement" rests upon the faulty assumption that class counsel had made a presentation to the Court of how the fees would be allocated. In fact, the Court never asked, and counsel therefore never provided, information as to (including agreements about) how the fees would be allocated. The Court – or an observer – may have assumed that some of the lawyers identified in the lodestar cross-check submission would be among those receiving an allocation,

---

submit to the Court the time of a law firm (that I assumed served as local counsel) in one of the ERISA complaints as part of the lodestar cross-check submission. *Compare The Andover Companies Employee Savings and Profit Sharing Plan v. State Street Bank,* No. 1:12-cv-11698, ECF No. 1 at 38 (listing Hutchings, Barsamian, Mandelcorn & Zeytoonian, LLP, as first counsel), *with* ECF No. 104-24 (Master Chart of Lodestars, Litigation Expenses, and Plaintiffs' Service Awards, not listing lodestar for Hutchings, Barsamian, Mandelcorn & Zeytoonian, LLP).

Class action law does not worry about such an omission. The lodestar cross-check's sole purpose is to ensure against a windfall. *See* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:85. If class counsel omit time from the lodestar cross-check submission, it is only to their detriment as it serves to increase their multiplier, *i.e.*, the measurement of their profit. *See id.* at § 15:87 (on multipliers). Class action law worries that the lodestar cross-check creates incentives for class counsel to pad their hours, not to winnow them, *id.* at § 15:86 (on the costs and benefits of the lodestar cross-check), and therefore in lodestar cross-check submissions, the lawyers tend to spend time explaining to the court how many hours they struck out of their submissions. *See, e.g.*, ECF No. 104-17 (explaining, in Lieff Cabraser lodestar cross-check submission, that "any personnel who billed fewer than 5 hours in the litigation have not been included in my firm's total [lodestar cross-check submission].").

[49] *See id.* at § 15:23 (explaining that fees are allocated according to a series of factors, not just time).

[50] *See* ¶ 11(d), *supra*.

but that assumption does not turn the lodestar cross-check submission into a partial fee allocation filing.[51]

b. Professor Gillers states:

> The 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." Nicole Zeiss of Labaton and Daniel Chiplock of Lieff were in the courtroom when the Court made this statement. Both knew about the intention to pay Chargois. Neither spoke up. David Goldsmith of Labaton, who was also in the courtroom, learned of the Chargois Arrangement within weeks and did not disclose it although he had quickly disclosed to the Court the double-counting of SA time. Earlier in the proceeding, the Court specifically asked to be reminded "of the terms of allocation." Mr. Goldsmith said, "I didn't want there to be something that was left that Your Honor wanted to hear." He then described the allocation to the class followed by a description of the basis for the fee request. Chargois was not mentioned.[52]

Professor Gillers engages in two mischaracterizations in this passage. *First,* the only discussion of "allocation" in the fairness hearing transcript had nothing to do with *fees*: it concerned the

[51] At his deposition, Professor Gillers expanded his definition of what would constitute an event triggering the requirement that class counsel disclose all fee allocation details to encompass either (1) the fact that the parties explicitly identified the magnitude of fees attributable to those with ERISA-based claims and/or (2) the fact that the class notice mentioned fees at all. Gillers Dep. 196:13–200:10.

The first disclosure identified above spoke to where the fees were coming from, not to whom specifically they were going, and it highlighted the critical fact that, depending upon the ultimate aggregate fee level, ERISA-based class members could recover more on their claims than the rest of the class members. *See* ECF No. 95-3 at 6. This information was provided to disclose potential conflicts among the class members, not to provide the Court or class with specific fee allocation information.

Professor Gillers' second proposition above is nonsensical: all class action notices necessarily encompass the level of fees counsel will seek, *see* Fed. R. Civ. P. 23(h)(1), but the very same section of the very same rule adopts Rule 54(d)(2), which states that agreements as to fees need be disclosed only upon court order. It therefore simply cannot be the case that because class counsel provides notice to the class of the level of fees it will seek it must therefore provide the specific amounts each lawyer will be allocated if/when the Court approves a fee.

[52] Gillers Report at 67–68 (citations omitted).

"plan of allocation" of the class's recovery among various class groups;[53] that phrase is a defined term in this case's settlement agreement unrelated to fees[54] and Professor Gillers's subjective view of the term for his advocacy purposes[55] cannot trump the parties' and Court's contemporaneous understanding of the term, as objectively documented in the settlement agreement. *Second*, Professor Gillers turns the Court's statement, "I'm relying heavily on the submissions and what's been said today," into the conclusion that the Court "dispelled any uncertainty about what it expected," although that statement, too, had absolutely nothing to do with fee allocation and hardly can be read as one "dispelling all uncertainty," given Rule 54(d)(2)'s explicit language directly on point.

c. Because Professor Gillers himself concedes that the Court never explicitly inquired into fee allocation, and his more creative excursions to pretend that the Court did so implicitly are unconvincing, it is fair to conclude that there simply was no discussion of specific fee allocation information at the hearing and hence there was no misinformation provided to the Court for Lieff Cabraser to correct or amend.

---

[53] ECF No. 114 at 21 ("MR. GOLDSMITH: '[D]id you want to hear any particular discussion of the terms of *plan of allocation*?" . . . THE COURT: Why don't you remind me of the terms of allocation.") (emphasis added).

[54] *See* ECF No. 89 at 15 ("'Plan of Allocation' means the proposed plan for allocating the Net Class Settlement Fund to Settlement Class Members, which, subject to approval of the Court, shall be substantially in the form described in the Notice.").

[55] Gillers Dep. 169:15–16 ("A. My understanding is the plan of allocation includes all allocation."); 171:1–5 ("A. I understood the term plan of allocation as used elsewhere more broadly to include allocating money from the class settlement to everyone who gets money from the class settlement.").

(D)
Professor Gillers Has Identified No Facts Supporting the Conclusion that Federal Common Law/Equity Required Lieff Cabraser to Inquire Into or Disclose to the Court Information About the Chargois Arrangement

14. Lieff Cabraser was in no way involved in the Chargois Arrangement and Professor Gillers accordingly conceded at his deposition that his written report provided no basis for implicating the firm.[56] Yet in that setting he generated, for the first time,[57] an argument that some unspecified body of law required Lieff Cabraser's lawyers to (a) have smelled a rat, (b) inquired into it, and (c) disclosed it to the Court.[58] Because the threshold points (a) and (b) do not apply to Lieff Cabraser, however, no disclosure obligation ever arose in fact.

a. *No visible evidence of wrongdoing.* Professor Gillers bases his new argument that Lieff Cabraser should have detected wrongdoing on the ideas that (i) Chargois did no work on this particular case and (ii) yet received what he alleges is an unusually high fee.[59] Professor Gillers concedes that the first of these premises does not actually apply to Lieff Cabraser, as the firm was informed that Chargois was undertaking legal work on the class's behalf as local counsel and the firm had no reason to doubt those representations.[60] Furthermore,

---

[56] Gillers Dep. 226:24–227:17; *id.* at 229:23–231:8.

[57] *Id.* at 228:14–17 ("Q. Where is that in your report, sir? A. It's not. Q. It's not in your report? A. No.").

[58] Again, to the extent this argument is based on federal class action law, it appears to emanate from Professor Gillers's six random snippets of class action law, as he provides no other pertinent federal cases in his report, *see* note 33, *supra.* But again, as he made up this argument at his deposition, *see supra* note 57, and in so doing cited no law, I have no basis upon which to identify its alleged legal foundation.

[59] Gillers Dep. 227:4–18.

[60] *Id.* at 228:1–13 ("My opinion is based on the fact that all Lieff knows is that Chargois has been characterized as local counsel and is getting 4.1 million dollars and that the class has never been told when invited to consider whether to object to counsel fees. *So I think you make a valuable*

although Labaton submitted no lodestar for Chargois when the firm filed the full fee petition,[61] given Labaton's representations to Lieff Cabraser that Chargois was serving as local counsel and working on the case in that capacity,[62] Lieff Cabraser would have been justified in assuming that Chargois had spent time on the case but that Labaton had decided not to submit that time as part of its lodestar cross-check submission.[63] Professor Gillers's second supposition is 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,"[64] specifically referencing the fact that Chargois was in line to receive roughly $4 million.[65] Yet Professor Gillers – who acknowledged that he is not

---

point that the knowledge of Lieff may be such that it didn't trigger any need to disclose Chargois because of his valuable contributions.") (emphasis added).

[61] Lead counsel typically collect, ideally scrutinize, and ultimately submit the lodestar submissions for each of the many firms in a large case like this without necessarily sharing each firm's lodestar with all other firms at this fee stage. Here, for instance, Lead Counsel submitted each individual firm's lodestar submission as an Exhibit to his own fee declaration. *See* ECF No. 104. Lieff Cabraser's lawyer testified that he "didn't have control over what went in," and that he had anticipated that "a declaration was going to be filed by this local counsel, too," referencing Chargois. Chiplock Dep. 132:17–24, Sep. 8, 2017 [hereinafter Chiplock Dep.].

[62] *Id.* at 109:22–110:18, 118:9–22, 130:11–16; *see also* Lieff Dep. 58:15–59:17, 61:9–21, 64:16–67:17, 72:15–74:5, 92:17–93:13, Sep. 11, 2017 [hereinafter Lieff Dep.].

[63] Lieff Cabraser might have assumed that Labaton did not include Chargois' lodestar in the cross-check for any number of routine reasons: (1) application of its billing discretion as Lead Counsel; (2) because it did not think it appropriate to include local counsel's time in the lodestar cross-check submission; (3) because it did not believe it needed to rely on those hours to justify its sought-after multiplier; or (4) simply because Chargois was delinquent in submitting his lodestar records to Lead Counsel. Any of these would have been legitimate reasons to omit Chargois' time from the lodestar cross-check submission – as noted above, *see* note 48, *supra*, one of the local ERISA counsel's time was not submitted in this case's lodestar – while nonetheless not omitting Chargois from sharing in the aggregate fee. And any of these explanations would have been far more obvious to Lieff Cabraser at the time than jumping to the assumption that Labaton might have misled it about Chargois' relationship to the case.

[64] Gillers Dep. 228:6–13.

[65] *Id.* at 229:9–10.

an expert on class action law[66] and that he has no class action experience[67] – conceded he had no basis for assessing the reasonableness of a (referral) fee in class action lawsuits,[68] while Robert Lieff – who has roughly 50 years of experience in class action law[69] – testified that the amount paid Chargois (for what he understood to be local counsel work) did not "seem on the face of it to be unusual."[70] The record therefore simply does not support the conclusion that Lieff Cabraser had knowledge that anything was amiss.

b. *Inquiry futile.* If Lieff Cabraser had inquired about the nature of Chargois's work on or connection to the case, that inquiry would have been directed to the Labaton firm, which was Lead Counsel in the case and which had represented Chargois's role to Lieff Cabraser. There is little doubt that such an inquiry would likely have been futile. A lead counsel's relationship with local counsel and the client are generally proprietary attorney-client relationships (particularly in the PSLRA context) and Labaton would have been unlikely to be forthcoming about further details of these relationships. Indeed, Chris Keller testified that the firm had not disclosed Garrett Bradley's service as local counsel in another case for precisely these reasons.[71] Similarly, Eric Belfi testified that the motivating factor in not disclosing the

---

[66] *Id.* at 15:16–19.

[67] *Id.* at 177:23–178:4.

[68] *Id*. at 237:9–12 ("Q. Do you have any clue as to what a typical referral fee arrangement is in these situations? A. No. . . .").

[69] Lieff Dep. 78:9–10.

[70] *Id.* at 93:20.

[71] Keller Dep. 203:14–204:21, Oct. 13, 2017 ("A: Well, there's – there's proprietary sort of relationship information. Again, that's one aspect. Q: What is that -- what do you mean by that? A: If -- if we put his name on these papers, that means our competitors know that that firm has relationships with these clients and that means they'll be calling them up trying to poach them as local counsel.").

Chargois Arrangement was a fear that Chargois might sue for breach of contract and that such a suit would disrupt the firm's relationship with the Arkansas client.[72] Finally, Lawrence Sucharow testified that he believed the details of the Chargois Arrangement "irrelevant,"[73] just his firm's "business obligation" that had nothing to do with anyone else,[74] and that he made the decision not to disclose them (to ERISA counsel) for that reason. The record in this case therefore amply supports the conclusion that had any inquiry obligation arisen with respect to Lieff Cabraser, the ensuing inquiry would have proven futile.

c. *No disclosure requirement triggered.* Thus, when presented at his deposition with the facts of what Lieff Cabraser actually knew in real time, Professor Gillers was forced to concede that no disclosure obligation likely attached to them. Specifically, Lieff Cabraser's lawyer laid out a series of assumptions that paralleled the firm's knowledge in this case: (i) that Chargois served as local counsel; (ii) that he performed work commensurate with his proposed allocation; (iii) that the client was aware of and had approved of Chargois involvement and share in writing; and (iv) again (at Gillers's suggestion) that Lieff Cabraser believed Chargois contributions to the case made his proposed fee not unreasonable.[75] Presented with those circumstances, Professor Gillers conceded that no disclosure obligation arose, stating: "Fine. If all that is true, then I -- then my opinion is not that there was a need to disclose it."[76]

* * *

[72] Belfi Dep. 58:1–59:21, 89:4–17, 90:7–12, Sep. 5, 2017.

[73] Sucharow Dep. 38:21–39:22, Sep. 1, 2017.

[74] *Id*. at 94:15–95:6.

[75] Gillers Dep. 219:21–221:22.

[76] *Id.* at 222:7–9.

15. For the foregoing reasons, Professor Gillers simply misstates the facts of this case and the law in concluding that:

> In deciding the amount of fee to award to class counsel, ***and to whom to award it***, the Court, as a fiduciary for the class including unnamed class members, needed *first* to know – ***and class counsel had a duty to tell it*** – who would be participating in any fee the Court in its discretion might award from the class recovery and the basis for the claim.[77]

The Court in this case undertook no inquiry into the question of "to whom to award it" and accordingly never ordered the disclosure of fee agreements, as it was authorized to do under Rule 54(d)(2). Professor Gillers similarly misstates the underlying policy in further concluding that,

> Labaton's contrary argument would keep the Court in the dark and deny it the very information it needed in order to decide how much of the undifferentiated settlement funds should go to counsel, and which counsel, and how much should go to the class.[78]

Counsel's respect for Rule 23(h) and Rule 54(d) neither "keep the Court in the dark" nor "deny it . . . information." On the contrary, the rule structure could not be clearer in setting forth precisely what a court needs to do should it desire to review underlying fee agreements: ask.

16. In sum, it is my second expert opinion that Lieff Cabraser's duty to the class action court did ***not*** – as a matter of class action law[79] – require that it "disclose [the knowledge it had about] the Chargois Arrangement (and intended payment) to the Court before it awarded fees from which Chargois would be (and was) paid."[80]

---

[77] Gillers Report at 73 (first and third emphases added, second emphasis in original).

[78] *Id.*

[79] I am not opining about Lieff Cabraser's duties under Massachusetts' Rules of Professional Conduct, but it is my understanding that Lieff Cabraser's expert on those rules concurs with this conclusion as well.

[80] *Id.* at 74.

III.
RULE 23 DOES NOT REQUIRE DISCLOSURE OF FEE ALLOCATION AGREEMENTS IN THE CLASS NOTICE

17. As part of the class action ***settlement*** approval process, the "court must direct notice in a reasonable manner to all class members who would be bound by the proposal,"[81] and notice of a motion for ***attorney's fees*** by class counsel must be "directed to class members in a reasonable manner."[82] Where settlement and fees are occurring simultaneously, Rule 23 envisions a single notice being sent to the class encompassing both,[83] as was done in this case.

18. Professor Gillers advocates for the position that the class should have been informed of the Chargois Arrangement because information "that a lawyer who did no work to produce the class recovery and who accepted no legal responsibility for the work of others stood to receive more than $4 million from the class recovery . . . could reasonably have influenced members of the class in deciding whether to exercise the right to object to the disclosure regarding attorneys' fees."[84] This is again a tendentious statement of the facts, at least as Lieff Cabraser knew them: as just noted, there is no evidence in the record that Lieff Cabraser had knowledge that Chargois undertook no work on this specific case.

---

[81] Fed. R. Civ. P. 23(e)(1).

[82] Fed. R. Civ. P. 23(h)(1).

[83] Fed. R. Civ. P. 23(h) advisory committee's note to 2003 amendment ("In cases in which settlement approval is contemplated under Rule 23(e), notice of class counsel's fee motion should be combined with notice of the proposed settlement, and the provision regarding notice to the class is parallel to the requirements for notice under Rule 23(e).").

[84] Gillers Report at 76–77.

19. Moreover, Professor Gillers's advocacy in this section is premised on class counsel's general fiduciary duty to the class[85] and on ethical rules (which are beyond the scope of my charge), not on Rule 23 itself – in this section, he does not cite a single provision of Rule 23's notice requirements nor a single Rule 23 notice case. Similarly, at his deposition, he conceded that he knew of no cases requiring disclosure of fee allocation agreements in the class's notice and disclaimed any reliance on Rule 23.[86] This is not surprising because the non-tendentious point – 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.[87]

a.[88] *Settlement notice.* Rule 23(e)(1) requires that a court considering a proposed class action settlement "direct notice in a reasonable manner to all class members who would be bound by the proposal."[89] Yet other than requiring that the notice be made "in a reasonable manner," Rule 23 does not dictate that the notice contain any specific content, with

---

[85] For a general discussion, *see* Rubenstein, 6 *Newberg on Class Actions*, *supra* note 4, at § 19:2; *see also* note 87, *infra.*

[86] Gillers Dep. 150:3–7 ("Q. Sir, you list some cases in this section, but none of the cases you cite hold that counsel must disclose fee allocations to class members, do they? A. No."); *id.* at 150:17–22 ("Q. Can you cite us to a case that says that class counsel has the obligation to notify the unnamed class members; that is, the non-named plaintiffs, of a referral fee that's going to come out of class counsel's fee? A. No."); *id.* at 156:20–157:1 ("You're seeking to impose a duty of disclosure of a fee division that no Court has yet imposed in any written decision, right? A. So far as I know, but it's not -- it's an analysis under the Massachusetts rules. It's not an analysis under Rule 23.").

[87] In this section of his report, Professor Gillers cites three cases – a 1985 Eleventh Circuit case, a 1995 Third Circuit case, and a 1998 Southern District of Florida case – articulating class counsel's general fiduciary duties in the class action context. Gillers Report at 77 & n.69. None of these cases governs in this Circuit, but their general principles would not, in any case, reverse the clear language of the applicable Federal Rules of Civil Procedure. *See* Part II(B), *infra*.

[88] This paragraph is taken from Rubenstein, 3 *Newberg on Class Actions*, *supra* note 4, at § 8:17.

[89] Fed. R. Civ. P. 23(e)(2).

one caveat: if a class is certified at the same time that a settlement is reached, the court must issue notice that complies with both 23(c)(2)(B)'s certification notice requirements (that do require specific content)[90] and 23(e)'s settlement notice requirement (which does not).[91] Aside from that scenario, the content of the settlement notice itself is dictated by two other aspects of Rule 23(e): the requirement that the settlement be fair, reasonable, and adequate[92] and the guarantee that class members have the right to object to the settlement if, in their opinion, it does not hit this mark.[93] To safeguard class members' opportunity to object, notice must be sufficiently clear and informative to make those opportunities meaningful. Thus, Rule 23 does not require that fee allocation agreements be explained to the class in the settlement notice.[94]

b.[95] *Fee notice.* Rule 23(h)(1) requires that a court considering a motion for reasonable attorney's fees and nontaxable costs in a certified class action direct notice to class members "in a reasonable manner."[96] Yet other than requiring that the notice be made "in a reasonable manner," Rule 23 does not dictate any specific content that the notice must contain.

---

[90] *See* Fed. R. Civ. P. 23(c)(2)(B) (enumerating seven items that must be contained in certification notice). For a discussion, see Rubenstein, 3 *Newberg on Class Actions*, *supra* note 4, at § 8:12.

[91] Fed. R. Civ. P. 23(e)(1) (requiring that notice be sent "in a reasonable manner").

[92] Fed. R. Civ. P. 23(e)(2).

[93] Fed. R. Civ. P. 23(e)(5).

[94] Rule 23's settlement provisions require that parties seeking approval of a proposed settlement "file a statement identifying any agreement made in connection with the proposal." Fed. R. Civ. P. 23(e)(3). Courts have not read this to encompass fee allocation agreements, *see* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:12 & n.15, but even if they did, such a *court-filing* requirement does not automatically translate into a requirement that such agreements be made part of the class notice.

[95] This paragraph is taken from Rubenstein, 3 *Newberg on Class Actions*, *supra* note 4, at § 8:25.

[96] Fed. R. Civ. P. 23(h)(1).

The fee notice's content is primarily dictated by Rule 23(h)(2)'s guarantee that class members have the right to object to the fee motion.[97] The right to object connotes that class members ought to be given sufficient time to do so, but it also means that class members must be given sufficient information to do so. In the *Newberg* treatise,[98] and elsewhere,[99] I have strongly advocated for the position that class counsel should make their lodestar known to the court – and to the class – so as to assess the extent to which the proposed award reflects a multiplier of that lodestar. I have similarly argued that fee allocation agreements should be made known to the class, [100] but I do so within the terms of the governing legal regime: I contend that, using their authority under Rule 54(d)(2), courts should require greater disclosure of fee allocation agreements. Although I support such an approach on policy grounds, I am transparent in conceding that, absent a court order, Rule 23 contains no requirement that fee allocation agreements be disclosed to the court nor therefore provided to the class in the court's notice.[101]

---

[97] Fed. R. Civ. P. 23(h)(2).

[98] *See* Rubenstein, 3 *Newberg on Class Actions*, *supra* note 4, at § 8:25.

[99] I individually appeared as an *amicus* in a California Supreme Court case that considered the question of whether California law should embrace a percentage or lodestar approach to class action fee awards so as to advocate in support of a rule requiring courts that use a percentage award to undertake a lodestar cross-check. The Supreme Court embraced my argument in its ruling. *Laffitte v. Robert Half Int'l Inc*., 376 P.3d 672, 687 (Cal. 2016) ("The utility of a lodestar cross-check has been questioned on the ground it tends to reintroduce the drawbacks . . . in primary use of the lodestar method, especially the undue consumption of judicial resources and the creation of an incentive to prolong the litigation. We tend to agree with the amicus curiae brief of Professor William B. Rubenstein that these concerns are likely overstated and the benefits of having the lodestar cross-check available as a tool outweigh the problems its use could cause in individual cases.") (some citations omitted).

[100] *See* Rubenstein, 5 *Newberg on Class Actions*, *supra* note 4, at § 15:12.

[101] Local rule may do so, *see, e.g.*, S.D.N.Y. Civ. R. 23.1, *supra* note 16, but no such Rule exists in this District.

20. In sum, it is my third expert opinion that neither Rule 23 itself, nor class action notice cases more generally, created a duty upon the Lieff Cabraser firm to disclose the allocation of fees to Chargois, as it understood that allocation at the time, to the class in the class's notice.

* * *

21. I have testified that:

- ***Rule 23 does not require disclosure of fee allocation agreements absent judicial order, courts rarely so order, and Judge Wolf did not do so in this case.***

- ***Professor Gillers's four attempts to create a disclosure requirement by advocating around the text of Rules 23 and 54 are unconvincing on the law and on the facts of the case as applied to Lieff Cabraser***.

- ***Rule 23 does not require disclosure of fee allocation agreements in the class's notice.***

March 26, 2018 William B. Rubenstein

EXHIBIT A

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT A
Partial List of Documents Reviewed by Professor Rubenstein
(other than case law and scholarship on the relevant issues)

I incorporate by reference the list of 77 documents contained in Exhibit B to the report I submitted to the Special Master on July 31, 2017. See Exhibit B – Expert Declaration of William B. Rubenstein (July 31, 2017).

A. ECF Documents

1. Summary Notice of Pendency of Class Actions, Proposed Settlement, Settlement Hearing, Plan of Allocation, and Any Motion for Attorneys' Fees, Litigation Expenses and Services Awards, ECF No. 95-5
2. Notice of Pendency of Class Actions, Proposed Settlement, Settlement Hearing, Plan of Allocation, and Any Motion for Attorneys' Fees, Litigation Expenses and Services Awards, ECF No. 95-3
3. [Proposed] Memorandum of Law in Support of Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class, ECF No. 101-1
4. [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
5. Declaration of Lawrence A. Sucharow in Support of (A) Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion for an Award of Attorneys' Fees Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF No. 104

B. ECF Documents from Other Cases

1. Plaintiffs' Class Action Complaint, Andover Companies Employee Savings and Profit Sharing Plan v. State Street Bank and Trust Company, No. 1:12-cv-11798, ECF No. 1 (D. Mass. Sept. 12, 2012)
2. Class Action Complaint, Henriquez v. State Street Bank and Trust Company, No. 1-11-cv-12049, ECF No. 1 (D. Mass. Nov. 18, 2011)
3. Declaration of Daniel P. Chiplock in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Lieff Cabraser Heimann & Bernstein, In re Bank of N.Y. Mellon Corp. Forex Transactions Litig., LLP, No. 1:12-md-02335, ECF No. 622-1 (Aug. 17, 2015)

C. Deposition Transcripts

1. Transcript of Deposition of Lawrence A. Sucharow (Sept. 1, 2017)

2. Transcript of Deposition of Eric Belfi (Sept. 5, 2017)
3. Transcript of Deposition of Daniel P. Chiplock (Sept. 8, 2017)
4. Transcript of Deposition of Lynn Lincoln Sarko (Sept. 8, 2017)
5. Transcript of Deposition of Robert L. Lieff (Sept. 11, 2017)
6. Transcript of Deposition of Damon J. Chargois (Oct. 2, 2017)
7. Transcript of Deposition of Chris Keller (Oct. 13, 2017)
8. Transcript of Deposition of Stephen M. Gillers (Mar. 20, 2018)
9. Transcript of Deposition of Stephen M. Gillers (Mar. 21, 2018)
10. Transcript of Deposition of Camille F. Sarrouf (Mar. 21, 2018)

D. Other Documents Generated in Special Master Process

1. Letter from Eric J. Belfi to George Hopkins (Sept. 24, 2010)
2. Letter from Eric J. Belfi to George Hopkins (Feb. 8, 2011)
3. Email from Robert L. Lieff to Garrett Bradley et al (Apr. 25, 2013)
4. Email from Damon Chargois to Garrett J. Bradley et al (Apr. 25, 2013)
5. Email from Daniel P. Chiplock to Robert L. Lieff et al (Jun. 14, 2016)
6. Email from Garrett J. Bradley to Christopher J. Keller et al (Jul. 7, 2016)
7. Email from Christopher J. Keller to Eric J. Belfi (Sept. 2, 2016)
8. Consolidated Response by Labaton Sucharow LLP, Lieff Cabraser Heimann & Bernstein LLP, and Thornton Law Firm LLP to Special Master's July 5, 2017 Request for Supplemental Submission (Aug. 1, 2017)
9. Expert Declaration of Camille F. Sarrouf (Oct. 31, 2017)
10. Response by Labaton Sucharow LLP to Special Master's September 7, 2017 Request for Supplemental Submission (Nov. 3, 2017)
11. Response by Lieff Cabraser Heimann & Bernstein LLP to Special Master's September 7, 2017 Request for Supplemental Submission (Nov. 3, 2017)
12. Ethical Report for Special Master Gerald E. Rosen (Feb. 23, 2018)
13. Declaration of George Hopkins (Mar. 15, 2018)

EXHIBIT B

Arkansas Teacher Retirement System et al.
v.
State Street Bank and Trust Co.
C.A. No. 11-10230-MLW; 11-12049-MLW; 12-11698-MLW
Expert Declaration of William B. Rubenstein

EXHIBIT B
Methodology for Empirical Study of
Court Orders Relating to Fee Agreements in Class Action Cases

On March 9, 2018, we searched the dockets database in Bloomberg Law using the query <"class action" settlement> for cases filed in all District courts within the First Circuit since February 2, 2011, the date this action was filed. This returned 1,226 dockets. We then examined each docket to determine (1) whether the case was in fact a class action and (2) whether the case had in fact reached the preliminary approval stage. Applying these criteria, we identified a total of 127 class action settlements. Within in each of those 127 dockets, we then examined all filings related to the settlement, including: preliminary and final approval motions, memos, exhibits, and declarations; fee petitions; settlement agreements; court orders and opinions; objections; and hearing transcripts. We searched these filings for (A) any evidence that the court had directed class counsel to disclose any agreements regarding the manner in which they allocated fees; (B) submissions from the plaintiffs' attorneys indicating that they had entered into fee agreements amongst themselves, with outside counsel, or with the plaintiffs; and (C) any other evidence that the court or attorneys discussed fee-allocation agreements.

In 122 of 127 dockets, we found nothing more than clear-sailing agreements and references to class counsel's contingency-fee agreements with the named plaintiffs. Five of the dockets we reviewed contained more substantial discussions of fee agreements:

- *Case 1.* The court asked the lawyers during a conference if "there [was] any fee agreement with anybody in this case," to which class counsel responded by noting that they had entered into a contingency-fee agreement with the named plaintiff that they could submit if the court desired.[1] We found no evidence that the court followed up on this matter, and class counsel received the fees it requested.

- *Case 2.* The plaintiffs' attorneys disclosed *sua sponte* that two class counsel firms that were jointly representing one of the named plaintiffs had agreed to evenly divide their fees regardless of their individual lodestars.[2] Similarly, we found no evidence that the court followed up on this matter, and the court granted class counsel's fee petition for the amount requested without commenting on the agreement.

[1] *Rossmeisl et al v. A.C. Moore Arts & Crafts, Inc*., Docket No. 1:17-cv-10219 (D. Mass. Feb 08, 2017).

[2] *In Re: Collecto, Inc., Telephone Consumer Protection Act (TCPA) Litigation*, Docket No. 1:14-md-02513 (D. Mass. Feb 19, 2014).

- *Cases 3-5.* The final three cases[3] were the Massachusetts, New Hampshire, and Rhode Island versions of forty-six state-wide class actions against Sprint litigated by the same group of attorneys. Class counsel in all three cases disclosed that the group of firms that had settled the entire set of cases with the defendant had agreed to share a portion of the fee awards they received from each individual action. The courts in all three cases signed near-identical fee-approval agreements and do not appear to have inquired further about the fee-sharing agreement.

Although it is possible that we missed some information in reviewing more than 1,000 dockets in a short period of time, I am confident that our data provide empirical support for the conclusion that courts rarely request fee allocation agreements and that class counsel do not typically volunteer fee-allocation agreements without specific instruction from the court.

[3] *Kingsborough et al v. Sprint Communications Company L.P. et al.*, Docket No. 1:14-cv-12049 (D. Mass. May 08, 2014); *Longa Revocable Trust et al v. Sprint Communications Company, L.P.*, Docket No. 1:11-cv-00172 (D.N.H. Apr 11, 2011); *Coombs et al v. Sprint Communications Company, L.P.*, Docket No. 1:11-cv-00144 (D.R.I. Apr 06, 2011).

EX. 235

Volume: 1

Pages: 1-223

Exhibits: 1-5

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 WILLIAM B. RUBENSTEIN

April 9, 2018, 9:12 a.m.-2:52 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

Page 2

A P P E A R A N C E S:

DONOGHUE BARRETT & SINGAL
By William F. Sinnott, Esq.
Elizabeth J. McEvoy, Esq.
One Beacon Street, Suite 1320
Boston, Massachusetts 02108-3106
617-720-5090/wsinnott@dbslawfirm.com
and
JAMS
By Linda Hylenski, Esq. (via teleconference)
150 West Jefferson
Detroit, Michigan 48226
313-872-1100
Counsel for the Special Master

NIXON PEABODY, LLP
By Brian T. Kelly, Esq.
100 Summer Street
Boston, Massachusetts 02110-2131
617-345-1065/bkelly@nixonpeabody.com
Counsel for the Thornton Law Firm
[appearances continued]

Page 3

A P P E A R A N C E S (cont.):

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
By Richard M. Heimann, Esq.
Robert L. Lieff, Esq.
275 Battery Street, 29th Floor
San Francisco, California 94111
415-956-1000/rheimann@lchb.com
Counsel for Leiff Cabraser

CHOATE HALL & STEWART, LLP
Joan A. Lukey, Esq. (joined via
teleconference a.m. - present in person p.m.)
Stuart M. Glass, Esq.
Two International Place
Boston, Massachusetts 02110
617-248-5000/joan.lukey@choate.com
and
LABATON SUCHAROW, LLP
By Michael Canty, Esq.
140 Broadway
New York, New York 10005
212-907-0882/mcanty@labaton.com
Counsel for Labaton Sucharow, LLP

Page 4

ALSO PRESENT: Michael Thornton, Esq.
Professor Stephen M. Gillers

Page 5

I N D E X

E X H I B I T S

Page 6

P R O C E E D I N G S

MR. SINNOTT: Good morning, everyone. Professor, thank you for being here.

Paulette, if the witness could be sworn.

(Witness duly sworn.)

MR. SINNOTT: Good morning, everyone. This is the deposition of Professor Rubenstein. My name is Bill Sinnott, S-I-N-N-O-T-T. I'm counsel to the special master.

The special master has been appointed by Judge Mark Wolf in connection with Arkansas Teacher Retirement System versus State Street Bank & Trust Company, number 11-cv-10230-MLW.

The special master is The Honorable Gerald Rosen who is at my right formerly of the United States District Court in Detroit, Michigan.

Also on the special master's team to my left is Attorney Elizabeth McEvoy also of Barrett & Singal. To the special master's right is Professor Stephen Gillers.

We expect that Attorney Linda Hylenski will join us momentarily. She is also on the special master's team. And I would imagine that

Page 7

we'll have other participants join us by telephone during the course of the morning and afternoon.

At this time I would ask that the participants in the room identify themselves and their affiliation for purposes of the record. And, Mike, if we could start with you.

MR. CANTY: Michael Canty, Labaton Sucharow.

MR. GLASS: Stuart Glass, Choate Hall & Stewart for Labaton firm.

MR. HEIMANN: Richard Heimann for Lieff Cabraser.

MR. LIEFF: Robert Lieff, Lieff Cabraser.

MR. THORNTON: Michael Thornton, Thornton Law Firm.

MR. KELLY: Brian Kelly -- good morning -- of Nixon Peabody on behalf of the Thornton Law Firm.

MR. SINNOTT: All right. Good morning, everyone.

And I would just caution you that, as usual, we have at least one phone participant today and probably several so that I could ask -- if I could ask that the witness and questioners keep their voices up so that the folks on the phone can hear, and I would offer the same caution when the telephone participants join us, that if they can't hear something, that they let us know at the earliest possible moment they have trouble hearing us so that we don't have to reread the record or repeat testimony.

All right. As I indicated, this is the deposition of Professor William Rubenstein.

EXAMINATION

BY MR. SINNOTT:

Q. Good morning, professor.

A. Good morning.

Q. And, sir, you have provided an expert report to the special master; is that correct, sir?

A. Yes.

Q. All right.

MR. SINNOTT: Paulette -- Madam Court Reporter, if this document could be marked as the next exhibit.

MR. HEIMANN: Do you want to swear the witness?

Page 9

MR. SINNOTT: He's been sworn. Do you think we need to do it again, Richard?

MR. HEIMANN: No.

THE SPECIAL MASTER: Double sworn.

MR. SINNOTT: As soon as that's marked, I'll show you that document. Take your time, Paulette.

(Exhibit 1 marked for identification.)

MR. SINNOTT: Thank you, Madam Court Reporter.

BY MR. SINNOTT:

Q. And, sir, viewing Exhibit 1, is that the expert report that you submitted to the special master in this matter?

A. Yes. I've submitted two. This is the second one.

Q. All right. The first one that you submitted was in approximately -- on approximately July 31st of 2017?

A. That sounds right, yes.

Q. Okay. Now, sir, with respect to that document, did you also submit on a prior occasion a CV?

Page 10

A. With my first expert declaration on July 31, 2017 I submitted a CV.
Q. All right, sir. With respect to your CV, which I won't mark as an exhibit although we do have that document, is it fair to say that you have a background and experience in class actions?
A. Yes. Yes, I was a practitioner in class action law for about a decade, and I've been a teacher and scholar and academic writing about class actions for over 20 years now -- 25 years.
Q. All right. And you consider yourself an expert in the field?
A. I do.
Q. And specifically do you consider yourself an expert in the area of attorney fee awards?
A. In class actions in particular, yes.
Q. Okay. So all aspects of that class actions would fall under that category of expertise?
A. Well, I just finished writing a ten-volume treatise on --
PHONE LINE CONFERENCE: The following participant has entered the conference: Linda Hylenski.
A. So I'll have to confess that, yeah, I have

Page 11

expertise on the whole gamut.
Q. With respect to your prior experience as an expert, I believe in your CV -- strike that.
In your previous report on July 31st of 2017 in paragraph 8 you described some of your expert witness work for and against a number of firms involved in this matter as well as current and past legal work on behalf of the Thornton Law Firm including at the inception of this case.
Could you describe for the special master and participants what your experience was first of all with Lieff Cabraser in the past?
A. Yeah, I don't have the document you're referring to in front of me.
THE WITNESS: Do you have the July --
MR. HEIMANN: I don't unfortunately.
A. But I think I wrote there that I've been an expert witness hired by the Lieff Cabraser firm I think two, three times.
Q. Okay.
A. I've been an expert witness and a lawyer against the Lieff Cabraser firm probably five or six times.
Q. All right, sir. And how about your prior

Page 12

work with or against Labaton?
A. I've been hired as an expert witness by the Labaton firm I think two or three times. I don't know exactly. And I've probably been an expert witness against them, but I don't know exactly.
Again, I don't know exactly what I wrote in that paragraph. I'd have to look at it again.
Q. All right, sir. Just your best memory is fine. Thornton Law Firm same question, please.
A. I've worked with the Thornton Law Firm for probably a decade on a number of different occasions, and on those occasions I would say that I worked not as an expert witness for them but as an expert consultant providing consulting advice and legal advice to them.
Q. All right, sir. And Keller Rohrback, same question.
A. I worked with Keller Rohrback as potentially co-counsel on a case, and I've worked as an expert witness for them on two or three occasions in the past, and I probably worked as an expert witness against them as well.
Q. Have you worked for or against any of the other firms that were listed on the joint fee

Page 13

petition to your knowledge?
A. I don't -- most of the other firms on the joint fee petition were smaller ERISA firms my memory is, and I wasn't familiar with any of those.
Q. All right. But you do remember Keller Rohrback?
A. Of course, yes.
Q. Have you ever been retained by a defense firm or a class objector?
A. Yes. Both.
Q. Could you describe those for us, please?
A. I've been retained by defense firms on a number of occasions. I'd have to go back through my CV. I'm working for a large insurance company right now. I've worked for a handful of Fortune 500 companies as expert witness in class action cases and attorneys' fees cases.
If you want, we can go through my CV, and I can point out the particular cases that I've worked for for defendants.
Q. No, sir, but if you could just give us a general idea as to the scope of your work on behalf of the defendants?
A. Yeah, I've been an expert witness in about

Page 14

close to a hundred cases -- 75 to a hundred cases. A lot of my work has been on attorneys' fees, and I get asked this question are you more plaintiff oriented or defense oriented.

A lot of the stuff that I do isn't plaintiff versus defendant per se. A lot of times it's plaintiffs fighting with each other or questions on whether the plaintiff should get a certain amount of money from the class.

But there are a number of occasions where I've been hired by defendants both to defend against fee petitions in class action cases.

I've also testified for defendants on questions that were -- I've also testified for defendants on questions about the binding effect of a class action settlement and whether it precludes a later class action on a number of occasions.

I think -- again, I'd have to look at my CV to go through it, but I think those two sets of issues, attorneys' fees and preclusive effect, are the main ones I've worked with defendants on.

Q. All right, sir. Thank you.

How about class objectors? Have you done any work on their behalf?

Page 15

A. Yes.

Q. Could you describe that, please?

A. Sure. I was hired as an expert witness for objectors in one of the cases I litigated against -- I was an expert witness against Lieff Cabraser, and I was an expert witness on some of the practices involved in that case hired by objectors to a settlement in that case.

I've also represented objectors in vouching that they should get attorneys' fees in certain instances where their work contributed to the class' relief.

Q. All right, sir. Thank you.

Sir, with respect to your time here today, are you being compensated?

A. Yes.

Q. And what's your rate of compensation?

A. I think it's $1100 an hour.

Q. And approximately how many hours have you spent on this case up until this point? Estimate.

A. Going back a year from -- I have no idea.

Q. Can you estimate whether it's more than a hundred hours?

A. I can't. If you're asking me have I been paid more than $100,000, the answer would be yes.

Page 16

Q. And was your rate the same with respect to the work that you did in the -- on your July 31, 2017 declaration?

A. Yes.

Q. So it was $1100 per hour?

A. Yes. To be clear, I charge a flat fee for a written declaration. Once I've submitted the written declaration, I charge an hourly rate of $1100 an hour. I think that's this contract.

The hourly rate has changed in the last year.

Q. As you prepared that July 31, 2017 declaration, did counsel inform you about the existence of a referral agreement with Chargois & Herron or with Damon Chargois?

A. I don't remember hearing about that issue until after later in the proceedings.

Q. Have you prepared for your testimony here today?

A. Yes.

Q. And how did you prepare for it?

A. I read over a number of documents in the case, depositions from last week. I read Professor Gillers' report again. I read -- looked at his depositions. I looked over my report, and I had a telephone conference with the counsel who've retained me.

Page 17

Q. And when was that telephone conference?

A. Friday.

Q. And, sir, you indicated in preparation for today you reviewed documents as well as depositions. Let me direct your attention to your fact statement on pages 1 to 8 of the instant report, the report -- strike that. Wrong affidavit.

Sir, with respect to the facts that you've relied on in this case, how were those provided to you?

A. Well, again, we're talking about the present testimony or last July or both?

Q. Your present testimony first.

A. Present testimony? I looked at the facts that were provided to Professor Gillers by your team of course, and I -- again, I've read over a number of the depositions, and I learned about facts from reading the depositions.

And then I've talked to the counsel who retained me about some of the facts of the case as

Page 18

well. So my factual understanding I think has those three bases to it.
Q. All right. And tell me with respect to the documents that you've listed in your expert report, how were those documents selected for you to review?
A. We're now talking about the current report?
Q. Yes, sir.
A. So we're in Exhibit A.
Q. That's right.
A. I know when Lieff Cabraser first called me about this, they sent me Professor Gillers' report, and I think from there probably everything are things that I asked for. It may be that they supplied me some documents. I don't remember.
I tended to do my own research. I like getting on PACER and going through the whole PACER history of the case and looking at all the documents. I tend to do that in almost every case I'm involved in.
In fact, I often do it before I'm retained to be sure I'm understanding the case and the whole thing.
They may have sent me a few documents at the beginning of this, but the rest of this is

Page 19

probably as I started reading I asked them for. I know that's true of a lot of these deposition transcripts. I asked for them. I was interested in reading them.
Q. So with respect to those deposition transcripts, you list ten of them.
Did you read the entire transcript? Did you read selected portions? A combination? What's your best memory on that?
A. Well, I definitely did not read portions selected by counsel who hired me. I asked for the transcript of the deposition, and I looked through them.
I read some of them more closely than others. They're kind of -- were fascinating reads. But some of them I skipped through. I can't say I read every word of every one of them.
Q. And other than the documents that you've listed in Exhibit A to your expert report, did you review any additional documents?
A. You know, I try to be complete when I do this. And I have a system with my research assistants to make that work.
So the only thing I would have -- I

Page 20

would guess I would have added to this -- again, I say at the beginning everything I read last summer. And then anything that came up subsequent to my written report, which I think were the depositions last week, would probably be what I read beyond this.
Q. All right, sir. And you mentioned that you had a research assistant or assistants provide help to you in this case?
A. Yes.
Q. What did -- first of all, how many research assistants worked on this case?
A. On this phase of the case, I think two.
Q. All right. And on the previous phase of the case?
A. I think four.
Q. And you had four working -- when you say previous phase of the case, is that in preparation for your July 31, 2017 declaration?
A. That's correct. And in both instances we did a lot of empirical work where we looked at reported cases and crunched some numbers and ran data, and the students did a lot of that work.
Here I think my students went through

Page 21

like 1200 cases from the District of Massachusetts in the last six years.
Q. And that was the empirical study that you discuss in your report?
A. Correct.
Q. Sir, with respect to the opinions in your March 26, 2018 report, who wrote those opinions?
A. I did.
Q. And did you have any assistance in writing those opinions?
A. No.
Q. And is it fair to say that your research assistants provided some assistance to you?
A. Again, they primarily provided assistance doing the empirical work. Other than that, everything here is me. They didn't -- I don't think there's any even legal research they did here for this.
Q. All right. So your research assistants didn't do any of the legal research. They were strictly confined to the empirical study?
A. Correct.
Q. So you did your own legal research?
A. I do.

Page 22

Q. All right. Now, sir, let me direct your attention to your expert report and direct your attention to page 3 first of all.
The heading -- your first of three sections in your report I believe states that Rule 23 does not require disclosure of fee agreements absent judicial order, and Judge Wolf issued no such order in this case.
Have I correctly read that title for Section 1?
A. Yes.
Q. And, sir, is it fair to say that your basic premise contained in paragraph 3 is -- or one of your basic premises is that the aggregate fee is allocated among the lawyers whose work benefited the class? Did I read that correctly?
A. In paragraph 3 the first sentence --
PHONE LINE CONFERENCE: The following participant has entered the conference: Joan.
A. In paragraph 3 the first sentence identifies the two phases of the fee petition and fee work in a case like this, the petition phase where the Court decides in the aggregate how much the attorneys are getting and then the allocation phase where the

Page 23

attorneys or the Court divide the fee up, and I do state precisely what you said in the second of those phases "the aggregate fee is allocated among the lawyers whose work benefited the class."
Q. All right. But that's relegated to the allocation phase; is that correct?
A. I'm not sure what "that" means in your question. I'm sorry, I don't mean to be difficult.
The allocation phase is when the fee is split among the attorneys.
Q. Right. But with respect to your statement "the aggregate fee is allocated among the lawyers whose work benefited the class," are you speaking about the allocation phase with respect to that clause?
A. Yeah. I use that phrase, that's correct. I think it's an important distinction in a big case like this that there are these two phases; that the fee is set in the aggregate in the first phase. That's the important phase 'cause that's when the class' money is being taken from the class. And that's the key to the whole thing in my opinion.
And then once the Court has decided that that's a fair fee to take from the client, then the

Page 24

question of how the lawyers divide that fee up among themselves is what I refer to as the allocation phase which I think has less pertinence for the class in most cases.
THE SPECIAL MASTER: Does the Court have authority in both phases however --
THE WITNESS: Absolutely.
MR. HEIMANN: He hadn't finished the question.
THE SPECIAL MASTER: Thank you, Richard.
Does the Court have authority in both phases as to both the aggregate fee and the ultimate allocation?
THE WITNESS: Yes. The Court -- yes. The Court has the authority in both phases, absolute authority in terms of how much money is taken from the class.
And I think that's the key phase, and if we refer to the Court as a fiduciary for the absent class members in that phase. And then in the allocation phase it's the allocation of money coming out of a class action in front of the Court, and the Court has the authority to decide.
THE SPECIAL MASTER: But the Court would

Page 25

also have authority in the first phase as to allocation if it saw something that it deemed unfair to the class before it approved the aggregate fee, yes?
THE WITNESS: Judge, I think you're suggesting in some sense that there could be allocational instances that would arise in the second phase that might affect the class, and you might think about them during the first phase.
THE SPECIAL MASTER: No, that's not what I'm suggesting.
THE WITNESS: Okay. Try again. I'm sorry.
THE SPECIAL MASTER: If there is something that the Court sees in what you say is the first phase -- I'm calling it the "fairness hearing" at which a settlement is approved --
THE WITNESS: Yeah.
THE SPECIAL MASTER: -- and all allocations, both allocations among class members but also allocations as to fees among attorneys, the Court has authority in that first phase if it sees something in the allocation that it believes is inappropriate or perhaps in some way unfair to the

Page 26

class, correct?
THE WITNESS: I feel like what you're saying is if the Court undertakes the allocation as part of the fee petition phase, in that instance it's essentially the way you're describing it collapsed what I'm describing as two separate phases into one. And its authority would be there.
THE SPECIAL MASTER: Before the fee is awarded?
THE WITNESS: Again, most courts don't allocate before the fee is awarded.
THE SPECIAL MASTER: I'm not asking about most courts.
I'm only asking you if the Court has authority at that phase to make decisions about allocation?
And then I'll try -- after you answer that question, I'll try a hypothetical on you.
MR. HEIMANN: Well, that is a hypothetical, judge.
THE SPECIAL MASTER: No, that is not. The first part is not --
MR. HEIMANN: Well --
THE SPECIAL MASTER: -- a hypothetical.

Page 27

It's a very direct question.
MR. HEIMANN: All right. Then I object to it if it's not a hypothetical.
THE SPECIAL MASTER: Is there anything about the question you don't understand, professor?
THE WITNESS: I'm a little -- just to be very clear, you're asking me what the law -- what my opinion of what the law is?
THE SPECIAL MASTER: Yes.
THE WITNESS: Yes. And you're asking me if the Court -- I've kind of -- I write a treatise. I try to describe how courts do this, and I've described this as a two-stage process.
You're asking me, hey, if a Court does both stages at stage one does it have the authority to do it that way. Yeah, I guess it does. I've not seen courts do that, but I don't think they lack the authority to do that.
THE SPECIAL MASTER: Okay. So if a Court sees an agreement -- this is the hypothetical part.
If a Court sees the agreement -- sees an agreement of the allocation of fees before -- before it has actually approved the settlement and the fees

Page 28

for the attorneys, you would agree that the Court at that point could question about the allocation? First could raise questions about the allocation?
THE WITNESS: So as I understand the question, if allocational information is provided to the Court or the Court asks for it and comes upon it prior to what I'm describing as the allocation phase, does the Court have the authority to look into that question? Yes.
THE SPECIAL MASTER: And you would agree that the Court also has authority if it finds the allocation in any way unfair to reject the proposed allocation and either reallocate it or perhaps give some of it to the class?
THE WITNESS: A Court has authority over the allocation of attorneys' fees in a class action. And if the Court finds the proposed allocation unacceptable from the Court's point of view, the Court has the authority to remedy that.
In the Agent Orange case, for instance, that your experts talked about, the Court reallocated the money among the attorneys because it wasn't happy with the way the agreements did it.
Could the Court instead of reallocating

Page 29

among the attorneys take some of the allocation and return it to the class? I imagine it could. I've not seen a Court do that precisely because they separate these two phases. Once it's been decided that the aggregate fee is fair, it's unlikely that we need to return the money to the class.
But I doubt the Court lacks the authority to do that.
THE SPECIAL MASTER: All right. Thank you. In fact, on footnote 5 in that section, it's on page 3.
THE WITNESS: Yes.
THE SPECIAL MASTER: You call that out specifically, don't you?
Quoting from One Class Action Attorney Fee Digest May of 2007. You say -- after the quote you say, "Technically the Court has the power to decide which plaintiffs' attorneys get what amount of money."
And then you go on to say, "But no judge in her right mind wants to undertake this task particularly in cases involving large number of attorneys."
We'll put aside the question of whether

Page 30

judges are in their right mind when they see something they don't like.
And then --
MR. HEIMANN: I object to that comment, your Honor.
THE WITNESS: That's not what I said.
THE SPECIAL MASTER: I'm putting it aside, Richard.
MR. HEIMANN: I object to the comment.
MR. GLASS: I join in that objection.
THE SPECIAL MASTER: And then you say, "Yet, judicial involvement is occasionally necessarily particularly as lead counsel is not a disinterested allocator." And then you quote In Re: Diet Drugs Product Liability Litigation Judge Ambro concurring "counsel have inherent conflicts."
"They make recommendations on their own fees and thus have a financial interest in the outcome. How much deference is due the fox who recommends how to divvy up the chickens?" And there's a question mark at the end of that.
That would certainly indicate that you believe that the Court has the authority to either reallocate fees before approving the fees or --

Page 31

among counsel or to take some of the fees that were going to be allocated to counsel and give some of it to the class?
MR. HEIMANN: Objection.
THE WITNESS: Yeah, I would only tweak the last thing you say in the sense that's saying give some of the fees that were going to be allocated to counsel, I think I say give some of the fees that the fee petition in the petition phase were going to go to counsel.
And as a remedy for misallocation, the Court could return some of that money to the class. I think the Court would have that authority, yes.
THE SPECIAL MASTER: Okay. Thank you.
BY MR. SINNOTT:
Q. And just to follow up on that, professor, when Judge Ambro writes that "counsel have inherent conflicts," do you agree with that?
A. Well, again, what he's referring to here is something very specific. So let's -- let me zero in on it.
The way I'm describing this, there are two phases, and in the second phase, the allocation phase, the way most courts handle this is that they

Page 32

ask the lead counsel to propose an allocation in the hopes that lead counsel will propose an allocation and get all of the lawyers to agree to the allocation, and the Court therefore doesn't have to involve itself.
And in that setting what Judge Ambro is saying is lead counsel who's proposing the allocation is themselves involved. They're also proposing how much they're going to get. And so there's some question there about how disinterested they are.
There's unique tension though because lead counsel also would like to leave the Court out of it. So it has some incentive to try to propose an allocation that everyone agrees to; and, you know, that's the hope of what we're balancing here is that if they do that well, the Court doesn't have to get involved in these attorney inter -- intra-attorney disputes.
Q. All right. But let me ask you again do you agree that "counsel have inherent conflicts" under those circumstances?
MR. HEIMANN: Well, objection. He's answered that question.

Page 33

A. Again, with specifically lead counsel who's charged with proposing the initial allocation is what Judge Ambro's referring to, and I agree with him that there's a conflict in some sense.
What I'm trying to point out is there's also incentives that help temper the conflict a little bit.
Q. All right. You know, obviously Judge Ambro makes reference to lead counsel making recommendations on their own fees and thus having a financial interest in the outcome.
Are there any other inherent conflicts for lead counsel that in your experience may exist?
A. In allocating fees?
Q. Yes, sir.
A. Among all the counsel when they're undertaking this task?
Q. Yes, sir.
A. I think that would be the primary one. Again, if -- you know, if you're lead counsel in one of these cases, your hope is you're going to be lead counsel in another one of these cases. So you want to do a good job. And one of the ways of doing a good job is in this setting getting the other

Page 34

lawyers to agree to the allocation you're proposing, not having to involve the Court in the allocation.

In my experience I do a lot of work with MDL judges; and when MDL judges get an MDL for the first time or even multiple times, there are a lot of people that apply to be lead counsel. And a lot of times the MDL judges will talk to each other have you worked with this person before, how'd she do in your case.

And so there's a reputational interest the lead counsel have that's part of this whole process, too. They want to -- they want to make the MDL work. They want to work with the MDL judge and make that work.

So I think there's a lot of -- a lot of factors that go into how they're thinking about the allocation, and their self-interest is definitely one of them. These are entrepreneurial lawyers, but it's not the only one.

THE SPECIAL MASTER: I'm curious that in arriving at these allocations amongst themselves in these large class actions, is there a duty of candor by lead counsel to other counsel to disclose what might be material facts?

Page 35

THE WITNESS: Again, I don't -- I'm not fighting the question. I'm happy to answer it and talk about it.

You're now asking me another question that's --

THE SPECIAL MASTER: I am, yes.

THE WITNESS: -- not in Professor Gillers' report?

THE SPECIAL MASTER: Correct.

THE WITNESS: All right. So I'm here as a rebuttal witness, and I haven't prepared --

THE SPECIAL MASTER: I understand. But you are an expert on class action which I assume includes the divvying up of fees among class counsel.

THE WITNESS: Correct. So if you're asking me to describe what the law is on this, there's very little.

The main precedent in my opinion is the fifth circuit case called In Re: High Sulfur, and there was kind of an allocation that was behind closed doors, and the fifth circuit opinion takes the position that there should be transparency in the allocation and that each attorney should be told

Page 36

what every other attorney is getting in the allocation. And I support that strongly in my treatise. I say transparency is a good idea in these circumstances.

So I don't know if I'd say that a Court has articulated it as a duty of candor. I would rather say that the courts have thought about this as a transparency issue that the lead counsel is open about what the allocation is.

Whenever I think about this I'm reminded when I was growing up my father was an accountant, and he ran a small accounting firm in Pittsburgh, and he allocated the partnership benefits at the end of the year. And he told me he would meet with all his partners and tell them what they were getting, and everyone was very happy. And then he would release the book that showed what everyone else was getting, and he'd have to meet with them all again a second time because they were all unhappy at that point. And so, you know --

THE SPECIAL MASTER: The first stage doesn't sound like a law firm. The second stage does having been on the management part --

THE WITNESS: So I think the

Page 37

transparency is an important aspect to this for that reason.

THE SPECIAL MASTER: So the touchstone in your view would be transparency meaning disclosure of material facts so that other counsel can make a determination as to whether or not they're getting their fair share?

MR. GLASS: Objection.

THE SPECIAL MASTER: Is that a fair way to put it?

MR. GLASS: Objection.

THE WITNESS: I've really thought about this in terms of disclosure of how much. I'm kind of copying what my father says. You say to all the lawyers here's how I'm distributing this.

And I should say one other thing about this. I think in most of these cases you should also know what everyone's lodestar is at that point.

As I point out in my report here, about half the cases the lodestar -- the amount of time that counsel spent not submitted to the Court, and so it's not clear all the attorneys would have the information that lead counsel has about the time that the other attorneys had spent on the case.

Page 38

So I think if I were doing this, I would make sure to share with all the attorneys here's everyone's lodestar, and here's how I'm divvying up the money.

THE SPECIAL MASTER: So is it not a good practice to make agreements before the lodestars are known as to allocation of fees amongst counsel? And -- let's just leave it at that.

MR. HEIMANN: You're asking him is it not a good practice?

THE SPECIAL MASTER: Is it not a good practice?

MR. KELLY: Sorry. What is not a good practice?

THE SPECIAL MASTER: To make agreements to allocate fees before the lodestar is known.

MR. GLASS: Objection.

THE WITNESS: That's a tough question and let me say why.

It feels like a different question, your Honor, for this reason: When the lawyers are starting these cases, they're trying to think about what their investment in the case is going to be and what their potential return on the case is going to

Page 39

be and how much time and effort are they going to put into the case.

And take this case for instance. If Labaton is lead counsel and Lieff Cabraser's coming aboard and they're thinking, you know, how much -- how many attorneys should we put on this case, they want to get a sense of, well, how are the fees going to be divided up in the back end.

And so like any other investment, they're making an important investment of millions of dollars of their time here, I would imagine that there would be agreements up front about how to think about that. And I -- you know, I learn from my experience in doing -- in seeing how this all works, and I think what you see in this case feels somewhat right which is there was some agreement as to some portion of the fee, and then some we'll decide the rest at the end.

And I think they need some certainty in terms of the amount of money and time they're going to invest in the case up -- that they're going to get some of that back in the back end. I'm not sure agreements before anyone's lodestar is put in are necessarily a bad thing.

Page 40

We want to encourage lawyers to invest in a case, and we may need to have them to have such agreements in order to make them comfortable to invest millions of dollars in the case.

THE SPECIAL MASTER: I want to go back to this issue of transparency in making these agreements as to the allocation of fees amongst class counsel.

What information should be made available to the various counsel before they agree on an allocation?

MR. HEIMANN: Now I'm going to object. Maybe I can have a standing objection. You're going way beyond his report now.

THE SPECIAL MASTER: I am going beyond his report.

MR. HEIMANN: And I object to that. I don't think it's appropriate for you to do that with a rebuttal expert witness.

As long as I get the objection on the record, he can answer it if he thinks he can then respond.

THE SPECIAL MASTER: It actually is not beyond one of the premises in his understanding of

Page 41

the facts in his report, and I'll get to that.

MR. HEIMANN: I would disagree. So I would be interested to see you get to it.

THE WITNESS: I'm sorry, can you repeat the question? Sorry.

MR. HEIMANN: We can have the court reporter read it back.

(Reporter read back.)

MR. GLASS: Objection.

THE WITNESS: So as I understand the question, you're saying if there's a lead counsel that's going to propose the initial allocation, in proposing that initial allocation what information should they give.

THE SPECIAL MASTER: Or at any point in the allocation process -- or at any point in the process of agreeing upon the fee allocation, either the initial or subsequently or the final.

MR. HEIMANN: And you're asking him for what his view is what is good practice or best practice or what is required under the law?

THE SPECIAL MASTER: I'm asking what constitutes transparency? That was what -- what kind of information should be provided?

Page 42

MR. GLASS: Objection.
THE WITNESS: It's a question -- again, in my experience the main thing to be provided by the counsel are the lodestar and -- and then the proposed allocation.
And I think what most lawyers do is they look at their lodestar, and they see, hey, I'm getting 1.12 of my lodestar, and you're getting 2.4 of your lodestar, and they call lead counsel and say why is he getting two-and-a-half, and I'm getting 1.2. And then lead counsel says something like his contributions were more important.
THE SPECIAL MASTER: Are those the only material facts, the facts contained in a lodestar?
THE WITNESS: No. Again, for what the reason I just said, lead counsel may well say something like the value of his contribution were more important, and that's why I'm allocating more money than the lodestar represents.
Look, there's no secret we're talking about this case and the facts of this case. And I think one of the things, obviously, you're concerned about is the allocation of Mr. Chargois.
According to what I'm saying, at the

Page 43

point at which the allocation would have happened if the lodestar had been shared, the lawyers would have seen that he had little or no lodestar in the case and might have been asked questions.
THE SPECIAL MASTER: And that's exactly my question.
You know that Mr. Lieff has testified that when the agreement was made amongst what we call the customer class counsel -- and, indeed, a number of the e-mails and other documents indicate -- that it was Mr. Lieff's understanding from what he was told that Mr. Chargois was performing in the role of local counsel or liaison counsel.
He was not told that the agreement was to pay Mr. Chargois dated back long before the case started; that it was an agreement to pay Mr. Chargois 20 percent of Labaton's fee on every case in which Arkansas was lead plaintiff and Labaton was lead counsel.
He says he was also not told that -- he was also not told that Mr. Chargois had done no work on the case and provided no value in the case itself.

Page 44

Would that have been material information that lead counsel should have shared with the other co-counsel in the case? And I should add that Mr. Bradley -- Garrett Bradley also testified to the same effect.
MR. GLASS: Objection.
MR. HEIMANN: Objection. This is outside the scope of this witness as an expert witness.
THE WITNESS: So, again, my understanding -- and it's consistent with what you just said -- Lieff Cabraser was under the understanding that he was serving as local counsel in the case.
And, in fact, I talk in my report --
THE SPECIAL MASTER: You do.
THE WITNESS: -- about the fact that then when Mr. Chargois submitted no lodestar at the time of the fee petition, how did Lieff Cabraser understand -- how might have Lieff Cabraser understood that at that time and how they might have thought all kinds of things other than there was an agreement, and he wasn't doing anything in the case whatsoever.

Page 45

So I think what your question is consistent with my understanding of Lieff Cabraser's very limited knowledge. You then asked me was there a duty upon Labaton to provide more information about the Chargois Arrangement.
And I'm not exactly -- I'm not running from the question. I'm not exactly sure how to answer it. When you say duty, you're asking about ethical duty --
THE SPECIAL MASTER: Actually, I used the word "obligation."
THE WITNESS: Obligation. Is there a legal obligation? I don't know. Is there an ethical obligation? That's not my area of expertise.
Is it a best practice for class counsel -- lead counsel in certain such circumstance? Maybe not. But primarily because you want to maintain good relationships with the other lawyers who are working on the case. And this is reputationally not going to be a great thing if the other lawyers find out about this after the fact and feel like they weren't treated fairly in this way.
There's an aspect of the allocation

Page 46

phase in which you kind of feel like the lawyers will work it out between themselves; and, frankly, if they feel like they've been harmed in one case, they may then, you know, think about that reputational interest in future cases.

But I don't -- it's harder for me to say -- put my finger on a legal obligation that Labaton had to the other lawyers per se. I've not seen anything litigated like that.

I have no doubt that if the Court had asked for the agreements, that Labaton would have had a legal duty to provide the agreements at that point.

THE SPECIAL MASTER: I'm actually not asking about the Court at this point.

I'm asking about the obligation of Labaton as lead counsel to other counsel to fully disclose the nature and origins of the Chargois agreement.

MR. HEIMANN: Objection again. It's outside the scope of this witness' testimony.

THE SPECIAL MASTER: It's actually not, Richard. On pages 22 and 23 he relies for his facts on exactly what Mr. Lieff's testimony was. I don't

Page 47

want to have to read the whole thing.

But he relies on -- in part at least on the fact that Lieff Cabraser had no knowledge of the background and true nature of the Chargois agreement.

MR. HEIMANN: I maintain my objection.

THE SPECIAL MASTER: Okay.

THE WITNESS: Again, the question -- you're asking again do they have an obligation.

THE SPECIAL MASTER: Yes.

THE WITNESS: And I guess I'd give the same answer again.

I'm breaking it down into a legal obligation. I don't know anything in class action law that addresses this directly. I don't think it's a great practice for the reasons that I've already testified to.

And, you know, lead counsel in a case like this --

THE SPECIAL MASTER: I'm sorry, you don't think what is a great practice?

THE WITNESS: Again, my testimony is that when lead counsel is dividing up the fees, it's a -- it's in my opinion a best practice to share the

Page 48

lodestar that everyone has and to explain then when asked why you're divvying up the fees in particular ways.

And in this case had that happened, at some point someone may have said here's Chargois' lodestar, and there is nothing, and someone would have asked a question. And I think at that point Labaton would have said here's why we're giving that amount of money -- should have said. If they were asked that question.

THE SPECIAL MASTER: And are you aware that Mr. Lieff testified that had he known that Mr. Chargois did no work on the case, contributed no value, did not serve as local counsel, he would not have agreed on behalf of Lieff to share Labaton's obligation to Mr. Chargois?

MR. HEIMANN: Can we see that testimony, judge?

MR. GLASS: Objection.

THE SPECIAL MASTER: I believe that fairly summarizes it.

MR. HEIMANN: No, I object because frequently I have found your summaries to be inaccurate.

Page 49

I don't see any reason why we can't look at the testimony if you're going to ask him --

THE SPECIAL MASTER: We can call it up. Assume it, please.

MR. GLASS: Objection.

MR. HEIMANN: Assume that Lieff testified to that effect, and then what is the question?

THE SPECIAL MASTER: My question is does that increase the obligation or bear upon your answer of whether there was an obligation to disclose it to the customer class counsel?

MR. HEIMANN: All right. Again, objection. It's beyond the scope of this witness' testimony as an expert witness.

MR. GLASS: I object as well.

THE WITNESS: I think what you're asking, if I understand it correctly, is you're using Mr. Lieff's testimony to say that this is a material fact.

THE SPECIAL MASTER: Correct.

THE WITNESS: Yeah.

THE SPECIAL MASTER: At least it was material to him.

Page 50

THE WITNESS: Yeah. And given that it's a material fact, does that increase their duty to disclose it?
THE SPECIAL MASTER: Obligation.
THE WITNESS: Obligation.
And, again, I -- I go back to the same answer I had before.
If the Court is involved and the Court asks, absolutely. If you're talking about a private agreement among them, I don't know any law on the subject. It would be my testimony that if I were wanting to be lead counsel repeatedly, I'd be as forthright as possible in these circumstances.
THE SPECIAL MASTER: So more in the nature of a best practice than an obligation?
THE WITNESS: I think that sounds right. But again it's not...
It's not something I prepared, I think, to testify on that point specifically and I've thought a lot about. As I'm right here, most judges leave this to the lawyers.
I think a lot of the allocation stuff goes to the lawyers' reputational interests and trust that they build up with other lawyers in these

Page 51

cases.
BY MR. SINNOTT:
Q. Well, let me just focus on your report for a minute and the statement you make in paragraph 7 where you say in practice judges rarely order disclosure of agreements as to fees.
Do you see that, sir?
THE REPORTER: Did you say "really" order or "rarely"?
THE SPECIAL MASTER: Rarely.
MR. SINNOTT: Rarely.
A. I do see that paragraph 7 first sentence.
Q. You're troubled by that, aren't you?
A. Yes. And let me say in the treatise I wrote years before these facts arose I point out that the judges have the authority to ask. They rarely do it. And I specifically encourage them to do it more.
Q. And notwithstanding your belief that the Federal Rules of Civil Procedure do not require it, why are you troubled, and why do you urge them to do it more often?
A. Let me put this in perspective. Two reasons -- really one main reason.

Page 52

The reason is that occasionally the fee agreements directly affect the class members' interest, and there are two aspects to the fee again. There's the fee petition stage and the fee allocation stage.
At the fee petition stage the key thing I adamantly advocate for in the treatise is that counsel -- that the Court make counsel submit their lodestar, and the reason I do that is because it makes transparent how much profit they're making at the class' expense, what the multiplier is.
And I think class members lose millions, if not tens of millions, of dollars a year because judges don't ask for submission of the lodestar and crosscheck the percentage of work. At the allocation phase I think this is much less pertinent but pertinent nevertheless. I spend a paragraph on it in the treatise.
I suggest that they should make agreements known for the same reason. Occasionally agreements have a negative effect on the class members' recovery.
And I think the Agent Orange case is a perfect -- is the best example of this, far better

Page 53

than this case in some ways.
What I worry about and what the judges worry about a lot are investors and particularly third-party investors. Agent Orange is a little different because they're kind of second-party investors, but they're outsiders who have an interest in the lawsuit. And you worry that the attorneys' incentives may be skewed by those outside investors.
And what I suggest here is that the fee agreements should be disclosed in part to make sure that the class hasn't been harmed by some agreements that have been made with respect to fees.
Q. All right. And you've advocated for that in the treatise?
A. Softly, yes.
Q. But you've advocated for it?
A. Yes.
Q. And specifically let me make reference to 5, Newberg on Class Actions Section 15-12 which states once again qualifying that -- where you see the Rule 54 in the federal rules fit in, you say, "While Rule 54(d)(2)(B)4 makes disclosure of such agreements dependent on a judicial order..." -- and, by the

Page 54

way, the heading for 15-12 is Fee Procedures At Class Actions' Conclusion--Disclosure of Fee-Related Agreements Requirement.

MR. HEIMANN: So you're reading from the treatise; is that correct?

MR. SINNOTT: Yes, sir.

BY MR. SINNOTT:

Q. But going down to that paragraph, if I could begin again.

"While Rule 54(d)(2)(B)4 makes disclosure of such disagreements dependent on a judicial order, there are at least two reasons that courts should regularly order disclosure. First, given that the Court is acting as a fiduciary for absent class members in overseeing the settlement approval and fee process, there is a strong argument that requiring transparency as to the fees is in the class' interest, and hence a Court should so order their disclosure."

So if I could just direct your attention to requiring transparency as to the fees is in the class' interest so as to suggest disclosure, what was the interest in the class in this undisclosed payment going to Chargois & Herron?

Page 55

MR. GLASS: Objection.

MR. HEIMANN: Objection. Beyond the scope of this witness' testimony as an expert.

A. So, actually, I think I see this slightly different in some ways -- in the following way: I appreciate the concern about the Chargois payment. I see it as an allocation issue more than a class issue for a few reasons, and I'll just go through them and explain why I say that.

Number one, in this case I think everyone agrees this is a good class action -- actually an excellent class action. The results and what the lawyers did here is really tremendous.

A lot of class actions are copycat cases or piggyback cases on government actions. This is an important case that the lawyers did themselves, invested a lot of money in and brought a terrific result for the class. I don't think anyone really argues with that.

And so I think I kind of start from the place that they did a good job, and they were paid fairly.

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.

When I say that, there's no evidence that anyone thought during the case, well, we should take this to trial, but we have to pay Chargois so let's settle now, or we should settle, but we have to pay Chargois so let's take this to trial or something like that.

That's what we worried about in Agent Orange. You don't really have any of that here with Chargois.

Third, I don't think there's any evidence -- you guys have got all of the e-mails back and forth. And I don't also see any evidence there was an overreaching for the aggregate fee because of Chargois. There's nothing in the e-mails that says, you know, this is a 20 percent case, but we owe Chargois 5 percent so let's get 25 percent for the class or anything like that.

I think the 25 percent is a fair fee, and in my terms it's a two multiplier which I think is far more important than the percentage. It's a two multiplier. And for what the attorneys accomplished here a two multiplier is a perfectly reasonable -- in fact, quite a modest fee for them. I don't see any evidence that the Chargois fee payment kind of made them overreach in terms of the fee that they were asking for here.

And fourth -- finally, I just throw in one other thing. I think when you look at the Agent Orange case, you have the second circuit there talking about what you really worry about which is that an agreement as to fees alters the incentives in representing the class.

And there what the Court was worried about was the investment return that the lawyers were getting -- some of the lawyers were getting would mean you would settle the case before it should be settled in the class' interest or litigate too long against the class' interests.

And that the second circuit -- notice the second circuit's very upset about this. This is an outrageous set of fee agreements. Notice what they didn't do. Even though the class' interests were at stake, they didn't give the class back the money. They just kind of reorganized the money among the lawyers who were in the case themselves --

Page 58

throughout the agreements reorganized the money.
I just don't -- I'm not defending the Chargois payment per se --
PHONE LINE CONFERENCE: The following participant has entered the conference.
A. I'm not saying you shouldn't be upset about it. But I see it less as a fee petition interest affecting the class than as an allocation interest that maybe he shouldn't have been allocated money, and you could give it back to the class if you want.
You could reallocate it, but I don't see how it had a direct effect on the litigation here and undermined the class' interest which is the most important thing at the end of the day.
THE SPECIAL MASTER: So if I could understand. Is your testimony that because the overall fee was reasonable when juxtaposed against the results in the complexities of the case and the challenges, the payment to Chargois raises no issues for the class?
THE WITNESS: That's an interesting way of putting it. I wouldn't exactly say it that way.
Again, because the fee petition stage I think was fair and the fee was fair as an overall

Page 59

fee, at the allocation stage if you don't think Chargois should have been allocated some money, I don't think that misallocation to Chargois affected the class' recovery in the case or what they -- how they were represented in the case directly.
THE SPECIAL MASTER: You've sort of taken my question and put it on your own terms. I'd like you to answer my question.
Is your testimony then that because the overall fee was reasonable to the result, the class has no interest in the payment to Mr. Chargois?
MR. HEIMANN: Objection. Outside the scope of this witness' testimony as an expert.
MR. GLASS: Objection.
THE WITNESS: A lot turns on how you understand the Chargois payment in that regard. And I think it's a misallocation. If you were to go so far as to say there was something to find, that there was something illegal about it -- and I haven't made that conclusion -- then it would be hard for me to say the class had no interest in that allocation.
But, again, my testimony is that allocation generally comes after fee setting. I'm

Page 60

comfortable with the fee setting here. The allocation may have gone wrong. I'm not sure how the class was directly harmed by that.
THE SPECIAL MASTER: In this case the allocation to Mr. Chargois was actually agreed upon by counsel before the fee petition was approved. Are you aware of that?
THE WITNESS: Again, I'm aware that from Lieff Cabraser's standpoint their understanding was that they were agreeing to an allocation of a fee to local counsel in the case.
THE SPECIAL MASTER: Yeah. But the agreement as to allocation in terms of timing and your division was made before the fee petition itself.
MR. HEIMANN: You mean the decision on the fee petition? Or the submission of the fee petition? Or the drafting of the fee petition?
THE SPECIAL MASTER: The agreement on the allocation to Mr. Chargois was made before the submission of the fee petition.
THE WITNESS: And?
THE SPECIAL MASTER: Does that say anything about your view on the propriety of the

Page 61

allocation here? As I understand it, you've divided up allocation pre approval and then allocation post approval.
MR. HEIMANN: And you're representing that that's the fact? I don't know.
THE SPECIAL MASTER: I believe it is.
MR. HEIMANN: I don't know one way or the other.
THE SPECIAL MASTER: I believe it is. It certainly is the fact that the allocation was made before the fee petition was approved. That is certainly the fact.
MR. HEIMANN: That I'll agree with.
THE SPECIAL MASTER: Yeah.
THE WITNESS: I think I'm dividing up something slightly different. It is less a temporal thing than it is a substantive thing.
The substantive thing is how much money is the class giving up versus how are the lawyers then going to split up that money. And, you know, how much money the class is giving up, based on my expertise I think they got a good deal. How the money was divided up...
THE SPECIAL MASTER: That goes back to

Page 62

the earlier question about whether the class has an interest at the time of the allocation, whether the allocation is made before the fee petition, before the hearing on the fee petition or after.

And my question to you is doesn't the class have some interest, at least in knowing about the allocation to Mr. Chargois in this case?

MR. GLASS: Objection.

THE WITNESS: I thought you were going to end the sentence doesn't the class have some interest in knowing about the allocation period.

My answer to that would be yes.

THE SPECIAL MASTER: I wish you would just answer my questions instead of rephrasing.

My question was does the class have some interest in knowing about the allocation to Mr. Chargois?

MR. HEIMANN: Well, I object now again because we don't know now whether you mean the Chargois Arrangement --

THE SPECIAL MASTER: Yes. The fee allocation.

MR. HEIMANN: Just the amount?

THE SPECIAL MASTER: Well, more than the

Page 63

amount. The fact that he did no work on the case. The fact that he was not local counsel. The fact that he did not appear in the case. The fact that the arrangement -- I guess it would be the entire Chargois Arrangement.

MR. GLASS: Objection.

THE WITNESS: Again, I would approach this question by -- you want to make up a rule after the fact. I wrote a treatise before the fact, and before the fact I said I hope all the fee agreements would be -- that the Court would order that the fee agreements be made transparent.

So I'm agreeing before the fact that I'd love all this stuff to be transparent. Has nothing to do with Chargois. I'm not making up a rule for one case. I'm saying I would like fee allocations to be transparent in every case.

So I'm on record saying that, and I'm comfortable with that. I don't need a special rule for this case.

But I should say I'm on record saying that and therefore urging the Court to order that this stuff be made transparent. That's what the rule structure is.

Page 64

THE SPECIAL MASTER: Hm hm.

THE WITNESS: And if the judge had followed my order -- my recommendation, we wouldn't be here.

THE SPECIAL MASTER: You understand, I'm sure, the background in this case which is a little different than most cases in terms of the posture of the case as it went to the judge for approval of the settlement class and the fee petition and the entire settlement in that there were three cases, two of which were ERISA cases, that were consolidated for pretrial purposes. You're aware of that?

THE WITNESS: I'm aware there are three cases consolidated for pretrial purposes. You had said this is different than most cases. There are lots of different ways these work. Sometimes it works this way. So yes.

THE SPECIAL MASTER: And that it is possible that the interests of all of the different class members were not completely aligned as to the allocation of fees.

MR. GLASS: Objection.

THE WITNESS: So your question is am I aware that in this case --

Page 65

THE SPECIAL MASTER: To start with, are you aware of the procedural posture first of all?

MR. GLASS: Objection.

THE WITNESS: So my understanding the Arkansas cases file. There are also some ERISA-related complaints that come later which is fairly typical in these cases. And then they all get consolidated. Eventually they're settled as one single case, one class settlement, one class.

I don't -- I worry about the sense that there are conflicts among class members as to fees. If there are conflicts among class members, that makes class certification more problematic.

And I think there was a little bit of transparency in the class notice and in the settlement agreement about the ERISA -- the members of the class whose claims were ERISA based and how they might be treated slightly differently, and all of that was made transparent. So I'm aware of all that background.

THE SPECIAL MASTER: Should the Chargois Arrangement have been noticed to the class because of this procedural posture in which three different cases were consolidated together and the class

Page 66

representatives of all three were in different classes to begin with, and then there was one settlement class that included all of these different class members?

MR. HEIMANN: Objection.

MR. GLASS: Objection.

THE WITNESS: I don't -- I feel like you're struggling to find some way of --

THE SPECIAL MASTER: I think everybody's struggling here.

THE WITNESS: Yeah.

MR. GLASS: Objection.

THE WITNESS: From my point of view -- and I think this is what I testified to -- 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.

And I count like a dozen -- at least a dozen fee agreements in this case. And I just don't think the judge ordered their release, and I don't think, as I testified, that there's a need to put it in the notice in the case.

Page 67

And I don't understand how the ERISA -- consolidation of the ERISA cases in the one class changes that conclusion of mine.

THE SPECIAL MASTER: It really goes back to this issue of transparency that you've identified. Not only was the Chargois Arrangement not fully disclosed to the other customer class counsel, it was not disclosed at all to the ERISA lawyers.

And my question to you is was there any obligation to, at the very least, disclose the Chargois Arrangement to the ERISA lawyers, if not to the class, so that they could then advise their class representatives, their named representatives in the two other actions?

MR. HEIMANN: Objection. Beyond the scope of this witness' testimony as an expert.

MR. GLASS: Objection.

THE WITNESS: Yeah, I think the way I'm hearing your question -- and I don't mean to be fighting it -- it sounds like an allocation -- you're asking me in the allocation process should they have made known to the ERISA lawyers the Chargois Arrangement?

Page 68

THE SPECIAL MASTER: Yes.

THE WITNESS: And I just fall back on the testimony I said earlier. I think it would have been a best practice to say here's how we're allocating, and here's who's getting what and here's why.

THE SPECIAL MASTER: You understand that the ERISA lawyers have testified that had they known about this, they would not have agreed to the allocation?

THE WITNESS: And, again, I experience that as a similar question as to materiality to Mr. Lieff and his testimony, and I think I'm saying that if I were lead counsel in these circumstances, I would consider it a best practice to be transparent about what I'm doing, and I wish Judge Wolf had ordered transparency of the fee agreements here.

THE SPECIAL MASTER: There's also another interesting wrinkle to this case that may be different from most cases which was the involvement of governmental agencies in the negotiation of the settlement.

There's been testimony that State Street

Page 69

was insisting upon what we've all called a global settlement to include the governmental agencies but particularly the Department of Labor who, of course, has oversight responsibility over ERISA-fied funds and ERISA-fied claims.

There is other testimony and evidence in the record that the Department of Labor was very interested in this settlement and particularly in the amount of fees should it -- the Chargois Arrangement -- have been disclosed to the Department of Labor?

MR. GLASS: Objection.

MR. HEIMANN: Objection. Beyond the scope of this witness' testimony as an expert.

THE WITNESS: You're asking me should Labaton have disclosed the Chargois Arrangement --

THE SPECIAL MASTER: That could have been accomplished in any number of ways. It could have been accomplished through the notice process. It could have been accomplished by giving notice to other lawyers who were dealing directly with the Department of Labor. It could have been accomplished whether Labaton did it directly or not.

Should it -- should the Chargois

Page 70

Arrangement and the particulars of it here have been disclosed to the governmental agencies who were very much a part of the negotiation process?

MR. HEIMANN: Objection.

MR. GLASS: Objection.

THE WITNESS: But, again, from Lieff Cabraser's point of view, they thought Chargois was the local counsel. So you're asking me should Labaton --

THE SPECIAL MASTER: Yes.

THE WITNESS: -- have disclosed some facts about the Chargois Arrangement.

And I -- you know, I wish Judge Wolf had ordered disclosure of fee agreements. I don't know if there was an obligation other than that. The law is clear that fee agreements should be disclosed when the Court orders them, and I wish he had ordered them to do that, and they would have been disclosed.

I --

THE SPECIAL MASTER: So you're -- I'm sorry, were you done?

THE WITNESS: I was going to say one other thing. And, again, I'm not fighting the sense

Page 71

that you might -- that there's concern about the Chargois Arrangement.

If there had been disclosure of it say in the class notice, I think in fairness to Labaton they would have been part of the process of writing the class notice, and I think they would have tried to explain in the class notice that some of the fees in this case are going to a lawyer who we've worked with in the past in conjunction with the client in this case. There's one named plaintiff that was willing to step up and take on State Street in this circumstance.

We got that named plaintiff because of our portfolio monitoring work in response to a request by the state to apply for such a position. We've been providing that service, and it's been of great value to the shareholders beyond Arkansas in stepping up. And because of that value, we have an arrangement with the lawyer who introduced us to them that he gets a part of our fee in these cases.

So that kind of notice is slightly different than the way you keep describing the notice. So I think there would have been some sense in which if we got to that point -- if the judge had

Page 72

asked them to -- for the agreements, had seen this agreement, had said now let's tell the class, it would have been framed -- they would have argued it should have been framed in those kinds of terms.

THE SPECIAL MASTER: So it seems that you are pinning all of this on the fact that the judge didn't ask under Rule 54, and there was no local court rule? Is that right?

MR. HEIMANN: Objection --

MR. GLASS: Objection.

MR. HEIMANN: -- to the judge said "all of this."

THE SPECIAL MASTER: The lack of -- thank you, Richard. Let me rephrase it.

You are pinning all of the non-obligation to disclose the Chargois Arrangement on the fact that Judge Wolf didn't ask, did not have a standing order and that there was no local rule, correct?

MR. GLASS: Objection.

THE WITNESS: Yes "and." Correct. I hesitate to say I'm pinning it. I'm saying the rules were clear. And the judge could have and in my treatise I argued I hope he does ask for these.

Page 73

And so he bears some of the responsibility here, yes, absolutely.

THE SPECIAL MASTER: It sounds like you're saying he bears all of the responsibility. Either he or the Court as a whole in adopting a local rule.

THE WITNESS: Another way I think about this -- and I'm kind of agreeing with you. I'm not totally comfortable with it, but I'm kind of agreeing with you.

I think about it this way: When I was writing the treatise section five years ago without the Chargois facts in my head but knowing a lot about class action law, I said, boy, I hope judges ask for this.

If instead I had written in the treatise what your expert wrote, I don't think it would have been believable. I think it was made up after the fact to fit the facts of this case.

THE SPECIAL MASTER: Well, my expert was actually opining under the Rules of Evidence.

THE WITNESS: He says a lot about class action law, too. Doesn't anymore --

THE SPECIAL MASTER: We don't need to

Page 74

argue about that, but...
My question to you is very succinct. In this case as to the Chargois Arrangement, the burden is entirely -- the burden of disclosure is entirely upon either Judge Wolf or the Court to adopt a local rule or a specific court order or even just him asking at the hearing? Is that accurate?
MR. GLASS: Objection.
THE WITNESS: I think Rule 23 and Rule 54 are clear that fee agreements must be disclosed upon judicial order. And absent that, that's correct. With one caveat.
Again, I divide this up into these two phases. During the allocational phase stuff comes out among the lawyers, and then it gets raised, and it can be raised that way in that setting.
I think what you have here is a situation where you found out something during -- in your investigation you found out something about the allocation. I don't think it really affected the class that much.
I think you and Judge Wolf have every power to say this was a bad allocation if that's what you think, and we think the money should be

Page 75

reallocated or sent back to the class. But going forward either -- I am adamantly saying the rule was clear. The judge has to order the fee agreements. And I hope they follow my advice and order them in the future. And this is a great case to show why they should do it. Or change the rule.
THE SPECIAL MASTER: You actually anticipated my next question which is what phase are we in now? Are we in the allocation phase still now that we've discovered --
THE WITNESS: Yes --
MR. HEIMANN: I don't know that the question had been finished but --
THE SPECIAL MASTER: Are we in the allocation phase now that we've discovered the Chargois Arrangement?
MR. HEIMANN: Now I object again. This is well beyond the scope of this witness' testimony as an expert.
THE WITNESS: For reasons I said earlier, your Honor, when you discovered the Chargois payment, I think you did discover something about the allocation.
I nonetheless, like you, asked myself do

Page 76

I think this harmed the class in the way the second circuit asked in the Agent Orange case. Were the fee agreements such that it changed the mechanics of the litigation in ways that upset the class' interests?
So I asked myself those questions, and I just don't see any evidence that there was -- that Chargois played any -- that anyone's worry about Chargois played any role in the litigation of this case whatsoever. I really do feel like it's an allocational thing.
THE SPECIAL MASTER: So the lawyers for the ERISA members of the class have testified that had they known about the Chargois Arrangement, they would not have recommended the settlement to their representatives -- named representatives.
MR. HEIMANN: Objection. That's not their testimony, your Honor.
THE SPECIAL MASTER: We don't need any speaking objections, Richard.
MR. HEIMANN: You ought to be honest to the record, judge, really.
THE SPECIAL MASTER: Rule 30(c). I'm happy to read.

Page 77

MR. HEIMANN: Please do.
MR. GLASS: I'm objecting as well, but I don't think there's a question pending yet.
(Pause.)
BY MR. SINNOTT:
Q. I'm going to ask some questions while we're digging that out, professor.
A. Sure.
Q. Let me see if I understand you correctly.
In the treatise where it says there's a strong argument that requiring transparency as to the fees is in the class interest, and hence a Court should so order their disclosure, you're not saying that it's any less in the class interest if the class got a good deal, are you?
MR. GLASS: Objection.
A. No, but that is the point, right?
The reason to disclose the fees is to make sure the class' interests weren't undercut in any way by the agreements that were made. And so the transparency and disclosure is a means to an end, and the end is making sure the class' interests weren't sold out in some ways.
Q. Would you agree it's in the class' interest

Page 78

to get a better deal on occasion?
MR. GLASS: Objection.
A. I was raised by a Jewish mother. You always want a better deal.
Q. I'll take that as a yes in deference to your Jewish mother.
A. I think the Court's role is to make sure that the class -- both the class and class counsel get a fair deal.
The Court has a real interest in making sure that the lawyers are paid fairly 'cause the whole system is premised upon the lawyers investing their own money, and we want them to be able to do that.
And so I think the Court has a strong interest in making sure the lawyers are fairly paid and at the same time has a very important interest in making sure the class doesn't overpay.
Q. But you're not saying that your advocacy for transparency and the imperative of transparency ends when the lead counsel or class counsel determine that there's been a good deal, are you?
MR. GLASS: Objection.
Q. Good deal for the class?

Page 79

MR. GLASS: Objection.
A. No. I think I've already testified that in my opinion the allocation phase should be transparent as well.
Q. All right. Thank you.
Now in Section 1 on page 3 --
A. We're going back to my current report?
Q. Yes, sir.
A. Okay.
Q. And you quoted from High Sulfur previously.
A. Hm hm.
Q. But looking at footnote 5, it says, does it not, it is -- quoting from High Sulfur. "It is likely that lead counsel may be in a better position than the Court to evaluate the contributions of all counsel seeking recovery of fees."
Did I read that correctly?
A. Yes.
Q. What do you understand the Court to have meant by contributions in High Sulfur?
A. Well, again, I've testified that in -- we're talking about the allocation phase, and the fifth circuit's there saying -- as I do in the next quote -- generally speaking, the Court's going to defer to lead counsel to allocate in the first instance.
And the reason it's going to do that is that lead counsel is essentially running a small law firm -- often a big law firm in running one of these cases, and in doing so it has the best understanding of the value -- not just the time but also the value of various contributions to the case.
Those contributions can be -- they can be heavy lifting, pure hours. They can be brilliant thoughts, creative ideas. They can actually be monetary investments in the case.
This case was going to be lost, and at the last minute someone came in and invested this amount of money and enabled us to depose an expert witness and win the case on that ground.
So I think what lead counsel knows better than anyone having run the law firm on the plaintiffs' side of the case is all of the types of contributions that went into the case and what value they -- how they served the class, what value they brought to the class.
Q. All right. Professor, but based on your understanding of the facts in this case, what was the contribution of Chargois & Herron?

Page 80

Page 81

MR. HEIMANN: Objection. Beyond the scope of this witness' testimony as an expert.
MR. GLASS: Objection.
A. You know, I've written and taught about this for a long time, and I have perhaps a little more forgiveness in some ways in the following sense: That I think the Labaton firm made the decision that Chargois had brought enough value by introducing them to the Arkansas plaintiff that it was worth it to them to give him some benefit of the cases they got in working with Arkansas.
So I think what Arkansas -- what Arkansas brought to this case is that they stepped up and were a named plaintiff in a situation where no one else would do that. You have to remember that the whistleblower case was unsealed about a year and a half before the Arkansas case was ever brought.
And so my guess -- and this is just a pure guess -- is that the lawyers were looking for a client for a year and a half and didn't find one until the Arkansas plaintiff agreed to step up.
Why did the Arkansas plaintiff agree to do that? Because Labaton had an ongoing

Page 82

relationship with them. They were performing portfolio monitoring for them. The Arkansas Fund trusted Labaton because of that. And that relationship I think is very valuable to the class getting 300 million dollars in relief here.

So you then go back to its origin, and Labaton feels like it has some indebtedness, I guess, to the origin of that relationship.

So, you know, I think you could say there's a but-for cause if -- if Labaton had never met the Arkansas Fund, there may never have been a State Street case.

Q. And you believe that that constituted a contribution to the State Street case?

A. Again, you could make an argument that it's a but-for cause.

Q. But you would agree that in the State Street litigation based on your understanding of the facts there was no contribution?

MR. GLASS: Objection. He just answered that.

A. Again, it's my understanding -- and, again, I have no -- I'm not a fact witness. It's my understanding that Mr. Chargois was not directly

Page 83

involved in the State Street litigation, but my testimony is, you know, really you got to go back to the congress' enactment of the Private Securities Litigation Reform Act of 1995.

When it was enacted in 1995, I predicted that it would fail because no institutional investor would ever step up to run a securities case. It was a crazy idea. I was basically right. No private institutional investor really ever has.

The public institutional investors have done so, but it's really out of the genius I think of the entrepreneurial attorneys to engage them in this process and get them involved.

And so I have a kind of long, deep understanding of these relationships, and I think, for better or for worse, congress created a situation that required the plaintiffs' attorneys to get institutional investor clients interested in securities class actions, and the plaintiffs' attorneys are kind of ingenious in finding portfolio monitoring as a way of engaging institutional investors to serve the public interest by stepping up and doing that.

And in that sense, you know, you're

Page 84

looking at the warts part of it, but how did they do it? They got people like Chargois to introduce them to the Arkansas funds in the world, and the Arkansas Fund stepped up in this case, and it's kind of a but-for cause in some ways.

Q. All right. And that but-for cause is not undermined in your view by the fact that there was no work in this particular litigation?

MR. HEIMANN: Again objection. Beyond the scope.

MR. GLASS: Objection.

A. It doesn't make it any less of a but-for cause. It could have been more of a but-for cause, but it doesn't make it any less of a but-for cause.

Q. So an introduction years prior to this litigation in your opinion would constitute the work or contributions called for?

MR. GLASS: Objection.

A. I can imagine -- I think what I'm testifying -- again, I'm not a fact witness here, but I think what I'm testifying to is apparently Labaton thought so.

Q. And that's enough as far as you're concerned?

Page 85

A. Well, I'm not -- now I'm a little bit lost. You asked me how I would interpret what the fifth circuit means by contribution.

Q. Yes, sir.

A. And I said lodestar, creative ideas, hard work, investment opportunities. And one possibility I guess you're asking me is could Labaton interpret contribution to be the introduction.

Yeah, I think they could interpret it that way.

Q. But I notice that in that list of contributions and how the fifth circuit might interpret it you didn't list making an introduction, correct?

A. You're saying -- I said making an introduction could be interpreted as a contribution.

Q. No. What I'm saying is when you testified as to what contributions could consist of, the list of items that you provided did not include making an introduction, did it?

MR. GLASS: Objection.

MR. HEIMANN: Meaning in the testimony he gave a few minutes ago is what you're asking about?

Page 86

MR. SINNOTT: Yes, sir.
A. I don't remember.
Q. But to you the important thing is what Labaton thought a contribution was?
MR. GLASS: Objection.
A. I'm sorry. I'm a little bit lost. I think -- I think I'm now testifying that I could imagine that Labaton -- it appears Labaton did put value on the introduction sufficient to give him a share in future cases.
And I'm just reflecting back what I see. I'm not a fact witness here. But what I see in the facts is that to Labaton that introduction was important enough that they were willing to agree to give him a portion of what their share of future cases would be coming out of that introduction.
It's a business deal. It happens to be a business deal about lawsuits, but it's a business deal.
Q. Are there limitations to that kind of a business deal as far as what can constitute contributions?
MR. GLASS: Objection.
MR. HEIMANN: Objection on scope.

Page 87

A. Well, there's certainly -- I think you're asking are the limitations on with whom lawyers can share their fees, and there are certainly ethical limitations on that which I'm not testifying to.
I'm not sure -- we're putting a lot of -- we're reading a lot into one word in the fifth circuit opinion. I'm not sure -- well, I'd stop there.
I'd say I think the major limitations can be from the ethics rules because they so limit that you can't share a fee with non-lawyers, for instance. They so circumscribe who's in the circle of potential sharing of fees. That kind of is far more important than anything else.
Q. So can you opine as to when judicial involvement would be necessary in assessing whether a party had or would it be necessary at all in assessing whether a party had contributed to a case?
MR. GLASS: Objection.
A. Yeah, again, there's a huge incentive for self-policing here because -- and this is why I like transparency. When the lawyers -- when lead counsel says to the other lawyers here's who I'm giving the fees to, you'd hope someone would say, Bob Smith?

Page 88

I've never heard of Bob Smith; why are we giving money to Bob Smith? He had nothing to do with this case.
So there's a lot of self-policing. And if lead counsel said Bob Smith is my second cousin, and we're giving him money, I suspect at some point someone would go to the Court and say, judge, you know, they're divvying up money in ways that don't seem right.
Q. All right.
THE SPECIAL MASTER: In deference to Richard, I want to read the entire quote I was thinking of from Mr. Sarko who was one of the lawyers for one of the ERISA-named representatives in one of the two ERISA suits.
He was the lawyer for what we've referred to as the Andover case.
THE WITNESS: Right.
THE SPECIAL MASTER: This was a question by Mr. Sinnott: "What would you have done, counsel, if during the course of this case you had learned about Mr. Chargois?
Answer: Well, I think in my answer if we go back to the original time, the 9 percent deal,

Page 89

I would not have agreed to that."
He's talking here about the fee agreement.
"I guess I would not have agreed to file a joint petition if some money was going to Mr. Chargois now that all this information has come out. I mean the first thing is I would have asked some questions, but I think that's -- you know, that's 20/20 hindsight.
I think the real issue is if I would have known this information, I would have not agreed to file a joint petition because I would not have wanted -- I mean bluntly in order to do that, I would have had to first talk to the other ERISA counsel, and they would not have agreed. I would have had to get approval from the named plaintiffs who would not have agreed. I mean you've met our named plaintiffs. They're straight shooters. They would say this doesn't sound right."
I can go on if you want me to.
MR. HEIMANN: No, but you understand the difference between that and what you said when you represented in your question that they had said they wouldn't have gone -- that they wouldn't have agreed

Page 90

to the settlement agreement.
And they're talking about fees, not the settlement agreement.
THE WITNESS: Joint petition.
THE SPECIAL MASTER: It's a little unclear, but, at any rate, they would not have agreed to the fees. Let's limit it now to that.
MR. GLASS: Objection.
THE WITNESS: What I heard in what you're reading is --
THE SPECIAL MASTER: That the named plaintiffs -- the ERISA-named plaintiffs in the other cases would not have agreed to the fees.
THE WITNESS: Well, I think what he's testifying -- what I heard was that they would not have agreed to a joint fee petition with Labaton in those circumstances.
THE SPECIAL MASTER: That's one of the things he's saying, yes. At the very least they're saying I would have had to get approval from the named plaintiffs who would not have agreed.
It may be a little unclear as to what they would not have agreed to, but at the very least they would not have agreed to a payment going to

Page 91

Mr. Chargois under the Chargois Arrangement at the very least.
MR. GLASS: Objection. That's not what it says.
MR. HEIMANN: What's the question?
THE SPECIAL MASTER: Does that in any way impact your view that it was not necessary to give notice of the Chargois Arrangement to the settlement class?
MR. GLASS: Objection.
THE WITNESS: No.
THE SPECIAL MASTER: Why not?
THE WITNESS: First of all, I hear the testimony as saying our clients wouldn't have agreed to a joint fee petition. So they wouldn't have agreed to a joint fee petition.
I don't know -- I think -- I think what you're getting at is if we had originally said Mr. Lieff would find this material, Keller Rohrback would have found it material, now I think you're adding in maybe the class representatives would have found this material.
THE SPECIAL MASTER: Okay. I'll accept that, yes.

Page 92

THE WITNESS: And, again, I -- you know, I come back to my testimony here. The rules are clear. The judge orders --
THE SPECIAL MASTER: Sorry.
THE WITNESS: Are you all right?
THE SPECIAL MASTER: I don't know. I just got a cramp. I'm okay.
THE WITNESS: Those are the most painful cramps I've had myself.
THE SPECIAL MASTER: Didn't have my banana this morning. Sorry.
THE WITNESS: I think it's a hundred percent clear there that if the judge had ordered the fee agreements to be disclosed, they should have been disclosed.
But looking at the agreements after the fact and working backwards and saying now that we know what they are should they be, I have a harder time with that. I think the rules are pretty clear.
THE SPECIAL MASTER: So we're back to the judge ordering it, the "it" being the disclosure of the Chargois Arrangement, even as to the notice of the class.
THE WITNESS: The judge had many

Page 93

opportunities here. There was an interim counsel appointment at the front end of the case. There was a preliminary approval before notice went to the class.
He could have asked for the fee agreements at every stage, learned about the Chargois Arrangement, decided whether -- frankly, the judge may well have said that ain't happening at that point, or could have decided how to describe it to the class and put it in the class notice and say let's see what the class says about it.
Judge Wolf never did any of that. And the rules are clear.
MR. HEIMANN: Can we take a break at a convenient moment?
THE SPECIAL MASTER: Yes. This is a good moment.
I do have a -- I have a conference call I've got to do at noon. So let's take a short break, and then we can have our lunch break at noon, okay?
MR. SINNOTT: All right. So it's 11 o'clock. 11:05?
THE SPECIAL MASTER: 11:10 maybe.

Page 94

(A recess was taken.)
MR. SINNOTT: Is anyone on the phone?
MS. LUKEY: I am. This is Joan.
MR. SINNOTT: All right, Joan. Linda, are you on the phone?
MS. HYLENSKI: Yes, I am.
CONTINUED EXAMINATION BY MR. SINNOTT:
Q. Professor, let me direct your attention to page 4 of your report and paragraph 4.
You talk in that first paragraph fee agreements may arise in either phase. And then you say at the fee-setting stage there may be agreements between the class representative and class counsel, particularly in cases governed by the Private Securities Litigation Reform Act of 1995, or agreements between class counsel and the defendants that may be pertinent in setting the aggregate fee.
And that phrase "agreements between class counsel and the defendants" is footnoted, and in footnote 8 you indicate these are often called "clear sailing agreements," and you cite the treatise.
Let me just talk very briefly about clear sailing agreements as referenced in footnote

Page 95

8. And in Newberg 13-9 you say clear sailing agreements are agreements whereby the defendant agrees not to contest class counsel's fee petition as long as it does not exceed a specified amount.
And then you say, "These agreements are troubling because they demonstrate that class counsel negotiated some aspect of their fee arrangement with the defendant when counsel's ethical obligation is to the class, not to its own fees."
So striking that you use the expression "these agreements are troubling," and -- you say they demonstrate that some aspect of the fee arrangement was negotiated by class counsel with the defendant because the ethical obligation should be to the class, not its own fees.
And counsel's ethical obligation -- when we refer to class counsel who negotiated this, is that to the entire class?
MR. GLASS: Objection.
A. 23(g) specifically says that class counsel's ethical obligations are to the entire class, and it explicitly makes clear that although there's an attorney/client type relationship with the class

Page 96

representative, class counsel's client is the entire class.
And so it's kind of a peculiar situation. They may have an individual client, but regardless of that, their ethical obligation as class counsel is to the entire class.
Q. Because you don't want divided loyalties. Is that a fair statement?
A. Well, the reason 23(g) did this is completely different. There are situations in which the class representative who's kind of standing in as the client may say, for instance, don't take this settlement, even though class counsel thinks it's a good settlement for the whole class; and having been a class action attorney myself in many cases sometimes you have class representatives who are unique, peculiar, have their own views, and the rules want to make quite clear that it's class counsel's obligation to do what's in the best interest of the whole class, even if the class representative has a different particular idea.
This had been a conflict, and Rule 23 tried to clarify that class counsel's serving the interest of the entire class.

Page 97

Q. All right. And we'll talk more about that later.
But are some of those same concerns implicated in a blind referral arrangement or referral agreement such as the Chargois Arrangement?
MR. GLASS: Objection.
A. I -- I don't understand the question.
Q. You've articulated some of the concerns in these clear sailing agreements, the matter that the primary concern of which is that the interest of the class are not being paramount.
Is that a fair paraphrasing of your concern?
A. Well, in the clear sailing agreement what you would worry about is that the class counsel's trading off the class' interest for their fees. So that the defendant says, hey, you know what, if you'll agree to settle the whole case for 50 million, we'll agree not to contest a fee up to 35 percent. But if you hold out for a hundred million, we're going to fight you on fees or something like that.
That's the tension there. And I don't see how the Chargois Arrangement has anything to do

Page 98

with that.
Q. Are you aware that State Street was not the only case that Chargois -- was not the only case that Arkansas served as lead plaintiff?
A. I'm aware that Arkansas's been lead plaintiff in other cases.
Q. And are you aware that Chargois stood to receive fees in those other cases as well?
A. I'm aware that he stood to receive fees in some other cases, yes.
Q. All right. And are you aware that that relationship arising out of his introduction of Labaton to Arkansas continued beyond State Street?
MR. GLASS: Objection.
A. When you say beyond State Street, State Street's still ongoing it sounds to me like.
Q. And it may never end.
A. Yeah, I don't know what that means.
THE SPECIAL MASTER: Oh, it's going to end.
Q. If the judge could have kicked me at that comment, I think he would have.
You understand that Chargois -- initially Chargois & Herron, and at least Chargois,

Page 99

currently still stands to make referral fees or whatever you want to call them, some sort of fees as a result of other Arkansas cases, correct?
MR. GLASS: Objection.
A. Yeah, look, I think what you're trying to ask me is the following -- which I think I've testified to already -- I did ask this question when I think about this case, and I went through this earlier, is the Chargois Arrangement, did it get in the way of the class' interest here, and I think that's what you're getting at again.
Q. It is.
A. Yeah. And, again, the way I looked at it myself was to say in litigating this case was Labaton's indebtedness to Chargois, did it interfere with how they litigated the case in any way whatsoever or interfered with anyone related to this case.
Frankly, it's kind of interesting that no one else knew about it, or Lieff didn't know about it, seems to really have played no role in this.
Remember what I just said about the clear sailing agreement. What you worry about in

Page 100

the clear sailing agreement is, hey, okay, if they're going to let us get 35 percent, we'll settle lower than we would otherwise settle; and what I said earlier about the Chargois Arrangement is I can't see how the lawyers cared about it at all when they were dealing with State Street and doing the best they could on behalf of the class against State Street. I just don't think it figured in.
You got all the e-mails. You got everything anyone ever said about Chargois, and I just don't think there's any evidence anyone was saying, boy, we'd love to take this case to trial, but we owe Damon Chargois so we can't go to trial, or we should try to get more money, or we shouldn't get more money.
I just felt like it was something they're going to deal with at the end of the case in terms of the allocation, but I don't see it creating the same kinds of concerns that the Agent Orange case created -- the agreements in the Agent Orange case created or the clear sailing agreements in theory could create and why judges worry about.
THE SPECIAL MASTER: Are you saying that if the class had received notice of the Chargois

Page 101

Arrangement, that class members could not rationally or reasonably have objected to it?
THE WITNESS: Again, if it had been -- if notice had been given to the class, and we've talked a little bit about what it would sound like, putting it in the best light possible from Labaton's point of view and explaining why they made this arrangement.
If you put it in the class notice, no, absolutely, you're saying to the class here's something that's happening in this case; do you want to object, or do you not want to object to it. You'd be inviting them to react to it by putting it in the class notice.
THE SPECIAL MASTER: And my question following on that is are you saying that class members could not reasonably object to the payment -- the Chargois Arrangement in the payment of four million dollars to Mr. Chargois?
MR. GLASS: Objection.
THE WITNESS: Are you asking for my opinion whether it was a good payment or not? Is that what you're asking?
THE SPECIAL MASTER: I'm asking you if

Page 102

it would have been reasonable for at least some of the class members to have objected to the payment to Mr. Chargois?
MR. GLASS: Objection.
THE SPECIAL MASTER: Had they received notice.
MR. GLASS: Objection.
THE WITNESS: I like class member objections. So I'm going to answer yes. But I like them because they focus the Court and help bring information to the Court.
In saying yes I'm not necessarily saying they would have won or they would have been right, but I think it's a good thing when class members bring things to the attention of the Court.
Remember the Court has a fiduciary duty to the absent class members. I read that in saying to the Court wake up; it's on your shoulders. It's all on your shoulders. You got to do something here.
And it's just more helpful -- it's, you know, somewhat helpful if a class member will come forward and say look at this in particular.
THE SPECIAL MASTER: But, of course,

Page 103

they can only do that if they're given notice of it, correct?
THE WITNESS: Yes, correct. The class members can't object to what they don't know about. That's why I want judges to take the authority that they have and use it.
BY MR. SINNOTT:
Q. Let me direct your attention, professor, to page 6 of your report and paragraph 7. And in that paragraph you talk about an empirical study that you conducted that yielded no cases in which disclosure of fee agreements under Rule 54 was ordered.
Is that a correct statement?
A. Yeah. I don't want to overclaim here. I use the phrase "empirical investigation." You know, my students and I quickly looked at a thousand dockets but did a pretty good job.
Q. Okay. And what importance do you draw from this study or this review?
A. What I draw from this review is that the lawyers' actions in this case are consistent with class action practice, and class action law says that fee agreements have to be disclosed only upon judicial order. And what I found in this

Page 104

investigation was that judges rarely order it, and lawyers rarely disclose it.
And so what happened here is kind of consistent with what happens in class action practice, and there is nothing that the lawyers did here that was unusual.
Q. Did your research assistants read the pleadings or transcripts in each of these cases?
A. Yeah. So it's amazing what they did. And they walked me through it, and then I spot checked it, but we went -- they went through the dockets. And you pull up the docket. Then they search to see if there was a settlement.
If there was a settlement -- and we got down to 127 cases with a settlement. If there was a settlement, they then searched for all of the fee-related documents that were submitted in the settlement process and read the transcripts as available of the preliminary fairness hearing -- the preliminary approval hearing and the fairness hearing, if they were available.
So we looked through everything we could find that was on PACER that was public to see if any of these agreements had been submitted to the Court

Page 105

or asked for.
Q. And how many of the 127 cases that your research identified was there a fee to a lawyer who had not been identified to the Court at all and who was getting paid solely for a recommendation or introduction and did no work?
MR. GLASS: Objection.
A. Of course, we'd have no way of knowing that, unfortunately, because the judges do not make transparent the fee allocation information, although they have the authority to do it.
So I don't have -- we generally don't have the fee allocation information in any of those cases.
Q. And it's fair to say that this empirical review that you did would not reasonably turn up fees that were not disclosed to the Court?
A. Again, when you say not disclosed, I would say that unless a judge asks how are the fees being allocated and then puts that information on paper when it's submitted to the Court, that information would not be publicly available. It depends on the Court to request and make available the fee allocation.

Page 106

Q. Sure. So in cases where -- let's say there might have been cases where fees were concealed from the Court.
There wouldn't be anything in the record for your research assistants to learn, would there?
MR. GLASS: Objection.
A. I don't -- my research assistants weren't looking to see if there are other Damon Chargois arrangements or what you're all calling the "Chargois Arrangement."
They were looking to see what class action practice was in this district with regard to whether fee agreements were submitted to the Court and/or asked for by the Court.
It's a different empirical project. If you said to me we want you to go out and discover every Chargois-type arrangement that exists in the world, this isn't the empirical investigation I would undertake.
Q. Sure. Would it be fair to say that even if you did say that or if you said I want you to go out and find cases where fees were concealed, there'd be nothing to find, correct --
MR. GLASS: Objection.

Page 107

Q. -- because by nature of those arrangements there'd be nothing in the record?
MR. GLASS: Objection.
A. Again, I see this case slightly differently in the sense that I wouldn't -- I would put this under the practices that evolve with the PSLRA, and I could do an empirical investigation of PSLRA cases and what fee information is available in the PSLRA context and who gets paid.
As we talked about earlier, I wrote a little piece about some of that a few years ago.
Q. All right, sir.
Let me direct your attention, professor, to page 8, Section 2. And the heading reads Professor Gillers' attempts to advocate around the text of Rules 23 and 54 are unconvincing.
Did I read that correctly?
A. Yes.
Q. And among the things that you reference here, would you say that Professor Gillers wrongly assumed that the identities of lawyers working on a class action case are known to the Court at the fee stage? Is that a fair summary?
A. In one part of this section I say that I

Page 108

think the mistake he was making was mistaking the lodestar submission for a fee allocation submission.
Q. All right. But you read the November 2nd fairness hearing, correct?
A. Yes. The transcript.
Q. The transcript of it. Is it fair to say that Judge Wolf reviewed the lodestars as a crosscheck?
MR. HEIMANN: You mean he referred -- are you representing that he referred to the lodestar as a crosscheck at the hearing itself?
MR. SINNOTT: No. He reviewed the lodestars for purposes of being a crosscheck.
MR. HEIMANN: And you're saying that's referenced at the fee hearing?
MR. SINNOTT: I'm asking, yes, if that was reflected in the November 2nd transcript.
MR. HEIMANN: Can you tell me where in the transcript you had in mind?
MR. SINNOTT: Sure. We'll dig that out, and we'll indicate it.
BY MR. SINNOTT:
Q. Is that your recollection?
A. No -- well, let's be clear.

Page 109

My recollection is that the lawyers submitted their lodestar for crosscheck purposes. This is a percentage of work case. The lodestar was submitted to see what the multiplier was going to be, the crosscheck.
Q. Yeah.
A. I don't remember -- I may be wrong, but I don't recollect that at the fairness hearing the Court reviewed the lodestar submission at all.
Q. Let me direct your attention to page 11. You talk about a variety of situations in which the Court does not know the identities of counsel sharing in the fee award.
Do you see that, sir?
A. I do.
Q. Third line from the top. Can you describe those situations?
A. Sure. So, number one, I said in a percentage award case, unless the Court asks the lawyers to submit their lodestar for crosscheck purposes, the Court's not going to have the identities of the lawyers who worked on the case. It's just going to have a fee petition from lead counsel perhaps. Maybe signed by other counsel,

Page 110

maybe not.
But it's not going to have the breakdown of who all the lawyers were, what all they were doing, etcetera. I'm in another case right now where there are 50 -- there are 63 law firms in the case, 300 timekeepers. If the Court hadn't asked for the lodestar breakdown, it probably would have known only of the four lead counsel in the case.
So this is a huge thing, one I'm very, very critical about. But in about half the cases that are percentage award cases, probably 40 percent of all class actions the judges never ask for a lodestar breakdown, and they don't know most of the identities of many of the lawyers working on the case, especially in the big cases. So that's the big category.
You have other lawyers who may not show up in the lodestar. Sometimes lawyers are tardy getting their lodestar submissions to lead counsel, and they just don't put 'em in. In this case Lieff Cabraser, for instance, said any timekeeper with fewer than five hours they didn't put them in.
There's an ERISA law firm in this case that doesn't show up in the lodestar for some

Page 111

reason. No one put them in the lodestar submission. I don't know why.
There are investors in cases sometimes who might not show up in the lodestar submission, but I think -- or whose identity might not be known to the Court. So I think I have a variety of circumstances where that could happen.
Q. All right.
MR. SINNOTT: So, Richard, in response to your question on page 30 of the November 2, 2016 fairness hearing transcript, line 18 Attorney Goldsmith says, "Finally, your Honor, there was one other matter I did want to note on the fee, if I may, which is that many courts apply a lodestar crosscheck. It's not required."
And Judge Wolf responds: "And I do that."
And subsequently on page 35 of that same transcript on line 3 Judge Wolf in presenting his decision in this case starts off by saying, "So, again, I'll decide this orally." And he talks about the request for attorneys' fees and expenses as being reasonable.
Then on line 12, if you drop down, he

Page 112

says, "I have used the percentage of common fund method. I've used the reasonable lodestar to check on that."
So I guess, getting back to my question, you'd agree that in this particular case and in this hearing Judge Wolf was reviewing the lodestars as a crosscheck?
A. No, I wouldn't agree with that.
Q. Why not?
A. I think what he's doing at the hearing is discussing the method. He's saying I used the percentage method with the lodestar crosscheck. I don't think at the hearing he's reviewing the lodestar at all.
Q. So you don't consider that to be a review of the lodestar?
A. I do not.
Q. On page 11 you talk about the question the Court should have asked, that being who all is sharing in the fee. And -- do you see that, sir?
A. I do.
Q. And let me ask you in your opinion who would counsel being asked that question have to list in response?

Page 113

MR. GLASS: Objection.
A. Anyone who was sharing in the fee.
Q. And that would include Damon Chargois?
A. Correct. In this case.
Q. Let me move ahead to page 13. I want to thank you for teaching me what the word capacious means.
But beyond that, you state a series of principles beginning on the following page, the fiduciary role of the Court, and you describe in the treatise Section 13-40 which highlights novel and noteworthy aspects of the Court's role in approving a settlement --
MR. HEIMANN: You've lost me, Bill.
MR. SINNOTT: Let me see if I can find...
(Pause.)
BY MR. SINNOTT:
Q. So specifically in the subheading 1 case law including cases from the district -- strike that. Let me just back up.
Professor Gillers provides snippets from six random class action cases to set out four generic principles of class action law. And you

Page 114

list number 1 as case law including cases from the district of Massachusetts amply supports recognition of the Court's fiduciary duty to protect the class and the Court's reliance on counsel to be forthcoming with the information the Court needs in order to do so.

So you're quoting Professor Gillers in that; is that correct?

A. That's correct. That's his language.

Q. Right. But then in the footnote you -- footnote number 34, after you've cited where in Professor Gillers' report this appears, you say see generally Rubenstein for Newberg on class action supra note 4 at Section 13-40, fiduciary role of the Court.

And with respect to that 13-40, would you agree that that section of the treatise highlights novel and noteworthy aspects of the Court's role in approving a settlement?

A. I would agree with one thing. Chapter 13 is about settlement approval --

Q. Yep.

A. -- not fees in particular.

But -- and in Chapter 13 I guess, yeah,

Page 115

from the heading in Section 40 of Chapter 13 I talk about the fact that in approving the settlement -- and, frankly, I would also say fees -- the Court is acting as a fiduciary for absent class members.

Q. Okay.

A. Without having the treatise in front of me -- you're reading something. I don't have the language --

MR. HEIMANN: Sorry, you don't have it memorized?

THE WITNESS: I don't have it memorized.

A. So I don't know what you're reading.

Q. I'm disappointed.

A. Yeah.

Q. Let me see if we have that.

THE SPECIAL MASTER: While you're looking for that -- we're skipping ahead a little bit, but I want to get this in before lunch because I want to go to this issue of notice to the class and what would have been reasonable, and I'm trying to understand the relationship between Rule 23(e), settlement notice requirement, and Rule 23(h), the fee notice.

Rule 23(e) requires that the notice of

Page 116

-- that the settlement be fair and reasonable and adequate and that class members have the right to object to the settlement if it doesn't hit this mark. I mean -- right?

THE WITNESS: Correct.

THE SPECIAL MASTER: So, as you say on page 29, to safeguard class members' opportunity to object, notice must be sufficiently clear and informed to make those opportunities meaningful. Right?

THE WITNESS: Correct.

THE SPECIAL MASTER: Thus Rule 23 does not require that fee allocations be explained to the class members.

That's a general statement that fee allocations generally not be required --

THE WITNESS: I think that's fair.

THE SPECIAL MASTER: -- to be included in the notice?

THE WITNESS: I think that's fair, yes.

THE SPECIAL MASTER: Does that change when -- and here I'm still focusing on 23(e).

Does that change when you have a situation like we have here where lawyers obtaining

Page 117

a payment for having done nothing in the case, not appeared in the case, not filed a lodestar, does that change at all?

MR. GLASS: Objection.

THE WITNESS: I don't know of any cases that say that.

Again, I feel like we're kind of trying to make up a rule to fit the facts of this case after the fact. And I'm describing here -- I'm actually quoting from the treatise what I say the rules are in general.

So I'm not kind of reverse engineering what I think the rules are, but, rather, this is what they are, the way they're written.

THE SPECIAL MASTER: What about 23(h) and notice of the content? 23(h)(2) I believe the object of that rule is that class members have the right to object to the fee. Correct?

THE WITNESS: Yes.

THE SPECIAL MASTER: And then you go on to say the right to object connotes that class members ought to be given sufficient time to do so, but it also means that class members must be given sufficient information to do so.

Page 118

THE WITNESS: Correct.
THE SPECIAL MASTER: That seems unobjectionable, that statement?
THE WITNESS: Agreed.
THE SPECIAL MASTER: Agreed. And then you go on and say, "I've strongly advocated for the position that class counsel should make their lodestar known to the Court and to the class so as to assess the extent to which the proposed award reflects a multiplier of the lodestar. I have similarly argued that fee allocation agreements should be made known to the class."
And then you caveat that by saying "but I do so within the terms of the governing legal regime."
"I contend that using their authority under 54(d)(2) the Court should require greater disclosure of fee allocation agreements."
So you seem to be conflating there the obligation of the Court to ask lawyers under 54(d) about fee allocations with the obligation of class counsel to give notice sufficient to inform the class and sufficient information to give them the opportunity to object.

Page 119

You seem to be conflating those two considerations. Is that right?
MR. GLASS: Objection.
THE WITNESS: Somewhat. Rule 23 -- you said class counsel's obligation under Rule 23 to give notice to the class.
Rule 23 is actually peculiarly written, and it's different than the phrasing of who has the duty to give notice, whether it's the Court or the lawyers.
My own opinion is it's the Court's duty to make sure the class members have all the information that they need. And so I would say it's the Court's duty to make sure of this. Regardless of what the lawyers want to disclose, the Court has an obligation to make sure that the class members have all the information they need with regard to the settlement and the fees.
And I do say here -- I think what I'm conflating is if the Court does what I want them to do and says make the fee allocation agreements -- disclose the fee allocation agreements, then I think that information should be conveyed to the class as well.

Page 120

The Court has thought enough to ask for it; let's then give it to the class members as well.
THE SPECIAL MASTER: We all know in practice that the lawyers draft the notice to the class of settlement, right?
THE WITNESS: Um --
THE SPECIAL MASTER: Draft.
THE WITNESS: Yes and no. They also nowadays, as you probably know, have professional companies that do this.
THE SPECIAL MASTER: Yes.
THE WITNESS: Yeah. And so there's a -- in my experience the lawyers and these professional notice givers will come up with a notice. I never know who writes the first draft. Sometimes I think these companies do. Sometimes the lawyers do.
The Court then has to approve the notice, but rarely does the Court write the notice in the first instance, yeah.
THE SPECIAL MASTER: It's either done by one of these companies at the direction of class counsel, correct? Or class counsel itself?
MR. HEIMANN: Well, I know you don't want speaking objections, but I know of exceptions

Page 121

where the Court writes the notice.
THE SPECIAL MASTER: I'm going to get to that. At any rate, yes?
THE WITNESS: Generally speaking, that's my understanding.
THE SPECIAL MASTER: So I believe what you're saying here again is that the burden is on the Court at the notice stage to make sure that fee allocation agreements are in the class notice?
THE WITNESS: I'm saying Rule 23 puts that burden on the Court, that's correct. I'm not saying it's the burden. I'm saying Rule 23 says that's the burden's on the Court. That's how the framers wrote it.
They -- the experts who wrote this picked up the language of Rule 54 and put that burden on the Court.
THE SPECIAL MASTER: And the obligation under Rule 23(h)(2) that class members be given sufficient information to do so, meaning to object to a fee petition, is an obligation as to fee agreements and allocation agreements that is on the Court?
MR. GLASS: Objection.

Page 122

THE WITNESS: Yes. And I think the drafters thought to put that obligation on the Court because allocation agreements are much less likely to affect the class' interest whereas what you have to give the class information about is what's the magnitude of the fee that's being sought and where's it coming from and how much are we paying for the fees. That's the stuff they're centrally interested in.

I think we'd agree in most cases the fee allocation would be distracting to the class members I think the drafters thought. And rather than inundate them with that information, give them the key information they need to know. How much am I paying the lawyers. How the lawyers split it up is their problem. How much am I paying for the lawyer.

THE SPECIAL MASTER: And the obligation to provide sufficient information for the class means that as to fee allocation agreements the Court has to ask? Yes?

THE WITNESS: Yes. That's what Rule 23 says. That's correct.

And, again, remember, you know, in this case I can count at least a dozen different fee

Page 123

agreements. At least a dozen different fee agreements in this case. And this is a small case relatively speaking -- I mean it's a big case, 300 million dollars, but the quantity of lawyers to create it is relatively small. I don't know what a notice would look like with a dozen fee agreements explained. Or more.

And I think Rule 23 focuses the limited time of the federal judge -- you know this better than any of us in this room -- on the key thing in the class' interest which is how much is the class paying.

THE SPECIAL MASTER: How much is the class paying in the aggregate in fees.

THE WITNESS: Yeah.

THE SPECIAL MASTER: And an important part of that information for it to be sufficient is not to know whether the lawyers getting money did any work at all on the case? That's not important for the class to know?

MR. GLASS: Objection.

THE WITNESS: I don't think that's my testimony.

I think my testimony is in my opinion I

Page 124

would hope the judge would ask for the fee agreements and learn if such a situation existed and inquire into it and figure out what the judge felt about it and whether the class should know about it.

THE SPECIAL MASTER: It's a lot to put on a judge.

Separate and aside from what Rule 54 says and the incorporation of Rule 54 into Rule 23, you said earlier the class only knows what it knows and can only object to what it knows, right?

Is that -- obviously that's a --

THE WITNESS: Sounds like a truism.

THE SPECIAL MASTER: -- truism. That was the word I was going to use. It's also true of a judge.

And this burden of requiring the judge to ask in every case tell me everything about every fee agreement, you know, that is in this case, don't judges have the right to rely upon what the lawyers are giving them as to be all of the necessary and material important information?

MR. GLASS: Objection.

THE SPECIAL MASTER: Without having to ask is anybody getting a fee here that didn't work

Page 125

in the case, this didn't appear in the lodestar, that didn't appear in the case?

MR. GLASS: Objection.

MR. HEIMANN: I'd object to that question as compound. There are at least four questions there.

THE SPECIAL MASTER: You can answer any one of them or all of them.

THE WITNESS: I -- the sense that you're -- it's a lot to ask of a judge. I think we ask an enormous amount of federal judges. They're incredibly busy in a wide range of things.

And then at this moment in a class action lawsuit we say to the federal judge, hey, you're now a fiduciary for absent class members is an enormous burden to put on judges, but I think the courts that use that language do so specifically to remind the judge you're the backstop. It's up to you. And you have to do something here.

And I in writing the treatise am saying to the judges you're busy, rely on me, and I'll tell you. I'm an expert in this area. Here's what I think you should be doing. Ask for the lodestar and do a crosscheck and get the fee agreements and make

Page 126

sure there's no chicanery going on.
And I'm not -- by the way, I'm not testifying there was any chicanery. I'm not taking a position here but --
THE SPECIAL MASTER: There was a generalized chicanery going on here.
THE WITNESS: Generalized comment, yeah.
So I don't dispute that that's putting a lot on the federal judge, and I'm trying to help. I do a lot of work with federal judges trying to get them to understand this.
THE SPECIAL MASTER: My question was -- the other part of my compound question was doesn't the judge have the right to expect the lawyers to tell him or her everything that the judge should know so that the judge can fully perform his or her fiduciary duties to the class?
MR. GLASS: Objection.
THE WITNESS: I'd answer it this way, your Honor. 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.
I think beyond that, it's a tough question for a lawyer to answer because you're now

Page 127

asking them to interpret what would be pertinent to a judge, and it varies wildly.
Remember 40 percent of the judges don't even ask for a lodestar submission which I find outrageous. So are the lawyers then required to submit the lodestar when the judge doesn't ask for it? I find it incredibly pertinent.
But if a judge doesn't ask for it, are they supposed to predict that the judge really means to ask for it and didn't?
Now I appreciate your reaction to the Chargois Arrangement makes it feel very negative, and you think you should have been told it. I suspect there are other judges who would think, wow, this is the price of doing business in a PSLRA, and a firm like Labaton has to give away this amount of money for this introduction, that's kind of an amazing fact. I'm busy.
And so I think that lawyers appearing in these cases have the right to rely on the rule structure, and it's hard to put on them a burden to predict what else would be important for the judge to know.
THE SPECIAL MASTER: All right. It's

Page 128

11:59. I have to -- you can continue, Bill.
THE WITNESS: Or not.
THE SPECIAL MASTER: We'll break for lunch. We're going to continue. This feels a lot ask like "Don't Ask, Don't Tell."
MR. HEIMANN: So I object to that.
THE WITNESS: I know more about "Don't Ask, Don't Tell" than anyone in the room. Why does it feel like Don't Ask --
THE SPECIAL MASTER: If the judge doesn't ask -- maybe it should be "doesn't ask, don't tell."
MR. HEIMANN: I mean is that really a question?
THE SPECIAL MASTER: Yes.
MR. GLASS: Objection.
THE WITNESS: 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.
THE SPECIAL MASTER: Okay. If you want -- if you folks want to continue, I have to go get on this call.

Page 129

MR. HEIMANN: We generally want to break for lunch at some reasonable point. Now is fine if you want or if you want to continue --
MR. SINNOTT: Why don't we break now for 45 minutes?
THE SPECIAL MASTER: Yeah.
MR. SINNOTT: Forty-five minutes, and then we'll resume.
(A lunch recess was taken.)
MR. SINNOTT: Welcome back, everyone.
Paulette, I have in my hand the expert declaration of Professor Rubenstein dated July 31, 2017 and the accompanying exhibits which include his CV and publications.
So at this time I'd like to offer this as an exhibit.
(Exhibit 2 marked for identification.)
BY MR. SINNOTT:
Q. Professor, for purposes of authentication, if you could look at that and confirm that that's your July 31, 2017 declaration?
A. It looks like it, yes.
Q. Okay. And does that include a CV as well in

Page 130

the content?
A. Yes.
Q. All right, thank you.
Now prior to the break I had started to ask you some questions about your report and the section that begins on page 13 through 17, and I brought up a section of the Newberg treatise, and specifically this is under the title of Chapter 13 Settlement, Roman numeral four, Final Judicial Approval of Proposed Class Action Settlements, Section 13-40 Fiduciary Role of the Court.
MR. SINNOTT: Paulette, if we could mark that as Exhibit 3.
(Exhibit 3 marked for identification.)
BY MR. SINNOTT:
Q. All right, professor, if you'd look at that document before you.
A. Okay.
Q. And directing your attention to the first paragraph, it says, "Rule 23 requires judicial approval of any settlement of a class action lawsuit. That requirement distinguishes settlement of a class suit from settlement of a non-class suit:

Page 131

The latter requires no judicial approval in most circumstances."
And then you go on to say, "A Court must approve a class action settlement because the parties that are present in settling the case, the class counsel, the class representatives and the defendants, are proposing to compromise the rights of absent class members. The settlement process aims to ensure that the interest of these absent class members are safeguarded. It primarily does so by charging the judge with that responsibility in requiring her judicial stamp approval."
Then you talk about three components or aspects of this process in this fiduciary responsibility -- fiduciary role of the Court.
And in the first bullet you say, "First, so central is the protection of absent class members' rights that the Court is said to have a fiduciary duty toward absent class members during the settlement of a class suit. This is a peculiar judicial function as the normal job of a Court is to act as a neutral arbiter between two competing parties, not as the fiduciary for a group of people."

Page 132

And then in the second bullet you say, "Second, the Court's role as fiduciary is primarily to ensure that the class's own agents, its class representatives and class counsel have not sold out its interest in settling this case. In this sense the Court's activity is to review the work that lawyers have undertaken to make sure it is noncollusive in nature and successful in substance. This, too, is a peculiar judicial function particularly to the extent it requires the Court to examine how class counsel has carried on extra judicial negotiations on behalf of the class."
And then in the third bullet you write: "Third, to make matters worse, the presentation of the settlement for judicial approval is non-adversarial in nature: The prior competing parties, class counsel and the defendants have resolved their differences and are now in harmony seeking the Court's approval. The Court is therefore required to make a decision using a mode of decision making unfamiliar to courts. Typically courts resolve an issue after the parties present their cases in an adversarial matter. In a class settlement absent objectors, the Court is presented

Page 133

information representing only one side of the issue." And in parentheses pro settlement. "And even if objectors appear and argue against the settlement, the pro settlement presentation is typically far stronger. Hence, the Court often lacks the information necessary to make a truly informed decision."
And then let me just -- before I ask you some questions, let me just read the next few lines.
"In sum, at the settlement of a class suit, the law requires the judge to act as a fiduciary, making an unusual, largely non-legal judgment and to do so in an informational vacuum. The manual for complex litigation describes this peculiar judicial task this way: Because there is typically no client with the motivation, knowledge and resources to protect its own interest, the judge must adopt the role of a skeptical client and critically examine the class certification elements, the proposed settlement terms and procedures for implementation."
So let me ask you a few questions on that section, at least the portions that I've covered here.

Page 134

It sounds like, you know, words like "to make matters worse," this is a process for the judge -- this fiduciary role -- that's fraught with difficulties? Is that a fair statement, professor?
A. Yes and no. Yes in the sense that, as I describe, it's an unfamiliar -- it's not the formal thing judges do. So it can be difficult in that regard.
No in the sense that settlement's a good thing. The judicial system strongly encourages settlement. The next or previous section of this treatise emphasizes how much weight is given to settlement, and I think at the moment of settlement there's kind of a congratulatory sense that the legal system has for itself.
So on the one hand, you know, you put the Court in a difficult role; on the other hand, it's a good moment generally speaking.
Q. Is it fair to say that the system and the fiduciary role of the Court in particular relies upon the good faith of the parties?
A. Yes. You know, I feel like you all want to read a lot into that further than I do.
Q. Well, in your treatise you talk about how

Page 135

the Court's role is -- in the second bullet -- to ensure that the class' own agents, its class representatives and class counsel have not sold out its interest in settling the case.
So what am I reading into that? That's a very valid consideration, is it not?
A. Yeah. Three things I think we differ on.
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.
The whole point of the appellate court saying to the district court you are a fiduciary is to say to the trial judge, sit up, do something; you're a fiduciary duty to the absent class members. So the first thing I think is I don't want to slough over or forget how important it is that the Court is the fiduciary here.
Second, if you kept reading on the next page, I say under the -- it's my second point now; it's my third point here -- the Court has available to it a variety of mechanisms for actively seeking assistance.

Page 136

And as I've testified in writing and throughout the day, one of those mechanisms is the Rule 23 via Rule 54 says to the Court you can ask for fee agreements to be submitted to the Court.
So that's a second thing that I think is important.
And, third, the other thing I think here is that I, for the reasons I've testified throughout the day, am not convinced that the class' interests were compromised by the Chargois Arrangement at the moment that we're talking about here --
Q. Well, let me ask you this --
A. -- if ever.
Q. Do you -- are you finished?
A. I'm sorry, I said "if ever" at the end of that.
Q. Okay. Because you do specifically make reference to class representatives and class counsel not selling out its interest -- the class' interest. I'm assuming you mean there in settling the case.
Have you seen the declaration of George Hopkins that was submitted last month?
A. Yes.
Q. And do you recall that in that declaration

Page 137

Mr. Hopkins indicates that he didn't know about the Chargois Arrangement?
A. I'm willing to accept -- I don't recall the specifics of it, but that sounds right.
Q. All right. And do you recall him writing words to the effect that he didn't want to know?
A. I recall him testifying to that effect, correct.
Q. Do you regard that declaration and specifically those portions of it that I just asked you about as a disqualifier or as undermining Mr. Hopkins' ability to be an adequate class representative?
MR. HEIMANN: Objection.
MS. LUKEY: Objection. I already stipulated he was only ratifying Arkansas Teachers Retirement System.
MR. HEIMANN: I'm objecting on the grounds that it's beyond the scope of this witness' testimony as an expert in this matter.
A. So, again, now you're asking me do I think George Hopkins was an adequate -- George Hopkins and the Arkansas Teachers were adequate class representatives?

Page 138

Q. Yes, sir.
A. And, again, I'm testifying here as a rebuttal witness to Professor Gillers, and we agree Professor Gillers said nothing about this whatsoever in his report.
So you're asking me to testify to something fresh that I haven't had a chance to read the argument in favor of, if there is one.
Q. Yes, sir.
A. And so if this becomes a pertinent fact, I would then have the opportunity to update my opinions after having to reflect on them since I am here as a rebuttal witness.
I don't -- so here's the way I would think of this question: You're asking is the class representative a good monitor of fee allocations among class counsel, and I would say that the class action law -- I'm now describing class action law to you -- doesn't depend on the class representative in the fee allocation process very much, if at all.
And I would come back here and say, look, the thing we're reading from my treatise says the Court is the fiduciary; the Court is the fiduciary for the absent class members at this

Page 139

point.
I know of very few instances, if any, in which class counsel present the fee allocation to the class representative, go over the details of it with the class representative, ask the class representative to sign off on it and proceed in that particular manner.
If you read the cases about the fee allocation process like High Sulfur, Agent Orange, actually all the cases your expert cites, not one of them mentions the class representative as being part of that process.
In Agent Orange, for instance, the second circuit said this arrangement is outrageous because the class representative didn't approve it, or the class representative did approve it, and it's still outrageous or something like that.
So we generally don't think as the class representative of being a monitor of the fee allocation process. There's one exception.
That exception is cases litigated literally under PSLRA, the Private Securities Litigation Reform Act of 1995, and the exception occurs because the relationship is switched.

Page 140

Under the PSLRA the Court appoints lead plaintiffs, and the lead plaintiffs then select lead counsel. And so in that circumstance where the lead plaintiff has the legal responsibility to choose the lead counsel, the Court has to sign off on it, but they choose the lead counsel.
In that situation some courts, the third and second circuit in particular, have held that there's some deference to the class representative -- lead plaintiff -- if they approve the fee allocation, there'll be some deference -- some deference, still judicial approval -- that some deference to lead plaintiffs in the PSLRA context. And a kind of -- it's very specialized.
It reverses everything we know, but it's because the lead plaintiff in the PSLRA case is hiring the lawyer for the class.
Q. All right. So let me just back up.
What is the responsibility of in this case George Hopkins with respect to the members of the class?
MS. LUKEY: Objection.
A. I'm not sure how to answer that question. The Arkansas Teachers Fund -- I think that's the

Page 141

name of it. Let's say Arkansas. They're the class representative, but I think at the end there's a handful of class representatives. They're one of the class representatives. And their responsibilities to the class are those that go with being class representative.
There's probably a whole book of the treatise on this topic which we don't really have time for. The shorthand version would be to some extent the class representative plays the function of being the client for the absent class members, stands in as the client to the lawyer for the absent class members. And in a pretty limited way.
And I say that for two reasons. What we ask of class representatives are basically two things: Number one, that they don't have obvious conflicts of interest; and, number two, that they hit some minimum threshold of performing their job, and the threshold is put at a minimum so that in a lot of cases the defendants will attempt to disqualify the proposed class representative and depose them.
And at that deposition it will come out that the proposed class representative doesn't know

Page 142

very much about the lawsuit, doesn't understand the lawsuit, doesn't understand the law, may not completely understand their functions, and nonetheless courts are very forgiving and say the class representative is fine in these circumstances.
So, you know, I don't want to pretend we expect too much of the class representative in class action lawsuits.
Q. Are the courts forgiving enough to say that a class representative who says he doesn't wish to know about a fee allocation is doing his job to his members?
MS. LUKEY: Objection.
A. Look, the law says that the judge is a fiduciary and oversees fee allocation. Ninety-nine percent of the judges say we don't want to know.
Q. But that's not what I'm asking you.
A. I know, but that's my answer.
If the judges themselves who have the ultimate authority to oversee the fee allocation do not want to know and do not get involved, I don't see how the judges can then say to the class we expect more from the class representative, who I've just said is expected to know very little, and not

Page 143

really to be able to oversee and manage the lawyers.
It's precisely why we make the judge the fiduciary for the absent class members, and the judges themselves neglect this authority.
Q. But let's get away from the responsibility of the judges, and let me ask you about the responsibility of the class representative.
Would it be reasonable for an Arkansas class member to feel that he or she was entitled to a class representative that was actively in the know about issues of attorney allocation?
MS. LUKEY: Objection.
A. When you say an Arkansas class member, you're asking me specifically about a member of the State Street class who happened to be a resident of Arkansas?
Q. No. I'm asking you about -- Arkansas's our shorthand for --
A. Oh, for this case.
Q. -- ATRS.
A. Any class member in the case?
Q. Yes.
A. If you stopped someone on the street and says are you a member of the class, someone's

Page 144

representing you, are you asking me what that person would say?
I don't know what the person would say.
Would it be reasonable --
Q. No, I'm not asking you that.
I'm asking you what the responsibility of a class representative such as George Hopkins would be to that inquiry from one of his members?
MS. LUKEY: Objection.
A. Well, you asked me would it be reasonable for the class member to expect something, and I said I don't know how to answer that question from the class member's point of view.
I can tell you what class action law thinks about this question, and what I'm telling you is class action law has no expectation that a class representative in a standard non-PSLRA case will oversee the fee allocation process.
I don't know of a single fee allocation case that references the class representative's involvement in any way whatsoever, even the cases in which they kind of suggest the judge should have done more.
Q. Well, have you been involved in cases in

Page 145

which a class representative had a conflict of interest or where there was something preventing that class representative from adequately representing the class?
A. Yes.
Q. Tell us about that. How many cases?
A. Oh, I've probably -- I'd have to go through my CV and my history, but I can think of at least a handful off the top of my head.
Q. Okay. And what was the problem with the class representative in those cases as best you recall?
A. You know what? I'm sorry, I should back up.
The cases that I'm thinking of have more to do with class counsel's relationship with the class representative and that relationship going wrong more than the class representative themselves having done something wrong.
Q. All right.
A. So in one case lawyers said to the class representative if you agree to this settlement, you'll get an incentive award which is a kind of bonus that the class representative gets at the end. But if you don't agree to the settlement, you won't

Page 146

get that.
And I was an expert testifying that I didn't think that was appropriate to be made to the class representative because if the class representative didn't agree with the proposed settlement, that was information that the lawyer should want to hear rather than coercing them into agreeing to the settlement.
And I've been in other cases where class counsel -- there are often situations in which there are competing class actions. Someone has a good class action going. It's going very well. All of a sudden, lo and behold, out of nowhere the whole case settles in another court somewhere across the country that precludes that the case go forward.
The lawyers in the good case --
THE WITNESS: Are you getting down my hands?
A. The lawyers in the good case then go in and object to the proposed settlement that's going to preclude their case, and in some sense they're saying to the judge in objecting to the settlement that the proposed settlement isn't fair, adequate and reasonable, and the class representatives in

Page 147

that case and class counsel shouldn't have approved it or proposed it.
I was in another case in which I was actually an expert witness for objectors in a case where there was an antitrust case against BARBRI -- the bar preparation course.
Q. Yeah?
A. The class consisted of everyone who took the bar preparation course which, of course, is all the lawyers.
So the proposed class representatives were all lawyers, and the proposed class representatives had thought up the case and bargained in advance for themselves to get an incentive award on a sliding-scale basis.
And the ninth circuit struck that down as being a conflict of interest between their duties to the class and their own self-interest in the case. And so there's an example of kind of a class representative gone bad. Lawyers' class representatives gone bad.
Q. Well, I think all of us in the room want to know can we still join that class?
A. Exactly. So there's a few examples.

Page 148

Q. Okay.
A. But the ninth circuit case sticks out because it's so rare that the class representatives are found inadequate. Absent them being, you know, the first cousin of the lawyer or the sister of the lawyer or brother of the lawyer or something like that.
Q. All right. Let me ask you specifically about the fiduciary duty of the Court. Is the Court only bound by Rules 23 and 54 in carrying out its fiduciary duty?
MS. LUKEY: Objection.
A. I wouldn't say the Court was only bound by 23 and 54. I would have said the Court is -- in this case what we're talking about, I would say the Court is authorized by Rule 23 and 54 specifically to ask for the disclosure of fee agreements.
So I don't know if it's bound by that. Rule 23 and Rule 54 are what structure the fee process in class action cases.
Q. Yeah. Let me put it another way.
Are those rules the only mechanism by which the Court can scrutinize the circumstances in which a fee petition is made?

Page 149

A. It's hard to answer that question in the abstract. 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 on point.
So, you know, look, I feel like you all are trying very hard to find a way around that specific law, and you've built kind of a group Goldberg contraption with lots of other things going on but --
Q. Well, thank you very much.
A. -- from where I sit there's a specifically rule directly on point. Just doesn't happen to say what you want it to say, but it's there.
Q. Well, you're an expert on class actions, correct?
A. Yes.
Q. You're not an expert on ethics, correct?
A. You know, I never know how to answer that question. I like to think of myself as having ethics. And use of the word "expert" -- we're now talking about it in the context of an expert witness -- depends on how you define that.

Page 150

Q. Well, would you be prepared to opine as an expert on ethics with Judge Wolf at some point in the near future?
A. I'm not here as an expert on ethics.
Q. There's an old expression that "when you're a hammer every problem in the world looks like a nail."
When you're an expert on class actions, does every problem in the world look like a class action problem?
MS. LUKEY: Objection.
A. I'm not testifying that there are no ethical rules involved in lawyering. I'm here as a rebuttal witness because your ethics expert testified as to the content of class action law.
Q. But you are not opining as an expert on ethics, correct?
A. I'm not here as an expert on ethics. There's someone waiting outside that I will be happy to cede the seat who is Lieff Cabraser's expert on ethics.
Q. Let's see if I can save us a little time. So if you'll just bear with me.
(Pause.)

Page 151

BY MR. SINNOTT:
Q. Just as a related question, would you agree that lawyers for a class may have obligations to the Court or to the class other than under Rules 23 and 54?
MS. LUKEY: Objection.
Q. Putting aside whether they did or did not in this case.
MS. LUKEY: Objection.
A. I think all lawyers in any case have an obligation to follow the ethics rules that govern the practice that they're in.
Q. Okay. Would you agree that after certification in this case that the class and its members were clients of class counsel?
A. So I've written a lot about this question, and my answer is there is no answer to this question.
And to be more specific, they are clients for some purposes, and they're not clients for other purposes.
Q. All right. Could you explain that?
A. Sure. After a class is certified, the class members are clients for the following purpose -- we're now talking about the ethics rules. Again, I should qualify this by saying I'm not here as an expert on the ethics rules --

Page 152

Q. Okay.
A. -- but I have written a section in the treatise on this.
And, for instance, once the class is certified, they are clients for purposes of say defendants wanting to communicate with the class members. In a normal lawsuit the defendants can't communicate directly with the plaintiff; they have to communicate through the ethics rules with the plaintiff's lawyer.
Similarly, once a class has been certified, the class members are considered clients of the class lawyer for those purposes, and defendant communications have to be through the lawyer.
On the other hand, they're not clients for some other purposes. For instance, in conflicts rules are much laxer so that in a normal lawsuit the lawyer representing a client has to clear all types of conflicts like representing the opponent in a different lawsuit.

Page 153

But it's much different in a class action lawsuit because of the absent members of the class, and there's all kinds of overlapping possibilities, and we don't think of the client -- class members being clients for conflicts purposes in quite the same way we would in an individual lawsuit. Top of which, Rule 23's commentary makes quite clear that class members can't fire their lawyer. And so they're very much unlike clients in that regard.
Q. Would you agree that after certification counsel has a fiduciary duty to class -- the class and to its members?
A. So, again, you're asking me a question that I think isn't Rule 23 specific. I would say that in reading the case law courts sometimes use that language, but, again, I'd be very careful about what it means because there's a whole set of cases, and I'll now walk you through these -- there's a whole set of cases in which former class members sue class counsel for malpractice, and in those malpractice cases their cause of actions brings in breach of fiduciary duty. And in many of those cases the courts will say that the class action lawyers

Page 154

complied with Rule 23, and therefore they did not breach their fiduciary duties and hence appear to conflate what those two things mean.
So I think the phrase comes up class --
Q. Wasn't that a case --
MS. LUKEY: Wait. You interrupted him.
Q. I'm sorry, go ahead.
A. I think that the phrase is used that class counsel have fiduciary duties to the class, but it's kind of used in a general generic sense, and it's very hard to be more specific about what that means.
Q. Well, weren't those examples that you just described cases in which the Court found there was not a fiduciary duty?
A. No, I'm sorry. I might not have been clear. What the Court found was that there was not a breach of the 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.
And if that's the case, then Rule 23 creates the set of so-called fiduciary duties that we're talking about.
Q. Okay. Thank you.

Page 155

And prior to certification, before the class is certified, what duties does counsel for a putative class and for the putative class representative owe to the class and its members?
A. Again, speaking most carefully under Rule 23 because Rule 23(g) and the commentary that the advisory committee notes speak directly to this question.
There's really three possibilities here. There's a lawyer who files a putative class action full stop. There's the appointment of interim class counsel without class certification which actually happened in this case. And then there's for class certification, and there are varying -- there are varying things that happen at each stage.
The Supreme Court has been quite clear if you're not literally class counsel you lack the ability to bind the class in a recent case they so held. I'm not actually entirely sure they're right but they so held.
On the other hand, Rule 23's commentary makes clear that any lawyer who files a putative class action should beware of the actions they take because of the effect it may have on absent class members. So Rule 23's commentary suggests that there's some duty that arises in the filing of a putative class action.
Q. Okay. Thank you.
What if at a hearing in this matter that Judge Wolf had asked counsel or had said to counsel why didn't you tell me about Chargois, and assume the lawyers had retained you as an expert and asked how they should reply to that question, how would you advise them?
MS. LUKEY: Objection.
A. So I'm sorry. Walk me through this again.
Q. Sure.
A. There's a hearing -- like tomorrow?
Q. Judge Wolf -- or at some point in the past Judge Wolf says why didn't you tell me about Chargois?
MR. HEIMANN: Before or after the fee award? Does if matter for your question?
MR. SINNOTT: After the fee award.
MS. LUKEY: Objection.
BY MR. SINNOTT:
Q. How would you respond?
MS. LUKEY: Objection. Sorry.

Page 156

Page 157

A. So to make this so I understand it, let's say Judge Wolf reads everything that's happened here, and the Chargois Arrangement has come out and says to one of the lawyers why didn't you tell me about the Chargois Arrangement?
Q. Yes, sir.
A. You're asking me what advice I would give that lawyer about how to answer that question?
Q. Right.
A. So now I'm a --
Q. The question has not been answered yet.
A. Yes.
Q. And your clients say how do we answer that question?
A. Well, I'd say I have a conflict of interest because I'm an expert witness in this case. I can't now be consulting counsel.
THE SPECIAL MASTER: In the abstract.
THE WITNESS: Yeah.
A. I think, you know, I'd pretty much say what I said which is I think he should be honest with the Court and tell the Court the way you understood the rules.
There was no requirement to disclose fee

Page 158

agreements absent judicial request.
Q. All right, sir.
A. If you can honestly say that.
Q. Yeah. Let me direct your attention to pages 22 and 23 of your report. And the header at the top of page 22 says Professor Gillers has identified no facts supporting the conclusion that federal common law/equity required Lieff Cabraser to inquire into or disclose to the Court information about the Chargois Arrangement.
(Pause.)
Q. Specifically within this section you indicate that 5.5 percent of the total fee award such as occurred in this case is not an unusually high referral fee.
A. Hm hm.
Q. What's a referral fee? How do you define that?
A. I say the 5.5 percent is not an unusual --
MR. HEIMANN: Yeah, I'm not finding that.
Q. Are you relying on that?
A. I don't know what you're talking about.
Q. Just give me a moment to find that.

Page 159

THE SPECIAL MASTER: I think you were relying on some testimony that we've had or at least a statement that was made that 5.5 percent was not -- we can find it.
A. What I say -- it's on page 24. I say Mr. Lieff who has roughly 50 years of experience in class action law testified that the amount paid Chargois, which I don't think was 5.5 percent, for what he understood to be local counsel work did not seem on its face to be unusual.
But I -- yeah. Is that what you're referring to?
THE SPECIAL MASTER: I think that's it.
MR. SINNOTT: Yes, that section.
A. He's here if you want to talk to him.
MR. LIEFF: I'm not an expert.
Q. We've already heard from him.
A. Okay.
Q. Let me ask that question again though. How do you define a referral fee? Or do you?
MR. HEIMANN: Are you referring to the use of the referral fee in that sentence when he's referring to --
MR. SINNOTT: No, in general terms.

Page 160

MR. HEIMANN: Oh.
BY MR. SINNOTT:
Q. What's a referral fee?
A. How do I define a referral fee?
Q. Yeah.
A. You're asking me a question now not about class action law. So I think it's a question about legal practice, of legal ethics or one or the other?
Q. All right. So would it be fair to say that your expertise in class actions does not inform your definition of what a referral fee is?
A. That's probably fair, yeah.
Q. All right.
A. Maybe. I don't know. There's some situations in which referral fees come up in class actions. So I'd have to say my studying of class actions over many years, my work in the field has given me some data points about referral fees. I wouldn't consider myself a world expert on referral fees.
Q. All right. Among those data points does your expertise in class actions inform you as to the reasonableness of referral fees?
A. I'd be hesitant to call myself an expert on

Page 161

what a reasonable referral fee is. There's an old saying a third of a third. Anytime I ask lawyers about it, they -- especially when I'm asking for a referral fee, they tell me that's not what it is.
Q. All right. Thank you.
Let me direct your attention to page 27 and the header for this under Roman numeral three says Rule 23 does not require disclosure of fee allocation agreements in the class notice.
So my -- and you then go on to describe that the Court -- as part of the class action settlement approval process the Court must direct notice in a reasonable manner to all class members who would be bound by the proposal, and notice of a motion of attorneys' fees by class counsel must be directed to class members in a reasonable manner.
And you subsequently argue that Rule 23 only requires that the settlement notice be fair, reasonable and adequate and that class members have the right to object to the settlement.
Is that a fair statement?
A. No. The settlement has to be fair, reasonable and adequate.
Q. Yes.

Page 162

A. The class members have a right to object. I think what I was trying to say here is that those two ideas inform what should be put into the notice.
Q. All right. So you're not saying that the notice needs to be fair, reasonable and adequate?
A. The notice has to hit the mark of -- I forget the exact language of Rule 23; I'd have to go back and look, but then it has to hit the Constitutional mark that it has to be reasonable.
Q. Is it accurate to say that 23(h)(2) guarantees that class members have a right to object to the fee motion?
A. Yes.
Q. And that sufficient information should be provided upon which to object to that fee motion?
A. I'm not sure (h)(2) says that exactly, but I would say that exactly -- I do say that exactly.
Q. All right. So you would agree with that?
A. Yes.
Q. What information must be disclosed in order for the class to have sufficient information upon which to object?
A. The key piece -- two key pieces of information are how much are the attorneys asking

Page 163

for literally. What's the level of the fee request?
And I think implicit -- explicit is -- 'cause this hugely goes together with the settlement notice -- how much is the class getting. So kind of how much is the -- are the lawyers getting and what are the class getting. It's kind of a combination of those two things are the bases of making sense of the fee request and whether it seems to be a reasonable -- for a class member to assess whether it seems like a reasonable fee request.
Again, my own opinion -- this is not the law -- is that the class members should be given a sense of what multiplier of class counsel's lodestar the fee request is. I wished that were the law, but it's not.
I think that it's an important fact to determine the sufficiency -- the fairness of the fee request because it shows you how much profit they're getting on your case.
Now having said that, you know, most courts don't agree with me, and I think in most individual arrangements when you hire a contingent fee lawyer, they usually don't keep a lodestar, and you don't know what multiple of their time they're

Page 164

making. So I'm kind of in the minority in thinking this.
Q. Well, minority or not, why do you think that would be important? Why do you advocate for that?
MS. LUKEY: Objection.
A. I advocate it -- I spend dozens of pages on this in the treatise. I think the problem with the percentage award is that 25 percent in one case and 25 percent in another case could mean completely different things.
In one case it could be the counsel's lodestar; in another case it could be 20 times their lodestar. To say, oh, all we're asking for is 25 percent, we always get 25 percent, yeah, but what does it mean. What's your lodestar?
That -- if I'm a class member, I want to know, you know -- I think the lawyers should be fairly paid. And in being an advocate of the lodestar crosscheck, I'm also an advocate of them getting a multiplier. But not a ten multiplier. Not a 20 multiplier. And the multiplier should fit the case. That's I think the most important thing.
I think the allocational stuff takes a backseat to that in every way. And if I have a

Page 165

judge in front of me, and I say you have a fiduciary duty, and in the abstract here's how I want you to spend your time, I want you to spend your time figuring out what the multiplier is. Let the lawyers work out the allocation.
Q. All right. In what manner should the class receive information as to their grounds for objection?
MS. LUKEY: Objection.
A. I'm sorry, could you -- I apologize.
Q. Sure.
A. Could you say that again?
Q. How do you propose that class members receive information on grounds by which they can object to a fee award?
MS. LUKEY: Objection.
A. That I think is a good question. I'm actually -- I have several concerns here I've talked about in the treatise.
I think in today's world everything should be at a settlement website. And this generally happens in big cases. There'll be a settlement website, and the fee petition will be put at the settlement website. I don't -- you know,

Page 166

it's a lot to ask of most class members to go to a settlement website and read the fee petition. It's crazy to assume they'd know how to go on PACER and get the documents off of PACER.

So my own feeling about this is the class members should -- there's a notice that will go out to them in some way, but there should be a repository to which they have access of the pertinent information which would be the fee petition and the declarations that go with the fee petition, and they'd be able to take a look at that if they had the time and interest in doing so.

So I'm an advocate for the website. The other thing I talk about in the treatise is the time. Needless to say, the lawyers want to file the fee petition with as little time as possible before the objection deadline. And I'm a big proponent of pushing that out giving the class 30 days, 60 days to take a look. They often want to do it in 14 days. I think you've got to give the class information that's easily accessible, and you've got to give them time to review that information.

We don't generally give them allocation information as part of that, and I'm not entirely

Page 167

sure we should. I would really like to focus anyone who cares on the multiplier and not inundate them with, you know -- and again, in this relatively big case -- small case you've got, you know, 20 some, 15 some fee agreements. I'm not sure I would put them all at the settlement site.

THE SPECIAL MASTER: You have advocated though that information about the fee allocation agreement should be known to the class? Have you not advocated for that? I thought you had.

THE WITNESS: I mean I think I -- well, I say the fee agreement should be made available, yeah.

THE SPECIAL MASTER: Fee allocation agreements.

THE WITNESS: Fee allocation would be one of the agreements, correct. Yeah.

THE SPECIAL MASTER: Okay.

THE WITNESS: Yeah. If the judge asks for them and gets them, then -- first of all, there'll be on PACER at that point, but, yeah, they should probably put them at the settlement website. I think maybe -- that's a good question. I haven't thought this through 'cause it never happens.

Page 168

The judge might want to parse through them. In this case you've got six class representatives. So they're going to be retainer agreements I assume with each of the class representatives, and maybe the judge wants to look through and say let's put these six up but not these six or put all twelve up or whatever. You got the third, third and third with the ERISA lawyers, the two sets of ERISA lawyers and then subagreements with other ERISA lawyers and that they're sharing agreements among them and -- so I don't know. I mean the Court would have to decide how much of that the class would want to see.

THE SPECIAL MASTER: You may have answered this while I was gone, and I apologize for missing some of the deposition, but I think you said earlier that the settlement class was a client of class counsel. Is that right?

THE WITNESS: What I said is yes and no. And I'm not being evasive.

What I say in the treatise -- and I have a whole section on this -- is once a class is certified, class members are considered clients for some reasons and not for others -- for some purposes

Page 169

and not for others. And I gave examples of each. I can go back over it if you want me to.

THE SPECIAL MASTER: This is when I was out of the room?

THE WITNESS: Yes.

THE SPECIAL MASTER: Okay. Not necessary.

BY MR. SINNOTT:

Q. Do you agree that a class member can consult with a lawyer about whether to object to a settlement?

A. Absolutely.

Q. And would you agree that if a class member requests information on fee allocations, that it should be provided?

A. You know, I think I cite the case here where that didn't happen. There was an objector who sought discovery of the fee agreements, and the Court denied discovery of the fee agreements.

I think, you know, my general view of transparency would probably say why not make the fee agreements transparent, and I think you all would take the position after what happened in this case this is a good example of why we should make them

Page 170

transparent, so we could see them.
So I -- if there were a lawyer who sought them -- sought discovery at that point and tried to get the fee agreements made public, I'm not sure why a Court would not make them public.
Q. Okay. In an article you wrote called The Fairness Hearing: Adversarial and Regulatory Approaches -- do you recall that?
A. Yes.
Q. All right. Two thousand six UCLA Law Review.
In that article you proposed court-designated attorney to serve as a devil's advocate I believe was the expression used in evaluating class action settlements. Is that a fair summary?
A. You know, it sounds like you read it more recently than I did. In that article --
THE SPECIAL MASTER: We have just the guy for you.
THE WITNESS: So I heard.
MR. SINNOTT: Let's not go there.
A. In that article I examine four possibilities. I think the devil's advocate was one

Page 171

of them. I had a -- like a rating agency, like a restaurant rating agency where you put a sign up and say this is a B settlement or A settlement.
So I had -- I was looking at different ways of assisting the Court in its oversight process, and devil's -- appointing a lawyer to advocate was one of them. Using money, making the lawyers put up a bond; and if the settlement was denied, having them forfeit the bond was another one.
And I went through a series of mechanisms of trying to perfect the fairness hearing. That was one of them. I don't remember that I advocated for that one, but I may have. I don't remember which one I came down in favor of.
Q. What were your grounds for believing that devil's advocate was necessary to the settlement process?
A. Yeah, again, I think I was exploring the idea. I'm not sure I was in favor of it, but it goes back to what we were talking about earlier; that the judge at the fairness hearing is hearing a one-sided presentation of the issues and doesn't have the benefit of an adversarial presentation.

Page 172

And judges are best I think -- they're most familiar with the process of making an adversarial decision. So let's give them an adversarial presentation.
Sometimes you have that when objectors show up, but sometimes the objectors are worse. And the idea would be make -- make the process worse because they have their own interests. And the idea of the Court-appointed devil's advocate would be to be kind of more of a straight shooter.
I think I ended up having concerns about that proposal because it implies that the devil's advocate would have to come up with a problem all the time, and maybe there's no problem. So maybe the person who was assigned that role would then have to say, look, I looked into this, your Honor, and I think that I couldn't find anything to object to. So I wasn't sure kind of how that would all play out in the end.
Q. Just to refresh your memory with a quote, you wrote: "When attorneys file a motion seeking preliminary approval of a class action settlement, the Court could appoint an attorney to argue against the settlement."

Page 173

So you say "could" appoint --
A. Yep.
Q. -- an attorney to argue against the settlement.
And then you go on to say, "A Court-designated attorney could function in a similar manner. She would take the position that the settlement is not fair, reasonable and adequate within the terms of Rule 23(e)(1)(C) or the equivalent state rule. Each Court could maintain a list of attorneys in the community capable of providing this function and could pay the appointed attorney using public funds or from the settlement if it is a monetary settlement."
Does that sound familiar?
A. Sure.
Q. All right. You still believe in that?
A. I'm not sure I was proposing that. I was laying -- again, I don't remember, but I think I was laying out here's an option.
So when you say do you still believe in that, I'm not sure I even believed in it. I was laying it out as an option there.
Q. All right. And later on you say, "The

Page 174

advantages of the devil's advocate concept mirror the advantages of Court-appointed criminal attorneys. The requirement that a person perform this task helps to ensure that the system gives attention and respect to arguments against depriving individuals of liberty or property thereby serving a legitimate function." You use the analogy of Court-appointed criminal attorneys.

Were you concerned about a lack of equilibrium or parody between class members and sophisticated counsel who might be recommending a settlement?

MS. LUKEY: Objection.

A. Well, I put it slightly differently. Look, most class action cases are about small amounts of money, and that's why they're class action cases. There's not enough money at issue to fund the litigation if you don't aggregate the claims that are -- so that the clients, the class members themselves, they're not only somewhat unsophisticated -- most of them are not lawyers, but they don't just have enough money in interest in most cases to spend a lot of time providing oversight of the attorneys. So there's kind of an

Page 175

oversight process inherent of what the class action is -- an oversight problem inherent to what the class action is.

And, you know, that's why we have these varying mechanisms. We have the judge acting as a fiduciary in some respects. We have class representatives which we kind of pretend do this but don't really do a good job of it in most cases, and we struggle.

And that's what I was struggling with in this article, to figure out how to deal with the fact that the absent class members lack both the sophistication and the incentive to provide significant monitoring of their class counsel.

Q. All right. And considering that -- those shortcomings or lack of parody, do you think it's reasonable that a class member in considering whether to object to the notice of pendency with respect to Chargois can do so when there's no information there to object to?

MS. LUKEY: Objection.

A. So you're asking --

Q. Let me put it another way.

A. Yeah.

Page 176

Q. Could a class member reasonably have considered the Chargois fee in deciding whether or not to object to the fee application as the notice of pendency told the members they could do so under the circumstances in this case?

MS. LUKEY: Objection.

A. I guess you're asking me would any class member have had reason to know about the Chargois Arrangement.

Q. Yes. That's one way of -- one component of it.

A. That's a factual question. As I understand the facts, I think the answer to that question is no.

Q. All right. And would not that circumstance be exacerbated if there was a class representative that had professed to not want to know about fee allocations?

MS. LUKEY: Objection.

A. And I would add a Court that professed not to want to know about fee allocations, too. Remember it was the Court that had the authority to ask for the disclosure of fee agreements and didn't do it.

Page 177

And again, my testimony -- and I'll repeat it -- is that I don't expect much of the class representatives as to fee allocation, nor does class action law. I don't know of a single class action case that says the class representatives oversee fee allocation. In all the cases that your expert cited no one ever mentions a class representative as being a key factor in the fee allocations or the fee agreements. It's the Court.

And so, no, the class here didn't have information about the Chargois Arrangement. The Court never required the disclosure of fee agreements.

I should at -- and, you know, I'll keep adding this as long as I'm here -- two things: I'm not sure the class was harmed by the Chargois Arrangement for the reasons I went through this morning. And, second of all, if you had taken the time to explain why a firm like Labaton would agree to share its fees with someone like Chargois in the class notice, I don't know how much class members would have focused on that, understood it and/or objected to it.

Q. Of course, we'll never know because the

Page 178

class members were not aware of it, were they?
MS. LUKEY: Objection.
A. Again, you're asking me a factual question, and the answer factually -- I'm not a fact witness, but I think the answer's no.
Q. You're not saying that the notice is, if you will, a paper drill in the process, are you?
MS. LUKEY: Objection.
A. Paper drill?
Q. Does the -- the notice has to mean something, doesn't it?
A. Yes. Yeah. I mean, yeah, the notice is important -- is an important part of the process. It's the point at which you tell the class, hey, this is what you're getting, and here's what the lawyers are getting, and here's what we did, and here's why they're getting it, and here's what happened.
Q. And if the notice does not contain full information, it does not fulfill its purpose, does it?
MS. LUKEY: Objection.
A. If the notice doesn't contain information relevant to a class member figuring out, (a), if the

Page 179

settlement is fair, adequate and reasonable from their perspective, and, (b), if the aggregate attorneys' fees seem appropriate for the case, then the notice hasn't provided -- served its purpose.
Q. And how does it benefit the class to give Damon Chargois 4.1 million dollars from the class recovery rather than to ask Judge Wolf to redirect the money to the class?
MS. LUKEY: Objection.
MR. HEIMANN: Objection. Beyond the scope.
MS. LUKEY: I'm objecting, too, but I'm not stating my reasons because I've been asked not to.
THE SPECIAL MASTER: You can state them concisely in a non-suggestive manner under Rule 30(c). Non-argumentative --
MS. LUKEY: It was a hypothetical that built in a fact that's not in evidence or expected to be in evidence.
THE SPECIAL MASTER: Thank you.
A. Look, Bill, I could go through the fee allocation lawyer by lawyer and ask the same question. Why is Mike Thornton getting

Page 180

two-and-a-half times his lodestar, and someone else is getting one time their lodestar? Why does that benefit the class?
And, you know, there are answers to that question. The value he brought to the case. Lead counsel made the decision that that was, you know, the worth of his services.
You got to remember I'm -- I'm a total transparency person. I'm all for the Court ordering this. There are some stuff on the other side of this which is class counsel's running a law firm, and it's providing a set of legal services with its own money. It's investing millions of dollars of its own money, and we want them to do this. You have to give them some leeway to run their law firm.
So, you know, I think the argument on the other side is this isn't something -- you know, absent criminal stuff going on -- let the lawyers run their law firm, and let's see in the aggregate that the class not overpay, and my feeling is let's see what the multiplier is, make sure the class isn't overpaying.
How the lawyers split up the money amongst themselves is part and parcel of how we get

Page 181

them to invest in these lawsuits in the first place, and you got to give them some -- what's the word? -- authority to do that.
THE SPECIAL MASTER: I'm trying to understand your point on this. I thought I did earlier but maybe not.
Is your testimony that so long as the aggregate fee is commensurate to the result, the lodestar, hours worked, then the specific allocation of lawyers' fees is not the business of the class, is not -- the class doesn't have an interest in that?
THE WITNESS: Yes. With the exception I'm a little bit more -- I like transparency partly 'cause I learn a lot from it, and it helps me teach people how these cases work and understand how they work.
And so I kind of like the transparency. I'd like to know how the fees are allocated. I learn from these cases. Unfortunately, all this stuff's under seal so I can never talk about it again.
But, generally speaking, when I look at the allocation from your point of view, the

Page 182

questions I'd ask -- which I said earlier -- are did the Chargois Arrangement -- did the allocational arrangements pervert the incentives in representing the class. And if they didn't, then I think it's fair to let the lawyers work it out among themselves just as the second circuit suggested in Agent Orange where you had perverted incentives in that case.

THE SPECIAL MASTER: So that may answer the second part of my question.

If the aggregate fee is reasonable, then is it your further opinion that the class has no interest in a situation such as this in which a lawyer is paid 5.5 percent of the fee for doing no work, never appearing, pursuant to an agreement that predates even the case by years?

MS. LUKEY: Objection.

THE WITNESS: I'd separate the two, and I'd say the following thing: I don't think anyone in the State Street class was harmed by the Chargois Arrangement. At least I haven't seen facts. And, again, I come back to all the e-mails you've seen.

I've not seen anything where anyone said we got to settle 'cause we got to pay Damon or anything like that. I don't think anyone in the

Page 183

State Street class was harmed by Chargois Arrangement. Point one.

Point two. Now that you've uncovered the Chargois Arrangement, it helps us understand the practices that have arisen really under the PSLRA, and that might be a subject congress would want to look at again some day. We passed the PSLRA. We wanted institutional investors to take the lead in these cases. Look what we've created, and maybe we're not happy with what we've created in that way.

I don't see the investors -- I don't see the class in the State Street being directly harmed by that. And I will say that, you know, as many warts as it seems like on the system, there are some good stuff that's come from the PSLRA. All things being equal, attorneys' fees have come down. In many of these cases the institutional investors actually negotiate lower fees up front from class counsel.

And I think in a case like this -- I'm guessing -- we only got Arkansas to step forward because Labaton had this arrangement with them to report fully on monitoring.

So in the old days you had, you know,

Page 184

the Milberg Weiss firm; they had clients who had one share of stock in every stock in The Stock Exchange. Congress didn't like that, and they went to this system. And it encouraged portfolio monitoring and the Chargois arrangements, but you have institutional investors playing kind of an important role in this stuff.

It just has, you know, some warts to the system.

THE SPECIAL MASTER: So you seem to be saying here that because in your view the class was not harmed, the class had no interest in being informed of the Chargois Arrangement. Is that accurate?

THE WITNESS: Again, yes. I would say the judge had every authority to ask about the fee agreements; and had he done so and given them to the class, terrific.

But when I'm reverse engineering looking back from the end of the case, the questions I ask are similar to what I see the second circuit asking in Agent Orange. Did this pervert the incentives of the lawyers to the detriment of the class? And now, judge, that's just a factual question.

Page 185

I haven't seen it in this case that it perverted the lawyers' incentives in representing the class. In what I've read about the case I haven't seen that evidence. So I don't feel like this class was directly harmed by the Chargois Arrangement.

THE SPECIAL MASTER: And therefore the class had no interest in being informed in the notice?

MS. LUKEY: Objection.

THE WITNESS: And, again, I think the public's interest in the whole system creates some interest in this kind of information being out there, and that's why I'd like judges to ask about it. But I don't see that it was the kind of information that had to be put in the class notice in this case for those reasons.

THE SPECIAL MASTER: I think you're answering my question is yes, right?

MS. LUKEY: Objection.

THE WITNESS: Try me again. I'm sorry.

THE SPECIAL MASTER: Why don't we have the court reporter read back my last question?

THE WITNESS: Judge, I promise you I'm

Page 186

not trying to prolong this.
(Reporter read back.)
MR. HEIMANN: Are you insisting on a yes or no answer to that?
THE SPECIAL MASTER: I'd like a yes or no answer.
MR. HEIMANN: He can give you a yes or no answer, and then he's entitled to explain it.
THE SPECIAL MASTER: Let's start with a yes or no answer. I think he's explained it, but if he wants to explain it again, then he can.
THE WITNESS: All right. No. I don't feel like the question is fair because you have to ask the question ex-ante which is was the class notice wrong for any reason when it went out. And the judge didn't ask for the disclosure of the fee agreements. I don't think there was anything missing from the class notice.
Ex post we find out about the Chargois Arrangement. Now that we know about the Chargois Arrangement, you want me to go back and say should the class notice have been different now that I know about the Chargois Arrangement.
THE SPECIAL MASTER: I don't think I'm

Page 187

going to get a yes or a no answer, but, okay, that's fine.
MR. HEIMANN: You got an answer. It was no with an explanation.
THE SPECIAL MASTER: Which built in the assumption that the judge has to ask. Which we know that's his testimony. So that's fine.
MR. HEIMANN: I know that -- well, I'll be quiet.
THE SPECIAL MASTER: My question focused only on whether the class had an interest in knowing as part of the 23(h) notice process -- whether the class had an interest in knowing about the Chargois arrangements independent of whether the judge asked or not.
MR. KELLY: And now we're defining interest --
THE SPECIAL MASTER: Whether they had an interest in knowing.
MR. KELLY: -- or some legal duty?
MS. LUKEY: I would join in that objection.
MR. HEIMANN: There's no question.
THE SPECIAL MASTER: There is a

Page 188

question.
MR. HEIMANN: Oh, I'm sorry.
THE WITNESS: And now I think I understand a little better. So I think I would say this: The Chargois Arrangement is a fee allocation arrangement, and we -- class action law generally does not put fee allocation information in the class notice. And so you want me to say, therefore, I'm saying the class has no interest in that. It's not -- I wouldn't quite say that.
But 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.
If 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 in a class.
BY MR. SINNOTT:
Q. Professor, was there a lodestar check in this case?
A. So the lawyers applied for a fee award based

Page 189

on a percentage of the settlement.
Q. Yep.
A. They asked for 25 percent. They then also submitted their lodestar for crosscheck purposes which is very different than saying the award was based on their lodestar.
All they were saying to the Court in submitting their lodestar is, look, this is how many hours we spent on the case. So if you give us 25 percent, we'll be getting twice as much as we would be getting using our hourly rates. And, therefore, our profit, if you will, our multiplier is twice our hourly rates, and we think that's reasonable in these circumstances.
So the lodestar was submitted for crosscheck purposes, but it was not a lodestar-based fee award which is a whole different thing. It makes the lodestar far more important.
Q. So -- maybe I'm missing this.
What role, if any, do those lodestar calculations have in the plaintiffs seeking approval from Judge Wolf?
A. Yeah, good, good. This is really important. In a lodestar-based fee award like a fee-shifting

Page 190

case where the defendant is directly going to pay the fee, when you submit your lodestar and the Court approves the lodestar, you're getting dollar for dollar. You're submitting your lodestar here, and you're saying here's what I want payment for, and the Court goes kind of hour by hour, if you recall, or lawyer by lawyer or however, firm by firm, and pays that lodestar. The lodestar itself is like the bill that you're submitting to the Court.

In a percentage award case the lodestar is not a bill that you're submitting to the Court. It's like a credit check. It's a crosscheck. You're saying give me 25 percent, and the Court's thinking to itself is 25 the right number. Is it too much? Is it too little?

And the only way of assessing whether 25 percent is the right number -- the one way of doing it -- I think the only good way of doing it is to say what multiple of your lodestar -- when the lawyers submit their lodestar for crosscheck purposes, the law is very clear on this. In almost every circuit the law is we don't look at the lodestar for crosscheck purposes hour by hour; we don't think about it in those terms.

Page 191

It's just like a back-of-the-envelope calculation. And the reason is partly we went to the percentage method to get judges out of the business of doing a lodestar audit going line by line, and it's much easier to award a percentage.

So if you put the lodestar crosscheck back in, you've introduced all the downsides of the lodestar method, and so courts are very clear that in using the lodestar for crosscheck purposes it's just kind of more like a back-of-the-envelope check.

Q. All right. But even on that back-of-the-envelope check, shouldn't the Court be able to rely on the identification of the lawyers who worked on the case contained within those lodestar calculations?

A. What I say in the footnote in this report is that we don't worry at all about underinclusion in a lodestar crosscheck. We kind of encourage underinclusion because if there's underinclusion, people are left out. It means that the lawyers are submitting a lower lodestar for crosscheck purposes, and that means that the multiplier -- the profit that they're getting -- seems higher.

And so they want to leave people out of

Page 192

the lodestar and submit a high cross -- and get a higher multiplier and they think they can get it, let me them go for that.

What we worry about a lot is the exact opposite; that they're going to pad the lodestar with all kinds of extra hours and bring down their multiplier and make their fee award more reasonable.

So, generally speaking, in doing the back-of-the-envelope crosscheck, we don't care that hours are left out or that people are left out. We like it. 'Cause it means the lawyers are asking for a higher profit and seem to think they can justify it.

Q. Even in cases where the lawyer did nothing?

MS. LUKEY: Objection.

A. Well, if the lawyer has no lodestar in the case, then they're not going to show up in the lodestar crosscheck.

Q. And that back-of-the-envelope assessment of the value of the attorney's work is not frustrated by the lack of identification of that lawyer?

A. No, on the contrary. Again, it's -- we're only using a lodestar for a crosscheck. And so if you're not in the lodestar for crosscheck purposes,

Page 193

the fee petitioner's goal is harder to reach. The more lodestar they leave out, the more multiplier they're getting of their lodestar, and the harder their task becomes.

And so there's no -- from the Court's point of view if they want to ask for a three multiplier and leave time out of their lodestar, they better prove they can -- they're worth the three multiplier rather than a two multiplier. So we don't worry about underinclusion in the lodestar for crosscheck purposes.

And if the lawyer doesn't have any lodestar, if it's an investing lawyer or a referring lawyer or something along those lines, they wouldn't show up in the lodestar crosscheck anyway. They'd only be getting a share of someone's else's lodestar.

Q. It's strictly a factor of multiplication?

A. You minimize it. To me the lodestar crosscheck is the key to the whole thing because it's precisely putting your finger on what the profit is.

And the profit on a hundred-million-dollar case, and the profit in a

Page 194

two-million-dollar case are wildly different at the 25 or 30 percent, but it's the multiplier that brings them altogether. If it's one time your lodestar, two times the lodestar, it's going to be the same one time your lodestar or two times your lodestar in a 50-million-dollar case as a two-million-dollar case.

Q. In this particular case before approving lead counsel's fee request, Judge Wolf said "I'm relying heavily on the submissions and what's been said today," and then he approved the fee request.

What did Judge Wolf mean when he said that?

MS. LUKEY: Objection.

A. What do I think he meant?

Q. Yeah.

A. I think he meant he was relying on the submissions. You know, that he was relying on the submission.

I don't know what to add -- what I could add to that. What I don't think he meant is that I asked you for fee agreements.

Q. Well, let's say Judge Wolf had said I'm relying heavily on what counsel said in ruling on

Page 195

the fee petition, do you think that counsel would have been required to disclose the Chargois Arrangement?

MS. LUKEY: Objection.

A. So go back in time five years. I'm sitting in my office writing a treatise, and I'm on this section of the treatise, disclosure of fee agreements, and I write in the treatise the parties have to disclose a fee agreement under two circumstances: One, if the Court asks for it; or, two, if the judge says at the fairness hearing I'm relying on the submission of the parties, I just don't think that passes the laugh test.

Q. What would the Court have to have asked in order for Chargois's arrangement to be revealed?

A. How are the fees being allocated would be one way of asking. Please disclose the fee agreements would be another way of asking.

Q. All right.

THE SPECIAL MASTER: So I just want to understand your testimony.

So Judge Wolf's statement before he approved the fees and the settlement that "I'm relying heavily on what has been submitted here"

Page 196

could not under any circumstances be construed as the judge telling the lawyers, hey, I'm relying on what you guys are giving me? And I'm trusting you to tell me that this is everything I need to know?

MS. LUKEY: Objection.

MR. HEIMANN: That's two questions, maybe three. I object.

THE SPECIAL MASTER: You can pick any one.

MS. LUKEY: Objection nonetheless.

THE WITNESS: I would say one hundred percent if Judge Wolf had said how are the fees being allocated or disclose the fee agreements, and no one had mentioned Damon Chargois, and he then said at the fairness hearing I'm relying on what you're telling me, I think in those circumstances you'd have a real problem.

I don't think Judge Wolf was interested in the fee allocation. It didn't come up. And I don't -- it doesn't distinguish him from most judges in these circumstances.

THE SPECIAL MASTER: So by saying I'm relying heavily on the submissions and what's been said here or words to that effect, he wasn't asking

Page 197

enough in order to elicit information about the Chargois Arrangement?

THE WITNESS: He did not ask the lawyers to disclose their fee agreements, correct.

THE SPECIAL MASTER: Okay.

BY MR. SINNOTT:

Q. Professor, given the Court's fiduciary duty to the class, the power of the Court which you've acknowledged to abrogate the Chargois fee, your own frequent emphasis that you've referred to on transparency in class action settlements and fee determinations, class counsel's fiduciary duty to the certified class and its members as their lawyers and the fact that at the fee determination stage the lawyers and the class have opposing interests, does it trouble you that no one, not Hopkins, not the class members and not the judge, were told that a lawyer who did no work for the class was going to get 4.1 million dollars for a recommendation or representation and so those parties could do nothing to question the payment?

MS. LUKEY: Objection.

A. It bothers me that judges do not use their authority to ask for fee agreements. If Judge Wolf

Page 198

had used his authority and found out about the Chargois Arrangement, I am not sure the knowledge of that arrangement as I know it now would bother me as much as I think it bothers you all for the reasons that I've testified to.

But I think -- you know, the law is clear here, and the lawyers have every reason to rely on the clearness, the clarity of the law. Rule 23 and Rule 54 could not be more clear in saying they should disclose fee agreements -- they must disclose fee agreements when the Court orders them to do so.

Q. So again it comes back to the judge not asking the question?

A. Yes. You make it sound like I'm crazy for saying that. It's the law. It's what the law says.

The judge has a fiduciary duty to absent class members. She, he -- he, in this case Judge Wolf, should be asking these questions. That's what I'm telling him.

Q. And just to be clear once again, your opinion is based on Rules 23 and 54 of the Federal Rules of Civil Procedure?

A. Yes.

Page 199

THE SPECIAL MASTER: Not on any ethical rules or ethical obligations?

THE WITNESS: I'm not here as an ethics expert, correct.

THE SPECIAL MASTER: Okay.

THE WITNESS: I did read your ethics expert's report, and I'm not convinced that -- it didn't convince me that it trumps the clear rule structure of Rule 23 and 54.

THE SPECIAL MASTER: You may have answered this question when I was out of the room. If so, that's fine.

Was Arkansas the class representative for the entire settlement class after -- once the class was certified?

THE WITNESS: One of several I believe.

THE SPECIAL MASTER: Okay. The others being?

THE WITNESS: I think in the --

MR. HEIMANN: I don't think so. This is on the record. I think there was only one class representative for the settlement class.

THE SPECIAL MASTER: Well, I'm asking -- you know the procedural posture here. The

Page 200

procedural posture was there were three separate cases. In each of these cases there were named class representatives.

Then the case was consolidated for pretrial purposes and settled during the pretrial on this two-track discovery and mediation.

At that point there was a preliminary hearing in August of 2016, and the class was certified, and that class included members from all three of the cases including the ERISA -- the members of ERISA funds that were in the other two cases.

THE WITNESS: Yeah.

THE SPECIAL MASTER: So my question to you is was Arkansas the class representative for that settlement class?

THE WITNESS: That's a factual question, and my memory I thought was that the settlement agreement defined class representative to include all of the class representatives from all of those putative class actions.

If Richard's suggesting -- my memory may be wrong on that point, but I think Arkansas was at least one of, if not the only one.

Page 201

THE SPECIAL MASTER: Well, we'll look at the settlement agreement and see if it calls out the others.

In your view under 23(a)(4) was Arkansas -- if Arkansas was the class representative, was Arkansas an adequate class representative for the entire settlement class?

THE WITNESS: This is not a question I --

THE SPECIAL MASTER: I understand you haven't opined on it --

THE WITNESS: Yeah.

THE SPECIAL MASTER: -- but you're an expert --

THE WITNESS: Yeah.

THE SPECIAL MASTER: -- and the adequacy under 23(a)(4) is certainly within your strike zone.

THE WITNESS: Yeah, yeah, yeah. I just haven't drilled down on it. I mean it's a big question. You have to look through the whole thing. Sitting here today, I don't have any reason to believe they weren't.

And I think what you're suggesting -- and I'll just put it out there -- is their

Page 202

disinterest in the fee allocation suggests that they were an inadequate class representative.
THE SPECIAL MASTER: One of the questions, certainly --
MS. LUKEY: Your Honor, that was covered while you were out.
THE SPECIAL MASTER: That was covered?
THE WITNESS: Briefly. I'll be happy to say it again.
I just -- what I tried to say earlier, I'd love to think the class representatives were monitoring class counsel and the fee allocation arrangements, but I think it's completely unrealistic to believe that. And outside of the PSLRA, none of the cases about fee allocation ever referenced the class representative as being a player in that.
So Agent Orange, all the other cases your expert cites that are class action cases, none of them say this fee allocation process went bad because the class representative wasn't a part of it or didn't sign off on it or wasn't informed of it. I don't think anyone even talks about it.
THE SPECIAL MASTER: I was going to --

Page 203

I'm asking the question for perhaps a different reason. And I'm asking you to help me here.
Knowing what we know now with the benefit of hindsight, would it have been better to have broken this settlement class into subclasses and have what we've been referring to as the customer class and the ERISA class in subclasses?
And maybe everything else remaining the same, the allocation to the ERISA class, the allocation to the customer class, but to have -- for purposes of managing it and managing the notice process, would that have been a better way to handle it?
MS. LUKEY: Objection.
THE WITNESS: From what I've -- in my review of the case, I was more surprised about the differentials between what the ERISA class members got and the non-ERISA class members got and the potential conflict that created 'cause it felt like the non-ERISA class members were getting less money per dollar and were paying higher fees per dollar than the ERISA class members were paying. And that's a potential conflict which was made somewhat transparent in the class notice.

Page 204

That to me may have called for subclassing. I think it was okay. May have called for subclassing. The Chargois Arrangement I don't -- I don't completely understand how that all gets mixed up in all of that. To me the differentials are far more important than the fee allocation from the class' perspective.
THE SPECIAL MASTER: Effectively, weren't all of the class members then being asked to effectively share in the Chargois Arrangement, even though the only sharing was done on the surface by the customer class?
MS. LUKEY: Objection.
THE SPECIAL MASTER: 'Cause they were all handled as one class.
THE WITNESS: Well, that's a hard question to answer 'cause, you know, I'm chafing at the sense that any of the class members were involved in the Chargois Arrangement.
They were all taxed an aggregate attorney's fee, and the attorneys' fees were allocated by the attorneys. The ERISA class members did quite well. They were only taxed 18 percent. The rest of the class was taxed over 25 percent to

Page 205

balance that out.
So it seems to me the ERISA class members did really well. I'm not worried about the ERISA class members. They seem to have done great.
Look, I understand why you would be concerned about the Chargois Arrangement, and I think if I had students it would take me a whole seminar to go through the PSLRA and all the practices and teach it all.
I don't completely understand why you're concerned about the ERISA versus non-ERISA stuff as to the attorneys and whatnot. That part I understand less I have to say.
THE SPECIAL MASTER: One of the reasons I'm asking about it, and I am concerned about it, is because of the testimony of the ERISA lawyers themselves.
THE WITNESS: Yeah, and part of their testimony the way I understood it -- and I know they're not here today, and I've worked with the Keller firm many times, and I have great respect for them; I think they're a terrific firm -- just felt like a little bit like they felt like they didn't get enough money at the end of the day.

Page 206

And that part of the fee allocation I'm not worried about Keller Rohrback. They'll do fine.

THE SPECIAL MASTER: Did you read the testimony of Lynn Sarko and Carl Kravitz?

THE WITNESS: Not Kravitz. I read Lynn's testimony.

THE SPECIAL MASTER: Just Lynn Sarko's?

THE WITNESS: Yeah. I haven't read Kravitz.

THE SPECIAL MASTER: Let's stick with Lynn Sarko's. Is it fair to say that he seemed to you to be concerned about the fact that he simply wasn't told about it at all?

MS. LUKEY: Objection.

THE WITNESS: He testified that he was concerned that he wasn't told about it. I think that sounds right. He also testified he wasn't happy with the 9 or 10 percent.

THE SPECIAL MASTER: So knowing what we know now with the benefit of hindsight, would it have been a good idea to have handled these for purposes of settlement approval at the fairness hearing as separate subclasses?

MS. LUKEY: Objection.

Page 207

THE WITNESS: Knowing what we know now about two different things. One is the Chargois Arrangement. I don't think the Chargois Arrangement has to me -- to me it has no meaning for ERISA versus non-ERISA. I can't figure out what it does.

Knowing what we know now which we knew then, which is the potential conflict between the ERISA and non-ERISA class members, I think it's a close call, but I think making transparent what the discrepancy was between the two, the judge handled that fine I think in those circumstances.

THE SPECIAL MASTER: All right. I don't have anything else.

MR. SINNOTT: I'm done. That concludes our examination. Richard?

MR. HEIMANN: Yes, I have a few questions.

EXAMINATION

BY MR. HEIMANN:

Q. You were asked about -- a few moments ago about what was said by the judge at the fairness hearing regarding what he had relied upon. Correct?

A. Yes.

Page 208

Q. All right. I'm putting in front of you now a copy of the settlement agreement itself in this case.

And I'll ask you, first of all, as you understand it, would that agreement have been presented to the Court at least as early as the preliminary hearing on preliminary approval?

A. It should have been, and I believe it was.

Q. All right.

A. It's got a PACER number on it consistent with that.

Q. All right. And is there any discussion in the settlement agreement about the procedure that was to be followed with respect to the allocation of the attorneys' fees to be awarded among the plaintiffs' counsel?

A. Yes.

Q. And what does that provide, if you would, please? And give us the page number while you're doing that.

A. I'm in paragraph 21 which is on PACER page 28 to 29. And it's on the settlement -- it's on the settlement agreement page 27 to 28, but it's paragraph 21.

Page 209

And it lays out 9 percent in the aggregate shall be distributed to ERISA counsel in full satisfaction of ERISA counsel's interest in any attorneys' fees awards -- is this what you're asking me?

Q. Yes, that's part of it.

A. And of the attorneys' fees awarded by the Court, if any, 91 percent in the aggregate shall be distributed to counsel for plaintiff -- counsel for plaintiff and/or the class in the ARTRS action in full satisfaction of customer counsel's interest in any attorneys' fees awarded by the Court.

Q. How is that to be allocated according to the agreement?

Not in terms of percentages, but how was the decision to be made according to the settlement agreement?

A. Oh. If customer counsel disagree about the amount of the fee to be distributed amongst customer counsel by lead counsel, they shall mediate their dispute with Jonathan B. Marks, esquire. If unsuccessful, present the dispute to Court for presentation.

I think you're saying -- I think you're

Page 210

asking me and showing me the settlement agreement itself explained to the Court that lead counsel would be overseeing the fee allocation and that the lawyers had set up a dispute resolution mechanism with regard to the fee allocation process, and that dispute resolution mechanism had a mediator followed by appeal to the Court if there were disputes about the allocation.

Q. All right. And in your experience and based upon your academic work, how common is it in a class action for the Court to leave up to lead counsel in the first instance the allocation of attorneys' fees among the various plaintiffs' counsel?

A. I'd say it happens close to a hundred percent of the cases.

MR. HEIMANN: Miss Reporter, if you could mark as the next exhibit in order this e-mail exchange. The last e-mail I think is dated August 8.

Then after that the next e-mail exchange where the last e-mail is dated August 28.

(Exhibit 4 marked for identification.)

(Exhibit 5 marked

Page 211

for identification.)

BY MR. HEIMANN:

Q. So you've been asked a number of times today about testimony by Lynn Sarko regarding what he might have done had certain permission about Chargois Arrangement been made known to him, correct?

A. Yes.

Q. And you were asked specifically questions about whether or not in your view the payment to Chargois should have been disclosed to the ERISA counsel including Mr. Sarko?

A. Yes, I think I was.

Q. Also questions about whether or not the payment to Mr. Chargois should have been disclosed to the Department of Labor, either directly or through ERISA counsel?

A. I think I was asked that, yep.

Q. Take a look please, if you would, at this first document. That's the e-mail that ends -- the last e-mail's August 9 from Mr. Sarko. If you look at the top.

A. Hm hm.

Q. So it's an e-mail from Mr. Sarko dated

Page 212

August 9 addressed to a number of lawyers including Bradley, Chiplock, Sucharow, Lieff, Thornton, Goldsmith. Do you see that?

A. I do.

Q. With copies to Kravitz and McTigue. Do you see that?

A. I do.

Q. And Mr. Sarko wrote in the e-mail: "I want to share a few thoughts prior to Tuesday's call with the DOL." Do you see that?

A. I do.

Q. So that would suggest, would it not, that the lawyers who are on this e-mail string were getting together to talk about or consider issues that Mr. Sarko wanted to address in advance of a call with the Department of Labor.

A. It does.

Q. And the first item -- the first line item is the DOL wants to talk about the amount of attorneys' fees in the ERISA portion of the case only. Do you see that?

A. I do.

Q. I want you to drop over to the next page where the e-mail continues. You'll see a section

Page 213

about a third of the way down that begins "expect the DOL to ask." Do you see that?

A. I do.

Q. And then there's a numbered 1 paragraph where he says, "Are the attorneys planning on filing one fee application or separate application?" Do you see that?

A. I do.

Q. And now the next paragraph. And this is the one I want to focus on.

Mr. Sarko wrote are there -- under the heading "expect the DOL to ask," item 2 he says, "Are there deals/arrangements on how to divide the fees between the class lawyers, and are we willing to tell the DOL what those arrangements are? (I have stayed away from commenting on this and have always changed the subject or ignored their question--as I feel it is none of their business)."

Do you see that?

A. I do.

Q. Does that suggest to you that Mr. Sarko was unwilling to share information with the Department of Labor about fee arrangements of deals when the DOL was asking about it?

Page 214

A. It does.
Q. To go over to the next e-mail string, this from the -- the last e-mail's August 28, 2015. Do you see that?
A. I do.
Q. The context -- well, below that e-mail from Mr. Sucharow is an e-mail from Mr. Sarko again dated August 28 where he writes to -- it looks to me the people that are on the string of this e-mail which includes many of the same folks I just mentioned a moment ago, the lawyers -- both the ERISA lawyers and the customer lawyers.
A. Yes.
Q. Because he's responding to an e-mail from Mr. McTigue in which Mr. McTigue wrote: "I don't agree with lead settlement's counsel distributing attorneys' fees and expenses in its sole discretion. Attorneys' fees and expenses should be distributed pursuant to the existing written agreements of counsel."
Do you see that?
A. I do.
Q. And then Mr. Sucharow responded to that e-mail as follows: --

Page 215

A. Sarko -- Mr. Sarko?
Q. Mr. Sarko. Just above the McTigue e-mail you'll see it reads -- on August 28, Lynn Sarko wrote --
A. Hm hm.
Q. -- and then here's what he wrote. "We need to be careful about this as the DOL had asked if there were any agreements on fees between counsel. I would never answer their question, and then they seem to forget about it. But I'd rather not highlight it and have the DOL go sideways on us."
Do you see that?
A. I do.
Q. Does that suggest to you that Mr. Sarko was concerned that if he disclosed the fee arrangements that he was aware of they might have problems with the DOL?
A. It does.
MR. HEIMANN: That's all I have.
MR. SINNOTT: Brian.
MR. KELLY: Quick question for you, Professor.
EXAMINATION
BY MR. KELLY:

Page 216

Q. You said at the outset that the corrected multiplier of two -- it started out 1.8, but once they took out the double counting stuff, it became a multiplier of two. You found it to be both reasonable and modest. Could you explain that?
A. Sure. Brian, I think -- I forget the exact numbers. You're reminding me it started out as being 1.8. My memory is that after the correction it was around two.
Q. Yep.
A. And I think I testified originally back a year ago that a two multiplier is consistent with -- in fact, plausibly modest for this case. You have to look at empirical data on multipliers and in what circumstances lawyers deserve multipliers.
And, in fact, in my treatise I have what I refer to as a multiplier calculator and in which I set out a series of factors, and using those factors I would have guessed there might have been a higher multiplier in this case.
And those factors include the following: Number one, the -- this is a novel one-off case. This is not a case piggybacking government cases, and this is a case where the lawyers themselves

Page 217

working with the whistleblowers had developed the case and I think a very important case in that regard deserving of a good multiplier.
Second, the rewards that they got for the class I think everyone agrees are quite tremendous. It's a 300-million-dollar settlement.
Third, it appears -- and I think partly due to Judge Wolf -- it was done in a fairly efficient manner and in a good way which kept the multiplier kind of lower than it might otherwise have been in a different case.
And, you know, I'd have to think about it some more, but just looking at it, I was surprised that it didn't have a higher multiplier. A multiplier of two is modest.
One other fact I would put in here is there's a time investment of the money; and the longer the case goes, you might get a higher multiplier because part of what the multiplier should be capturing is the time of investment and money.
So putting all these factors together, I wouldn't have been surprised in a 300-million-dollar settlement to see a three or a four multiplier. I

Page 218

should add multipliers are often higher the higher the settlement. And so I wouldn't have been surprised, and I think it would have been justified to see a three or four.

Just by way of comparison, I've just finished being a Court-appointed expert in the NFL concussion case. And the judge in the NFL concussion case just approved a fee an award on 112.5 million dollars on what may be a billion-dollar settlement. So it's about an 11 percent award.

All I care about is the multiplier, and in that case the lawyers are getting a three multiplier -- 2.96, something like that. And they literally did nothing except negotiate a settlement. Now they would argue with me about this, but they -- there was no discovery. There was nothing but one motion and a settlement. And so a two multiplier is -- the class did very well. They were very well served.

Q. Okay. Final question.

Mr. Sinnott asked you a series of questions about what you think Judge Wolf was thinking when he said various things, but I don't

Page 219

think I heard him ask you what you may think Judge Wolf was thinking when he said -- on June 23rd prior to the submission of any fee declarations when Judge Wolf said, "I usually start with 25 percent in mind."

Did you get a chance to review that transcript at all?

A. I remember hearing that. And, again, I don't -- you know, you're asking me to say what I think Judge Wolf was thinking. I think Judge Wolf was thinking I usually start with 25 percent.

The ninth circuit, for instance, has what's called a benchmark of 25 percent. And I think a lot of courts kind of start in class action cases with a 25 percent. It's hard to know in a 300-million-dollar case is 25 percent too much or too little. It's a little different than a 10-million-dollar case.

And that's why I'm a strong believer in the multiplier, and I think Judge Wolf did quite the right thing here. You guys put in your multiplier; he was able to do a crosscheck. The lawyers put in the multiplier. They were able to do a crosscheck and see that the multiplier was a two.

Page 220

And so the 25 percent he started with turned out to be a reasonable, again if not a modest, fee.

MR. HEIMANN: Nothing further.

MR. SINNOTT: Joan?

MS. LUKEY: Nothing. Thank you.

MR. SINNOTT: Judge, anything else?

THE SPECIAL MASTER: Just have a followup, but before I ask that, I want to make sure I understood Richard's question -- the very last question he asked.

Could you go back and find it please about what Mr. Sarko was referring to on this April 28, 2015 --

THE REPORTER: August 28?

THE SPECIAL MASTER: Yes. Did I say April? August.

(Reporter read back.)

THE SPECIAL MASTER: So Mr. Sarko -- in Mr. Heimann's question about what you thought he was conveying included the predicate "that he was aware of."

Mr. Sarko was aware of a lot of things that he did not disclose to the DOL. He was not

Page 221

aware of the Chargois Arrangement.

MS. LUKEY: Objection.

THE WITNESS: Okay.

THE SPECIAL MASTER: So does that change your answer at all as to whether or not he would have been concerned about the Chargois Arrangement?

MR. HEIMANN: That wasn't the question, your Honor. That wasn't my question. So I object.

THE SPECIAL MASTER: All right. Let me ask it then in the predicate that Mr. Heimann asked, he asked "that he was aware of." He being Mr. Sarko, right?

He was not aware of the Chargois Arrangement.

THE WITNESS: Is that a question?

MS. LUKEY: I'm sorry? Objection.

THE SPECIAL MASTER: Is that your understanding that he was not aware of the Chargois Arrangement?

THE WITNESS: It's my understanding that Mr. Sarko was not aware of the Chargois Arrangement.

THE SPECIAL MASTER: That's all I wanted to ask.

THE WITNESS: Okay.

Page 222

MR. SINNOTT: All right. With that, this examination is concluded. Thank you, professor.

THE WITNESS: Thank you.

(Whereupon the proceedings adjourned at 2:52 p.m.)

Page 223

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 WILLIAM B. RUBENSTEIN, 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 10th day of April, 2018.

Notary Public

My commission expires:
February 5, 2021

B

E

F

I

J

K

N

T

U

V

W

EX. 236

5 Newberg on Class Actions § 15:12 (5th ed.)

Newberg on Class Actions | December 2017 Update
William B. Rubenstein [a0]

Chapter 15. Attorney's Fees
II. Class Action Fee Procedures [*]

§ 15:12. Fee procedures at a class action's conclusion—Disclosure of fee-related agreements requirement

Rule 23(h) governs fee petitions in class action lawsuits and that Rule, in turn, adopts the procedures of Rule 54(d)(2), as applicable. [1] Both Rule 23 [2] and Rule 54 [3] require a fee claim to be made by motion. Rule 54(d)(2)(B) sets forth the required content of a fee motion, [4] including the requirement that the motion must "disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made." [5] Relatedly, Rule 23(e), governing class action settlement approval, states that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the [settlement] proposal." [6]

The parties to the suit and their counsel may have a range of private agreements concerning fees. Such agreements might include:

- a retainer agreement between the class representatives and class counsel;
- a retainer agreement between individual class members and their counsel, including objectors and objectors' counsel;
- an agreement between class counsel and the defendant—often embedded in the settlement agreement—whereby the defendant agrees to pay, or not to contest, a certain fee request by class counsel; [7]
- agreements among class counsel about the allocation of fees; and
- agreements between class counsel and non-class counsel about the allocation of fees, such as payment to counsel who helped fund the case but may not have played a material role in litigating it.

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. *First*, given that the court is acting as a fiduciary for absent class members in overseeing the settlement approval and fee process, [8] there is a strong argument that requiring transparency as to the fees is in the class's interest and hence a court should so order their disclosure. [9] The Fifth Circuit has put the argument in these terms, writing in a case concerning the allocation of fees among counsel:

> On a broad public level, fee disputes, like other litigation with millions at stake, ought to be litigated openly. Attorneys' fees, after all, are not state secrets that will jeopardize national security if they are released to the public … From the perspective of class welfare, publicizing the process leading to attorneys' fee allocation may discourage favoritism and unsavory dealings among attorneys even as it enables the court better to conduct oversight of the fees. If the attorneys are inclined to squabble over the generous fee award, they are well positioned to comment—publicly—on each other's relative contribution to the litigation. [10]

Some courts may require disclosure of fee agreements by an initial case management order; others may do so at the conclusion of the case.

Second, in evaluating the merits of the fee petition, courts have "given weight to agreements among the parties regarding the fee motion, and to agreements between class counsel and others about the fees claimed by the motion." [11] As the Advisory Committee that adopted Rule 23's fee provision states, "[t]he agreement by a settling party not to oppose a fee application up to a certain amount, for example, is worthy of consideration, but the court remains responsible to determine a reasonable fee. 'Side agreements' regarding fees provide at least perspective pertinent to an appropriate fee award." [12] Moreover, the Committee noted that "[i]n some circumstances individual fee agreements between class counsel and class members might have provisions inconsistent with th[e] goals [of ensuring an overall fee that is fair for counsel and equitable within the class], and the court might determine that adjustments in the class fee award were necessary as a result." [13] These passages suggest the relevance of fee agreements, another factor suggesting that courts should routinely order their disclosure.

Finally, as noted above, in addition to Rule 54's disclosure requirements, Rule 23(e), governing class action *settlement*—not *fee*—approval, states that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the [settlement] proposal." [14] This generally references the settlement agreement itself, but, given the broader language covering agreements "made in connection with the [settlement] proposal," agreements beyond the settlement agreement itself—such as any agreements about fees—may also fall within the purview of Rule 23(e). Courts generally do not read Rule 23(e)'s disclosure requirement as requiring disclosure of fee agreements among counsel on the ground that such agreements do not necessarily affect the class's interests. [15] There may be some cases where this reasoning is incorrect, as some agreements among counsel would impact settlement terms and hence should be disclosed to the class. For example, if one set of counsel's fee allocation was capped at a certain amount, that counsel would have less interest in pushing further on behalf of the class once her cap was met. Moreover, there is little obvious downside from transparency so not only should courts order disclosure of fee agreements under Rule 54(d)(2), but settling parties should also readily provide them under Rule 23(e) in any case.

Footnotes

a0 Sidley Austin Professor of Law
Harvard Law School

* Professor Rubenstein thanks Adam Cambier, Harvard Law School Class of 2014, and Jeffrey Bayne and Emily Cusick, Harvard Law School Class of 2015, for their help in preparing this unit and Rachel Miller-Ziegler and Todd Logan, Harvard Law School Class of 2015, and Albert Rivero, Harvard Law School Class of 2016, for their help in editing it.

1 Fed. R. Civ. P. 23(h)(1) ("A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets.").

2 Fed. R. Civ. P. 23(h)(1) ("[A] claim for an award must be made by motion under Rule 54(d)(2) …").

3 Fed. R. Civ. P. 54(d)(2)(A) ("A claim for attorney's fees … must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.").

4 For an overview of the Rule's requirements, *see* Rubenstein 5 Newberg on Class Actions § 15:11 (5th ed.).

5 Fed. R. Civ. P. 54(d)(2)(B)(iv).

6 Fed. R. Civ. P. 23(e)(3).

7 This is referred to as a "clear sailing agreement." For a discussion, *see* Rubenstein, 4 Newberg on Class Actions § 13:9 (5th ed.).

8 In re High Sulfur Content Gasoline Products Liability Litigation, 517 F.3d 220, 228, 69 Fed. R. Serv. 3d 1516 (5th Cir. 2008) ("The district court's close scrutiny of fee awards serves to 'protect the nonparty members of the class from unjust or unfair settlements affecting their rights as well as to minimize conflicts that may arise between the attorney and the class, between the named plaintiffs and the absentees, and between various subclasses.' The court's review also 'guards against the public perception that attorneys exploit the class action device to obtain large fees at the expense of the class.'" (quoting Strong v. BellSouth Telecommunications, Inc., 137 F.3d 844, 849, 1998-1 Trade Cas. (CCH) ¶ 72098, 40 Fed. R. Serv. 3d 462 (5th Cir. 1998))).
For a discussion of this fiduciary duty, *see* Rubenstein, 4 Newberg on Class Actions § 13:40 (5th ed.).

9 In re High Sulfur Content Gasoline Products Liability Litigation, 517 F.3d 220, 229, 69 Fed. R. Serv. 3d 1516 (5th Cir. 2008) (concluding that a "lack of transparency [in fee allocation process] supports a perception that many of these attorneys were more interested in accommodating themselves than the people they represent").

10 In re High Sulfur Content Gasoline Products Liability Litigation, 517 F.3d 220, 230, 69 Fed. R. Serv. 3d 1516 (5th Cir. 2008).

11 Fed. R. Civ. P. 23(h) advisory committee's note (2003).

12 Fed. R. Civ. P. 23(h) advisory committee's note (2003).

13 Fed. R. Civ. P. 23(h) advisory committee's note (2003).

14 Fed. R. Civ. P. 23(e)(3).

15 Hartless v. Clorox Co., 273 F.R.D. 630, 646 (S.D. Cal. 2011), aff'd in part, 473 Fed. Appx. 716 (9th Cir. 2012) ("The allocation of … fees amongst class counsel does not affect the monetary benefit to class members.").

End of Document

EX. 237

Volume: 1
Pages: 1-92
Exhibits: 1-3

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 TIMOTHY J. DACEY

April 9, 2018, 3:03-5:09 p.m.

JAMS

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

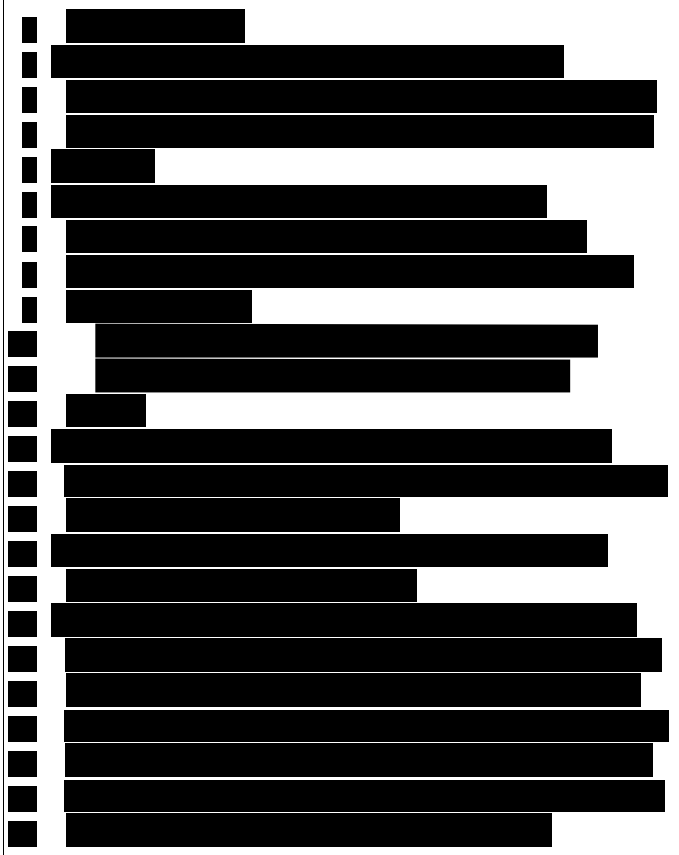
Page 42

Page 43

Page 44

the class?
MR. HEIMANN: You're just asking generally?
MR. SINNOTT: After certification.
MR. HEIMANN: All right. Beyond the scope of this witness' testimony as an expert.
MS. LUKEY: Objection.
A. Yeah, I don't profess to be an expert in notice of class actions. I would only say that it's not like communicating with an individual client about settlement. In that case your communications about settlement are the result of a dialogue that began with the client back at the beginning of the case.
When you're telling a class that you've settled the case, it's more like publishing a notice in a newspaper. You have to sort of think about the things that as a general matter anybody reading the newspaper would want to know. And you would probably look at case law and court rulings about what should be in class action notices and start from there.
But I don't -- I'm not an expert by any means on what is customarily included in class

Page 45



EX. 238

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

RESPONSE BY LABATON SUCHAROW LLP TO SPECIAL MASTER'S SEPTEMBER 7, 2017 REQUEST FOR SUPPLEMENTAL SUBMISSION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") respectfully provides this response to the Special Master's September 7, 2017 invitation for a further supplemental submission pertaining to the participation of Damon Chargois ("Chargois") and his firm, Chargois & Herron, in the fee award to the Firm and its customer-side co-counsel Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") and The Thornton Law Firm ("Thornton") in the State Street litigation.

I. PRELIMINARY STATEMENT OF FACTS[1]

Although Labaton Sucharow's relationship with Chargois & Herron[2] has changed over time, its business agreement with Chargois & Herron has not. After the initial introduction of the Firm to the then-Executive Director of the Arkansas Teacher Retirement System ("ARTRS" or the "Client") by Chargois & Herron, i.e., during the RFQ process and in the early period after Labaton Sucharow was selected as panel monitoring counsel, the Firm expected that the two firms would jointly represent ARTRS: Chargois & Herron would serve as a key interface with ARTRS, handling issues local to the client and providing the client with the comfort of readily accessible local counsel, while Labaton Sucharow would provide the actual monitoring of events relating to ARTRS's investments that could lead to litigation.[3] With the introduction and the

[1] This section presents a summary overview. Detailed facts, with record references, follow.

[2] Although Labaton Sucharow does not know the details (other than as Chargois described them in his deposition), the Firm understands that Chargois has used different names to describe his firm or firms. In this response, "Chargois & Herron" is used throughout, even where a different name may have been used at that particular time.

[3] Although the Firm and Chargois & Herron jointly responded to the RFQ, ARTRS's Chief Counsel informed Labaton Sucharow that, for administrative purposes, Chargois & Herron could not be listed on the same "state contract form" as Labaton Sucharow. LBS017456. As explained further below, this was not a "rejection" of Chargois & Herron by ARTRS; rather, Labaton Sucharow was added to the list of approved firms and given permission to "affiliate" Chargois & Herron. *Id*. ARTRS's Chief Counsel has not been deposed, but Labaton Sucharow witnesses took this to mean that they were free to affiliate with Chargois & Herron as they saw fit. *See infra* at pp. 6-8. Accordingly, the Firm continued with the expectation that the representation of ARTRS would be a joint effort on the terms set forth above.

expected division of responsibilities in mind, Labaton Sucharow agreed that Chargois & Herron would receive 20% of any fees awarded to the Firm, in cases where ARTRS was a named plaintiff and the Firm was appointed lead or co-lead counsel.

Shortly after Labaton Sucharow was awarded panel status, ARTRS changed Executive Directors, resulting in a new administration with no ties to either Chargois or his partner Tim Herron. Labaton Sucharow partner Eric Belfi, who focused substantial attention on the Firm's business development efforts, therefore developed his own relationship with the new Executive Director, George Hopkins, and Chargois & Herron's role dissipated. Unfortunately, the fee allocation agreement between the Firm and Chargois & Herron had not contemplated such a turn of events; and Chargois continued to take the position that his firm was entitled to share in Labaton Sucharow's fees pursuant to the agreement.

Labaton Sucharow was displeased with the unexpected turn of events, and believed that the fee sharing agreement had been based upon a condition that was not being satisfied. Although increasingly dissatisfied with the passage of time, Labaton Sucharow continued sharing fees with Chargois & Herron, fearing that the latter would otherwise sue the Firm in state court in Texas,[4] an event that could have an extremely adverse impact on a firm that works extensively with public pension and retirement plans. This litigation (the "SST Litigation") was the most recent matter in which Chargois & Herron benefited from the agreement, which the Firm believes ends with the conclusion of its current panel contract with ARTRS. After discussions with Garrett Bradley of Thornton, Chargois agreed that, instead of calculating the payment as an amount equivalent to 20% of Labaton Sucharow's fee allocation, in this case the payment to Chargois & Herron would be calculated as 5.5% of the total fee award, jointly paid

[4] Indeed, Chargois implicitly threatened to do just that (*see* Belfi 2d Dep. 58:5-59:22; LBS031137), although Chargois claimed a lack of memory in that regard (Chargois Dep. 320:9-14).

by the three customer-side law firms. Chargois & Herron thus received a portion of the allocations of Labaton Sucharow, Thornton and Lieff Cabraser, but no portion of the allocations of the ERISA firms. And, of course, none of the Chargois & Herron allocation came from the pool of proceeds designated for class members in either the customer action or the ERISA action, which was consolidated with the customer action for pre-trial purposes.

II. PRELIMINARY STATEMENT OF LAW

Based upon various statements made by and questions posed to witnesses by the Special Master or his counsel, the Firm understands that the Special Master is concerned about the following purported failures to disclose: Failure to disclose the fee allocation for no work performed to: (1) the client ARTRS, (2) the Court, (3) ERISA counsel, and (4) class members, and failure to disclose that the client had not approved the fee allocation to (5) Thornton and Lieff Cabraser (together with Labaton Sucharow, "Customer Counsel"). As discussed below, with the exception of the first category, no such disclosures were required (although in some instances the Firm believes that the information was nonetheless known to various of the constituencies).

As discussed below, under the Massachusetts Rules of Professional Conduct, which control in these circumstances, the only disclosure required was a full and complete disclosure to the client. Labaton Sucharow acknowledges that, erroneously, the disclosure to Hopkins was incomplete and imperfect. For the reasons also discussed below, however, that incomplete disclosure to the client does not justify sanctions in this case.

III. STATEMENT OF FACTS RELEVANT TO DETERMINATION OF EFFECT OF CHARGOIS & HERRON FEE ALLOCATION ON APPROPRIATENESS OF FEE AWARD[5]

Labaton Sucharow's relationship with Chargois & Herron originated through Labaton Sucharow partner, Eric Belfi. Belfi met Chargois in approximately 2004, when Belfi worked at a different law firm and met Chargois in connection with a litigation matter. *See* Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Interrogatories to Labaton Sucharow LLP ("Response to Supplemental Interrogatories") at 4; Belfi 2d Dep. 12:21-13:4.[6] As Belfi understood Chargois's work, Chargois & Herron did "some litigation, but mostly what they do is they find clients, and they refer [the matters] to other law firms." Belfi 2d Dep. 13:7-9.

Labaton Sucharow, a plaintiffs' class action law firm with a strong focus on securities litigation, often serves as "monitoring counsel" for its clients. In such situations, the Firm monitors the client's portfolio of investments — without charge to the client — for events (*e.g.*, a drop in stock price) that might indicate a securities disclosure violation. *See, e.g.*, Portfolio Monitoring and Case Evaluation[7]; LBS017739-41. If an investment in the client's portfolio declines in value as a result of a potential securities violation, the Firm may ask whether the client would be willing to serve as lead plaintiff in a securities case. *Id.* Only if the client agrees does the Firm begin representing the client in litigation. *Id.*; *see also* Sucharow 2d Dep. 115:13-116:15.

[5] This Supplemental Submission deals exclusively with the issue of what, if any, effect the allocation of a portion of the Customer Counsel's fees to Chargois & Herron should have on the fee award. The original issues considered by the Master have been addressed previously in the Firm's original Submission.

[6] Chargois apparently did not recall this meeting during his deposition, because he testified that he first met Belfi through a friend, when Belfi was already working at Labaton Sucharow. Chargois Dep. 16:8-23.

[7] *Available at* http://www.labaton.com/en/practiceareas/Institutional-Investor-Protection-Services.cfm (last visited Oct. 11, 2017).

Belfi joined Labaton Sucharow in 2006, serving primarily in a role developing new clients, maintaining existing ones, and serving as the client contact in connection with ongoing litigation. Belfi Dep. 9:7-23. After the move, Chargois approached him about opportunities to introduce the Firm to pension plans in the Texas, Arkansas and Oklahoma regions, and Belfi agreed. Belfi 2d Dep. 13:10-14. Although the precise date of the earliest discussions is somewhat unclear, Belfi, Chargois and Labaton Sucharow partner Christopher Keller discussed the terms of an agreement between the two firms: In a case brought on behalf of a fund for which Chargois & Herron facilitated the introduction, Chargois & Herron would generally receive 20% of the gross attorney fees based on what Labaton Sucharow earned, although the percentage would be lower in certain circumstances. *See*, *e.g.*, LBS031185; Chargois Dep. 50:11-52:24, 162:19-164:2. As explained below, Labaton Sucharow's intention was that Chargois & Herron would serve as local counsel to the clients whose introductions they successfully facilitated, and would provide such assistance as would appropriately be provided by lawyers in geographic proximity to, and with an existing relationship with, a client. *See* Belfi 2d Dep. 26:15-23, 27:11-15; Keller Dep. Day 1 44:8-46:21.

In April 2009, by which time Chargois & Herron had successfully facilitated an introduction with ARTRS as described below, Chargois sent a draft letter agreement to Belfi and Keller seeking to memorialize the previous discussions in writing. LBS030985-87. Keller edited the document and sent a return draft that, among other things, inserted an arbitration clause. LBS031192-95. While a written agreement was never finalized (Response to Supplemental Interrogatories at 8), Chargois at least viewed it as enforceable (LBS031137; Belfi 2d Dep. 58:1-22).

ARTRS was among the funds as to which Labaton Sucharow wished to serve on the monitoring panel. Tim Herron, Chargois' partner in Little Rock, knew Steve Farris, an Arkansas state senator who played an oversight role with respect to ARTRS. *See* LBS040318; LBS017432; Chargois Dep. 33:16-21; Hopkins 2d Dep. 35:6-36:8 (explaining that Farris served on the Arkansas legislature's Joint Committee on Public Retirement and Social Security Programs); Ark. Code Ann. §§ 10-3-701 and 10-3-703 (2017) (assigning oversight responsibilities to the joint committee).

Herron arranged a meeting for Belfi and Keller with Senator Farris in August of 2007, and they explained the services that the Firm provides. LBS040322; LBS 017438 (in which Chargois observes "[y]ou guys did well" and "represent[ed] the firm very well" in the meeting with Senator Farris); Keller Dep. Day 1 20:3-10, 32:20-24. Thereafter, Senator Farris and/or Herron introduced Belfi and Keller to Paul Doane, the Executive Director of ARTRS at the time. LBS040329. In September or October 2007, Doane visited the Firm's offices in New York City while he was in the area on other business. Belfi 2d Dep. 38:2-6, 41:11-13. Belfi was traveling at the time, so Doane met with Keller during that trip. Keller Dep. Day 1 33:10-34:18; LBS040524-A. [8]

In mid-2008, ARTRS issued a Request for Qualifications ("RFQ") which invited firms to submit qualifications to become additional monitoring counsel to the fund. Labaton Sucharow

[8] During depositions, questions arose about an email chain following this visit. LBS040523-A; *see, e.g.*, Belfi 2d Dep. 43:3-47:6; Hopkins 2d Dep. 43:6-46:17. In the first email, Paul Doane tells Belfi that he appreciated the visit but clarifies that "this is an involved process and will involve further review and probably a formal RFP process." LBS040524-A. Thereafter, Herron states in an email that Doane "is going to be extremely careful in all public statements to avoid any difficulty" and that "[t]he Senator is cautious and doesn't want any impropriety to by [*sic*] imputed and wants this thing to proceed under the radar." LBS040523-A. Belfi explained that, in his mind, this simply meant that the process was going to proceed according to required protocol, with issuance of an RFQ followed by a chance for the Firm and Chargois & Herron to make a submission. Belfi 2d Dep. 46:18-47:6. The specific language appears to be attributable to Herron's harmless tendency to overstate and self-promote, and does not suggest any kind of improper influence or that a decision to select Labaton Sucharow had already been made.

and Chargois & Herron submitted a joint RFQ response on July 30, 2008. LBS017738-55; LBS017756-67. Labaton Sucharow contemplated that, if selected as panel monitoring counsel, both firms would work on the litigation, if any, filed on ARTRS's behalf. Belfi 2d Dep. 18:14-19; Keller Dep. Day 1 47:24-49:3. The plan was that Labaton Sucharow would serve as the lead counsel, and Chargois & Herron, with its Arkansas nexus and connections, would serve as counsel working locally with the client.[9] Belfi 2d Dep. 26:15-27:15; Keller Dep. Day 1 44:8-46:21. The responsibilities assigned to this type of co-counsel could range from being the "on the ground" attorneys in Arkansas, responsible for coordinating with the client regarding updates, document review and discovery responses, preparation for depositions, and the like, to serving as co-counsel in virtually any other aspect of the litigation. Belfi 2d Dep. 26:15-23; Keller Dep. Day 1 44:20-46:2; Sucharow 2d Dep. 113:8-115:12; Lieff Dep. at 80:9-14. As witnesses from Labaton Sucharow and other firms testified, although this position is not the same as a courtroom "local counsel," attorneys who are local to the client and work as co-counsel on litigation matters are common in connection with Plaintiffs' class action work on behalf of funds. Sometimes this type of local counsel is even required by the client. *See, e.g.*, Belfi 2d Dep. 26:15-18; Sucharow 2d Dep. 113:8-115:12; Lieff Dep. 80:21-81:12.[10]

On October 13, 2008, ARTRS's Chief Counsel, Christa Clark, emailed Belfi and advised that "ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system." LBS017456. She went on to say:

[9] As has become apparent in discovery, Firm attorneys sometimes used the phrase "local counsel" when referring to law firms in physical proximity to, and with some relationship with, a client. In such circumstances, the meaning differed from that of "local counsel" in litigation. In the latter instance, the phrase refers to locally admitted members of the Bar in the venue where litigation is pending.

[10] Given that representatives of multiple firms explained this local counsel role, it is of no moment that some witnesses who have different types of practices are not familiar with this type of arrangement. *Cf.* Sarko 2d Dep. 62:16-63:7.

> I would like to speak with you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.
>
> If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or utilize them as independent contractors, if you deem is appropriate [*sic*], on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conductive to a joint proposal.

Id. As the email clearly indicates, the ARTRS system could not administratively accommodate a single panel monitoring member comprised of two unaffiliated firms seeking to act jointly. *Id.* Although ARTRS did not approve Chargois & Herron as panel counsel, it did inform Labaton Sucharow that the Firm had the authority and discretion to affiliate with Chargois & Herron in any case in which the Firm chose to do so, qualifying only that "[t]here would be no *requirement* that you use them if it was not a necessary and appropriate expense of a case."[11] *Id.* (emphasis added); *see also* Belfi 2d Dep. 114:2-22, 117:20-118:10 (explaining that to the best of his recollection, Belfi had a follow-up conversation with Ms. Clark about the fact that Labaton Sucharow would be working with Chargois & Herron); Keller Dep. Day 1 49:10-22, 50:19-23; Keller Dep. Day 2 296:11-22.

During the same month that Labaton Sucharow was selected as additional monitoring counsel to ARTRS (October 2008), Paul Doane departed — unexpectedly at least from the Firm's perspective — as ARTRS's executive director. *See* Arkansas Times, "Doane to depart,"

[11] Given the nature of the relationship, discussed below, the payment to Chargois & Herron was never an "expense of a case." Keller Dep. Day 2 302:24-304:8. Except where they appeared as counsel in Court, Chargois & Herron only received a portion of Labaton Sucharow's attorneys' fees, which themselves were awarded on a percentage basis that were unrelated to "expenses."

Oct. 28, 2008.[12] The new Executive Director, George Hopkins, began in or about December 2008. Hopkins Dep. 10:17-21. Hopkins did not know Tim Herron or the Chargois & Herron firm. Hopkins 2d Dep. 21:5-10. Belfi and then-managing partner Lawrence Sucharow traveled to Little Rock, Arkansas, to meet with Hopkins, the new client representative, a few months after he began. Belfi 2d Dep. 27:18-21. Belfi and Hopkins related to each other quickly and well. Going forward, Belfi therefore handled the relationship personally, deducing (correctly) that this was Hopkins' preference. Belfi 2d Dep. 27:21-28:7, 56:22-57:10; Hopkins 2d Dep. 60:8-62:16.

Over time, the relationship between Belfi and Hopkins grew stronger, leaving no room for the "local counsel" role that had initially been anticipated for Chargois & Herron. Belfi 2d Dep. 57:5-19. Nevertheless, Chargois took the position that his firm was still owed 20% of recovered fees in cases brought on behalf of ARTRS. He pushed back hard in response to any suggestion that his "share" of the Firm's fees should be reduced or eliminated. LBS017594 (in which Chargois proclaims, among other things, that "[w]here 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."); LBS030876; Belfi 2d Dep. 58:5-15. Chargois claimed that the absence of a signed written agreement was immaterial, because the email and other correspondence constituted a binding contract under Texas law. Belfi 2d Dep. 58:10-59:12; Chargois Dep. 59:6-60:4; Keller Dep. Day 1 130:19-131:12. Although Chargois claimed to have no such recollection during his deposition, Belfi testified that Chargois effectively threatened to file suit in Texas state court in Galveston if Labaton Sucharow did not honor the agreement.

[12] *Available at* https://www.arktimes.com/ArkansasBlog/archives/2008/10/23/doane-to-depart (last visited Oct. 17, 2017).

Belfi 2d Dep. 58:5-59:22; *see also* Keller Dep. Day 1 130:22-131:132:3.[13] Labaton Sucharow was justifiably concerned that litigation over a fee dispute would be harmful to its reputation and to its relationship with ARTRS, and also concerned that, as Chargois threatened, a Texas state court would rule in Chargois & Herron's favor. *See* Belfi 2d Dep. 58:16-59:22; Keller Dep. Day 1 130:22-132:3; Keller Dep. Day 2 541:19-543:23 (describing Chargois' Sept. 2, 2016 email at LBS031137 as "push-back with a setup – with a potential contractual claim setup").

On September 24, 2010, before the SST Litigation was filed, Belfi sent Hopkins a draft retention letter for the matter, which contained the following:

> Arkansas Teacher agrees that Labaton may divide fees with other attorneys for serving as local counsel, as referral fees, or for other services performed in connection with the litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting the prosecution of an action. The division of fees with other counsel is Labaton's sole responsibility and will not increase the fees payable upon a successful resolution of the litigation.

LBS019948-50. On February 8, 2011, Belfi sent a slightly revised, final retention letter to Hopkins with a modified first sentence to the quoted paragraph, allowing for allocation of "local *or liaison*" fees. LBS011061 (emphasis added). Hence, ARTRS was aware of the potential for a division of fees at the Firm's discretion for referral fees and local or liaison fees, among the several characterizations used for Chargois & Heron's allocation by the witnesses and in the documents in this case.

[13] Chargois' claim that he never made these statements is not credible. During his deposition, he repeatedly complained that Labaton Sucharow was attempting to pay him less than the 20% to which he apparently believes he is entitled. *See, e.g.*, Chargois Dep. 66:4-67:7, 186:7-13, 226:20-24 . He also refused to say that he would abandon the agreement going forward if Labaton Sucharow refused to pay him a share of any future settlements. *Id.* at 323:4-324:1. Viewed in full context, Labaton Sucharow was more than reasonable in believing that Chargois was an actual litigation risk if the Firm attempted to walk away from the agreement.

Because ARTRS was the only named plaintiff in Civil Action No. 11-cv-10230 MLW, i.e., the action on behalf of the putative class of customers of State Street — as contrasted with the ERISA class plaintiffs in Civil Action Nos. 11-cv-12049 MLW and 12-cv-11698 MLW, which were consolidated with the customer action for pre-trial purpose — the three Customer Counsel agreed in 2013 that they would share in paying the allocation to Chargois & Herron from their own fee awards. LBS027776. Garrett Bradley of the Thornton firm handled the discussions with Lieff Cabraser and Chargois regarding this point. *Id.*; Bradley 2d Dep. 53:14-54:10. Bradley explained that he took on the role of negotiating with Chargois & Herron because he had a friendly relationship with Chargois, and he wanted to reach agreement out of concern that, because ARTRS was the only named (non-ERISA) plaintiff, Chargois could say his firm was entitled to 20% of the overall fee award, not just the portion that Labaton Sucharow received. *Id.*; *see also* Belfi 2d Dep. 94:5-23; Keller Dep. Day 1 122:6-124:19.

On April 24, 2013, Bradley sent a confirming email, copied to Chargois, that memorialized the agreement that the three firms would jointly pay the Chargois & Herron portion of any fee award. LBS027776. Bradley referred to Chargois & Herron in that confirmatory correspondence as "local counsel" or "the local." *Id.* This characterization did not raise any eyebrows at Labaton Sucharow, likely because (as explained above) that is how the relationship began; and, at that time Belfi (and perhaps Keller) were likely the only Labaton Sucharow attorneys who knew that Chargois & Herron was not performing any work in connection with ARTRS. *See, e.g.*, Sucharow 2d Dep. 17:8-13; Zeiss 2d Dep. 49:23-51:5; Goldsmith 2d Dep. 108:20-109:6, 111:9-114:5; Keller Dep. Day 1 99:6-100:4.[14]

[14] Lieff Cabraser and Thornton certainly were aware that Chargois & Herron was not local counsel in the courtroom use of that phrase, because at no time did Chargois & Herron enter an appearance in the litigation.

In June 2016, well after a settlement agreement-in-principle had been reached, Bradley reached out to Chargois for further discussions regarding the payment to Chargois & Herron. TLF-SST-060973. Bradley negotiated an agreement that Chargois & Herron would receive an amount equal to 5.5% of the total fee award (basically, a percentage calculated off the top that would be approximately equivalent to 20% of Labaton Sucharow's anticipated share of the total fee), which would be funded by the three Customer Counsel from their respective shares of the award. LBS040924; Bradley 2d Dep. 93:16-22. At various depositions, the Special Master or his counsel raised questions regarding the June 21, 2016 email to Chargois cited above, in which Bradley discussed ERISA counsel and what percentage will be allocated to them in the context of his dialogue with Chargois about what percentage would be paid to Chargois & Herron. TLF-SST-060973. No Labaton Sucharow lawyers were copied on this communication, and there is no evidence in the record suggesting that lawyers from Labaton Sucharow saw it before this investigation. *Id.* In any case, as Bradley explained, he was simply providing the context of the ERISA firms as background and as a negotiating point with Chargois. Bradley 2d Dep. 84:9-85:20; Keller Dep. Day 2 534:23-535:1 (observing that "Damon didn't exactly negotiate heavily and was probably thrilled to get what he was getting"). Bradley's reference in that 2016 conversation did nothing to change the agreement that the ERISA lawyers had struck with Customer Counsel more than two years earlier.

The fee sharing arrangement with Chargois did not impact the amount payable to the class, the overall amount of the fee award, or the amount of the fee owed and paid to ERISA counsel. Although the Chargois & Herron amount was computed as a percentage of the total fee award, the 5.5% of the total was merely a negotiated extrapolation of (approximately) 20% of Labaton's share of the total fee. Hence, the Chargois & Herron fee remained based only on the

fee allocation to which Labaton Sucharow was entitled, and it was paid only by the three Customer Counsel from their allocations of the fee. *See, e.g.*, Sucharow 2d Dep. 28:8-13; Zeiss 2d Dep. 51:10-22, 59:16-19; Goldsmith 2d Dep. 164:20-165:13; LBS041840. By the time Customer Counsel authorized these payments from their allocations to Chargois & Herron, ERISA counsel had long since agreed to their own allocation relative to the Customer Counsel. At the time that the ERISA cases were consolidated for pre-trial purposes with the ARTRS case, ERISA counsel negotiated with Customer Counsel and reached an agreement that ERISA counsel would receive 9% of the total fee award, should one be entered at the conclusion of the case, and Customer Counsel would receive 91%. TLF-SST-015649-54. The 9% was based upon the estimated amount of losses allegedly suffered by putative ERISA class members when compared to putative Customer Class members.[15] Sarko 2d Dep. 48:19-24; McTigue 2d Dep. 15:15-22. In the end, Customer Counsel voluntarily increased ERISA counsel's allocation to 10% and reduced their own to 90%. Sucharow 2d Dep. 29:2-6. The payment to Chargois & Herron did not impact this amount paid to ERISA counsel because it came exclusively from the amounts paid to Customer Counsel.

The Settlement Agreement provided that, "[u]nless otherwise ordered by the Court, and subject to the provisions of the Lead Counsel Escrow Account, Lead Counsel will in good faith promptly distribute any award of attorneys' fees and/or payment of Litigation Expenses among Plaintiffs' counsel." Settlement Agreement and Release (ECF No. 89) at ¶ 21. The Court entered its Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs ("Order Awarding Fees") (ECF No. 111) on November 2, 2016, the

[15] Despite what some suggested during depositions, ERISA class members did not suffer 20% of the total losses. Rather, the Department of Labor used its leverage to extract a premium, which is why $60 million out of the total $300 million settlement was allocated to ERISA class members. *See infra* at pp. 31-32.

same day it entered judgment (ECF No. 110). Because no person filed a notice of appeal, on December 2, 2016 (30 days later), that order became final. *See* F.R.A.P. 4(a)(1). Accordingly, Labaton Sucharow was required to "promptly" distribute the attorneys' fees to the various firms, which at that point were held in the Lead Counsel Escrow Account.

In light of the double counting error, which had been disclosed to the Court several weeks earlier, the Firm wanted to be sure that all counsel receiving a portion of the fee award would refund their respective portion of the payment should the Court order a recalculation. Accordingly, the Firm circulated a "clawback letter" or "undertaking" which it requested that each firm or counsel sign. LBS017922. Bradley replied by email, which he sent only to several partners at Labaton Sucharow, saying "I think you should put Damon on this letter." LBS017920. Goldsmith responded that the Firm was planning to do a separate letter to Chargois, after which Sucharow gave more detail about the calculation and explained that the separate letter made sense because there was no reason for the ERISA counsel "to see Damon's split," given that they were paying no part of it.[16] *Id.*; *see also* Sucharow 2d Dep. 26:9-26:24 (discussing this exchange, and explaining that he "see[s] no rational explanation as to why [ERISA counsel] would need" information about the payment to Chargois & Herron).

Following execution of claw back letters, Labaton Sucharow distributed the attorneys' fees from the Lead Counsel Escrow Account as required. Zeiss 2d Dep. 124:16-126:2. From that account, fees and expenses were paid to Lieff and Thornton, as well as to Keller Rohrback,

[16] Although Sarko requested that Labaton Sucharow "circulate the fee and expense breakdown" (LBS017934), Chargois' allocation was a fee split, not an "expense," and Sarko was clearly not looking for a fee breakdown among individual Customer Counsel (or to their referring counsel), because ERISA counsel provided no such breakdown to Customer Counsel or, indeed, even to each other. *See* Keller Rohrback L.L.P.'s Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories at 8; McTigue Law LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories to McTigue Law at 5; Zuckerman Spaeder LLP's Answers to Special Master's Second Supplemental Interrogatories at 5.

McTigue Law, and Zuckerman Spaeder (collectively, the "Three Main ERISA Firms"). Zeiss 2d Dep. 125:16-21, 139:9-14; LBS041874-75. Fees and expenses payable to Labaton Sucharow and Chargois & Herron, as well as service award payments (which Labaton Sucharow would send along to the respective named plaintiffs), were transmitted to Labaton Sucharow. Zeiss 2d Dep. 125:22-126:2.

Each of the Three Main ERISA Firms received 1/3 of the 10% of the attorneys' fee award that was allocated for ERISA counsel. Labaton Sucharow understands that those firms had fee-sharing obligations to other firms, some of which submitted affidavits in support of the fee petition, and at least one of which did not. Until they responded recently to interrogatories (which the Special Master served at Labaton Sucharow's request), none of the ERISA counsel ever shared with Labaton Sucharow or the Court the amount of the fee award the various firms were paid, much less the basis for the share they received, what facts they disclosed or discussed when they negotiated their fee sharing agreements with other ERISA counsel, or whether or how the work they did on the SST Litigation related to the amount they received. *See* McTigue Law LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories to McTigue Law at 5-6 (agreements "were not submitted to the Court" and "McTigue . . . did not disclose to Customer Counsel the division of fees among *Henriquez* Counsel"); Zuckerman Spaeder LLP's Answers to Special Master's Second Supplemental Interrogatories at 5 ("precise amounts were not disclosed"); Keller Rohrback L.L.P.'s Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories at 5-8 (amounts shared with Hutchings Barsamian not disclosed to the Court or Customer Counsel).

IV. RESPONSE TO ISSUES RAISED BY THE SPECIAL MASTER

Labaton Sucharow addresses below the main topics regarding the payment to Chargois & Herron that it understands are the focus of the Special Master's inquiry. Should the Special

Master have follow-up questions regarding these or other points, the Firm requests that it be given the opportunity to respond and respectfully reserves its right to supplement this submission accordingly.

A. The Payment of a Portion of the Fee Award to Chargois & Herron was Permissible Under Controlling Massachusetts Rules of Professional Conduct.

Although ARTRS is an Arkansas entity, the ethical propriety of the payment to Chargois & Herron in connection with the SST Litigation is governed by the Massachusetts Rules of Professional Conduct:[17]

> In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows: (1) for conduct in connection with a matter pending before a government tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise . . .

Mass. R. Prof. C. 8.5(b)(1); *see also* D. Mass Local Rule 83.6.1 (making the Massachusetts Rules of Professional Conduct the governing rules in this Court); *MBA Opinion* No. 12-02 (2012) ("Massachusetts rules govern a fee contract entered into in another state relating to litigation in a Massachusetts court"); ABA Model Rule 8.5(b)(1). The Court's order appointing the Special Master also cited the Massachusetts Rules of Professional Conduct as a governing source of authority. *See* March 8, 2017 Memorandum and Order (ECF No. 173) at 3.

The payment of a portion of Customer Counsel's share of the fee award to Chargois & Herron is governed by Massachusetts Rules of Professional Conduct 1.5. Subsection (e) of that rule states that the "division of a fee (including a referral fee) between lawyers who are not in the same firm" is permissible, provided client disclosure and consent requirements are met[18] and "the

[17] The Massachusetts Rules of Professional Conduct are contained within Supreme Judicial Court Rule 3.07. They are referred to and cited hereinafter as "Massachusetts Rules of Professional Conduct" or "Mass. R. Prof. C." *See* Mass. R. Prof. C. 1.0(r).

[18] The disclosure and consent requirements are discussed in Sections B and C, *infra.*

total fee is reasonable." Mass. R. Prof. C. 1.5(e). Labaton Sucharow respectfully suggests that the reasonableness of the total fee has already been determined, and that no reason exists to disturb that finding and ruling. *See* Order Awarding Fees (ECF No. 111) (finding the percentage-based award reasonable in light of "the factors considered within the First Circuit"); Memorandum in Support of Motion for Attorney Fees (ECF No. 103-1).[19] Indeed, virtually every witness who was asked that question has agreed. *See, e.g.,* Kravitz 2d Dep. 118:9-119:12; Sarko Dep. 134:4-11; Cohn Dep. 18:20-19:1.

It is important to note — particularly in light of questions and statements of the Special Master or his counsel that seemed to suggest a contrary belief — that under the governing Massachusetts Rules of Professional Conduct, Chargois & Herron was *not* required to work on the SST Litigation to receive a share of the fee award. Massachusetts Rule of Professional Conduct 1.5(e) "does not require that the division of fees be in proportion to the services performed by each lawyer or require the lawyer to assume joint responsibility for the representation in order to be entitled to a share of the fee." Mass. R. Prof. C. 1.5, cmt. [7A]; *see also* Expert Declaration of Camille F. Sarrouf ¶¶ 19-20; Gilda M. Tuoni, *Massachusetts Attorney Conduct Manual*, at 2-61 (1992) ("the absence of such requirement effectively allows for 'referral' fees to be paid"). Massachusetts has a long history of allowing what some refer to as a "forwarding fee" or "origination fee." Sarrouf Decl. ¶¶ 20-21. Indeed, Massachusetts expressly chose not to adopt the requirements of proportionality or joint responsibility that exist in the

[19] As Labaton Sucharow has explained, the unfortunate "double counting" issue did not impact this conclusion. The lodestar is used as a cross-check and is only implicated by one of the eight express findings the Court made in approving the award. Order Awarding Fees (ECF No. 111) at 4-5; *see also* Consolidated Response by Labaton Sucharow LLP, Lieff Cabraser Heimann & Bernstein LLP, and Thornton Law Firm LLP to Special Master's July 5, 2017 Request for Supplemental Submission at 3.

ABA's Model Rule 1.5(e)[20] and the rules of some states. *Id.* ¶ 20. Massachusetts Disciplinary Rule ("DR") 2-107, the predecessor of the current Rule 1.5, also omitted these requirements. *See MBA Opinion* No. 76-3 (1976) ("When the Supreme Judicial Court, in its Rule 3:22, adopted the Canons generally, it omitted DR 2-107 (A)(2). Thus, in the common 'referral fee' situation, a referral need not measure the services or responsibility of the referring attorney.").[21]

Nor does it matter what term is used to describe the arrangement, e.g., referral fee, forwarding fee, origination fee, or as Mr. Chargois adamantly urged, "[j]ust an agreement" (Chargois Dep. 62:3-13).[22] Under the Massachusetts Rules of Professional Conduct, characterizations are irrelevant, as is the fact that the arrangement has applied to multiple litigation matters. Massachusetts Rule of Professional Responsibility 1.5(e) governs *any* "division of a fee (including a referral fee) between lawyers who are not in the same firm." Pursuant to that rule, a payment of a portion of Customer Counsel's fee award to Chargois &

[20] ABA Model Rule 1.5(e) provides that "[a] division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable."

[21] In 1972, in rejecting the proportionality and joint responsibility requirements urged by the ABA Model Code Disciplinary Rule 2-107(A)(2), the Supreme Judicial Court concluded that these requirements "would interfere with the established custom of dividing fees with forwarding counsel." James Bolan et al., *Ethical Lawyering in Massachusetts* § 5.5.2 (4th ed. 2014); *see also* Harold Brown, *ABA Code of Professional Responsibility*, 17 Ann. Surv. Mass. L. 730, 738 (1969-1970) (describing the proportionality and joint responsibility requirements proposed by the ABA as "a radical departure from widespread custom of long duration"). Then again in 1988, "much debate arose" with respect to the proportionality and joint representation requirements of ABA Model Rule 1.5(e). Gilda M. Tuoni, *Massachusetts Attorney Conduct Manual*, at 2-61 n.218 (1992). Given the long history of referral fees in Massachusetts, the Supreme Judicial Court rejected those additional requirements. *See In The Matter of Adoption of Model Rules of Professional Conduct, Petition of the Boston Bar Association*, S-4357 (1988).

[22] Labaton Sucharow suggests that the only reasonable inference to be drawn from Chargois' position is that he wishes both to avoid sanctions under the ethical rules of his own jurisdiction (Texas) which — unlike Massachusetts — requires referral fees to be "in proportion to the professional services performed by each lawyer" or "made between lawyers who assume joint responsibility for the representation" (Texas Disciplinary Rule of Professional Conduct 1.04(f)(1)), and to preserve the purported breach of contract claim with which he previously threatened Labaton Sucharow if the Firm did not pay pursuant to the controversial email agreement.

Herron was permissible, even though that firm did not work on the SST Litigation.

B. Customer Counsel Had No Obligation to Disclose the Chargois & Herron Payment to the Court.

1. *There was no provision of law, court rule, or order that required Customer Counsel to disclose a fee-sharing agreement to the Court.*

Federal Rule of Civil Procedure 54(d)(2)(B) provides that, unless a statute or court order provides otherwise, a motion for attorney's fees must: (i) be filed within 14 days after judgment enters, (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award, (iii) state the amount of attorney's fees the movant seeks, and (iv) "disclose, *if the court so orders*, the terms of any agreement about fees for the services for which the claim is made" (emphasis added).[23] Thus, the rule is not merely silent as to whether fee arrangements must be disclosed to the court; it specifically calls them out as something that must be disclosed *only if specifically ordered*. Fed. R. Civ. P. 54(d)(2)(B)(iv); see also Fed. R. Civ. P. 54, 1993 Notes of Advisory Committee, ¶ 8 (reinforcing that the obligation "to disclose any fee agreement, including those between . . . attorneys sharing a fee to be awarded . . . " only exists "[i]f directed by the Court" to do so). The leading class action treatise, Newberg on Class Actions ("Newberg"), similarly notes in the specific context of class actions that Rule 54(d)(2)(B)(iv) "makes disclosure of such agreements dependent on a judicial order." William B. Rubenstein, *Newberg on Class Actions* § 15:12 at 33-36 (5th ed. 2016). Although Newberg goes on to *recommend* that courts order disclosure of private fee agreements, that recommendation is premised upon the fact that absent such an order, disclosure is not required under the rule. *Id.*

No local rule exists in this jurisdiction that obligated Customer Counsel to disclose a fee-sharing arrangement with Damon Chargois to the Court. Nor did Judge Wolf have in place a

[23] Fed. R. Civ. P. 32(h)(1) requires that motions for attorneys' fees in a class action be brought pursuant to Rule 54(d)(2).

standing order, case management order, or any other order that imposed such an obligation. This is not surprising given that, as witnesses who practice regularly in this area testified, most judges do not become involved in the allocation of a fee award among counsel. *See, e.g.*, Zeiss 2d Dep. 62:19-63:12; Keller Dep. Day 2 501:7-22. Given that the Court never ordered or even requested that fee agreements or the allocation among counsel be disclosed, and absent an applicable rule or standing order requiring such disclosure, there is no basis to say that Labaton Sucharow specifically or Customer Counsel generally were required to disclose details regarding the Chargois & Herron payment.[24] *See* Sarrouf Decl. ¶¶ 29-31.

The lack of inquiry by the Court into the fee allocation among lawyers is not surprising given the role of the Court in fee award proceedings in class actions. The question before the Court in this context was whether the total fees sought were reasonable. Fed. R. Civ. P. 23(h); *see Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 350 (D. Mass. 2015), *aff'd*, 2015 U.S. App. LEXIS 22925 (1st Cir. Dec. 31, 2015). "'[I]n a common fund case the district court, in the exercise of its informed discretion, may calculate counsel fees either on a percentage of the fund basis or by fashioning a lodestar.'" *Medoff v. CVS Caremark Corp.*, No. 09-cv-554-JNL, 2016 U.S. Dist. LEXIS 19135, at *25 (D.R.I. Feb. 17, 2016) (quoting *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995)). "A

[24] Despite what certain witnesses now say, ERISA counsel clearly reached a similar conclusion because none of the ERISA firms disclosed to the Court the details of their fee-sharing arrangements with other ERISA firms. *See* Keller Rohrback L.L.P.'s Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories at 5-6 and 8 (explaining that allocations were not disclosed to the Court); McTigue Law LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories to McTigue Law at 5-6 (agreements with other ERISA counsel not disclosed to the Court); Zuckerman Spaeder LLP's Answers to Special Master's Second Supplemental Interrogatories at 5 (amounts paid to other firms were not disclosed). The opinions they advance now, without authority, are beside the point. *See, e.g.*, Kravitz 2d Dep. 105:9-14 ("And so my sort of gut reaction, without being able to cite you anything technical, is that Judge Wolf should have had that information. But, as I said, that is my personal view of this. I cannot cite you a technical rule. I can't cite you a case. I can only tell you what I think.").

percentage of the fund is precisely that: under that method, counsel receive a percentage of the recovered funds. Employing the lodestar method, on the other hand, requires the court to 'determin[e] the number of hours productively spent on the litigation and multiply[] those hours by reasonable hourly rates.'" *Medoff*, 2016 U.S. Dist. LEXIS 19135, at *25-26 (quoting *In re Thirteen Appeals*, 56 F.3d at 305). In the First Circuit, courts normally employ the percentage of the fund method and then use the lodestar method only as a cross-check on the reasonableness of the fee request. *Id.* at *26. When using the percentage of the fund method, courts within the circuit "generally award fees in the range of 20-30%, with 25% as the benchmark." *Bezdek*, 79 F. Supp. 3d at 349 (quoting *Latorraca v. Centennial Techs., Inc.*, 834 F. Supp. 2d 25, 27-28 (D. Mass. 2011)) (internal quotation marks omitted); *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) ("Courts in the First Circuit have recognized that fee awards in common fund cases typically range from 20 to 30 percent.").[25]

In assessing the reasonableness of a requested fee award, courts in the First Circuit consider a set of factors:

> (1) the size of the fund and the number of persons benefitted; (2) the skill, experience, and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the case by counsel; (6) awards in similar cases; and (7) public policy considerations, if any.

Id. at *12. Among these factors, "the most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). It is undisputed here that the $300 million

[25] Here, the requested fees represented 24.85% of the settlement fund and a 2.0 multiple of the lodestar, a modest multiplier compared to cases of similar size in the First Circuit. The original calculation of the lodestar multiplier submitted to the Court was 1.8; the 2.0 reflects the multiplier after the double-counting error was removed from the lodestar submissions. *See* Letter from D. Goldsmith to the Court, November 10, 2016 (ECF No. 116).

settlement achieved in this case was an enormously favorable outcome for the class and represented a tremendous amount of effort by Plaintiffs' counsel. *See, e.g.*, Order Awarding Fees (ECF No. 111) at 4; Sarko 2d Dep. 44:16-17 ("It was a fabulous settlement. There was a fabulous recovery."). Neither that factor nor any others require the Court to investigate the fee allocation among counsel. Although one factor, the amount of time devoted to the case by counsel, asks how much time or work counsel performed during the case, even that inquiry does not ask what percentage each attorney will receive, whether the money paid to one attorney will then be shared with another, or whether the amount allocated to a lawyer is based upon that lawyer's specific work on the case or other factors. *See id.* Thus, the issue of fee allocation was simply not germane to the Court's analysis.

Based on questions and statements of the Special Master or his counsel, the Special Master appears reluctant to accept the absence of a disclosure requirement. *See, e.g.*, Hopkins 2d Dep. 66:11-21; Sucharow 2d Dep. 31:1-4; Zeiss 2d Dep. 53:8-54:20. The skepticism appears to suggest that FRCP 54(d)(2)(B) is overridden by the general rubric concerning candor to the tribunal, or because a party should err on the side of more disclosure and "transparency." *See, e.g.*, Sucharow 2d Dep. 54:6-12 ("In such a non-adversary process, does class counsel not have a heightened obligation of transparency and disclosure . . . ? Does the Court not have an obligation there to know everything?"). Labaton Sucharow respectfully suggests that the express language of FRCP 54(d)(2)(B)(iv), a rule specifically addressing whether a motion for attorney's fees must disclose "the terms of any agreement about fees for the services for which the claim is made" and concluding that it need not unless "the court so orders," cannot be reconciled with such an interpretation of general principles of candor and transparency. While such principles are generally admirable, they do not permit for sufficiently specific application in this

circumstance to provide attorneys with meaningful guidance. *See* Sarrouf Decl. ¶ 30. At the very least, it would be improper to retroactively penalize Customer Counsel, or Labaton Sucharow, for a gloss on Rule 54 that, to the best of Labaton Sucharow's knowledge, has not been enunciated previously. Indeed, if the principle that full disclosure of fee allocations to the Court is required, that principle would necessarily be applicable across the board, to ERISA counsel as well as Customer Counsel. Labaton Sucharow does not advocate such a position, because it flies in the face of FRCP 54(d)(2)(B). The Firm simply notes that one party or group of parties cannot fairly be sanctioned or criticized for conduct in which another party or group has engaged without repercussions.

Moreover, if the controlling theory is that candor and transparency require disclosure of all information whether or not required under the applicable rules, e.g., hourly time entry backup, expense backup, and other related items that would fill multiple bankers' boxes for most petitions, the fee petition process would become unworkably slow and burdensome, making it far more difficult for the Court to sort through and find the key information needed to decide the actual question before it — whether the percentage of the total fund is reasonable. *See Bezdek*, 79 F. Supp. 3d at 350 ("Regardless of the calculation method employed, the touchstone of the inquiry is reasonableness."). Thus the rule identifies certain information that *must* be provided, and then broadly permits the Court to require more by order in a specific case, or more generally by standing order or by local rule. Fed. R. Civ. P. 54(d)(2)(B) and (D) (allowing "special procedures to resolve fee-related issues" and simplifying the process of referral of fee petitions to a special master or magistrate judge). Customer Counsel should not be criticized or penalized for disclosing exactly what the drafters of the rule chose to require.

2. *The Imperfect Disclosure to George Hopkins did not create an obligation to disclose the Chargois & Herron payment to the Court where no obligation otherwise existed.*

Labaton Sucharow acknowledges that George Hopkins should have been given more complete information about the Chargois & Herron payment, and that Belfi, who was in charge of the relationship, should have obtained explicit consent in writing to the division of fees. Mass. R. Prof. C. 1.5(e); *see* Section C, *infra* (discussing a number of mitigating factors present here). Research has identified no authority, however, suggesting that the remedy, or penalty, for an imperfect or inadequate disclosure to a client of a fee sharing agreement is that the lawyer must disclose the agreement to the Court. Such a requirement would put the Court in the inappropriate position of having to assess whether a partial, or even total, ethical lapse in dealing with a client modifies the Court's responsibility under the particular circumstances (here, the determination of what constitutes a reasonable attorneys' fee on a percentage of the fund basis).

It is well established in Massachusetts that an ethical violation does not give rise to independent cause of action. *See Fishman v. Brooks*, 396 Mass. 643, 649 (1986) (noting that a violation of a disciplinary rule does not itself constitute "an actionable breach of a duty to a client"); Mass. R. Prof. C. Scope, Cmt. [6] (same). Following the same rationale, the Special Master should not, in essence, create a new rule saying that a possible ethical violation regarding client disclosure gives rise to an independent duty to disclose to the Court. Such a rule would, in effect, turn one violation into two,[26] while undermining the processes designed to investigate and adjudicate such potential violations. *See* Section C, *infra*. Because there is no authority

[26] Similar attempts to turn one violation into two, based on failure to disclose the first, have been rejected in other contexts. *See, e.g.*, *Werner v. Werner*, 267 F.3d 288, 299 (3d Cir. 2001) ("a plaintiff may not 'bootstrap' a claim of breach of fiduciary duty into a federal securities law by alleging that directors failed to disclose the breach of fiduciary duty") (quoting *Kas v. Financial General Bankshares, Inc.*, 796 F.2d 508, 516 (D.C. Cir. 1986)).

supporting the existence of this type of derivative disclosure obligation, there is no basis to find that imperfect disclosure to Hopkins rendered Labaton Sucharow's disclosure to the Court inadequate.

C. The Firm's Incomplete Disclosure of the Chargois & Herron Agreement to ARTRS Does Not Justify Imposition of a Sanction.

The Special Master should not recommend a sanction based on the imperfect disclosure to ARTRS. Respectfully, it is not the role of a court overseeing litigation (or by extension, a special master appointed by the court) to impose a sanction for inadequate or imperfect disclosure of a fee agreement to a party. Although a court may sanction ethical violations that are, in effect, a wrong committed upon the court, a court should not investigate every possible failure to comply with a Rule of Professional Conduct. When an alleged failure does not directly impact the proceedings, there are processes in place that are designed to investigate and resolve the issue:

- Massachusetts law places the inquiry within the jurisdiction of the Board of Bar Overseers. *See* Mass. S.J.C. Rule 4:01(1) ("[a]ny lawyer or foreign legal consultant admitted to, or engaging in, the practice of law in this commonwealth shall be subject to this court's exclusive disciplinary jurisdiction and the provisions of this rule as amended from time to time"); *Wong v. Luu*, 472 Mass. 208, 219 (2015) (finding that a judge's inherent power to enter a sanction for violation of the Rules of Professional Conduct is limited to instances where such action "is necessary to punish, deter, or remedy misconduct that threatens a judge's ability to ensure the fair administration of justice" and that in other instances, the proper procedure is a referral to the Board of Bar Overseers) (internal citations omitted).
- For attorneys practicing in this federal district, there is a relatively new and

complicated procedure that allows "Disciplinary Proceedings" based on alleged violations of the Massachusetts Rules of Professional Responsibility that come to the attention of the presiding judge. *See* Local Rule 83.6.5.[27] The presiding judge conducts the initial investigation and has a variety of referral options, including to the appropriate state authorities.

Here, although the disclosure to Hopkins was imperfect, in no way did it constitute litigation misconduct or an issue that was directed toward the Court or an issue that impacted the litigation. For example, there is no evidence to suggest that the disclosure to Hopkins impacted the question before the Court, *i.e.*, whether the amount of the fees requested was reasonable. Accordingly, this is a matter that properly rests in the hands of the client, and/or appropriate disciplinary authority.

Even if this were the appropriate forum in which to investigate the disclosure to Hopkins, mitigating factors militate against the imposition of sanctions. This is not a situation where either the existence of Chargois & Herron or the possible payment of referral or liaison fees was hidden from ARTRS. To the contrary, ARTRS knew of the relationship between Chargois & Herron, stated that Labaton Sucharow was free to associate with Chargois & Herron if the firm wished to do so (LBS017456), and agreed through its engagement letter that Labaton was free to pay referral fees to others from the Firm's own fees (LBS019948-50; LBS011061). Although the disclosure did not include the specific percentage or amount of the sharing arrangement, such disclosure is not required in Massachusetts. *See* Mass. R. Prof. C. 1.5(e), cmt. [7A] ("The

[27] The new rules, adopted in 2015, appear to contemplate a division similar to the one that exists in Massachusetts state court: the court handling a litigation matter remains authorized to impose a sanction "for contempt of court or for litigation misconduct" (Local Rule 83.6.4(b)), but for other possible violations of the Massachusetts Rules of Professional Conduct, the court would invoke the process that puts the matter in a separate proceeding before the presiding judge.

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."). Nonetheless, the disclosure was imperfect: It did not specifically disclose the nature of the arrangement, which evolved with the change of Executive Directors, nor was the client's written assent obtained.[28]

Second, both Hopkins and Belfi testified that, when asked, Hopkins told Belfi that he wanted to deal with Labaton Sucharow and would leave it to the Firm to decide with which other lawyers it would affiliate. Belfi 2d Dep. 27:21-28:7, 56:22-57:10; Hopkins Dep. 60:8-62:16 . Relatedly, Hopkins (and thus ARTRS) have now effectively ratified the fee sharing relationship. *See* Hopkins 2d Dep. 73:1-75:10; *Saggese v. Kelley*, 837 N.E.2d 699, 705 (Mass. 2005) (declining to sanction attorney under precursor to Mass. R. Prof. C. 1.5(e) for failure to disclose fee sharing arrangement, finding, among other things, that the client's actions constituted adequate ratification of fee-sharing agreement). The fact that the Executive Director of the client that was "wronged" (to the extent anyone was wronged), did not want more information at the time, and does not feel misled, is a significant mitigating factor.

Third, any question about whether a sanction would be appropriate requires consideration of the reason behind and objectives of the disclosure rules. The applicable disclosure rules in

[28] Although Belfi did "blind courtesy copy" or forward ARTRS information to Chargois & Herron separately from his communication with Hopkins, this was after the firms made their joint submission. As Belfi explained, this practice began when Hopkins had very recently come on as Executive Director: "It was a brand new person. I did not want to bring another person in that wasn't from our firm at this point. So I thought it was best to just keep him apprised but not put him on the correspondence." Belfi 2d Dep. 110:12-18; *see also id.* at 111:9-22 ("I didn't know if Tim knew who George was or if George knew who Tim was . . . I really just wanted to keep it very uncomplicated"). (As explained, *infra*, Hopkins subsequently told Belfi that he did not want to know specific information about other attorneys with which the Firm was affiliating.) Belfi was not improperly revealing privileged information in these communications, because he "believe[d] them to be co-counsel with us" and indeed, for a period of time, Chargois & Herron was counsel to ARTRS in litigation involving HCC Insurance Holdings. *See, e.g.,* Zeiss 2d Dep. 16:18-17:1.

Massachusetts do not prohibit fee sharing. Rather, recognizing that referral fees and other fee sharing relationships can be good for the client because they encourage cases to be handled by the best lawyers for that case, the rules merely seek to impose controls. *See, e.g.*, Leo Boyle, *The Referral Fee Rule: If It's Not Broken, Don't Fix It*, 34 Boston Bar Journal 26, 26 (May/June 1990) (citing a 1987 FTC comment that "forcefully stated to the S.J.C. that changing the rule would be a detriment to consumers, reducing consumer access to highly competent and specialized legal counsel."); Geoffrey C. Hazard et al., *The Law of Lawyering* § 9.20, at 73-74 (4th ed. 2017) (noting that the practice of fee splitting "can also serve both the public interest and the interests of clients in many situations."). Here, the record confirms time and again that the SST Litigation was litigated zealously and vigorously, and that the result was good for the client and for the class. *See, e.g.*, Sarko 2d Dep. 44:16-17; McTigue 2d Dep. 42:25-43:25; Kravitz 2d. Dep. 118:14-21. Even if a technical violation of the disclosure requirement occurred, this is not an appropriate case to take the extreme step of imposing a sanction.

Finally, it is important to note that the failure to obtain more fulsome consent was a technical lapse by a single person at the Firm. There is no evidence to suggest that anyone at Labaton Sucharow, apart from Eric Belfi, was aware that Hopkins had not been fully advised of the relationship and provided consent. *See, e.g.*, Zeiss 2d Dep. 74:15-18; Goldsmith 2d Dep. 162:9-15; Sucharow 2d Dep. 51:14-21; Keller Dep. Day 1 94:23-95:10. Such an omission by one partner should not be the basis for imposition of a sanction. Indeed, it is noteworthy in this regard that, although the controlling Massachusetts Rules of Professional Conduct create obligations with respect to attorneys, they do not impose obligations upon law firms, as entities. To the contrary, in 2015 the Supreme Judicial Court declined to adopt a provision recommended by the Rules Advisory Committee that would have imposed responsibility on law firms. *See*

Rules Advisory Committee Proposed Revisions to Massachusetts Rules of Professional Conduct Rules 1.0-6.2, 7.1-7.5, 8.1-8.4, as revised as of May 14, 2014, at proposed Rule 5.1(d); March 2015 Supreme Judicial Court Order adopting changes to the Rules of the Supreme Judicial Court (adopting rule without proposed Rule 5.1(d)).

In light of the partial disclosure to ARTRS that occurred and in consideration of the foregoing mitigating factors, the Special Master should not recommend a sanction based on the incomplete disclosure to ARTRS regarding the payment to Chargois & Herron in this matter.

D. Customer Counsel Had No Obligation to Disclose the Chargois & Herron Payment to ERISA Counsel.

As explained above, no information was improperly withheld from ERISA counsel.[29] To the contrary, Labaton Sucharow genuinely believed and continues to believe that ERISA counsel had no reason to know what Customer Counsel planned to do with their portion of the fee award, because it did not impact what ERISA counsel received or what they were entitled to receive. *See* Sucharow 2d Dep. 26:9-24; *see also id.* at 23:8-15; Goldsmith 2d Dep. 167:12-168:21; Zeiss 2d Dep. 80:22-81:5. ERISA counsel struck their agreement to receive 9% of the fee early in the litigation, based on estimates of losses, and they received that to which they had agreed, with a sweetener to 10% at the end. Sucharow 2d Dep. 29:2-6; 48:19-24; Sarko 2d Dep. 48:19-24; McTigue 2d Dep. 15:15-22. The payment to Chargois & Herron came from the Customer Counsel's share of the award and, thus, did not impact ERISA counsel's share.

There is no law, rule or regulation that required Customer Counsel to disclose this obligation to ERISA counsel. *See* Sarrouf Decl. ¶¶ 23-25. To the contrary, referral fees or other fee-sharing arrangements are common and they are *not* generally disclosed among Plaintiffs'

[29] Indeed, Mr. Lieff testified that he may have informed Mr. Sarko of the existence of the fee-sharing arrangement, although he acknowledged that Mr. Sarko's present recollection is that he did not. Lieff Dep. 90:5-18, 104:1-11.

counsel. *See* Keller Dep. Day 1 117:8-14 (explaining that referring relationships are confidential and can be sensitive because, if known, a competitor "would be calling them up and taking them out to lunch next week"); Sarrouf Decl. ¶ 24; Zeiss 2d Dep. 76:12-14; Sucharow 2d Dep. 59:13-22; Goldsmith Dep. 19-23, 130:3-8. Indeed, ERISA counsel never shared the details of their own fee splitting arrangements with Customer Counsel. *See* Keller Rohrback L.L.P.'s Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories at 7-8; McTigue Law LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories to McTigue Law at 5-6; Zuckerman Spaeder LLP's Answers to Special Master's Second Supplemental Interrogatories at 5.[30]

Any claim now by ERISA counsel that, had they known that Customer Counsel were paying a portion of the fee to Chargois & Herron they would not have agreed to the deal they struck (*see, e.g.*, Sarko 2d Dep. 75:2-7.), rings hollow. They urge, with the benefit of hindsight and their unique position in this investigation, that they would have used this fee-sharing obligation as a negotiating tactic to extract more than that to which they had agreed. Such a purely strategic consideration does not create a legal obligation on Customer Counsel's part to disclose. To the contrary, ERISA counsel's self-serving testimony appears to be little more than an attempt to use these proceedings to increase their fee award after-the-fact. *See, e.g.*, Kravitz 2d Dep. 115:13-116:4; McTigue 2d Dep. 24:11-25:2.

As part of an apparent attempt to suggest that the deal they struck was unfair, certain ERISA counsel have suggested that, because $60 million of the $300 million settlement was

[30] Similarly, Labaton Sucharow learned only in the context of this investigation that Lieff and Thornton negotiated regarding their portion of the fee award in this case at least in part by discussing fees in a different lawsuit involving BNY Mellon. *See, e.g.,* TLF-SST-040617-18; TLF-SST-038574-79. Lieff and Thornton had these discussions while they were strategizing how they would jointly negotiate with Labaton Sucharow regarding the fee allocation in this case. *Id.* Those firms never revealed any of the details of these negotiations to Labaton Sucharow, nor would the Firm expect that they would.

earmarked for ERISA claims, the actual amount of losses suffered by ERISA claimants was 20% of the total. *See, e.g.*, Sarko Dep. 48:19-11. That suggestion is belied by the facts for at least two distinct reasons. First, the 91%-9% split was negotiated; the parties knew at the time that it was not an exact split. Indeed, there could never be an exact split, because a number of class members — referred to in the Settlement Agreement as "Group Trusts" (ECF No. 89 at 11) — are custodial clients of State Street that have some ERISA-governed assets and some that are not. Second, under any calculation, it is clear that the losses of ERISA class members were well below 20% when compared to losses suffered by others in the settlement class. Zeiss 2d Dep. 163:16-164:2. The Department of Labor used its leverage — and the implicit ability to hold up the settlement — to extract a premium for the ERISA class members. *See, e.g.*, McTigue 2d Dep. 38:12-20 ("I know we got a premium"); Lieff Dep. 47:23-48:18 (discussing TLF-SST-051653).

Finally, the $10.9 million cap on fees that was demanded by the Department of Labor and is referenced in the Stipulation and Agreement of Settlement (ECF No. 089) does not impact this analysis. A "cap" sets a ceiling, not a floor. Here, it meant that no more than $10.9 million could be taken from the $60 million of the settlement that was earmarked for ERISA claims. The provision does not say, and there is no evidence to suggest, that the full amount of that "cap" was required to be paid to ERISA counsel. Goldsmith 2d Dep. 254:13-255:2. Such a contention would be directly contrary to the agreement that counsel reached years earlier. *See* TLF-SST-015649-54 at ¶2 (providing that the 9%-91% division of fees between ERISA and Customer Counsel "shall apply whether the attorneys' fees agreed, awarded and/or approved by the Court is a single sum for all claims and cases or otherwise"). Relatedly, any suggestion that the Chargois & Herron payment needed to be disclosed to the DOL is mistaken. The only

information in the record regarding the DOL and fee allocation is that the DOL asked Sarko what the breakdown was, and he chose not to give them that information, apparently believing it to be something they are not entitled to know. TLF-SST-052975-80. Certainly Customer Counsel cannot be faulted for not providing a further breakdown that would show the downstream payment to Chargois & Herron (which payment did not impact the ERISA class), when Mr. Sarko chose not to disclose the higher-level allocation among the attorneys actively handling the litigation.

What Customer Counsel chose to do with their portion of the fee award simply did not impact ERISA counsel or the amount of the fee award that ERISA counsel received. They had no reason to know that a portion would be paid to Chargois & Herron, and the failure to make such disclosure is not a basis for the ERISA counsel to complain, much less a reason to impose a sanction or order disgorgement of any portion of the fee.

E. Customer Counsel Had No Obligation to Disclose the Chargois & Herron Payment to the ERISA Plaintiffs.

During depositions, certain of the ERISA counsel introduced the idea that perhaps there was an obligation to disclose the Chargois & Herron relationship to the ERISA plaintiffs. *See, e.g.*, Sarko Dep. 91:4-12. Any such claim by ERISA counsel also rings hollow. Not one of the Three Main ERISA Firms who received a distribution of fees from the Lead Counsel Escrow Fund disclosed complete information to the ERISA plaintiffs regarding their own fee sharing arrangements. *See* Keller Rohrback L.L.P.'s Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories at 7 (explaining that the named plaintiffs approved ERISA counsel receiving 9% of the aggregate award and approved the 25% award being sought, but that "[t]he specific dollar allocations of fees to individual class law firms from the gross fee award was not detailed in any written disclosure to the ERISA named plaintiffs,

other ERISA class member, or the ERISA counsel"); McTigue Law LLP's Responses to Special Master Honorable Gerald E. Rosen's (Ret.) Second Supplemental Interrogatories to McTigue Law at 4-5 (contending that the filing and posting of lodestars operated as disclosure to the ERISA class, but conceding that neither the agreements with Customer Counsel nor agreements among ERISA attorneys about the sharing of fees were disclosed to ERISA class members); Zuckerman Spaeder LLP's Answers to Special Master's Second Supplemental Interrogatories at 4 (claiming that ERISA class members had "constructive notice" that other firms might receive some amount of the fees, but conceding that actual payments by Zuckerman Spaeder to three different law firms were never disclosed to the ERISA class). Given the varying, incomplete disclosure the ERISA counsel made regarding their own fee-sharing arrangements, they should not be heard to claim, without authority, that Customer Counsel had an obligation to disclose the payment to Chargois & Herron.

Moreover, there is a reason that fee sharing arrangements are required to be disclosed to a client, typically in the engagement letter at the commencement of litigation: It is to allow the client to choose other counsel if the client does not like the idea of its retained lawyers sharing fees with others, a practice that (as explained above) is perfectly permissible in Massachusetts. *See* ABA/BNA Lawyers' Manual on Professional Conduct, at 41:709 (2014) (explaining that the policy behind the client consent prong of Model rule 1.5(e)(2) "is that clients should be able to choose which attorney finally represents them and the type of legal fees to be charged.") (quoting *Norton Frickey, P.C. v. James B. Turner, P.C.*, 94 P.3d 1266, 1268 (Colo. App. 2004)). Labaton Sucharow had no engagement letter with the ERISA plaintiffs, who were represented by their own counsel throughout the litigation. *See, e.g.,* McTigue Dep. 42:20-24. Indeed, in the circumstances of this case, Labaton Sucharow, as lead counsel, was one large step removed from

the typical pre-certification situation because the ERISA plaintiffs were in a separate lawsuit from the customer plaintiffs, with the lawsuits consolidated for expediency during the pre-trial process. ECF No. 63. There was no attorney-client relationship between Labaton Sucharow and the ERISA plaintiffs, except arguably by operation of law when the class was certified at the conclusion of the settlement process. Goldsmith 2d Dep. 65:4-66:5. "While lead counsel owes a generalized duty to unnamed class members [prior to certification], the existence of such a fiduciary duty does not create an inviolate attorney-client relationship with each and every member of the putative class." *In re McKesson HBOC, Inc. Securities Litigation*, 126 F. Supp. 2d 1239, 1245 (N.D. Cal. 2000). *See Fulco v. Cont'l Cablevision, Inc*., 789 F. Supp. 45, 47 (D. Mass. 1992) ("[O]nce the court enters an order certifying a class, an attorney-client relationship arises between all members of the class and class counsel.") (quoting *Bower v. Bunker Hill Company*, 689 F. Supp. 1032, 1033 (E.D. Wash. 1985)); Joseph M. McLaughlin, 2 *McLaughlin on Class Actions* §1:11 (13th ed. 2016) ("The majority rule is that . . . absent class members are not represented parties prior to class certification and the expiration of any opt-out period."). Labaton Sucharow has identified no authority suggesting that where, as here, a class is certified for settlement purposes, a law firm like Labaton Suchrow suddenly becomes obligated to disclose a fee sharing arrangement pursuant to Mass. R. Prof. C. 1.5(e).[31] *See* Sarrouf Decl. ¶¶ 26-28.

Nor is there some inherent reason that this particular payment needed to be disclosed to

[31] It would be virtually impossible to comply with such a requirement. In this case, certification and conclusion of the opt-out period occurred when the case was essentially over. It would be illogical to force a firm like Labaton Sucharow at that point in time to disclose a fee agreement (as well as, presumably, conflicts that the client may have waived, or the host of other items required to be disclosed to a client), much less obtain written consent from each class member. Research has identified no authority suggesting that these kinds of disclosure obligations arise in connection with this type of settlement class certification.

ERISA class members. The payment to Chargois & Herron did not come from the $225 million of the settlement funds set aside to pay class members, or the $60 million earmarked for ERISA claims. Likewise, the amount paid to Chargois & Herron did not come from ERISA counsel's agreed-upon 9% share of the fees. It was a payment made by the three Customer Counsel firms from their shares of the fee award. The payment did not impact the ERISA class or ERISA counsel in any way. Therefore, no disclosure was required.

F. Labaton Sucharow Had No Obligation to Disclose Further Details Regarding Chargois & Herron To Customer Counsel.

Thornton and Lieff already possessed information as to all relevant points other than Labaton's imperfect disclosure of terms to ARTRS. More specifically, Lieff and Thornton knew about the relationship, knew the terms of the payment that was required under the agreement, and knew that it was on-going (i.e., not limited to the SST Litigation). Indeed, it was Garrett Bradley of Thornton who negotiated the application of the on-going fee sharing agreement to this case. Nonetheless, Labaton Sucharow recognizes with the benefit of hindsight that it would have been prudent for the Firm to share the information known by Belfi (although not others) concerning the imperfect disclosure to ARTRS as well as information regarding Chargois' actual role in the SST litigation, and the lack of written consent from ARTRS, with Thornton and Lieff because those firms were sharing the payment burden.

Representatives from the other firms have testified that they did not know that Chargois & Herron was performing no services on the SST Litigation — although they certainly knew that firm had not filed an appearance in the litigation and did not appear on any lodestar report. But, as explained above, the Massachusetts Rules of Professional Conduct did not require Chargois & Herron to perform services in order to share in the fees. Otherwise stated, fees such as referral and forwarding fees are perfectly permissible in Massachusetts.

Lieff and Thornton apparently did not know that the disclosure to ARTRS lacked precise details of the respective roles and payment amount, as well as the consent of George Hopkins, which placed the members of those two firms in the same boat as the members of Labaton Sucharow, other than Eric Belfi. The lack of fulsome disclosure and of written consent constituted violations, even if inadvertent, of a Massachusetts Rule of Professional Conduct. But, as discussed above, that violation is visited upon the individual attorney, not any of the three law firms. Hence, no sanction or disgorgement can be imposed upon any of the firms for Belfi's mistake; and Lieff and Thornton, like Labaton Sucharow, should therefore suffer no consequences.

G. There Was Nothing Improper About Paying Chargois & Herron from Labaton Sucharow's IOLA Account.

Finally, during depositions there were a number of questions asked about why the payment to Chargois & Herron was transmitted from Labaton Sucharow's Interest on Lawyer Account ("IOLA"), the New York version of what Massachusetts calls an Interest on Lawyers' Trust Account ("IOLTA"). The relevant New York authority provides the following:

- A lawyer "in possession of any funds or other property belonging to another person . . . must not . . . commingle such funds or property with his or her own." N. Y. R. Prof. C. 1.15(a).
- However, "[f]unds belonging in part to a client or third person and in part currently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved." *Id*., part (b).

- When third-party funds received by an attorney, "in the judgment of the attorney, are too small in amount or are reasonably expected to be held for too short a time to generate sufficient interest income to justify the expense of administering a segregated account for the benefit of the client or beneficial owner," such funds "shall be deposited in an IOLA account." N. Y. Judiciary Law §§ 497 (2) and (4)(a).

Here, consistent with these requirements, Labaton Sucharow arranged for one lump-sum transfer from the attorneys' fee escrow account to its IOLA that included (1) the portion of the fee award payable to Labaton Sucharow; (2) the portion of the fee award payable to Labaton Sucharow, Lieff Cabraser and Thornton that was going to be transmitted to Chargois & Herron; and (3) the service awards that belonged to named plaintiffs. Zeiss 2d Dep. 137:13-138:8; *id.* at 140:21-141:5; LBS041839-43; LBS041970-71. Thereafter, from its IOLA account, the Firm sent out the service awards, the Chargois & Herron payment, and transferred the portion of the fee award that the Firm would retain to a different Firm account. Zeiss 2d Dep. 137:13-138:8. Structuring the transfers in this manner was compliant with the applicable provisions of New York law cited above.

V. BEST PRACTICES

Labaton Sucharow previously identified a number of recommended "best practices" aimed at preventing errors like those that prompted the referral to the Special Master. *See* Consolidated Response by Labaton Sucharow LLP, Lieff Cabraser Heimann & Bernstein LLP, and Thornton Law Firm LLP to Special Master's July 5, 2017 Request for Supplemental Submission at 20-24. The Special Master has now asked that the Firm propose best practices in connection with Chargois & Herron fee sharing arrangement in this case.

As explained above, the fee sharing relationship was proper, *except* for the failure to disclose the specific relationship and fee division and to obtain the client's written consent. Identifying specific best practices is a challenge because every attorney should always be conducting him or herself in compliance with the applicable Rules of Professional Conduct, without verification by others. Nevertheless, Labaton Sucharow suggests the following best practices, which it has already begun to implement, for avoiding situations of this nature:

- Training should be undertaken for all partners, even at senior levels, regarding client disclosure and consent requirements. The Firm retained Hal R. Lieberman, a partner at Emery Celli Brinckerhoff and Abady LLP in New York and one of the top legal ethics lawyers in New York, to provide such training and to review the Firm's compliance with all ethical guidelines in its current cases. (Mr. Lieberman's biography is attached as Exhibit A.) Mr. Lieberman conducted ethics training at the Firm on October 10, 2017 to all partners and attorneys involved in business or client development. In addition, the Firm has revised all of its current cases[32] in which it has co-counsel and/or referral arrangements and, with the assistance of Mr. Lieberman, has brought all such arrangements into compliance with applicable ethics requirements.
- Approval should be required by an internal or external ethics counsel of each engagement letter, and no litigation could be undertaken without a signed approved letter. The ethics counsel would ensure, among such other items as s/he deemed appropriate, that the Firm had determined which state(s)' rules of professional conduct applied, and that the letter was tailored to those rules.

[32] The one exception is the Chargois & Herron relationship, which the Firm intends to address separately.

- An in-depth review should be undertaken of all existing on-going and one-off fee splitting agreements with other firms/attorneys to ensure that such agreements are in full compliance with the rules of professional conduct in the applicable state(s). Where non-compliance is identified, the agreements should be modified promptly to bring them into compliance. If the other firm/attorney refuses to agree to the required modification, the agreement should be promptly terminated as contrary to public policy.
- In firms that employ a "silo" model to allow specialists to effectuate each very specific phase of a litigation, from client intake to settlement documentation, a single individual should be assigned on each litigation team as the case "czar," and that attorney would be personally responsible for ensuring continuity and providing oversight at every phase of the process. Such individual case "czars" should receive training in the legal and ethical requirements attendant upon each phase and should report annually and at the conclusion of the litigation to the Firm Committee regarding the performance of the team in each phase.

Finally, to the extent that courts wish to be informed, in the context of fee petitions, about any referral relationship or fee sharing agreement that may result in another attorney receiving a portion of a fee, Labaton Sucharow respectfully suggests that those courts should issue a standing order that sets forth precisely what they require. Clear guidance about what the court does and does not want to receive in connection with a fee petition should help minimize confusion or questions regarding these issues going forward.

VI. CONCLUSION

For all of the foregoing reasons, Labaton Sucharow respectfully suggests that the Special Master conclude that the payment to Chargois & Herron was not improper and, although the disclosure to ARTRS was imperfect, there was no misconduct, no impact on the class or other counsel, and thus no basis for a sanction or disgorgement regarding the shared fee.

Dated: November 3, 2017

Respectfully submitted,

By: */s/ Joan A. Lukey*

Joan A. Lukey
Justin J. Wolosz
Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110

Counsel for Labaton Sucharow LLP

EXHIBIT A

Hal R. Lieberman
hlieberman@ecbalaw.com
vCard

Hal Lieberman is the co-author of "New York Attorney Discipline," and the former Principal Trial Attorney and Chief Counsel for the Departmental Disciplinary Committee in New York's First Department. During the past 17 years, he has defended hundreds of lawyers and law firms before disciplinary and grievance committees in connection with lawyer discipline complaints, formal disciplinary prosecutions, reciprocal discipline proceedings, post-conviction disciplinary proceedings, reinstatements, and matters related to bar admissions before the several New York character and fitness committees. Mr. Lieberman is a regular columnist for the *New York Law Journal* on the subject of Professional Discipline. He also publishes a blog, **NYLegalethics.attorney**.

In addition to attorney discipline defense, Mr. Lieberman has been a lecturer in law at Columbia Law School teaching legal ethics, has lectured widely, and published numerous articles on the subjects of legal ethics and professional discipline. He has testified as an expert in legal ethics in approximately 45 civil and criminal adjudications since 1998, including, among others, disqualification motions, legal malpractice cases, partnership disputes, fee disputes, and numerous issues involving interpretation and application of the Rules of Professional Conduct.

Mr. Lieberman joined Emery Celli Brinckerhoff & Abady LLP in 2014. He is the past partner-in-charge of the New York office of Hinshaw & Culbertson LLP, and was the subject of an exclusive interview in the March 23, 2011 issue of the *New York Law Journal*. The article, "Q&A with Hal R. Lieberman," focused on Mr. Lieberman's long and unique experience handling New York attorney disciplinary cases and legal ethics matters more generally, and his views on the state of New York's lawyer discipline system from the perspective of a former Chief Counsel to the Departmental Disciplinary Committee.

PUBLICATIONS:

"New York Attorney Discipline Practice and Procedure," book co-author, *New York Law Journal*, 2014 (updated for 2016).

"Fostering Efficiency in the Attorney Disciplinary Process," *New York Law Journal*, January 21, 2016.

"New 2016 Edition, New York Attorney Discipline Practice and Procedure," *New York Law Journal*, November 13, 2015.

"New York's Catch-All Rule: Is It Needed? Part 2," *New York Legal Ethics Reporter*, November 2, 2015.

"Report on Statewide Attorney Discipline: Uniformity and Fairness," *New York Law Journal*, October 23, 2015.

"New York's Catch-All Rule: Is It Needed? Part 1," *New York Legal Ethics Reporter*, October 1, 2015.

"Is New York's Disciplinary System Truly Broken?" *New York Law Journal*, July 16, 2014.

Attorney News

Ten ECBA Attorneys Named as Super Lawyers; One Named as Rising Star

Ten ECBA Attorneys Named as Super Lawyers; Two Named as Rising Stars

Hal Lieberman explains the New Attorney Discipline Rules

NYLJ Publishes Essay by ECBA Lawyers

Hal Lieberman on How to Improve Efficiency in the Attorney Disciplinary Process

Education

Harvard Law School, J.D., 1967
University of Chicago, A.B., *cum laude*, 1964

Admissions

U.S. Supreme Court

U.S. Court of Appeals for the First and Second Circuits

U.S. District Court for the Districts of Massachusetts, Eastern District of New York, Northern District of New York, Southern District of New York

New York

Massachusetts

State of Israel

"Should Disqualification Lead to Discipline?" *New York Law Journal*, April 4, 2014.

"How Do I Get Back My Law License?" *New York Law Journal*, November 29, 2013.

"Lawyers Who Commit Crimes: Disciplinary Consequences," *New York Law Journal*, August 22, 2013.

"Appellate Review of Disciplinary Decisions," *New York Law Journal*, May 29, 2013.

"Discipline for 'Private Conduct': Rationale and Recent Trends," *New York Law Journal*, Feb. 19, 2013.

"New York's Attorney Discipline System: Does It Meet 'Due Process' Requirements?" *New York Law Journal*, December 28, 2012.

"Attorney Discipline System: Does It Meet 'Due Process' Requirements?" *New York Law Journal*, August 31, 2012.

"The 'Galasso' Case and the Duty of Supervision," co-authored with Katie M. Lachter, New York Law Journal, May 30, 2012.

"New York's Attorney Discipline System: How Much 'Process' is 'Due'," *New York Law Journal*, April 4, 2012.

"New York's Lawyer Disciplinary System – Is it Fair?" Professional Responsibility column, *New York Law Journal*, March 1, 2010.

"Working Knowledge of Conflict of Interest Rules is Essential," *New York Law Journal*, September 2004.

"How to Avoid Common Ethics Problems," *New York Law Journal*, special supplement, October 28, 2002.

"Private Conduct and Professional Discipline," co-authored with Richard Supple, *New York Law Journal*, July 23, 2002.

"Six Clients in Search of a Lawyer: Or, Don't Take the Case," *The New York Professional Responsibility Report*, May 2002.

"Disqualification Denied Again: The Amazonas Case," *The New York Professional Responsibility Report*, July 2001.

"Prospective Client Perjury: A Lawyer's Dilemma," *The New York Professional Responsibility Report*, December 2000.

"Do Disbarred Lawyers Have Constitutional Rights?" *The New York Professional Responsibility Report*, October 2000.

"Be Aware of Ethical Witness Preparation Rules," *New York Law Journal*, May 25, 2000.

"Gidatex v. Campaniello, The Anti-Contact Rule and Subordinate Employees," *The New York Professional Responsibility Report*, January 2000.

"Lawyer Incivility Provokes Three-Month Suspension," *The New York Professional Responsibility Report*, July 1999.

"The Future of Attorney Discipline in New York's First Judicial Department," *The New York Professional Responsibility Report*, February 1999.

EX. 239

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 EMPLOYEES SAVINGS AND PROFIT SHARING PLAN, on behalf of itself and JAMES PEHOUSHEK-STRANGELAND, and all others similarly situated, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-11698 MLW

EXPERT DECLARATION OF CAMILLE F. SARROUF

I, Camille F. Sarrouf, Sr., Esq., hereby declare:

1. I am a senior partner at Sarrouf Law, LLP. I have been retained by Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") to provide several opinions relevant to the Special Master's inquiry regarding the payment in this litigation (the "SST Litigation") to Chargois & Herron LLP from the portion of the fee award allocated to Labaton Sucharow and two other law firms, Lieff Cabraser Heimann & Bernstein, LLP ("Lieff") and the Thornton Law Firm ("Thornton"). My opinions, which are discussed more fully below, can be summarized as follows:

- The Massachusetts Rules of Professional Conduct did not require that Chargois & Herron perform work on the SST Litigation in order to receive a portion of the fee award allocated to Labaton Sucharow, Lieff and Thornton (collectively, "Customer Counsel").
- Customer Counsel had no obligation to disclose to counsel who brought the ERISA cases ("ERISA Counsel") the fact that Chargois & Herron would receive a payment from the portion of the fee award allocated to Customer Counsel.
- Customer Counsel had no obligation to disclose to ERISA plaintiffs the fact that Chargois & Herron would receive a payment from the portion of the fee award allocated to Customer Counsel.
- Customer Counsel had no obligation to disclose to the Court the fact that Chargois & Herron would receive a payment from the portion of the award allocated to Customer Counsel.

Background And Qualifications[1]

2. I graduated from Bowdoin College in 1955, and earned my Juris Doctorate from the University of Texas in 1960. I served as Special Assistant Attorney General – Eminent Domain Division for the Commonwealth of Massachusetts from 1960-1961. I have been engaged in the private practice of law since that time, in a number of law firms. My professional areas of practice include personal injury, aviation law, products liability, medical and professional malpractice, general liability, contracts, securities, and commercial litigation. Although I have handled a wide variety of civil litigation over the course of my almost six decades in practice, the vast majority of my work has involved plaintiffs' contingency fee work.

3. Over the course of my career, I have served as Plaintiffs' counsel in many litigation matters that had multiple attorneys representing the same or different plaintiffs, and in many litigation matters in which there was a referral fee (sometimes called an origination fee or forwarding fee) or some other fee sharing arrangement. I thus have extensive, personal experience interacting and negotiating with other attorneys in connection with the allocation of attorneys' fees and attorneys' fee awards.

4. In addition to practicing law, I served as an Adjunct Professor of Law for the New England School of Law from 1974-1993, where I taught Trial Advocacy and Trial Preparation. In 1980 the school awarded me an Honorary Doctor of Laws degree.

5. I served as the President of the Massachusetts Bar Association from 1998-1999, Vice President in 1996, and Treasurer in 1995. I became a Fellow of the American College of Trial Lawyers ("ACTL") in 1983, and served as the State Chair for Massachusetts from 1991-

[1] My curriculum vitae is attached as Exhibit A.

1993, Regent for the Northeast Region from 1998-2002, and Trustee of the ACTL Foundation from 2007-2014. I was also selected as a Fellow of the International Academy of Trial Lawyers in 1999, and an Advocate for the American Board of Trial Advocates in 1989. I served as the President of the Massachusetts Academy of Trial Lawyers from 1986-1988, as a member of the Board of Governors of the Association of Trial Lawyers of America from 1982-1986, and I am a Fellow of the Massachusetts Bar Foundation, the American Bar Foundation, and the Roscoe Pound Foundation.

6. In 1999, I served as the Chair of the Magistrate Review Committee for the United States District Court for the District of Massachusetts. I served on the Massachusetts Commission on Judicial Conduct from 1990-1996, on the Recall Committee of the Massachusetts Supreme Judicial Court from 1986-1990, and on the Massachusetts Judicial Nominating Commission from 1980-1984.

7. I have been appointed a Discovery Master and Special Master by the Massachusetts Superior Court, and have served as Mediator and Arbitrator by agreement of counsel and at the request of the Massachusetts Superior Court. I have testified on issues of legal negligence and legal fees for Plaintiffs and Defendants in Massachusetts Superior Courts. *See, e.g., Zabin v. Picciotto*, 73 Mass. App. Ct. 141, 154 (2008) (discussing expert testimony presented at trial).

8. I have been retained in this case to provide the opinions concerning the issues set forth in the first paragraph, above. I am being compensated for providing this expert opinion on an hourly basis. My compensation is in no way contingent upon the content of my opinion.

Summary of Facts Relevant to Opinions

9. In analyzing these issues, I have discussed the case with the counsel who retained me, and reviewed certain documents produced in this case as well as the applicable law and secondary sources relevant to my opinions. I understand and assume the accuracy of the following background facts relevant to the opinions I offer.

10. In mid-2008, Arkansas Teacher Retirement System ("ARTRS") issued a Request for Qualifications ("RFQ") which invited firms to submit qualifications to become additional securities monitoring counsel for the retirement fund. Chargois & Herron partner Tim Herron had previously facilitated the introduction of Labaton Sucharow partners to certain officials in Arkansas who played a role with respect to ARTRS. Labaton Sucharow and Chargois & Herron submitted a joint response to the RFQ. Labaton Sucharow witnesses have testified that they expected that if selected, both firms would work on any litigation that may be filed on ARTRS's behalf. The plan was that Labaton Sucharow would serve as the monitoring counsel and lead counsel on any litigation matters, and Chargois & Herron, with its Arkansas connections and presence, would work with the client.

11. On October 13, 2008, ARTRS's Chief Counsel, Christa Clark, emailed Labaton Sucharow partner Eric Belfi and advised that ARTRS had selected Labaton Sucharow as monitoring counsel, but that ARTRS was "unable to process the state contract form" with Chargois & Herron also listed. I understand that Labaton Sucharow witnesses have testified that they believed, as a result of Ms. Clark's email and other communications with her, that the Firm was authorized to affiliate with Chargois & Herron on ARTRS matters.

12. Belfi, Labaton Sucharow partner Chris Keller and Damon Chargois agreed that Chargois & Herron would receive 20% of the gross attorney fees that Labaton Sucharow earns in

any case brought on behalf of ARTRS in which ARTRS is a named plaintiff and Labaton Sucharow is lead or co-lead plaintiffs' counsel, subject to certain exceptions. The parties exchanged emails and draft versions of a written agreement, but never signed a final contract.

13. On September 24, 2010 and February 8, 2011, Belfi sent engagement letters to George Hopkins relating to the SST Litigation. Both versions of the letter advised that the Firm may divide fees with, or allocate fees to, other attorneys, upon a percentage basis or based upon time spent in assisting in the matter, and that the division is the Firm's sole responsibility and will not increase fees payable by ARTRS.

14. In February 2011, the three Customer Counsel filed a putative class action against State Street Bank and Trust Company ("State Street") on behalf of ARTRS. (This case is commonly referred to as the "Customer" portion of the SST Litigation, which is why Labaton Sucharow, Lieff and Thornton are defined above as "Customer Counsel.") Labaton Sucharow informed Lieff and Thornton that it had a fee sharing obligation to Chargois & Herron. All three firms agreed to share the burden equally for that obligation. In June 2016, after a settlement agreement-in-principle had been reached, Garrett Bradley of Thornton negotiated an agreement with Damon Chargois that, rather than calculating the payment as 20% of Labaton Sucharow's portion of a fee award, Chargois & Herron would receive an amount equal to 5.5% of the total fee award, with the funds coming from the three Customer Counsel's respective shares.

15. In November 2012, the ARTRS case was consolidated for pretrial purposes with two cases filed on behalf of individuals and plans seeking to assert claims against State Street pursuant to the ERISA laws (referred to hereafter as putative "ERISA class members"). ERISA Counsel negotiated with Customer Counsel and in December 2013 reached an agreement that ERISA Counsel would receive 9% of any fee award, should one be entered at the conclusion of

the case. The 9% was based upon the estimated amount of losses allegedly suffered by putative ERISA class members when compared to putative class members in the customer portion of the litigation. In the end, Customer Counsel voluntarily increased ERISA Counsel's allocation to 10% and reduced their own to 90%. As explained above, the payment to Chargois & Herron came from Customer Counsel's 90% share of the overall fee award, not from ERISA Counsel's 10% share.

16. The Customer Counsel firms did not advise ERISA Counsel of the payment to Chargois & Herron. Labaton Sucharow witnesses have testified that they did not believe the payment needed to be shared with ERISA Counsel, because it would be paid out of Customer Counsel's share of any fee award and therefore did not impact the amount that the class or ERISA Counsel received.

17. The Customer Counsel firms did not disclose the Chargois & Herron relationship to the Court in connection with the fee petition or otherwise. The Court did not inquire as to the allocation of fees among any counsel.

18. Upon approval of the settlement, the Court approved the fee award that plaintiffs' counsel had jointly requested. Thereafter, each of the three main ERISA firms received 1/3 of the 10% of the attorneys' fee award that was allocated for ERISA Counsel. I understand that these three firms, in turn, paid portions of their shares to other firms with which they had fee-sharing agreements.

Opinions

I. The Massachusetts Rules of Professional Conduct did not require that Chargois & Herron perform work on the SST Litigation in order to receive a portion of the fee award allocated to Customer Counsel.

19. Massachusetts Rule of Professional Conduct 1.5(e), which governs all forms of fee sharing in connection with matters subject to the Massachusetts Rules of Professional Conduct, does not require a referring or originating attorney to work on a matter in order to share the fee.

20. Over the years, there have been a number of proposals to change Massachusetts Rule of Professional Conduct 1.5(e) and impose additional requirements, including (for example) a requirement that attorneys sharing a fee must be paid "in proportion" to work they have performed or must jointly represent the client. After hearing objections from members of the bar, including myself, the Supreme Judicial Court has consistently declined to impose these additional requirements.

21. As a result, in Massachusetts, attorneys routinely are paid referral fees or origination fees for work that another attorney performs. In my view, these arrangements benefit clients because they encourage attorneys to pass work along to attorneys who are better suited to handle the representation.

II. Customer Counsel had no obligation to disclose to ERISA Counsel the fact that Chargois & Herron would receive a payment from the portion of the fee award allocated to Customer Counsel.

22. I understand that the plaintiffs' attorneys agreed in 2013, after the ARTRS case was consolidated for pretrial purposes with the two ERISA cases, that (i) Customer Counsel would receive 91% of any fee award generated in the litigation; and (ii) ERISA Counsel would receive 9% of any fee award. I understand that this distribution was based, at least in part, on

relative losses to putative class members as the attorneys understood them to be at that time. I further understand that when the case settled, the Customer Counsel voluntarily agreed to increase the share to the ERISA Counsel to 10%.

23. I do not believe in these circumstances that Customer Counsel had an obligation to inform ERISA Counsel about the existence of the fee sharing arrangement with Chargois & Herron. The split of 91% and 9% appears to have resulted from arms' length negotiations among plaintiffs' counsel. The fact that Labaton Sucharow had an obligation to pay a share of its allocation to a third party, Chargois & Herron, or the fact that Lieff and Thornton agreed to contribute from their allocations toward that amount, would not impact the 9% (or ultimately the 10%) that ERISA Counsel received pursuant to the agreement that they negotiated.

24. In my experience, it is common for plaintiffs' attorneys to have referral or origination obligations to other lawyers. Where, as here, the existence of such an obligation did not impact the amount paid to ERISA Counsel, I am aware of no explicit or implicit rule that would require Customer Counsel to share with ERISA Counsel the existence of the obligations. In my experience, plaintiffs' attorneys do not typically disclose these obligations to each other in circumstances such as this.

25. I understand that certain of the ERISA Counsel have said during depositions that if they knew about the payment to Chargois & Herron, they would have, or may have, declined to join Customer Counsel in submitting a common fee petition, or attempted to renegotiate their agreement with Customer Counsel. This testimony does not change my opinion. Regardless of what they now say, I do not believe that ERISA Counsel were entitled to know about the payment to Chargois & Herron, nor do I believe that Customer Counsel were required to inform them of the payment.

III. Customer Counsel had no obligation to disclose to ERISA plaintiffs the fact that Chargois & Herron would receive a payment from the portion of the fee award allocated to Customer Counsel.

26. I understand that at all times in this litigation, ERISA Counsel represented and advocated on behalf of their clients, the named ERISA plaintiffs, as well as the putative ERISA class members. I understand that Labaton Sucharow did not have an engagement letter with the named ERISA plaintiffs and Labaton Sucharow attorneys handling the SST Litigation did not consider themselves to have an attorney-client relationship with those plaintiffs or the putative ERISA class members prior to the certification of a class at settlement.

27. Labaton Sucharow attorneys had an obligation to disclose the fee sharing agreement with Chargois & Herron to the Firm's client, Arkansas Teacher Retirement System, pursuant to Massachusetts Rule of Professional Conduct 1.5(e). I do not believe that Labaton Sucharow had an obligation to make a similar disclosure to the ERISA plaintiffs or the putative ERISA class members.

28. I understand that a class was certified by the Court at the conclusion of the case when the settlement was accepted, and that Labaton Sucharow was designated as "lead counsel" (which in my experience is primarily done for the convenience of the Court, to bring order to the litigation). Nevertheless, I do not believe that Rule 1.5(e) required disclosure to or approval in writing from the ERISA plaintiffs or the entire settlement class. In my experience and in my view, in class actions such as this, Massachusetts Rule of Professional Conduct 1.5(e) does not require an attorney to make a disclosure to an entire class. Based on my understanding of the facts and the applicable rules, I believe that Labaton Sucharow's disclosure and consent requirements under Rule 1.5(e) only required disclosure to, and consent from, its immediate client, the Arkansas Teacher Retirement System. In addition, in this case there were separate

lawsuits—the ERISA lawsuit (which was actually two separate cases) and the Customer lawsuit—which were consolidated for pre-trial matters. Labaton Sucharow was not counsel in the ERISA lawsuit, which removes them one more step from a traditional attorney-client relationship.

IV. Customer Counsel had no obligation to disclose to the Court the fact that Chargois & Herron would receive a payment from the portion of the award allocated to Customer Counsel.

29. Fed. R. Civ. P. 54(d)(2)(B)(iv) provides that fee arrangements must be disclosed to the court only if ordered. To my knowledge, there is no local rule, standing order, or order in this case that required the parties to disclose fee arrangements to the Court. Accordingly, Customer Counsel were not obligated to disclose to the Court the payment to Chargois & Herron. The fact that Chargois & Herron did not perform work on this litigation does not impact this opinion because, as set forth in my first opinion above, Massachusetts law does not require counsel to work on a matter in order to receive a share of the fee.

30. I understand that there has been some question about whether the fee sharing arrangement should nevertheless have been disclosed even in the absence of a requirement, under a general theory of "candor to the tribunal." I do not believe such disclosure was required, particularly where (as here) the payment of a portion of the fee to Chargois & Herron did not affect what the clients or class members received. The rule cited above sets forth what information must be provided in a fee petition, and judges are free to ask for more information or ask follow-up questions if they wish to know details that the drafters of the rule chose not to require. In my view, a general principle like candor to the tribunal is not sufficiently specific to overcome the application of Fed. R. Civ. P. 54(d)(2)(B)(iv), which so clearly governs in this type of situation.

31. My opinion is consistent with my experience. Referral fees, or origination fees, are very common in connection with plaintiffs-side litigation work. If the payment does not impact the total amount of a fee paid or awarded (which I understand to have been the case here), and if the court does not request this detail, in my experience referral or origination fee arrangements are not normally disclosed to the court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 31st day of October, 2017 in Boston, Massachusetts.

/s/ Camille F. Sarrouf, Sr.
Camille F. Sarrouf, Sr.

8339975

EXHIBIT A

CAMILLE F. SARROUF

Sarrouf Law, LLP
115 Broad Street, 4th Floor
Boston, MA 02110
TEL: (617) 227-5800
FAX: (617) 227-5470

PERSONAL:

Date Of Birth: April 23, 1933
North Adams, Massachusetts

Residence:
Belmont, MA 02478

EDUCATION: University of Texas (J.D., 1960)
Bowdoin College (A.B., 1955)
Wilbraham & Monson Academy (1951)
Drury High School, North Adams (1950)
St. Joseph Grammar School, North Adams (1946)

MILITARY: ROTC Bowdoin College (1951-1955)
Active Duty AA Surface to Air Missile, (1955-1957)
Executor Officer, Field Artillery Battery T/O Division (1957-1960)

PROFESSIONAL:

Private Practice Of Law:
Sarrouf Law, LLP Senior Partner

Admitted To Practice:
State of Texas - 1960
Commonwealth Of Massachusetts/1961
Federal District Courts: Vermont/1961; Massachusetts/1962
Supreme Court of the United States/1980

Special Assistant Attorney General — Eminent Domain Division
Commonwealth of Massachusetts
1961-1962

Special Assistant District Attorney
Middlesex County; Commonwealth of Massachusetts/1975

Adjunct Professor of Law 1974-1993
New England School of Law
(Trial Advocacy and Trial Preparation)

Professional Areas of Practice:
Personal Injury; Aviation Law; Products Liability; Medical and Professional Malpractice; General Liability; Contracts; Securities; and Commercial Litigation.

BAR ASSOCIATION MEMBERSHIPS:

Massachusetts Bar Association
President, 1998-1999 President-Elect, 1997 Vice President, 1996
Treasurer, 1995

American College of Trial Lawyers
Trustee ACTL Foundation, 2007-2014
Regent for Northeast Region, 1998-2002
State Chair for Massachusetts, 1991-1993
Fellow, 1983

Fellow, International Academy of Trial Lawyers, 1999
Advocate, American Board of Trial Advocates, 1989
President, Massachusetts Academy of Trial Lawyers, 1986-1988
Member, Board of Governors, Association of Trial Lawyers of America, 1982-1986
Fellow, Massachusetts Bar Foundation
Fellow, American Bar Foundation
Fellow, The Roscoe Pound Foundation

CIVIC AND CHARITABLE:

Chairman, Board of Governors
St. Jude Children's Research Hospital, 1994-1998, 2008-2009
Chairman/Board of Directors, American Lebanese Syrian Associated Charities, Inc., 1988-1990, 1991-1992
St. Jude Children's Research Hospital/ALSAC, Board of Governors & Directors, 1984-2015
Memphis, Tennessee
Chairman, Board of Trustees
St. Jude Graduate School of Biomedical Sciences, 2016 -

National Director
Kahill Gibran Foundation, 1990-1994

General Counsel Pro Bono
Diocese of Newton for the Melkite Catholics of the
United States, 1966—

JUDICIAL APPOINTMENTS:

Chair/Magistrate - Review Committee
U.S. District Court - District of Massachusetts, 1999

Member, Massachusetts Commission on Judicial Conduct, 1990-1996
Member, Recall Committee, Massachusetts Supreme Judicial Court, 1986-1990
Member, Massachusetts Judicial Nominating Commission, 1980-1984

Appointed Discovery Master & Special Master by the Superior Court

LEGAL EXPERT EXPERIENCE:

Have testified on issues of legal negligence and legal fees for Plaintiff and Defendant in Mass. Superior Courts for Suffolk & Middlesex County.

Have served as Mediator and Arbitrator by Agreement of Counsel and at request of the Superior Court.

HONORS:

Honorary Doctor of Laws
New England School of Law, June 1980
(Cited: "For bringing to the classroom the excitement of the courtroom")

Endowment Honoree - Camille F. Sarrouf Scholarship
Social Law Library of Massachusetts
November - 1990

Distinguished Service Award
Nicholas G. Beram Veterans Association
November 18, 1990
(Cited: For humane work, devotion and unique service to
the people of our community in promoting the spirit of brotherhood)

American ORT Jurisprudence Award - 1994
(Cited: For his public spiritedness, community achievement and deep concern
for human life)

Wilbraham & Monson Academy
Distinguished Alumni Award, 1996

Ellis Island Medal of Honor Recipient - 2001
(Cited: For his dedication, preservation and enhancement of American values and extraordinary service to his heritage and to humanity)

Massachusetts Academy of Trial Lawyers
Lifetime Achievement Award, 2008
(Cited: For his vast contributions to the legal community, his belief and constant support of the Academy and his incredible generosity of spirit)

Papal insigne- Awarded Gold Medal
Pro Ecclesia at Pontifice
By Pope Paul VI, 1975
(Cited: For his pro-bono efforts in the transfer of properties from the Latin Ordinaries to the newly established Melkite Catholic Diocese)

Cross of Jerusalem
Patriach Maximos V Hakim - 1983
(Cited for providing legal counsel for more than twenty years, seeking neither compensation nor recognition)

EX. 241

Expert Report, March 26, 2018
Professor Peter A. Joy

I. QUALIFICATIONS AND DISCLOSURES

I was retained by Labaton Sucharow ("Labaton") to prepare a legal ethics report and to render my independent expert opinion on certain questions. I agreed to an hourly rate of $400 for time in a non-testimonial context and an hourly rate of $500 for time in a testimonial context, which includes time spent testifying and/or waiting to testify at hearings, depositions, trials or any dispute resolution processes. The following describes my qualifications to offer my opinions in this matter, and a current CV is attached to this Report [Exhibit 1] and incorporated herein.

I am an attorney at law admitted to practice and on active status and in good standing in the State of Missouri (1998), the State of Ohio (1977), and I was admitted to practice in the District of Columbia (1979), where I am in good standing but on inactive status. I have also been admitted to practice before the U.S. Supreme Court (1995), the Sixth Circuit Court of Appeals (1983), the Third Circuit Court of Appeals (1984), the Fifth Circuit Court of Appeals (1999), the Eighth Circuit Court of Appeals (1999), and the District Court for the Northern District of Ohio. I have had a Martindale-Hubbell AV rating since 1980.

I am the Henry Hitchcock Professor of Law at Washington University in St. Louis School of Law, where I have taught since 1998. I previously taught at Case Western Reserve School of Law from 1978-1980, and 1981-1998. I have also had visiting professor positions at other universities in the United States and other countries.

My major areas of teaching are legal ethics, clinical teaching, and trial practice and procedure. My primary area of research and scholarship is legal ethics, though I also write about legal education and less about trial practice and procedure. I teach legal ethics both in classroom setting and in an applied setting through clinical courses. I am a co-author of *Professional Responsibility: A Contemporary Approach* (3d ed. West 2017), and co-author of the second and

third editions of the teaching manual for that textbook. I have published another book, several book chapters, and numerous articles on issues of legal ethics, and the articles have appeared in law reviews, American Bar Association (ABA) publications, and state and local bar association publications. I am a columnist (previously contributing-editor) for an ethics column for the ABA publication *Criminal Justice*. My legal ethics scholarship has been cited widely, including by: United States House of Representatives, Committee on the Judiciary, Committee Report, Lawsuit Abuse Reduction Act of 2011, 112-174 (resubmitted in 2013, 2015, and 2017); *ABA/BNA Lawyers' Manual on Professional Conduct*; *Annotated Model Rules of Professional Conduct*; ABA Standing Committee on Ethics and Professional Development; Association of the Bar of the City of New York Committee on Professional and Judicial Ethics; Supreme Court of Ohio Board of Professional Conduct; and various state and federal court decisions. I am frequently quoted by news media on a variety of legal ethics issues, including several quotes in the *ABA Journal*.

I am a member of the American Bar Association, ABA Center for Professional Responsibility, Missouri Bar Association, and a former member of the Ohio Bar Association, Cleveland Bar Association, and Cuyahoga County Bar Association. I was a Special Investigator for the Ohio Supreme Court Board of Commissioners on Character and Fitness (1990-91), and I served on the following bar committees: Cleveland Bar Association Ethics Committee (1987-98) and Advertising Committee (1989-90); Cuyahoga County Bar Association Ethics Committee (1989-90, 1991-98, Vice-Chair, 1997-98), Judicial Selection/Standards Committee (1994-98), and Lawyer Referral Service Committee (1996); and the Joint Cleveland-Cuyahoga County Bar Admissions Committee (1987-92). I am also a former member of the executive committee and a former chair of the Association of American Law Schools' Professional Responsibility Section.

I am a frequent presenter in the area of legal ethics for continuing legal education (CLE) courses sponsored by federal and state courts, bar associations, law firms, and law schools. Sponsoring organizations include: the ABA; the ABA Center for Professional Responsibility; the Federal Judicial Center; and the Federal District Court for the Eastern District of Missouri.

I have been retained as a consulting expert for legal ethics issues in more than a dozen different states, and those issues have included fee sharing, advertising, of counsel arrangements, conflicts of interest, confidentiality and attorney-client privilege, and other legal ethics issues. I have been retained as a testimonial expert witness in Ohio, Missouri, Kansas, Illinois, and New York on issues of legal malpractice, professional discipline for alleged ethics violations, and other legal ethics issues, though not all matters required my testimony in court. I have testified as an expert in state courts in Ohio and Missouri, and in Federal District Courts for the Northern District of Ohio and the District of Kansas.

In the past five years, I have testified in a hearing in *United States v. Lorenzo Black*, Case No. 16-CR-20032, United States District Court for the District of Kansas. I testified pro bono in that hearing on behalf of the Federal Public Defender for the District of Kansas.

II. FACTUAL ASSUMPTIONS

For the purposes of rendering this report and my opinions, I have assumed the following facts provided to me by Choate Hall & Stewart LLP, counsel for Labaton. I addition, I have reviewed certain documents and items referenced in the factual assumptions.

Labaton is a plaintiffs' law firm that focuses on large-scale and complex class action litigation, which often involves securities matters. In the context of its securities work, Labaton frequently acts as "monitoring counsel" for its clients. In that role, Labaton monitors the client's portfolio of securities investments for signs of possible securities law violations, such as a drop

in stock price. *See, e.g.*, Portfolio Monitoring and Case Evaluation[1]; LBS017739-41. In doing so, Labaton uses sophisticated in-house investigators and analysts to monitor the securities market. Keller Dep. Day 1 35:2-14. If Labaton believes a client's portfolio may have been involved in a securities violation that could lead to a viable case, Labaton may ask the client whether it would be interested in serving as lead plaintiff in a class action case. Portfolio Monitoring and Case Evaluation; LBS017739-41. If the client agrees, Labaton may represent the client in the litigation. *Id.*; *see also* Sucharow 2d Dep. 115:13-116:15.

Because of its complex role as monitoring counsel, it "takes a while for people to … understand [Labaton's work] to the point where it can be useful to them." Keller Dep. Day 1 24:20-23. Thus, Labaton relies on informational presentations that explain Labaton's work to potential clients, such as institutional investors. Keller Dep. Day 1 21:8-18, 24:10-27:10. These presentations are often the first step in Labaton's retention by a potential client. From there, Labaton typically participates in a submission process before being selected to represent an institutional investor. Keller Dep. Day 1 37:19-38:10.

A. <u>Labaton's Relationship with Damon Chargois</u>

Chargois & Herron was a law firm based in Little Rock, Arkansas. Labaton's relationship with Chargois & Herron originated through Labaton partner, Eric Belfi. Belfi met Damon Chargois, a partner at Chargois & Herron, in approximately 2004, when Belfi worked at a different law firm and came into contact with Chargois during a litigation matter pending in the Southern District of New York. *See* Labaton Sucharow LLP's Response to Special Master

[1] *Available at* http://www.labaton.com/en/practiceareas/Institutional-Investor-Protection-Services.cfm (last visited March 9, 2018).

Honorable Gerald E. Rosen's (Ret.) Supplemental Interrogatories to Labaton Sucharow LLP ("Response to Supplemental Interrogatories") at 4; Belfi 2d Dep. 12:21-13:4.[2]

Belfi joined Labaton Sucharow in 2006. He focused on building and maintaining client relationships for Labaton. Belfi Dep. 9:7-23. Early in Belfi's tenure at Labaton, he was approached by Chargois, who told him that he had "some opportunities" to introduce Labaton to "pension plans in the Texas, Arkansas, Oklahoma region." Belfi 2d Dep at 13:10-13. Belfi "asked him to proceed." *Id.* By mid-2007, Chargois was focused on introducing Labaton to the Arkansas Teachers Retirement System ("ARTRS"), along with other entities that may have been interested in Labaton's services. Keller Dep. Day 1 156:6-13; LBS031465. In addition, beginning in spring of 2007, Chargois served as local counsel for Labaton on a class action case pending in Texas. Keller Dep. Day 1 146:8-149; LBS017411. In that role, Chargois participated in mediation and performed other legal work. Chargois Dep. 17:7-18:22; 121:4-22:12; Keller Dep. Day 1 175:20-176:11; LBS031585.

B. Labaton's Early Contact with ARTRS

Tim Herron, Chargois' partner in his Little Rock office, knew Steve Farris, an Arkansas state senator who served in an oversight role with respect to ARTRS. *See* LBS040318; LBS017432; Chargois Dep. 33:16-21; Hopkins 2d Dep. 35:6-36:8 (explaining that Farris served on the Arkansas legislature's Joint Committee on Public Retirement and Social Security Programs); Ark. Code Ann. §§ 10-3-701 and 10-3-703 (2017) (assigning oversight responsibilities to the joint committee).

Herron arranged for Belfi and his Labaton partner Chris Keller to meet with Senator Farris in August of 2007. Keller viewed this initial meeting as educational in nature and

[2] Chargois apparently did not recall this meeting during his deposition, because he testified that he first met Belfi through a friend, when Belfi was already working at Labaton. Chargois Dep. 16:8-23.

designed to explain Labaton's work as monitoring counsel to Senator Farris. Keller Dep. Day 1 20:3-21:18. In connection with that meeting, Chargois informed Belfi and Keller that they would need to "impress[] the Senator with [their] firm credentials" in order to have a chance to retain ARTRS as a client. Keller Dep. Day 1 157:6-159:9; LBS017432. Apparently, Chargois remarked after the meeting that Belfi and Keller "did well" and "represent[ed] the firm very well" in the meeting with Senator Farris. LBS040322; LBS017438; Keller Dep. Day 1 20:3-10. Chargois later stated that he and Herron felt "very optimistic about Labaton firm's doing a lot of good things in Arkansas. This is thanks to [Belfi and Keller] representing the firm very well" to Farris. LBS017437.[3]

After this initial meeting, Senator Farris and/or Herron introduced Belfi and Keller to Paul Doane, the Executive Director of ARTRS at the time. Belfi 2d Dep. 38:10-15. In September or October 2007, Doane visited Labaton's offices in New York City while he was in the area on other business. Belfi 2d Dep. 38:2-6, 41:11-13. Belfi was traveling at the time, so Doane met with Keller during that trip. Keller Dep. Day 1 33:10-34:18; LBS040524-A. Keller introduced Doane to members of the firm and showed him the office. Keller Dep. Day 1 35:2-23. Doane expressed interest in Labaton after the meeting but explained that retention of Labaton would require further review by ARTRS and a request for proposals. LBS040524-A; Keller Dep. Day 1 180:7-21.

According to Chargois, during the fall of 2007 Senator Farris maintained contact with Doane regarding the possibility that Labaton would represent ARTRS as monitoring counsel.

[3]The testimony regarding this initial meeting is somewhat inconsistent. Chargois testified that, at Senator Farris' suggestion, he placed a "cold" telephone call to ARTRS director Paul Doane. Chargois Dep. 33:12-35:7. During this conversation, Chargois explained that Chargois & Herron was a local firm working with a New York firm specializing in representing institutional investors. *Id.* As a result, according to Chargois, Doane met with Eric Belfi and possibly Chris Keller in Little Rock. Chargois Dep. 35:8-36:20. However, while Keller testified that he met Senator Farris in Little Rock, he does not believe that Doane was present. Keller Dep. Day 1 32:12-33:23.

LBS017442.[4] Chargois and Tim Herron continued to relay information regarding Senator Farris' contact with ARTRS and other funds that could potentially be interested in Labaton's services. LBS017450; Keller Dep. Day 1 193:2-196:2. Similarly, in spring of 2008, Herron communicated information regarding Senator Farris' contact with Doane and the possibility that ARTRS would retain Labaton. LBS017451; LBS017453; Keller Dep. Day 1 218:18-224:16.

C. ARTRS' Retention of Labaton

In mid-2008, ARTRS issued a Request for Qualifications ("RFQ") which invited firms to submit qualifications to become additional monitoring counsel to the fund. Labaton and Chargois & Herron submitted a joint RFQ response on July 30, 2008. LBS017738-55; LBS017756-67. Labaton contemplated that, if selected as panel monitoring counsel, both firms would work on the litigation, if any, filed on ARTRS's behalf. Belfi 2d Dep. 18:14-19; Keller Dep. Day 1 47:24-49:3. Labaton would serve as the lead counsel, and Chargois & Herron would work with ARTRS in Little Rock. Belfi 2d Dep. 26:15-27:15; Keller Dep. Day 1 44:8-46:21.

On October 13, 2008, ARTRS's Chief Counsel, Christa Clark, emailed Belfi and informed him that "ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system." LBS017456. Clark further stated:

> I would like to speak with you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.
>
> If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or utilize them as independent contractors, if you deem is appropriate [*sic*], on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conductive to a joint proposal.

[4] Concurrently, Chargois purportedly continued to seek introductions for Labaton with other entities. *E.g.*, LBS031472 ("Damon is really moving on all of the fronts.").

Id. [5]

After receiving this email, Belfi had a telephone conversation with Clark. Belfi 2d Dep. 114:2-22, 117:20-118:10. Belfi explained to Clark that Labaton "would be working with Chargois & Herron" and that Chargois & Herron "were going to be involved in the relationship." Belfi 2d Dep 117:20-118:10.

In October 2008, very shortly after ARTRS selected Labaton as monitoring counsel, Doane departed as ARTRS's executive director. *See* Arkansas Times, "Doane to depart," Oct. 28, 2008.[6] The new Executive Director, George Hopkins, began in or about December 2008. Hopkins Dep. 10:17-21. Meanwhile, Clark – ARTRS' Chief Counsel – remained in her position at ARTRS until approximately October 2009. *See* Arkansas Democrat-Gazette, "Faulted on Contracts, Teacher-System Lawyer Quits," October 22, 2009.[7]

Unlike Doane, Hopkins did not know Tim Herron or the Chargois & Herron firm. Hopkins 2d Dep. 21:5-10. A few months after Hopkins began at ARTRS, Belfi and then-managing partner Lawrence Sucharow met with him in Little Rock. Belfi 2d Dep. 27:18-21. Because Belfi got along well with Hopkins, and because Hopkins desired a direct relationship without intermediaries, Belfi became Hopkins' primary contact with regard to Labaton's monitoring relationship. Belfi 2d Dep. 27:21-28:7, 56:22-57:10; Hopkins 2d Dep. 60:8-62:16.

[5] Given the nature of the relationship, discussed below, the payment to Chargois & Herron was never an "expense of a case." Keller Dep. Day 2 302:24-304:8. Except where they appeared as counsel in Court, Chargois & Herron only received a portion of Labaton's attorneys' fees, which themselves were awarded on a percentage basis that were unrelated to "expenses."

[6] *Available at* https://www.arktimes.com/ArkansasBlog/archives/2008/10/23/doane-to-depart (last visited March 9, 2018).

[7] *Available at* https://www.pressreader.com/usa/arkansas-democrat-gazette/20091022/283927403838722 (last visited March 9, 2018).

Thus, Chargois & Herron were uninvolved with ARTRS as Belfi's relationship with Hopkins developed. Belfi 2d Dep. 57:5-19

On September 24, 2010, Belfi sent Hopkins a draft retention letter for the State Street matter, which contained the following provision:

> Arkansas Teacher agrees that Labaton may divide fees with other attorneys for serving as local counsel, as referral fees, or for other services performed in connection with the litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting the prosecution of an action. The division of fees with other counsel is Labaton's sole responsibility and will not increase the fees payable upon a successful resolution of the litigation.

LBS019948-50. On February 8, 2011, Belfi sent a slightly revised, final retention letter to Hopkins with a modified first sentence to the quoted paragraph: "Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation." LBS011061. Throughout this case, Chargois & Herron's portion of the State Street fee has been referred to by witnesses and in documents as, among other things, a "referral fee," a "local counsel" fee, and a "liaison fee."

During Labaton's representation of ARTRS, Belfi spoke with Hopkins about "how fees worked." Belfi 2d Dep. 23:17-23. According to Belfi, Hopkins said that "he only wanted to deal with [Labaton] and wasn't concerned about how [Labaton] would cut fees up if [they were] working with other firms." *Id*. Hopkins was only interested in the aggregate attorney fee amount, rather than allocations of that aggregate fee among various firms. *Id.* at 23:24-24:5. According to Belfi, Hopkins "was not concerned with who [Labaton was] splitting fees with." *Id.* at 120:11-22. Belfi believed that Hopkins "didn't want to deal with" allocations of fees between lawyers. *Id.* Hopkins' testimony supports this belief. Hopkins 2d Dep. 68:23-69:3 ("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."); *id.* at 73:11-19 ("I don't feel misled because I made it real clear to them that I didn't want to be the gatekeeper on all this attorney relationship. And I think if they thought 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."); *see also id.* at 74:10-75:8.

D. Labaton's Agreement with Chargois

Early in the relationship between Labaton and Chargois & Herron, Belfi, Keller, and Damon Chargois discussed the terms of an agreement between the two firms. The crux of the agreement was that when Chargois & Herron facilitated the introduction between Labaton and a client, Chargois & Herron would receive up to 20% of the gross attorney fees Labaton earned representing that client, if the client was a named plaintiff and Labaton was appointed lead or co-lead counsel. *See, e.g.*, LBS031185; Keller Dep. Day 1 42:15-46:14; Chargois Dep. 50:11-52:24, 162:19-164:2. Initially, the understanding was that Chargois would play a local counsel role relative to the entities with which he facilitated introductions, and that he would be active assisting in litigating Labaton's cases if needed. *See* Belfi 2d Dep. 26:15-23, 27:11-15; Keller Dep. Day 1 44:8-46:21.

Labaton's agreement with Chargois was never reduced to a formal written contract. However, as Labaton's relationship with ARTRS developed, Chargois and Labaton began to formalize their agreement. In February 2009, Chargois indicated that he expected a relatively informal arrangement, but expressed the terms as he understood them in a written email. LBS030990. Roughly one week later, Chargois inquired whether a written "letter agreement" would be necessary. LBS030993; Keller Dep. Day 1 255:16-257:4. Chargois and Keller discussed via email the terms of the potential contract. LBS031492; Keller Dep. Day 1 258:8-

19. In April 2009, Chargois sent a draft letter agreement to Belfi and Keller seeking to memorialize the previous discussions in writing. LBS030985-87. Keller edited the document and sent a return draft that, among other things, inserted an arbitration clause. LBS031192-95. While a written agreement was never finalized (Response to Supplemental Interrogatories at 8), Chargois at least viewed it as enforceable. LBS031137; Belfi 2d Dep. 58:1-22. As time passed, Labaton and Chargois maintained the basic referral arrangement of an 80/20 fee split, if ARTRS became a named plaintiff and Labaton was appointed lead or co-lead counsel.[8]

Because ARTRS was the only named plaintiff in Civil Action No. 11-cv-10230 MLW, i.e., the action on behalf of the putative class of customers of State Street,[9] the three Customer Class Law Firms (Labaton, Lieff Cabraser, and the Thornton Law Firm) agreed in 2013 that they would share in paying the allocation to Chargois & Herron from their own fee awards. LBS027776. Garrett Bradley of the Thornton firm handled the discussions with Lieff Cabraser and Chargois regarding this point. *Id.*; Bradley 2d Dep. 53:14-54:10.[10]

In June 2016, well after a settlement agreement-in-principle had been reached, Bradley reached out to Chargois for further discussions regarding Chargois' fee allocation. TLF-SST-

[8] Although it became apparent that Chargois' total contribution would be limited to the initial assistance in introducing Labaton to ARTRS, Chargois maintained that he was entitled to 20% of any fee earned by Labaton. LBS017594; LBS030876; Belfi 2d Dep. 58:5-15. Chargois intimated that he would seek legal redress to vindicate his perceived contractual right, if necessary. Belfi 2d Dep. 58:5-59:22; Chargois Dep. 59:6-60:4; Keller Dep. Day 1 130:19-131:12. Labaton was concerned by the possibility of litigation in Texas state court. *See* Belfi 2d Dep. 58:16-59:22; Keller Dep. Day 1 130:22-132:3; Keller Dep. Day 2 541:19-543:23.

[9] Civil Action Nos. 11-cv-12049 MLW and 12-cv-11698 MLW, involving the ERISA Plaintiffs, were consolidated with the customer action for pre-trial purpose.

[10] Bradley explained that he took on the role of negotiating with Chargois & Herron because he had a friendly relationship with Chargois, and he wanted to reach agreement out of concern that, because ARTRS was the only named (non-ERISA) plaintiff, Chargois could say his firm was entitled to 20% of the overall fee award, not just the portion that Labaton Sucharow received. Bradley 2d Dep. 53:14-54:10; *see also* Belfi 2d Dep. 94:5-23; Keller Dep. Day 1 122:6-124:19.

060973. Bradley negotiated an agreement that Chargois & Herron would receive an amount equal to 5.5% of the total fee award (basically, a percentage that would be approximately equivalent to 20% of Labaton's anticipated share of the total fee), which would be funded by the three Customer Class Law Firms, by agreement, from their respective shares of the award. LBS040924; Bradley 2d Dep. 93:16-22.[11]

Given his desire not to be informed of the allocation of fees among counsel (Hopkins Dec. at ¶¶10-12, 14), George Hopkins personally was unaware of the Chargois agreement until August or September of 2017. Id. ¶ 7. Thereafter, when informed of the details of the fee-sharing agreement between the Customer Class Law Firms and Chargois in this case, Hopkins expressly consented to and ratified the agreement. *Id.* at ¶¶ 16-17.

The fee-sharing arrangement was not disclosed to the Court or to the class. No local rule or court rule required disclosure to the Court, nor did the Court have a standing order, or case specific order, requiring disclosure.

III. SUMMARY OF QUESTIONS ADDRESSED AND OPINIONS RENDERED IN THIS REPORT

I have been retained by Labaton to render legal ethics opinions on the following issues, and in formulating my opinions I have reviewed relevant ethics rules, case authority, other legal and ethics authorities, and relied upon my own professional knowledge, experience, skill, training and education:

[11] In that June 21, 2016 email to Chargois cited above, Bradley discussed ERISA counsel and what percentage would be allocated to them in the context of his dialogue with Chargois about what percentage would be paid to Chargois & Herron. TLF-SST-060973. No Labaton lawyers were copied on this communication, and there is no evidence in the record suggesting that lawyers from Labaton saw it before this investigation. *Id.* Bradley explained that he was simply providing the context of the ERISA firms as background and as a negotiating point with Chargois. Bradley 2d Dep. 84:9-85:20; Keller Dep. Day 2 534:23-535:24. Bradley's reference in that 2016 conversation did nothing to change the agreement that the ERISA lawyers had struck with Customer Counsel more than two years earlier.

1. If there is a flawed or imperfect division of fee arrangement between law firms and a client under Massachusetts' Rules of Professional Conduct (Mass. R. Prof. C.) 1.5(e), is a resulting fee division between the law firms considered under Mass. R. Prof. C. 7.2(c),[12] which prohibits a lawyer giving anything of value to a person for recommending the lawyer's services?

   Answer: No. As will be explained more fully below, I have concluded to a reasonable degree of professional certainty that under both the ethics rules and legal precedent in Massachusetts, a flawed or imperfect division of fee arrangement between law firms and a client under Mass. R. Prof. C. 1.5(e) does not convert any resulting fee division between the law firms into a matter in which Mass. R. Prof. C. 7.2(b) would be controlling. There is nothing in Massachusetts case law or other authorities that would support the proposition that a flawed or imperfect division of fee arrangement between law firms and a client under Mass R. Prof. C. 1.5(e) should be considered under Mass. R. Prof. C. 7.2(c). [See *infra* IV.A. for a more complete analysis.]

2. Whether there was an ethical or legal requirement for Labaton to provide notice to the Court of its fee sharing arrangement with Chargois & Herron in the case of *Arkansas Teacher Retirement System v. State Street Corp., et al*., MAD No. 11-cv-10230?

   Answer: No. As will be explained more fully below, I have concluded to a reasonable degree of professional certainty that there was no ethical or legal requirement for Labaton to provide notice to the Court of its fee sharing arrangement with Chargois & Herron in the case of *Arkansas Teacher Retirement System v. State Street Corp., et al*., MAD No. 11-cv-10230. Neither Fed. R. Civ. P. 23(h) nor 54(d) require fee sharing arrangements to be disclosed to the Court. No local rule or court rule required disclosure to the Court, nor did the Court have a standing order, or case specific order, requiring disclosure. The Board of Judges of the Eastern District of New York and the Southern District of New York adopted, and the Judicial Council of the Second Circuit, adopted Local Rule 23.1 to provide for disclosure of "any fee sharing agreements with anyone" after the Second Circuit's decision in *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 137 n.2 (2nd Cir. 2016), made it clear that without such a local rule or court order disclosure of fee sharing agreements is not required. In addition, neither Mass. R. Prof. C. 3.3(a) nor 8.4(c) independently create an ethical duty that required Labaton to disclose to the Court its fee sharing arrangement with Chargois & Herron, nor did the lack of disclosure of the fee sharing agreement violate these ethics rules. [See *infra* IV.B. for a more complete analysis.]

[12] During the relevant time period, including when Belfi sent a final retention letter to Hopkins on February 8, 2011, the provision stating that a lawyer not give anything of value to a person recommending the lawyer's services, with some exceptions, appeared in section (c) and not (b) of Mass. R. Prof. C. 7.2. *See* Exhibit 2. Mass. R. Prof. C. 7.2 was amended on March 26, 2015, effective July 1, 2015, section (b) of the former version of 7.2 was deleted, and section (c) became section (b). *See* Exhibit 3.

3. Whether there was an ethical or legal requirement for Labaton to provide notice of the fee sharing agreement between Labaton and Chargois & Herron to the class members in the above-stated case?

   Answer: No. As will be explained more fully below, I have concluded to a reasonable degree of professional certainty that 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 in the above-stated case. Disclosure to class members flows both from class counsel's disclosure obligations to the Court and from class counsel's obligations to class members. 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. [See *infra* IV.C. for a more complete analysis.]

4. Do courts or ethics authorities impose sanctions on or discipline a lawyer or law firm when a legal or ethical duty is unclear?

   Answer: No. Courts and ethics authorities do not impose sanctions on or discipline a lawyer or law firm when a legal or ethical duty is unclear. Mass. R. Prof. C. Scope [5] states, in pertinent part:

   > The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act on uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, including the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

   If at the time of an alleged violation of a legal or ethical duty the legal or ethical duty is unclear, the facts and circumstances, as well as fundamental due process, guide courts and ethics authorities to refrain from imposing sanctions or discipline on a lawyer or a law firm. [See *infra* IV.D. for a more complete analysis.]

5. Does Mass. R. Prof. C. 1.5(a) prohibition on a "clearly excessive fee" apply to the Mass. R. Prof. 1.5(e) "division of a fee (including a referral fee) between lawyers who are not in the same firm"?

   Answer: No. Mass. R. Prof. C. 1.5(a) prohibition on a "clearly excessive fee" does not apply to the Mass. R. Prof. 1.5(e) "division of a fee (including a referral fee) between lawyers who are not in the same firm." Mass. R. Prof. C. 1.5 has to be construed in its entirety, and it is clear that Mass. R. Prof. C. 1.5(a) prohibition on a "clearly excessive fee" does not apply to each lawyer's share of fee pursuant to a division of fee under

Mass. R. Prof. C. 1.5(e) because (e) requires that "the total fee is reasonable." [See *infra* IV.E. for a more complete analysis.]

IV. REASONING AND SUPPORT FOR EXPERT OPINIONS

A. A Flawed or Imperfect Division of Fee Arrangement Between Law Firms and a Client Under Massachusetts' Rules of Professional Conduct (Mass. R. Prof. C.) 1.5(e) and a Resulting Fee Division Between the Law Firms Should Not Be Considered a Violation of Mass. R. Prof. C. 7.2(c)

1. There is no authority in Massachusetts or the First Circuit holding that a division of attorney fees under a fee arrangement that does not fully comply with Mass. R. Prof. C. 1.5(e), or the equivalent ethics rule to Mass. R. Prof. C. 1.5(e), would violate Mass. R. Prof. C. 7.2(c), or the equivalent ethics rule to Mass. R. Prof. C. 7.2(c)

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 Mass. R. Prof. C. 7.2(c). In addition, no other District Court in the First Circuit has conflated any state's version of ABA Model Rule of Professional Conduct ("Model Rule") 1.5(e) with the equivalent of Mass. R. Prof. C. 7.2(c).

There are very few Massachusetts cases that discuss client-attorney fee agreements that do not fully comply with Mass. R. Prof. C. 1.5(e), and none of those cases even mention Mass. R. Prof. C. 7.2(c). For example, *Saggese v. Kelley*, 837 N.E.2d 699 (Mass. 2005), involved a dispute between an attorney, Alfred Saggese, who had an oral fee sharing agreement with Kelley Law Associates, P.C. ("Kelleys").[13] *Id*. at 702-03. When Saggese sought payment of his expected referral fee, the Kelleys argued that the oral fee sharing agreement should not be enforced because it violated Mass. DR 2-107(A)(1), which was in effect at the time of the client-attorney relationship was formed and was replaced with Mass. R. P. C. 1.5(e). *Id*. at 703. The

[13] Initially, Kelley Law Associates, P.C. was known as Kelley & Donovan, P.C. *Saggesse* 837 N.E.2d at 701-02.

Kelleys did not argue, and the Court did not consider, that payment to Saggese would violate the old Massachusetts Disciplinary Rule that was the equivalent of Mass R. Prof. C. 7.2(c), or Mass. R. Prof. C. 7.2(c), prohibiting giving anything of value to a person for recommending the lawyer's services, which Saggese had done for the Kelleys.

The Court in *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 188 F. Supp.2d 115 (D. Mass 2002) was faced with an "oral fee-splitting agreement made in contravention of the rules of professional conduct . . . ." *Id*. at 117. In considering the oral fee-splitting agreement to be "an imperfect fee agreement," the Court only looked to Mass. R. Prof. C. 1.5(e) and the corresponding N.Y. Code of Prof'l Resp. DR 2-107(A). *Id*. at 124. Again, at no time did the court consider Mass. R. Prof. C. 7.2(c) or the corresponding disciplinary rule in New York.

I conducted additional legal research into the following materials: other Massachusetts state court cases; advisory ethics opinions of the Committee on Professional Ethics for Massachusetts Bar Association; advisory ethics opinions of the Boston Bar Association Ethics Committee; articles and reports of the Massachusetts Board of Bar Overseers;[14] a selection of public Disciplinary Decisions of the Massachusetts Board of Bar Overseers;[15] all of the available non-public discipline matters called Admonitions by the Massachusetts Board of Bar

[14] I reviewed "The Year in Ethics and Bar Discipline" reports for all available years, 2007 to 2017, "That Was The Year That Was: Noteworthy Decisions On Ethics And Bar Discipline in 2003," and all reports that mentioned fees, advertising, or solicitation found on the Massachusetts Board of Bar Overseers website. *Articles*, MASSACHUSETTS BOARD OF BAR OVERSEERS, https://www.massbbo.org/Ethics.

[15] There appear to be hundreds of public disciplinary decisions on the Massachusetts Board of Bar Overseers. *See Disciplinary Decisions*, MASSACHUSETTS BOARD OF BAR OVERSEERS, https://www.massbbo.org/Decisions. There is no apparent way to search the decisions based on the alleged rule violation or subject matter, and I determined that there were too many decisions to review individually. Instead, I reviewed the first ten cases in alphabetical order that were decided in 2017, and then selected the first and last case or cases (some individuals had multiple disciplinary cases or rulings) for each letter of the alphabet.

Overseers;[16] searched and reviewed United States District Court opinions in the First Circuit, and searched and reviewed First Circuit Court opinions. I could not find a single case that held, or any disciplinary decision, ethics opinion, or bar report that stated, that a division of attorney fees under a fee arrangement that does not fully comply with Mass. R. Prof. C. 1.5(e), or the equivalent ethics rule to Mass. R. Prof. C. 1.5(e), would violate Mass. R. Prof. C. 7.2(c), or the equivalent ethics rule to Mass. R. Prof. C. 7.2(c).

There were two Admonition matters, discussed below, that have some relevance. Unlike the case for which this report is being written where the engagement letter contained permission for fee sharing, including referral fees, the two Admonitions involved matters in which there was no notice to or consent of the client.

Admonition No. 16-25 (2016), https://bbopublic.blob.core.windows.net/web/f/admon-2016.pdf, is classified "Improper Division of Fee with Other Lawyer [Mass. R. Prof. C. 1.5(e)]. This Admonition involves two respondents, A and B, who were both lawyers. Respondent A, the referring lawyer, took a referral fee when "[n]either lawyer notified or obtained the prior or contemporaneous written approval of the client of the referral fee taken by Respondent A." *Id.* When the client later learned of the referral fee, the client "brought the matter of the unauthorized referral fee to the attention of bar counsel." *Id*. The Admonition held that for "failing to obtain the client's advance, written consent to the division of fees, the respondents violated Mass. R. Prof. C. 1.5(e). They each received an admonition for their conduct in this matter." *Id.* If in 2016, or any time before 2016, ethics authorities in Massachusetts viewed sharing fees in violation of Mass. R. Prof. C. 1.5(e) as a violation of Mass. R. Prof. C. 7.2(b)

[16] I reviewed all of the Admonitions issued from 1999 through March 20, 2018. I searched these using the find function and "1.5(e)" and then "7.2" to identify Admonitions that dealt with fee sharing or giving a thing of value to another person for referring a client.

(previously Mass. R. Prof. C. 7.2(c)), then, in my opinion, I would have expected the Admonition to discuss a violation of Mass. R. Prof. 7.2(b).

The only other Admonition to mention an improper fee sharing is Admonition No. 99-58 (1999), https://bbopublic.blob.core.windows.net/web/f/admon.pdf, which is classified "Improper Division of Fee with Other Lawyer [DR 2-107(A(1)]." In this Admonition, a client consulted with respondent, a lawyer admitted to practice in Massachusetts, about a summons the client had received in a Rhode Island matter. *Id*. The client paid the respondent a consultation fee and the respondent referred the client to a lawyer in Rhode Island. *Id*. The client paid the Rhode Island lawyer a retainer of $1,500, and, thereafter without the client's knowledge the Rhode Island lawyer sent respondent $500, one-third of the initial retainer. *Id*. The client only learned of this division of fee after she discharged the Rhode Island lawyer and obtained her file to give to successor counsel. *Id*. She questioned payment to respondent and filed a complaint with Bar Counsel. *Id*. The Admonition found: "By failing to obtain the client's consent to a division of fees, the respondent violated Canon Two, DR 2-107(A)(1), as well as the analogous Rhode Island Rule of Professional Conduct 1.5(e). The respondent received an admonition for his conduct in this matter." *Id*. Again, there is no mention of any violation of Rhode Island R. Prof. C. 7.2 or the equivalent Disciplinary Rule in Massachusetts.

2. Leading resources on legal ethics do not maintain that a violation of Model Rule 1.5(e), or a jurisdiction's equivalent ethics rule to Mass. R. Prof. C. 1.5(e), is also a violation of Model Rule 7.2(b), or a jurisdiction's equivalent ethics rule to Mass. R. Prof. C. 7.2(c)

In researching this issue and in forming my opinions, I also reviewed leading legal ethics resources, including treatises and texts on legal ethics, and I could not find any authority for the proposition that a violation of either the Model Rule 1.5(e), or a jurisdiction's version of Mass. R. Prof. C. 1.5(e), is also a violation of Model Rule 7.2(b), or a state's version of Mass. R. Prof.

C. 7.2(c). These authorities either are silent on this issue or, in one instance, state that the original Model Rule 7.2(c), which is the equivalent of Mass. R. Prof. C. 7.2(c) at the relevant time, does not apply to lawyers.

a) Some authority maintains that Model Rule 7.2(c) does not apply to lawyers sharing fees

Cornell Law Professor W. Wolfram has stated: "The prohibition in MR 7.2(c)[17] is broader in that it prohibits giving anything of value to a person for recommending the lawyer's services except for advertising and lawyer referral plans. *Its comment,[18] however, suggests that it is limited to traditional touting arrangements* (§ 14.2.5)" (emphasis added). *Charles W. Wolfram, Modern Legal Ethics* § 14.2.4, at 782 n.58 (1986). Professor Wolfram goes on to explain what the touting and related arrangements targeted in Model Rule 7.2(c) typically involve:

> Lawyers – either directly or through their runners, cappers, or touts – have paid money to taxi drivers in "divorce haven" states who brought prospective divorce clients from the airport to the lawyer's office; have accepted referrals from a nonlawyer who solicited prospective clients of a mass accident for the lawyer in the hope of becoming his investigator; have paid gratuities to police officers, ambulance drivers, doctors and other medical workers in emergency rooms, or professional runners who might be first award of a personal injury, or to bail bond

[17] At the time that Professor Wolfram was writing, ABA Model Rule 7.2(c) provided: "A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that the lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule and pay the usual charge of a not-for-profit lawyer referral service or other legal service organization." ABA Model Rule 7.2(c) (1986).

[18] The comment to which Professor Wolfram referred was titled "Paying Others to Recommend a Lawyer," and it stated:

> A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommend the lawyer's services. Thus, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, THE LEGISLATIVE HISTORY OF THE MODEL RULES OF PROFESSIONAL CONDUCT: THEIR DEVELOPMENT IN THE ABA HOUSE OF DELEGATES 182 (1987).

> writers or others involved in the criminal process; or have had nonlawyer employees find and sign up prospective clients.

Id. at § 14.2.5, at 786.

According to Professor Wolfram, Model Rule 7.2(c) is aimed at lawyers, or those working for lawyers in some capacity, *paying nonlawyer persons*, such as taxi drivers, police officers, ambulance drivers, doctors, other medical professionals, bail bond writers, nonlawyer employees, and other "nonlawyers" for referring clients or signing up prospective clients. In Professor Wolfram's account, none of the impermissible payments to other persons involve fee sharing among lawyers who are not members of the same firm.

b) The legislative history of Model Rule 7.2(c) and Model Rule 1.5(e) does not support the conclusion that Model Rule 7.2(c) applies to lawyers sharing fees

The *Proposed Final Draft Model Rules of Professional Conduct* discusses what was to become ABA Model Rule 7.2, and it contains comparisons with the relevant ABA Model Code of Professional Responsibility Disciplinary Rules and legal background with case citations and notes. *ABA Commission on Evaluation of Professional Standards, Proposed Final Draft Model Rules of Professional Conduct* 255-61 (1981). There is nothing in the Model Code comparisons, the cases cited, or the notes that maintain that the prohibition against giving anything of value to a person embodied in Model Rule 7.2(c) also referred to sharing fees with another lawyer. Nor is there anything in the discussion of what was to become Model Rule 1.5 and comments to Model Rule 1.5, *id*. at 44-52, that suggests that a fee sharing agreement that does not fully comply with the requirements of Model Rule 1.5(e) (which was proposed Model Rule 1.5(d) in the draft) should be considered under Model Rule 7.2(c).

There are two official ABA publications for the legislative history of the ABA Model Rules, and the historical accounts in neither publication support the conclusion that an imperfect

fee sharing agreement with what was to become Model Rule 1.5(e) should be considered under what was to become Model Rule 7.2(b). *ABA Center for Professional Responsibility, The Legislative History of the Model Rules of Professional Conduct: Their Development in the ABA House of Delegates* 39-47, 178-82 (1987); *ABA Center for Professional Responsibility, A Legislative History: The Development of ABA Model Rules of Professional Conduct 1982-2005* at 77-97, 709-31.

The absence in the legislative history drawing a connection between imperfect fee agreements under Model Rule 1.5(e) and giving anything of value to a person under Model Rule 7.2(b) is an indication that these two ethics rules should not be conflated because each addresses a different ethical issue.

c) None of the authoritative example disciplinary cases and ethics opinions based on the equivalent of Mass. R. Prof. 7.2(c) involve dividing fees with or giving anything of value to lawyers, nor do disciplinary cases involving the equivalent of Mass. R. Prof. C. 1.5(e) refer to the equivalent of Mass. R. Prof. C. 7.2(c)

The ABA's *Annotated Model Rules of Professional Conduct* provides examples of how states' versions of the Model Rules are interpreted and applied. In discussing current Model Rule 7.2(b) prohibiting compensating others for recommending a lawyer, none of the eight disciplinary cases or the fifteen state advisory ethics opinions that this authoritative reference identifies and discusses involve fee sharing with or giving anything of value to a lawyer. *Ellen J. Bennett et al., Annotated Model Rules of Professional Conduct, Eighth Edition* 604-05 (8th ed. 2015) ("*Annotated Model Rules of Professional Conduct*"). This reference also identifies two disciplinary cases as examples of typical disciplinary cases involving state versions of Model Rule 1.5(e), and neither of these fee sharing cases are discussed in the context of a state's equivalent to Mass. R. Prof. C. 7.2(c). *Id*. at 96.

The ABA describes that *Annotated Model Rules of Professional Conduct* as "the ABA's definitive resource for information about courts, disciplinary bodies, and ethics committees apply the lawyer ethics rules." *Annotated Model Rules of Professional Conduct, Eighth Edition*, AmericanBar.org, https://tinyurl.com/y9tlhx65**.** The following excerpt contains the description of the disciplinary cases collected to illustrate Model Rule 7.2(b), and in every instance the representative cases selected involve persons who are not lawyers:

> Unless the exceptions of paragraph (b) apply, a lawyer may not pay someone else to recommend his or her services. *See People v. Shipp*, 793 P.2d 574 (Colo. 1990) (suspending lawyer for paying his inmate *client* to refer other inmates to him); *In re Maniscalco*, 564 S.E.2d 186 (Ga. 2002) (payment to operator of lawyer referral business who used *nonlawyer* "runners" to obtain clients violates rule even if lawyer initially did not know about runners and believe operator was a lawyer and refused to pay percentage of fees after learning truth); *Office of Disciplinary Counsel v. Au*, 113 P.3d 203 (haw. 2005) (lawyer paid *nonlawyer* runner 5 percent of fees earned on cases that runner referred); In re Geoff, 837 So.2d 1201 (La. 2003) (lawyer suspended for participating in scheme to employ *nonlawyer* "runners" to refer personal injury clients); *Son v. Margolius, Mallios, Davis, Rider & Tomar*, 709 A.2d 112 (Md. 1998) (sufficient evidence for trial whether fee paid to personal injury client's *nonlawyer* "consultant" who referred case to law firm was a referral fee in violation of the rule; summary judgment reversed); *Emil v. Miss. Bar*, 690 So.2d 301 (Miss. 1997) (lawyer suspended for using paid *investigator* to find prospective person injury clients); *In re Disciplinary Action against McCray*, 755 N.W.2d 835 (N.D. 2008) (lawyer paid *marketing firm* to tout firm's service as credit repair seminars); *Cincinnati Bar Ass'n v. Haas*, 699 N.E.2d 919 (Ohio 1998) (lawyer suspended for paying *insurance salesperson* for referring person injury clients) . . . .

Id. at 604 (emphasis added). Out of these eight disciplinary cases, the authors' descriptions of four of the cases specifically refer to the persons receiving payment as *nonlawyers*, and in the remaining cases the nonlawyers receiving payment are a client, an investigator, a marketing firm, and an insurance salesperson.

The *Annotated Model Rules of Professional Conduct* also summarizes fifteen advisory ethics opinions addressing states' versions of Mass. R. 7.2(c), and these ethics opinion cover a range of topics such as directly giving a thing of value to a nonlawyer for referrals, giving a thing

of value indirectly to clients on a pro bono reduced fee bases in exchange for client referrals, and the permissibility of giving nominal gifts for referrals under certain situations. *See id*. at 604-05. All of these ethics opinions involve some aspect of giving a thing of value to nonlawyers for referrals, and none of these ethics opinions involved fee sharing with lawyers.

In addition to the cases and ethics opinions focusing on state ethics rules that are the equivalent to Mass. R. Prof. C. 7.2(c), the *Annotated Model Rules of Professional Conduct* provides two examples of disciplinary cases involving the equivalent to Mass. R. Prof. C. 1.5(e). *Id*. at 96. Neither of these two cases involving the violation of a state's ethics rule that is the equivalent of Mass. R. Prof. C. 1.5(e) also discuss the state's ethics rule that is equivalent of Mass. R. Prof. C. 7.2(c). *See Statewide Grievance Comm. v. Dixon*, 772 A.2d 160, 165 (Conn. App. Ct. 2001) (finding Rule 1.5(e) violated when current counsel divided fees with client's former counsel without informing client, without obtaining the client's consent, and over the client's objection); *Cleveland Bar Ass'n v. Mishler*, 886 N.E.2d 818, 825 (Ohio 2008) (finding no violation of fee sharing rule when lawyer did not bill client for payment made to a lawyer not in the same firm).

d) Leading treatises and texts do not maintain that fee sharing between lawyers pursuant to an imperfect fee agreement under Model Rule 1.5(e), or a state's version of Mass. R. Prof. C. 1.5(e), becomes a violation of Model Rule 7.2(b), or a state's version of Mass. R. Prof. C. 7.2(c)

In addition to the legislative history of the Model Rules and the cases and ethics opinions in the *Annotated Model Rules of Professional Conduct*, other leading treatises and texts do not maintain that fee sharing between lawyers pursuant to an imperfect fee agreement under Model Rule 1.5(e), or a state's version of Mass. R. Prof. C. 1.5(e), becomes a violation of Model Rule 7.2(b), or a state's version of Mass. R. Prof. C. 7.2(c). In reaching this conclusion, I reviewed the *Restatement (Third) of the Law Governing Lawyers ("Restatement"), The Law of Lawyering*,

and *Lawyer Law*, which are generally considered leading treatises and texts concerning the ethical obligations of lawyers. The following discusses each in turn.

The *Restatement* does not conflate fee sharing among lawyers under circumstances where a fee sharing rule is not strictly followed into giving something of value to a person. The *Restatement* has a section titled "Fee-Splitting Between Lawyers Not in the Same Firm." *American Law Institute, Restatement (Third) The Law Governing Lawyers* § 47 (1986-2017). Comments and Reporter's Notes to this section discuss a number of different aspects of fee sharing, but none of the discussion states that fee sharing between lawyers that does not comport with the requirements in the *Restatement,* or in a state's version of Mass. R. Prof. C. 1.5(e), becomes a violation of a state's version of Mass. R. Prof. C. 7.2(c). *See id*., 332-40. The *Restatement* does not have a direct corresponding section for giving a thing of value to a person for a referral, but a comment to § 10, "Limitations on Nonlawyer Involvement in a Law Firm," states: "The general prohibition against fee-splitting with nonlawyers is often applied to schemes for compensating a nonlawyer for referring clients (e.g., ABA Model Rules of Professional Conduct, Rule 5.4(a), which is directly prohibited by ABA Model Rule 7.2(c) (with exceptions, "a lawyer shall not give a thing of value to a person for recommending the lawyer's services"). *Id*. at § 10 cmt. (d).

The Law of Lawyering discusses fee sharing among lawyers. *Geoffrey C. Hazard, Jr., et al., The Law of Lawyering* § 9.20 (4th ed. 2015). This section discusses fee splitting and the enforceability of referral fee agreements, and the authors note that "Model Rule 1.5(e) now permits fee splitting in virtually all situations, provided the client agrees to the arrangement in writing." *Id*. at § 9.20, 9-73. They also note that fee splitting can also involve the "forwarding" of cases and that in some instances "whatever portion of the total fee is paid to the first lawyer is

nothing more than a referral or 'finder's fee.'" *Id.* Nothing in the discussion of fee sharing states that fee sharing between lawyers not in the same firm becomes a violation of the prohibition on giving anything of value to a person for recommending the lawyer's services. The discussion of Model Rule 7.2(b) focuses on advertising and exceptions to the rule against giving something of value to a person for recommending the lawyer's services. *Id*. at § 60.02. It discusses the prohibition on "[u]sing a 'runner' (such as an ambulance driver or a hospital nurse) to drum up business in person" and notes that this would also violate other ethics rules. *Id*. at § 60.02, 60-6. *The Law of Lawyering* does not conflate an imperfect fee sharing arrangement under Model Rule 1.5(e) with a violation of Model Rule 7.2(b).

The final text I reviewed is *Lawyer Law*, which is published by the ABA Center for Professional Responsibility. *Thomas D. Morgan, Lawyer Law: Comparing the ABA Model Rules of Professional Conduct with the ALI Restatement (Third) of the Law Governing Lawyers* (2005) ("*Lawyer Law*"). This text divides its discussion into fee-splitting among lawyers, *id*. at 727-32, fee-splitting with nonlawyers, *id*. at 732-35, and referrals. *Id*. at 733-38. None of the discussion states that an imperfect fee sharing arrangement under either Model Rule 1.5(e) or a state's version of the rule should be considered a violation of Model Rule 7.2(b) or a state's version of the rule.

e) No case in other possibly relevant jurisdictions has held that a violation of the equivalent ethics rule to Mass. R. Prof. C. 1.5(e) is a violation of the equivalent ethics rule to Mass. R. Prof. C. 7.2(c)

I was also asked to research the ethics rules and cases in Arkansas, New York, and Texas, and I could not find any state or federal case that considered a fee division between law firms based on a flawed or imperfect division of fee arrangement between law firms and a client to be controlled by a state's ethics rule that is the equivalent of Mass. R. Prof. C. 7.2(c). In doing this

research, I found an ethics rule that explicitly states that the equivalent of Mass. R. Prof. C. 7.2(c) does not apply to lawyers:

> Texas Disciplinary Rules of Professional Conduct 7.03 states, in pertinent part:
>
> **Rule 7.03. Prohibited Solicitations and Payments**
>
> (b) A lawyer shall not pay, give, or offer to pay or give anything of value *to a person not licensed to practice law* for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952 (emphasis added).

This Texas rule makes it explicit that persons licensed to practice law in Texas are excluded under the ethics rule that is the equivalent Mass. R. Prof. C. 7.2(c).

f) The agreement between Labaton and ARTRS satisfied the requirements of Mass. R. Prof. C. 1.5(e)

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. Although Mass. R. Prof. C. 1.5(e) did not require Labaton to identify the referring attorney, the extent to which ARTRS's consent was sufficiently informed requires an understanding of how the client-lawyer relationship between ARTRS and Labaton developed.

Labaton and Chargois & Herron jointly submitted a response to an ARTRS Request for Qualifications ("RFQ") on July 30, 2008. LBS017738-55; LBS017756-67. If litigation on behalf of ARTRS would occur, Labaton anticipated being lead counsel and Chargois & Herron would serve as local counsel for ARTRS through the Little Rock, Arkansas, office of Chargois & Herron. Belfi 2d Dep. 26:15-27:15; Keller Dep. Day 1 44:8-46:21.

When ARTRS selected Labaton as one of its monitoring counsel in 2008, its Chief Counsel, Christa Clark, stated, in relevant part, that because Labaton and Chargois & Herron

"are not legally affiliated, we are unable to process the state contract form with both firms listed. . . . Your firm may affiliate that firm [Chargois & Herron] or utilize them as independent contractors, if you deem is appropriate [sic], on a case by case basis." LBS017456. Eric Belfi from Labaton later explained to Clark that Labaton "would be working with Chargois & Herron" and that Chargois & Herron "were going to be involved in the relationship." Belfi 2d Dep. 117:20-118:10.

At the time that ARTRS chose Labaton as monitoring counsel, the Executive Director of ARTRS was Paul Doane, who knew of the Chargois & Herron law firm and its joint proposal with Labaton. Doane left ARTRS after Labaton had been selected as monitoring counsel, and he was replaced by George Hopkins, who did not know the Chargois & Herron firm. Hopkins 2d Dep. 21:5-10. While Hopkins did not know of the Chargois & Herron firm, in his deposition Hopkins testified that, "I told Eric if I ever want to know about your attorney fees and who all you hired, I'll ask you." *Id*. at 68:23-69:3. Hopkins also testified that, "I don't feel misled because I made it real clear to them that I didn't want to be the gatekeeper on all this attorney relationship. And I think if they thought 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.

On February 8, 2011, Belfi of Labaton sent ARTRS a final retention letter for litigation involving State Street, and the retention letter contained this clause:

> Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting the prosecution of an action. The division of fees with other counsel is Labaton's sole responsibility and will not increase the fees payable upon a successful resolution of the litigation.

LBS019948-50; LBS011061.

Mass. R. P. C. 1.5(e), in effect until March 2011, stated, in pertinent part: "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 participation and the total fee is reasonable." Comment [4A] to Mass. R. P. C. 1.5 further explained:

> Paragraph (e), unlike ABA Model Rule 1.5(e), does not require that the division of fees be in proportion to the services performed by each lawyer unless, with a client's written consent, each lawyer assumes joint responsibility for the representation. . . . 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.

Mass. R. Prof. C. 1.5(e) in effect in February 2011,[19] when Labaton and ARTRS finalized their fee agreement, permitted Labaton to share fees with Chargois & Herron for its role in securing ARTRS as a client. Mass. R. Prof. C. 1.5(e) also did not require Labaton to disclose how it would divide its fees with Chargois & Herron, and did not expressly require that the division of fees be confirmed in writing. The fee agreement Labaton had with ARTRS permitted Labaton to allocate fees to other lawyers, including as referral fees. The fee agreement did not – and was not specifically required to – identify Chargois & Herron. The omission of Chargois & Herron's name was consistent with previous instructions from Hopkins. Further, in the context of the monitoring counsel role, former counsel Christa Clark, with whose knowledge ARTRS should be charged, was aware of Chargois & Herron, had given written permission for Labaton to affiliate with or use Chargois & Herron as Labaton deemed appropriate, LBS017456, and had been told by Belfi that Labaton would be affiliating with Chargois & Herron.

[19] In December 2010, Mass. R. P. C. 1.5(e) was amended, effective March 15, 2011, to state, in pertinent part: "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 the 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."

Hopkins stated in a written declaration that he did not desire to be informed of the allocation of fees among counsel, and so informed Belfi. Hopkins Dec. at ¶¶10-12, 14. Although Hopkins stated that he was personally unaware of the Chargois agreement until August or September of 2017, *id*. ¶ 7, when Hopkins was informed of the details of the fee-sharing agreement between the Customer Class Law Firms and Chargois & Herron in this case, he expressly consented to and ratified the agreement in writing. *Id.* at ¶¶ 16-17.

Mass. R. Prof. C. 1.5(e), which was in effect at the time of the retention letter between Labaton and ARTRS, was discussed in *Saggese v. Kelley*, 837 N.E.2d 699, 706 (Mass. 2005). As discussed previously, *Saggese* dealt with the enforcement of an oral fee sharing agreement wherein Saggese sought one-third, or a total of $90,931.50 of fees, for referring to the Kelleys a client for whom the Kelleys obtained an attorney's fees award of $309,498. *Id*. at 702. In *Saggese*, the client was unaware of the referral fee arrangement between the Kelleys and Saggese, but later consented to it. *Id*. at 705. The Court stated: "Ratification is not the preferred method to obtain a client's consent to a fee-sharing agreement, but it is adequate." *Id*. The Court then found "that the fee-sharing agreement was not void as against public policy or unenforceable for failure to comply with the applicable fee-sharing rule prior to the client referral, and the judge did not err in so ruling." *Id*.

The Court in *Saggese* then addresses a matter not at issue in the case, which it denominated as "Future fee-sharing agreements." *Id*. It noted that Mass. R. Prof. C. 1.5(e), in effect at that time, "does not speak to when disclosure to the client must be made, who must make the disclosure, or when consent must be given." *Id*. The Court then declared that Mass. R. Prof. C. 1.5(e) would be construed in the future so that the lawyer, preferably the referring lawyer, "is required to disclose the fee-sharing agreement to the client before the referral is made

and secures the client's consent *in writing*." *Id*. The Court continued that if the referring lawyer does not comply, the lawyer who undertakes the representation "should confirm, before undertaking such representations, that there has been compliance with rule 1.5(e)." *Id*. In the present matter, Labaton secured the client's consent to fee sharing in writing, including with regard to referral fees, in the engagement letter for the representation. In this way, Labaton complied with how the Court in *Saggese* stated Mass. R. Prof. C. 1.5(e) should be construed.

However, if the Special Master or the Court concludes that the written consent did not constitute perfect compliance with Mass. R. Prof. C. 1.5(e), there is precedent in the United States District Court, District of Massachusetts, considering an "imperfect fee agreement" that does not comply fully with Mass. R. Prof. C. 1.5(e). In *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 188 F. Supp.2d 115 (D. Mass 2002), an "oral fee-splitting agreement made in contravention of the rules of professional conduct," *id*. at 117, was nonetheless held enforceable. *Id*. at 132.

B. <u>There Was Not an Ethical Duty or Legal Requirement for Labaton to Provide Notice to the Court of Its Fee Sharing Arrangement with Chargois & Herron in the Case of *Arkansas Teacher Retirement System v. State Street Corp., et al*., MAD No. 11-cv-10230</u>

For there to be an ethical duty or legal obligation for Labaton to provide notice to the Court of its fee sharing agreement with Chargois & Herron, such a duty would have to originate in one of these: the Federal Rules of Civil Procedure ("Fed. R. Civ. P."); a local court rule for the United States District Court, District of Massachusetts; a standing order issued by the Honorable Judge Mark L. Wolf applicable to all cases or to all class action cases; a special order issued by the Honorable Judge Mark L. Wolf applicable to the instant case; or clear precedent either from the United States Supreme Court, the First Circuit, or the District of Massachusetts. My research into this matter did not reveal any rule, order, or clear precedent. As will be

described in greater detail below, without a legal duty to provide notice to the Court of its fee sharing agreement, Labaton could not have an ethical obligation to do so under Mass. R. Prof. C. 3.3 or 8.4(c). The only other basis for finding a violation of Mass. R. Prof. C. 3.3 or 8.4(c) would be if Labaton knowingly made a misrepresentation to the Court, or engaged in dishonesty, fraud, deceit or misrepresentation, which the record demonstrates it did not.

1. The Federal Rules of Civil Procedure did not require Labaton to disclose to the Court the fee sharing agreement it had with Chargois & Herron

The two Federal Rules of Civil Procedure that are relevant to this inquiry are Fed. R. Civ. P. R. 23(h) and Fed. R. Civ. P. 54(d). Neither rule requires notice of fee sharing agreements with the court.

Fed. R. Civ. P. 23(h) does not, on its own, require the automatic disclosure of fee sharing agreements to the court in class actions. Fed. R. Civ. P. 23(h) addresses the issue of attorney's fees and nontaxable costs in a certified class action, and it provides, in pertinent part: "(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets." The rule does not address the issue of fee sharing agreements.

In *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132 (2nd Cir. 2016), a lawyer had raised "ethical and legal implications of the arrangement" in which the law firm Bernstein Litowitz Berger & Grossman LLP ("BLB & G") paid a lawyer in a different firm without disclosing the payment to the Court in its fee petition. *Id*. at 137. The Court stated:

> Formerly, the local civil rules of the Southern District of New York required that the fee applicants in derivative and class actions disclose to the court "any fee sharing agreements with anyone." By a rule amendment effective July 11, 2011—three weeks before BLB & G submitted its fee petition—the automatic-disclosure provision was repealed as to class actions. *See* S.D.N.Y. Local Civil Rule 23.1 (repealed effective July 11, 2011); S.D.N.Y. Local Civil Rule 23.1.1. According to the Joint Committee on Local Rules note, the committee recommended that the

> automatic-disclosure rule as applied to class actions be deleted "because it is redundant [with] ... Fed. R. Civ. P. 23(h)." Federal Rule 23(h), in turn, does not mandate automatic disclosure of all fee-sharing arrangements in class actions.

Id. at 137 n.2. Thus, the Second Circuit recognized that Fed. R. Civ. P. 23(h) "does not mandate automatic disclosure of all fee-sharing arrangements in class actions." *Id*.

As a result of the *Bernstein* decision, the Joint Committee on Local Rules recommended, the Board of Judges of the Eastern District of New York and the Southern District of New York adopted, and the Judicial Council of the Second Circuit approved, Local Rule 23.1, which states, in pertinent part:

> Fees for attorneys or others shall not be paid upon recovery or compromise in a class action or derivative action on behalf of a corporation except as allowed by the Court after a hearing upon such notice as the Court may direct. The notice shall include a statement of the names and addresses of the applicants for such fees and the amounts requested respectively and shall disclose any fee sharing arrangements with anyone.

Local Rules of the United States District Courts for the Southern and Eastern Districts of New York Local Civil Rule 23.1 (effective Nov. 1, 2017), http://www.nysd.uscourts.gov/rules/rules.-pdf.

The 2016 Committee Note to Local Rule 23.1 states:

> The Committee in 2011 recommended that prior Local Rule 23.1 regarding class actions be deleted as unnecessary. The Second Circuit's recent decision in *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 137 n.2 (2nd Cir. 2016), stated that the prior Local Rule is not redundant with Fed. R. Civ. P. 23(h) regarding fee sharing arrangements. The Committee therefore recommends reinstating Local Rule 23.1 and combining it with Local rule 23.1.1 to cover both class actions and derivative actions.

Id.

The *Bernstein* case, the resulting Local Rule 23.1, and the Committee Note regarding Local Rule 23.1, establish two important points concerning the legal obligation to notify a United States District Court of a fee sharing agreement in a class action case. First, the Second Circuit

has decided that on its own Fed. R. Civ. P. 23(h) does not require a law firm to notify a District Court of a fee sharing agreement with others. Second, there is no obligation to notify a District Court of a fee sharing agreement unless there is precedent in a particular Circuit or District Court, a local court rule, a standing order, or a case specific order requiring disclosure of a fee sharing agreement.

Based on my research, I have concluded that the First Circuit has not addressed the issue of whether Fed. R. Civ. P. 23(h) on its own terms requires disclosure of fee sharing agreements. I have also determined there is no clear precedent in either the First Circuit or the District of Massachusetts that has held that Fed. R. Civ. P. 23(h) requires disclosure of a fee sharing agreement to the court.

In addition to Fed. R. Civ. P. 23(h), Fed. R. Civ. P. 54(d) also does not, on its own, require the disclosure of all fee sharing agreements to the court in class actions. Rather, Fed. R. Civ. P. 54(d)(2)(B)(iv) states that a motion for attorney 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). Thus, Fed. R. Civ. P. 54(d)(2)(B)(iv) specifically states that disclosure of any fee agreement is not required unless ordered by the court.

Based on my research, I have concluded that there is no precedent from the First Circuit Court of Appeals that has held that Fed. R. Civ. P. 54 requires disclosure of any fee agreement without a court order or local rule. I have also determined that there is no precedent in the District of Massachusetts holding that Fed. R. Civ. P. 54 requires disclosure of any fee agreement without a court order or local rule.

2. There was no local court rule or standing order in the District of Massachusetts or the First Circuit that required Labaton to disclose to the Court the fee sharing agreement it had with Chargois & Herron

I reviewed the website for the District of Massachusetts and searched the Court Website Links, http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links, and I could not find a local rule for the District of Massachusetts or any rule issued by the First Circuit that would have required Labaton to disclose to the Court the fee sharing agreement it had with Chargois & Herron. I also looked at the website for the Honorable Judge Mark L. Wolf, http://www.mad.uscourts.gov/boston/wolf.htm, and under the heading "Chambers Procedures/Standing Orders/Sample Orders" it stated "N/A", which I understood to mean "not applicable" in that there were no Chambers Procedures, Standing Orders, or Sample Orders accessible from the website.

3. Cases cited for the proposition that Labaton had a legal duty to disclose to the Court the fee sharing agreement it had with Chargois & Herron are not applicable to the facts in this matter

Upon examination, the underlying facts of the cases cited in the Ethical Report for Special Master Honorable Gerald E. Rosen ("Ethical Report") for the proposition that Labaton had a legal duty to disclose to the Court the fee sharing agreement it had with Chargois & Herron make the reasoning in the cases inapplicable to the instant matter. There is no clear and controlling federal case law that required Labaton to disclose to the Court its fee sharing agreement with Chargois & Herron.

a) District of Massachusetts cases discussed in the Ethical Report

There are no First Circuit cases and only two District of Massachusetts cases cited in the Ethical Report. Neither of the District of Massachusetts cases holds that there is a disclosure obligation in the District of Massachusetts requiring a law firm to disclose to the Court its fee sharing agreement with others. In addition, the underlying facts of the cases cited are distinct from the instant matter.

i) In re Volkswagen and Audi Warranty Extension Litigation

In *In re Volkswagen and Audi Warranty Extension Litigation*, 89 F.supp.3d 155, 183 (D. Mass. 2018), the Court addressed a number of issues including a request of a non-class counsel firm to consider the effect of a joint venture agreement that the non-class counsel firm maintained covered issues litigated before the court. *Id*. at 182. The joint venture agreement contained fee-sharing clauses, and non-class counsel sought fees in the class action pursuant to the joint venture agreement and the fee-sharing clauses. *Id*. The Court noted that the joint venture agreement had already been the subject of a breach of contract action between some of the firms in Alabama state court, "but the claims appear to have been dismissed in light of the fee motions pending in this Court." *Id*. The Court concluded that the "joint venture agreement and the circumstances under which it was made . . . has no effect on the pending matters in this case. *Id*. The Court noted that the joint venture agreement was "rendered moot by the consolidation of cases – only some of which were being tried by firms in the joint venture – into this multidistrict class action litigation, and by the subsequent appointment of other, non-joint venture firms to the Class Counsel team." *Id*. "Simply put, there is no way for this Court to reconcile the agreement with what this case became." *Id*. at 183. Thus, the joint venture agreement was both "rendered moot" and not applicable to the Volkswagen and Audi warranty extension class action.

After concluding that the joint venture agreement was not applicable to the class action, the Court stated, "even if the joint venture agreement did more neatly fit the circumstances of this litigation, the Court is not inclined to defer to its strictures." *Id*. The Court then proceeded to state the passage quoted in the Ethical Report about the Court not being "bound blindly to follow such private arrangements." *Id*.

It is clear from the underlying facts that *In re Volkswagen* is much different than the instant matter. *In re Volkswagen* dealt with a fee dispute among class counsel and non-class counsel that was brought to the Court's attention. If all of the counsel involved had believed that the joint venture agreement was applicable and had shared fees pursuant to it, it would not have been brought to the Court's attention. When the Court was asked to decide the applicability of the joint venture agreement, it decided that it was rendered moot and not applicable. At no point in its consideration did the Court announce a rule that in class actions the Court must be notified of fee sharing agreements.

ii) In re Relafen Antitrust Litigation

In re Relafen Antitrust Litigation, 231 F.R.D. 52 (Mass. 2005) involved a nationwide consumer class action, and the Court's decision focused on approval of a proposed settlement. Id. 57. The court did not discuss a joint venture, as in *In re Volkswagen*, nor any type of fee sharing agreement. The language quoted in the Ethical Report comes in the context of the Court's discussion of its fairness determination of the settlement. *Id*. at 71. Nothing in the language quoted and at no place in this decision does the Court announce a rule that in class actions the Court must be notified of fee sharing agreements.

b) Other cases discussed in the Ethical Report

The Ethical Report also quotes from and discusses cases from the Second Circuit, Third Circuit, Ninth Circuit, and the United States District Court, Southern District of New York. None of these cases cited to Supreme Court authority requiring notice to the Court of fee sharing agreements, and none of these cases announce a rule that would require notice of fee sharing agreements to the Court in class actions in the District of Massachusetts. In addition, the underlying facts of the cases cited are distinct from the instant matter.

i) In re "Agent Orange" Product Liability Litigation

In re "Agent Orange" Product Liability Litigation, 818 F.2d 216 (2d Cir. 1987), focuses on the District Court's approval of a fee sharing agreement entered into by a nine-member Plaintiffs' Management Committee ("PMC"). *Id.* at 217. Under the agreement, each PMC member who contributed funds for general litigation expenses would receive a "three-fold return on his investment prior to the distribution of other fees awarded to individual PMC members by the district court." *Id*. A non-investing member challenged the validity of the agreement on two bases: the ethics prohibition against a lawyer acquiring an interest in an action, and as an impermissible fee sharing agreement. *Id*.

The District Court was not advised of the fee sharing agreement until four months after a settlement was reached, and "the district court approved the agreement, holding that 'there is no reason to believe that the existence of the PMC's fee-sharing agreement had any appreciable untoward effect on the decision to settle.'" *Id*. at 218. The Second Circuit Court reversed, finding that the agreement "violates established principles governing awards of attorneys' fees in equitable fund class actions and creates a strong possibility of a conflict of interest between class counsel and those they were charged to represent." *Id*.

The Court noted that the District Court had waived a local rule "requiring notice to the class of all fee applications *and fee sharing agreements* prior to the hearing on such fee petitions." *Id*. at 219. The Court also noted that the District Court was unaware of the PMC agreement when it waived the local rule. *Id*.

In reviewing the agreement and the dispute among the counsel over fees, the Court stated that "tying the fee to be received by individual PMC members to the amounts advanced for expenses, [the agreement] completely distorted the lodestar approach to fee awards." *Id*. at 222.

The Court continued: "The distortion was so substantial as to increase the fees awarded to one investor by over twelve times that which the district judge had determined to be just and reasonable, and, in a second case, to decrease the otherwise just and reasonable compensation of a non-investor by nearly two-thirds." *Id*. at 223.

The excerpt from *In re "Agent Orange"* quoted in the Ethical Report comes directly after this reasoning by the Second Circuit. Thus, the language excerpted does not deal with a fee sharing agreement like the one between Labaton and Chargois & Herron, but rather an agreement for a return on advancing litigation expenses that distorted the fee award by the District Court.

In re "Agent Orange" informs, and is consistent with, my opinion that without a standing order, specific order, inquiry from the court, local court rule, or precedent in a Circuit, there is no obligation to disclose fee sharing agreements with a court.

ii) In re Rite Aid Corp. Securities Litigation

In re Rite Aid Corp. Securities Litigation, 396 F.3d 294, 307 (3rd Cir. 2005) is an appeal of a District Court's decision on the reasonableness of attorney fees following a fairness hearing and the process used in calculating the fees. *Id*. at 296. A class member, Walter Kaufman, filed the appeal objecting to the fees awarded and to the fact that the District Court did not appoint a guardian or fee award expert to protect the interests of the class members. *Id*. at 299. The Third Circuit Court found that the District Court had erred in one respect, which was failing to use the blended hourly rates of all of the attorneys working on the case in approving a lodestar cross-check multiplier of 4.07, reflecting the average hourly billing rate of the senior-most partners at lead co-counsel firms. *Id*. at 306.

The final point the Court addressed was the issue of the District Court failing to appoint a guardian or fee award expert to protect the interests of the class members. *Id*. at 307-08. The excerpt of this case quoted in the Ethical Report is from the Court's discussion of this issue and the obligation of the District Court Judge to protect the class's interests. *Id*. at 307. On this point, the Court decided that the District Court Judge did not abuse his discretion in deciding the fee award without appointing a guardian or fee award expert. *Id*. at 308.

Nothing in *In re Rite Aid Corp.* dealt with a client agreement that permitted fee sharing or notice to the court of a fee sharing agreement. The holding in *In re Rite Aid Corp*. does not announce a rule or create precedent that would have required Labaton to disclose its fee sharing agreement with Chargois & Herron to the Court.

iii) In re FPI/Agretech Securities Litigation

In re FPI/Agretech Securities Litigation, 105 F.3d 469 (9th Cir. 1997) involves an attorneys' fee dispute. The dispute arose after an attorney, Jamie Chuck, filed an application for allocation of fees from an aggregate attorneys' fee award. *Id*. at 472. Another law firm, Lieff Cabraser & Heimann ("LCH") contested Chuck's right to a portion of the fee. *Id*. At a hearing on the matter, LCH requested an opportunity for the attorneys to work out a compromise, and the District Court granted that request. *Id*. When presented with the a compromise agreement on how to divide the fees from the aggregate attorneys' fee award, the District Court Judge rejected it and denied Chuck any portion of the fees. *Id*.

The excerpted passage quoted in the Ethical Report comes from the Ninth Circuit Court's explanation why the District Court Judge and the Court are not required to approve an agreement when "the parties merely submitted orally a fee allocation proposal, arrived at, figuratively speaking, 'on the courthouse steps'." *Id*. at 474. Thus, the agreement in *In re FPI/Agretech* is

much different than the fee sharing agreement in the instant matter. The agreement in *In re FPI/Agretech* did not have its origin in an agreement with a client that permitted fee sharing. The issue before the *In re FPI/Agretech* Court was a fee dispute among lawyers.

Nothing in *In re FPI/Agretech* dealt with a client agreement that permitted fee sharing or notice to the court of a fee sharing agreement. The holding in *In re FPI/Agretech* does not announce a rule or create precedent that would have required Labaton to disclose its fee sharing agreement with Chargois & Herron to the Court.

iv) Lewis v. Teleprompter Corp.

Lewis v. Teleprompter Corp., 88 F.R.D. 11 (S.D.N.Y. 1980) involved an application for attorney fees by lead counsel ("Wolf Popper") and two other firms ("Pomerantz" and "Kaufman"), and lead counsel's opposition to attorney fees filed by attorneys representing other plaintiffs. *Id*. at 11. In the course of considering fee applications, the Court was advised that there were "undisclosed fee-splitting agreements between legal counsel and certain other plaintiffs' counsel [the Pomerantz and Kaufman firms] on whose behalf lead counsel applies for fees," and undisclosed agreements to pay additional lawyers attorney fees for furnishing clients to lead counsel. *Id*. at 16-17. Among these undisclosed agreements was the one between Wolf Popper and Pomerantz, in which the Court found "the fee agreement was directly related to Pomerantz' support of Wolf Popper's application to be lead counsel." *Id*. at 19. This agreement had not be disclosed to the trial court judge at the time of consolidation of different related lawsuits. *Id*. Similarly, the Court found that agreement between Wolf Popper and Kaufman "was directly related to Wolf Popper's application to be lead counsel," which Kaufman supported. *Id*. at 20.

Next, the Court addressed "forwarding fee agreements with two other attorneys." *Id*. These agreements were made by Wolf Popper with two other attorneys who essentially provided Wolf Popper with clients.

From reading the case, it is clear that Court was upset with the various arrangements Wolf Popper entered into to obtain support for its application to be lead counsel. *Id*. 19-20. Indeed, this is the first issue the Court addressed after the passage of the opinion excerpted in the Ethical Report. The Court also disapproved of the agreements Wolf Popper made with two other lawyers who provided clients to Wolf Popper.

The underlying facts and the types of agreements in *Lewis v. Teleprompter Corp*. are much different than the agreement Labaton had with ARTRS that expressly stated that Labaton could allocate fees to other counsel, including referral fees. The circumstances of *Lewis v. Teleprompter* are also distinct in that the Court was called upon to resolve a dispute among attorneys before approving attorney fee applications.

Nothing *Lewis v. Teleprompter Corp.* involved a client agreement that permitted fee sharing or notice to the court of such a fee sharing agreement. The holding in *Lewis v. Teleprompter Corp.* does not announce a rule or create precedent that would have required Labaton to disclose its fee sharing agreement with Chargois & Herron to the Court.

4. Neither Mass. R. Prof. C. 3.3(a) nor Mass. R. Prof. C. 8.4(c) required Labaton to disclose to the Court its fee sharing agreement with Chargois & Herron

At all times relevant to this matter, Mass. R. Prof. C. 3.3(a) stated, in pertinent parts: "A lawyer shall not knowingly: (1) 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; (2) [omitted]; or (3) offer evidence that the lawyer knows to be false, except as provided in Rule 3.3(e). . . ." In addition, Mass. R. Prof. C. 8.4(c) stated: "It is professional misconduct for a

lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." As will be discussed more fully below, neither Mass. R. Prof. C. 3.3(a) nor 8.4(c) required Labaton to disclose to the Court its fee sharing agreement with Chargois & Herron.

For 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. As described previously in Part IV.B. of this Ethics Report, I could not find any legal obligation for Labaton to disclose its fee sharing agreement to the Court either based on the Federal Rules of Civil Procedure, a local court rule, order of the Court, inquiry from the Court, or controlling precedent in the First Circuit or the District of Massachusetts.

Without such legal obligation to notify the Court of its fee sharing agreement with Chargois & Herron, Labaton was not on express or constructive notice that it had an obligation to do so. Even if there had been controlling precedent, a local court rule, or arguably some other constructive notice to Labaton, neither Mass. R. Prof. C. 3.3(a) nor 8.4(c) would be violated unless there was actual notice to Labaton, or sufficient facts and circumstances from which to infer Labaton's knowledge of the precedent, local court rule, or other requirement to disclose to the Court the fee sharing agreement with Chargois & Herron.

Mass. R. Prof. C. 1.0 addresses terminology in the Massachusetts Rules of Professional Conduct, and it states, in pertinent part: "'Knowingly,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.'" Thus, to violate Mass. R. Prof. C. 3.3(a) Labaton would have had to have actual knowledge of both an obligation to notify the Court of its fee sharing agreement with

Chargois & Herron, and it would have had to knowingly make false statements or offer false evidence.

Comment [3] to Mass R. Prof. C. 3.3 states: "There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation." For an omission to be the equivalent of a misrepresentation, the omission has to occur where there is a duty to speak. This opinion is supported by my research into Mass. R. Prof. C. 3.3(a), the ABA Model Rule 3.3(a), state ethics rules that correspond to Mass. R. Prof. C. 3.3(a), review of disciplinary cases addressing this issue, my knowledge, skill, and experience.

Without a legal obligation to disclose the fee sharing agreement to the Court, the next inquiry is whether Labaton engaged in dishonesty, fraud, deceit, or made a misrepresentation to the Court. Based on the factual assumptions and my review of certain documents and materials cited in the factual assumptions, I find no basis to conclude that Labaton engaged in dishonesty, fraud, deceit, or misrepresentations to the Court.

Mass. R. Prof. 8.4(c)'s prescription against a lawyer engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation" involves specific intent on the part of a lawyer to violate this ethics rule by engaging in fraud or deceit. While dishonesty and misrepresentation may not require specific intent, dishonesty and misrepresentation require scienter of at least knowingly as required in Mass. R. Prof. C. 3.3(a), or recklessness. *See, e.g., In re Discipline of an Attorney*, 884 N.E.2d 450, 462 (2008) (holding that the "assertion of a lien on a client's potential recovery when the lawyer knows he has no right to do so plainly constitutes misrepresentation and is dishonest" and violates Mass. R. Prof. C. 8.4(c)); *In re Surrick*, 338 F.3d 224, 234 (3d Cir. 2003) (stating that "misrepresentation" – one of the types of misconduct prohibited by RPC 8.4(c) – included statements made with reckless disregard for the truth");

In re Iowa Supreme Court Att'y Discipline Bd. v. Netti, 797 N.W.2d 591, 605 (Iowa 2011) (holding that "some level of scienter that is greater than negligence to find a violation of rule Rule 32: 8.4(c)"); *In re Skagen*, 149 P.3d 1171 (Or. 2006) ("Although proving that a lawyer acted dishonestly does not require evidence that the lawyer intended to deceive, it does require a mental state of knowledge – that is, that the accused lawyer know that his conduct was culpable in some respect.").

In addition, Mass. R. Prof. C. 1.0(e) states: "'Fraud' or 'fraudulent' denotes conduct that is fraudulent under substantive or procedural law and has a purpose to deceive." Comment [1] to Mass. R. Prof. C. 1.0 further amplifies this definition and further explains, in pertinent part: "When used in these Rules, the terms 'fraud' or 'fraudulent' refer to conduct that is characterized as such under the substantive or procedural law and has a purpose to deceive. *This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information*" (emphasis added).

If the Court decided that the fee sharing agreement between Labaton and Chargois & Herron was relevant information that the Court wanted before approving the fee award to class counsel, negligence on Labaton's part is not sufficient to find a violation of Mass. R. Prof. C. 8.4(c). There would have to be at least at least a knowing or reckless misrepresentation to the Court to constitute a violation of Mass. R. Prof. C. 8.4(c). A few Admonition cases illustrate this.

Admonition No. 17.07 (2017), https://bbopublic.blob.core.windows.net/web/f/-admon2017.pdf, involved a respondent representing a client in a personal injury matter, and the respondent signed the client's signature on a formal release of claim rather than have the client

sign the release. The Admonition held: "By furnishing the insurance company with a release he knew had not been signed by the client, the respondent violated Mass. R. Prof. C. 8.4(c). *Id*.

Admonition No. 16-11 (2016), https://bbopublic.blob.core.windows.net/web/f/-admon2016.pdf, involved a respondent who notarized the signature of the co-purchaser of an investment property without seeing the co-purchaser sign the documents. The Admonition held: "By notarizing the signature of a person who was not present before him, the respondent violated Mass. R. Prof. C. 8.4(c)." *Id.*

Admonition No. 15-26 (2015), https://bbopublic.blob.core.windows.net/web/f/-admon2015.pdf, dealt with a respondent representing a wife in a divorce in which she was to remain in the marital home while the husband made the mortgage payments. The husband subsequently lost his job, and the respondent's client informed respondent that she feared that her husband would not make payments and she wanted to sell the house. *Id*. The respondent filed a motion with the probate court for permission to sell the house, and stated in the motion, "on information and belief, the mortgage currently is not being paid by [the husband] and the parties are as risk of losing their equity in the martial home." *Id*. This was not true because the husband had been current in the mortgage payments, and respondent's client had not told respondent that her husband was behind in the mortgage payments. *Id*. The Admonition held: "By making an assertion to the court without adequate basis in fact to do so, the respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentations, in violation of Mass. R. Prof. C. 8.4(c); and conduct prejudicial to the administration of justice, in violation of Mass. R. Prof. C. 8.4(d)." *Id*.

The facts and reasoning of the cases in the Ethical Report additionally shows that in each instance a lawyer either made a misrepresentation or failed to speak up under circumstances

where there was a clear obligation to do so. A review of those cases is useful to seeing that Mass. R. Prof. C. 3.3 and 8.4(c) are not applicable in this matter.

a) In re O'Toole

In re O'Toole, 2015 WL 90309021 (Mass. St. Bar Disp. Bd. 2015) is a disciplinary matter involving respondent and statements he made that the Disciplinary Board determined were "half truths" and "clearly meant to mislead." *Id*. at *5. Respondent's client was ordered to pay plaintiffs $192,500, and execution issued for approximately $211,000, including interest. *Id*. at *1. Respondent's client eventually wired a total of $192,000 to respondent, who informed the plaintiffs' attorney that he had that amount available for payment on July 8, 2008. *Id*. at *2. Plaintiffs' lawyer replied that the wire transfer to the plaintiffs could be made, but that the total owed was approximately $211,000. *Id*. Respondent did not wire any funds to plaintiffs or their counsel, but, in mid-July, transferred approximately $35,000 back to the client in order for the client to make his payroll. *Id*. In early August, the client then instructed to return the balance of the funds, which respondent did. *Id*.

Later in August, the plaintiffs' lawyer wrote to respondent that the plaintiffs planned to begin execution proceedings. *Id*. The respondent then made a series of statements that the Disciplinary Board said were not "the failure fully to disclose," but rather "the respondent engaged in affirmative misrepresentations." *Id*. *5. The Disciplinary Board continued: "It matters little that he crafted those misrepresentations in formulations that, while facially ambiguous, could be expected to deceive, and did so." *Id*.

To illustrate the type of affirmative misrepresentations the respondent made, consider the first statement that the Disciplinary Board found to be misleading. The first affirmative misrepresentation was a voice mail respondent left for the plaintiffs' attorney in response to the

plaintiffs' lawyer writing to respondent that the plaintiffs planned to begin execution proceedings. Id at *2. In the voice mail, the respondent stated that "the money . . . is available to the extent that it was available previously." *Id*. at *2. The Disciplinary Board stated: "In theory, this statement could have meant that the client was still willing to pay the plaintiffs $192,500. In context, however, it would have been understood to mean that that sum was still in the respondent's possession, available to be paid. By this point, however, the respondent knew that the client was unlikely to be capable of satisfying the judgment against him." *Id*.

The other misrepresentations are similar, and all are affirmative misrepresentations. *In re O'Toole* is not a case about omissions, but one about deliberate misrepresentations.

b) In the Matter of Attorney

In the Matter of Attorney, 2007 WL 4284758 (Mass. St. Bar Disp. Bd. 2007) the Disciplinary Board found a violation of Mass. R. Prof. C. 8.4(c) when respondent sent a letter that the Disciplinary Board found, under the circumstances, "was deliberately misleading." *Id*. at *4. The letter was calculated to be misleading in several respects because it set out facts and responded to concerns of the opposing party in a way that "deliberately misleads the reader." *Id*.

It is clear from the facts of this case, and analysis of the Disciplinary Board, that this case did not deal with an omission but rather a deliberate plan to mislead that was obvious given the wording of the letter and the circumstances under which it was written. *In the Matter of Attorney* is not a case about omissions, but one about deliberate misrepresentations.

c) Comparing Bronston v. United States with United States v. DeZarn and statements and submissions of class counsel

In *Bronston v. United States*, 409 U.S. 353 (1973), the Supreme Court reversed a perjury conviction because the defendant had given a literally true but unresponsive answer. *Id*. at 361-62. *United States DeZarn*, 157 F.3d 1042 (6th Cir. 1998), is distinguished from *Bronston*

because the defendant, DeZarn, gave "unequivocal and directly and fully responsive answers to questions asked," and in context there was "more than ample context and evidence to test the meaning and context." *Id*. at 1051. Unlike the literally true unresponsive answer in *Bronston*, in *DeZarn* the defendant gave directly responsive answers under circumstances where a finder of fact could conclude that they were calculated to be misleading and false. *Id*.

The Ethical Report cites to these cases in the context of discussing in-court statements and submissions to the Court by class counsel concerning "the identities of the law firms who would share in those fees." Ethical Report at 72. The Ethical Report then asserts: "The Court could assume that the lawyers who were going to participate in the fee it was asked to award were the lawyers who appeared before it because no other lawyer was identified." *Id*. Assuming arguendo that the Court did in fact have that assumption, it is my opinion that the Court's assumption alone is not enough to serve as the basis for a violation of Mass. R. Prof. C. 3.3(a) or 8.4(c) unless it can be shown that the Labaton knew that this was the Court's assumption. That is, unless the Court's assumption was communicated to class counsel, class counsel could not know what the Court was assuming.

In addition, I believe that assertion in the Ethical Report that the "Court could assume that the lawyers who were going to participate in the fee . . . were the lawyers who appeared before it" is speculative and overbroad for at least two reasons.

First, as discussed in Part IV.B of this Ethics Report, some judges and some District Courts have realized that in order to know to whether a fee award will be shared with a lawyer or law firm not in a fee application, it is necessary to have a local court rule, a standing order, a case specific order, or the Court has to inquire of class counsel about fee sharing agreements. If this was not the case, then either Rule Civ. P. R. 23(h) or 54(d) or controlling authority for the

District of Massachusetts would make it clear that all fee sharing agreements must be disclosed to the Court.

Second, it is well-understood that while class action attorney fees are awarded to law firms on the basis of fee applications of the lawyers in the individual law firms working on the class action, how each law firm divides the fees among the lawyers in the firm is not necessarily based on the fee petition. Indeed, an originating lawyer in a law firm may not even be listed in a fee petition but may receive a very large share of the fee awarded to the firm. Or, a partnership agreement in a law firm may reallocate a portion of fees awarded in a class action to lawyers in the firm who may have not worked on the class action. I believe that a judge would know that, in awarding a fee to a law firm, exactly how the fee is divided, and to whom the fee will be divided, is not necessarily in a fee petition or stated to the court.

C. There Was Not an Ethical Duty or Legal Requirement for Labaton to Provide Notice to the Class of Its Fee Sharing Arrangement with Chargois & Herron in the Case of *Arkansas Teacher Retirement System v. State Street Corp., et al.*, MAD No. 11-cv-10230

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 in the above-stated case. Disclosure to class members flows both from class counsel's disclosure obligations to the Court and from class counsel's obligations to class members. 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 to the fee sharing agreement with Chargois & Herron to the class members.

Nothing in Fed. R. Civ. P. 54(d) or 23(h) states that class counsel has an obligation to give notice of fee sharing agreements to class members. In addition, the cases cited previously in Part IV.B. of this Ethics Report do not discuss the issue of notice to class members of the fee

sharing, fee-splitting, or even the return on investment agreements they reviewed. I reviewed additional cases, law review articles, and other materials,[20] and none of the cases or materials I reviewed stated that there was a legal or ethical duty for class counsel to notify class members of fee sharing agreements.

In reaching my opinion, I also paid particular attention to the treatise, *Newberg on Class Actions*. *William B Rubenstein, Newberg on Class Actions* (5th ed. (2016) (West online version, Dec. 2017 Update) ("*Newberg*"). Some sections in Newberg are helpful in understanding the basis for my opinion.

Section 8:25 of *Newberg* states that "Rule 23(h)(1) requires that a court considering a motion for reasonable attorney's fees . . . direct notice to class members 'in a reasonable manner.' Yet other than requiring that the notice be made 'in a reasonable manner,' Rule 23 does not dictate any specific content that the notice must contain." *Id*. at § 8:25. *Newberg* continues that class members "must be given sufficient information" to be able to object to the fee motion. *Id*. *Newberg* states that this requires that this information must conform to Fed. R. Civ. P. 23(h), and *Newberg* explains:

> Rule 23(h) requires that the fee petition be made by motion according to Rule 54(d), and Rule 54, in turn requires that the motion: (ii) specify the judgment and statute, rule, or other grounds entitling the movant to the award; (iii) state the amount sought or provide a fair estimate of it; and (iv) *disclose, if the court so orders, the terms of any agreement about fees* for the services for which the claim is made.

Id. (emphasis added). *Newberg* makes it clear that notice to the class of "any agreement about fees" starts with an order from the court requiring disclosure in the fee petition.

[20] *See, e.g, Barbara J. Rothstein & Thomas E. Willging, Managing Class Action Litigation: A Pocket Guide for Judges*, FEDERAL JUDICIAL CENTER (3rd ed. 2010), https://www.fjc.gov/sites/default/files/-2012/ClassGd3.pdf (omitting reference to fee sharing agreements); Written Submission of Judge Arlin Adams to Third Circuit Task Force on Appointment of Counsel in Class Action Lawsuits (Mar. 14, 2001), http://www.ca3.uscourts.gov/sites/ca3/-files/adams1.pdf (discussing class counsel issues and omitting reference to fee sharing).

Another section of the *Newberg* states "Rule 54(d)(2)'s motion requirement—concerning disclosure of fee agreements—is discretionary with the court. *Id*. at § 15:11. In the following section, Newberg opines that "courts should regularly order disclosure" of fee agreements. *Id*. at § 15:12.

Absent a legal duty to disclose to class members the fee sharing agreement with Chargois & Herron, Labaton did not have an ethical duty to do so.

D. Courts and Ethics Authorities Do Not Impose Sanctions on or Discipline a Lawyer or Law Firm When a Legal or Ethical Duty Is Unclear

Courts and ethics authorities do not impose sanctions on or discipline a lawyer or law firm when a legal or ethical duty is unclear. When a legal or ethical duty is unclear, courts and disciplinary authorities follow basic principles of fairness and due process and do not impose sanctions or punishment.

Mass. R. Prof. C. Scope [5] states, in pertinent part:

> The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act on uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, including the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

As this passage suggests, courts and ethics authorities must take into consideration "all of the circumstances, including willfulness," and willfulness cannot be present when a legal or ethical duty is unclear.

In *In re Crossen*, 800 N.E.2d 352, 379 (Mass. 2008), the Supreme Judicial Court of Massachusetts stated: "Due process requires fair notice of the proscribed conduct, meaning that attorneys may not be subject to rules that are so broad that they implicate concerns about

'potential random application or unclear meaning,' i.e., rules that are unconstitutionally vague." *Id*. at 379 (citing *Matter of Discipline of an Attorney*, 815 N.E.2d 1072 (Mass. 2004)). If a legal or ethical obligation is not clear, sanctions or discipline based on such an unclear obligation would violate the principle announced in *Crossen* and other Massachusetts disciplinary cases.

Section 3.28 the Rules of the Board of Bar Overseers for Massachusetts also states that in disciplinary proceedings there is "the burden of proof by a preponderance of the evidence." Index to the Rules of the Board of Bar Overseers Section 3.28 (effective 9/1/17), *Massachusetts Board of Bar Overseers*, https://www.massbbo.org/Rules; *see also Matter of Hocika*, 809 N.E.2d 1013, 1015-16 (2004) (finding "substantial evidence" to support hearing officer's findings of ethics violations). When a legal or ethical duty is unclear, there cannot be a "preponderance" or "substantial" evidence of the scienter required for the violation of the legal or ethical duty. Otherwise, courts or disciplinary authorities would be randomly imposing sanctions on or disciplining lawyers and law firms, which would not only lack fairness but would undermine public confidence in the judicial system and bar disciplinary authorities.

Finally, the *Annotated Standards for Imposing Lawyer Sanctions* states: "It is a well-established principle that the punishment of lawyers is not the purpose of lawyer disciplinary sanctions." *ABA Center for Professional Responsibility, Annotated Standards for Imposing Lawyer Sanctions* Standard 1.1, at 11 (2015). Rather, the purpose of attorney discipline is to protect the public and to deter other attorneys from engaging in the same prohibited conduct. *See, e.g., Matter of Concemi*, 662 N.E.2d 1030, 1033 (1994) ("We must consider what measure of discipline is necessary to protect the public and deter other attorneys from the same behavior."); *In re Balliro*, 899 N.E.2d 794, (1994) (stating that in determining discipline

protection of the public and deterrence of other lawyers is the aim) (quoting *Matter of Concemi*, 662 N.E.2d 1030, 1033 (1994).

E. Mass. R. Prof. C. 1.5(a)'s Prohibition on a "clearly excessive fee" Does Not Apply to the Mass. R. Prof. 1.5(e) "division of a fee (including a referral fee) between lawyers who are not in the same firm"

Mass. R. Prof. C. 1.5 has to be construed in its entirety, and it is clear that Mass. R. Prof. C. 1.5(a) prohibition on a "clearly excessive fee" does not apply to each lawyer's *share of a fee* pursuant to a division of fee under Mass. R. Prof. C. 1.5(e) because (e) requires that "the total fee is reasonable." Mass. R. Prof. C. 1.5(a)'s purpose is to ensure that the client is protected from being charged illegal or clearly excessive attorney fees or unreasonable expenses. When it comes to the division of fee, the same client protection purpose is found in the Mass. R. Prof. C. 1.5(e) requirement that "the total fee is reasonable."

The Massachusetts Supreme Judicial Court has recognized that client protection is the rationale for Mass. R. Prof. C. 1.5(e). In *Saggese v. Kelley*, 837 N.E.2d 699 (Mass. 2005), the Court noted that the trial judge enforced the oral fee sharing agreement Saggese had with the Kelleys even if Mass. R. Prof. C. 1.5(e) had been violated "because the rule was intended to protect the client from excessive fees, and here the client was not harmed because the referral fees came directly out of the Kelleys' hourly rate, which had not been adjusted upward as a result of the referral." *Id*. at. 703. In discussing whether the older equivalent to Massachusetts Disciplinary Rule of Mass. R Prof. C. 1.5(e) was controlling, the Court stated: "The rule, and it is immaterial which version applies, was intended to protect clients from unreasonable fees." *Id*. at 704.

Applying Mass. R. Prof. C. 1.5(a) to a lawyer's share in a division of fee under Mass. R. Prof. C. 1.5(e) is also contrary to Massachusetts Rules of Professional Conduct's approval of a

pure forwarding or referral fee. Comment [7A], previously Comment [4A] in February 2011,[21] to Mass. R. Prof. C. 1.5, states, in pertinent part: "Unlike ABA Model Rule 1.5(e), Paragraph (e) does not require that the division of fees be in proportion to the services performed by each lawyer or require the lawyer to assume joint responsibility for the representation in order to be entitled to a share of the fee." The rule and its comment makes it clear that a lawyer's share of a division of fee is permissible as long as the total fee is reasonable.

In addition to relying on my knowledge, skill, experience, and training, in reaching this opinion, I conducted research into the following resources: Massachusetts state court cases; advisory ethics opinions of the Committee on Professional Ethics for Massachusetts Bar Association; advisory ethics opinions of the Boston Bar Association Ethics Committee; articles and reports of the Massachusetts Board of Bar Overseers;[22] and all of the available non-public discipline matters called Admonitions by the Massachusetts Board of Bar Overseers.[23] 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. I also performed additional research into this issue, and none of the sources I reviewed support the view that each lawyer's share of a fee in a division of fee under Mass. R. Prof. C. 1.5(e) must not be clearly excessive.

[21] Mass. R. Prof. C. 1.5, cmt. [4A] in effect in February 2011 is worded slightly differently, and it provided: "Paragraph (e), unlike ABA Model Rule 1.5(e), does not require that the division of fees be in proportion to the services performed by each lawyer unless, with a client's written consent, each lawyer assumes joint responsibility for the representation."

[22] See *supra* note 14 for a description of the articles and reports I reviewed."

[23] I reviewed all of the Admonitions issued from 1999 through March 20, 2018. I searched these using the find function and "1.5(a)" and then "1.5(e)" to identify Admonitions so see if any discussed whether a lawyer's share of fee when dividing a fee must not be "clearly excessive."

V. CONCLUSION

As discussed in greater detail above, I have concluded to a reasonable degree of professional certainty that:

- A Flawed or Imperfect Division of Fee Arrangement Between Law Firms and a Client Under Mass. R. Prof. C. 1.5(e) and a Resulting Fee Division Between the Law Firms Should Not Be Considered a Violation of Mass. R. Prof. C. 7.2(c).

- There Was Not an Ethical Duty or Legal Requirement for Labaton to Provide Notice to the Court of Its Fee Sharing Arrangement with Chargois & Herron in the Case of *Arkansas Teacher Retirement System v. State Street Corp., et al*., MAD No. 11-cv-10230.

- There Was Not an Ethical Duty or Legal Requirement for Labaton to Provide Notice to the Class Members of Its Fee Sharing Arrangement with Chargois & Herron in the Case of *Arkansas Teacher Retirement System v. State Street Corp., et al*., MAD No. 11-cv-10230.

- Courts and Ethics Authorities Do Not Impose Sanctions on or Discipline a Lawyer or Law Firm When a Legal or Ethical Duty Is Unclear.

- Mass. R. Prof. C. 1.5(a) Prohibition on a "clearly excessive fee" Does Not Apply to the Mass. R. Prof. 1.5(e) "division of a fee (including a referral fee) between lawyers who are not in the same firm."

These are my independent opinions formed on my own and without the assistance of any person. These opinions are based upon my knowledge, skill, experience, training, and education, and informed by the facts assumed, materials I reviewed, and research I performed. I reserve the right to expand upon or modify the opinions in this report if presented with additional facts or materials, or if I conduct supplemental research after the submission of this report.

March 26, 2018

Peter A. Joy

PETER A. JOY
WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW
One Brookings Drive, Campus Box 1120
St. Louis, Missouri 63130
(314) 935-6445 Phone; (314) 935-4029 Fax
joy@wustl.edu

Appointments:

WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW, St. Louis, Missouri
Henry Hitchcock Professor of Law, 2010 to present
Vice Dean, January 2010-July 2012
Professor of Law and Director of the Criminal Justice Clinic, 1998-present
Director of Trial and Advocacy Program, 2002-06
Israel Treiman Research Fellow, 2001-02
Visiting Associate Professor of Law, Summer 1997 and Fall 1992

CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW, Cleveland, Ohio
Professor of Law and Director of Clinical Program, 1998
Assistant Professor of Law and Director of Clinical Program, 1984-98
Acting Director of Clinical Program and Assistant Professor of Law, 1983-84
Supervising Attorney in Clinical Program, 1981-83 and 1978-80

Other Teaching and Research:

Campbell Visiting Fellowship, Monash University, Melbourne, Australia, May 2016
Visiting Professor of Law, Utrecht University, Utrecht, Netherlands, January 2015
Visiting Scholar, Hitotsubashi University Law School, Kunitachi, Japan, 2012 and 2013
Visiting Professor of Research, Northumbria University, Newcastle Upon Tyne, UK, 2009-15
Visiting Professor of Law, St. Louis University, Spring 2006
Visiting Professor of Law, Aoyama-Gakuin University, Tokyo, Japan, Summer 2003

Books:

PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH (West, 3d ed. 2017) (co-author)

AUSTRALIAN CLINICAL LEGAL EDUCATION (ANU Press, 2017) (co-author)

PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH, TEACHER'S MANUAL (WEST, 2d & 3d 2015 & 2017) (co-author)

DO NO WRONG: ETHICS FOR PROSECUTORS AND DEFENDERS (ABA, 2009) (co-author)

CLINICAL EDUCATION FOR THIS MILLENNIUM: THE THIRD WAVE (Miche & Osaka trans. 2005) (co-author) (Japanese language)

Book Chapters:

Competency of Counsel: Mitigation and National Standards of Practice, in TELL THE CLIENT'S STORY: MITIGATION IN CRIMINAL AND DEATH PENALTY CASES (Monahan & Clark, eds. ABA, 2017) (co-author)

Ethics: Criminal Practice and the Media, in MEDIA COVERAGE IN CRIMINAL JUSTICE CASES (Taslitz ed. ABA, 2013) (co-author)

Ethics in Criminal Advocacy, in THE STATE OF CRIMINAL JUSTICE 2015 (Wojcik ed. ABA, 2015) (co-author)

Ethics in Criminal Advocacy, in THE STATE OF CRIMINAL JUSTICE 2014 (Wojcik ABA, 2014) (co-author)

Ethics in Criminal Advocacy, in THE STATE OF CRIMINAL JUSTICE 2013 (Raeder ed. ABA, 2013) (co-author)

Ethics in Criminal Advocacy, in THE STATE OF CRIMINAL JUSTICE 2012 (Raeder ed. ABA, 2012)

Ethics in Criminal Advocacy, in THE STATE OF CRIMINAL JUSTICE 2011 (Raeder ed. ABA, 2011) (co-author)

Japan's New Clinical Programs: A Study in Light and Shadow, in GLOBAL CLINICAL MOVEMENT (Bloch ed. Oxford University 2011) (co-author)

Ethics in Criminal Advocacy, in THE STATE OF CRIMINAL JUSTICE 2010 (Raeder ed. ABA, 2010) (co-author)

Criminal Law Clinics in the United States: Variation, History and the Quality of Student Representation, in DEVELOPMENT OF LAWYERS BY CLINICAL LEGAL EDUCATION (Shigeo Miyagawa ed. 2007) (Japanese language)

Articles and Essays:

The Uneasy History of Experiential Education in U.S. Law Schools, __ DICKINSON LAW REVIEW ___ (forthcoming 2018)

A Judge's Duty to Do Justice: Ensuring the Accused's Right to the Effective Assistance of Counsel, 46 HOFSTRA LAW REVIEW 139 (2018)

"What Do I Do with the Porn on My Computer?": How a Lawyer Should Counsel Clients about Physical Evidence, 54 *American Criminal Law Review* 751 (2017) (co-author)

ABA Standard 405(c): Two Steps Forward and One Step Back for Legal Education, 66 JOURNAL OF LEGAL EDUCATION 606 (2017)

Lawyers Serving as Judges, Prosecutors, and Defense Lawyers at the Same Time: Legal Ethics and Municipal Courts, 49 WASHINGTON JOURNAL OF LAW & POLICY 23 (2016)

Monroe Freedman's Influence on Legal Education, 45 HOFSTRA LAW REVIEW 649 (2016)

Race Matters in Jury Selection, 109 NORTHWESTERN UNIVERSITY LAW REVIEW ONLINE 180 (2015)

Unequal Assistance of Counsel, 24 KANSAS JOURNAL OF LAW & PUBLIC POLICY 518 (2015)

Systemic Barriers to Effective Assistance of Counsel in Plea Bargaining, 99 IOWA LAW REVIEW 2103 (2014) (co-author)

Law Schools and the Legal Profession: A Way Forward, 46 AKRON LAW REVIEW 177 (2014)

Prosecutors' Disclosure Obligations in the U.S., 42 HITOTSUBASHI JOURNAL OF LAW & POLITICS 51 (2014) (co-author)

The Criminal Discovery Problem: Is Legislation a Solution?, 52 WASHBURN LAW JOURNAL 37 (2012)

Why Lawyers Should Assess Lawyers' Ethics, 15 LEGAL ETHICS 405 (2012)

The Cost of Clinical Legal Education, 32 BOSTON COLLEGE JOURNAL OF LAW & SOCIAL JUSTICE 309 (2012)

Rationing Justice by Rationing Lawyers, 37 WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY 205 (2011)

Government Interference with Law School Clinics and Access to Justice: When Is There a Legal Remedy, 61 CASE WESTERN RESERVE LAW REVIEW 1087 (2011)

Ensuring the Ethical Representation of Clients in the Face of Excessive Caseloads, 75 MISSOURI LAW REVIEW 771 (2010)

'Kneecapping' Academic Freedom, 69 ACADEME 8 (2010) (co-author)

Constructing Systemic Safeguards Against Informant Perjury, 7 OHIO STATE JOURNAL OF CRIMINAL LAW 677 (2010)

Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility, 59 J. LEGAL EDUC. 97 (2009) (co-author)

Commemoration of the Founding of the Japan Clinical Legal Education Association, 1 LAWYERS & CLINICAL EDUCATION 21 (2009) (Japanese language)

The Evolution of ABA Standards for Clinical Faculty, 75 TENNESSEE LAW REVIEW 183 (2008) (co-author)

Introduction: New Directions in Clinical Legal Education – Law for the People, 28 WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY 1 (2008)

Brady and Jailhouse Informants: Responding to Injustice, 57 CASE WESTERN RESERVE LAW REVIEW 619 (2007)

The Relationship Between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System, 84 WISCONSIN LAW REVIEW 399 (2006); reprinted in BENCH AND BAR: ETHICS (Reddy ed. Amicus Books 2008)

Building Clinical Legal Education Programs in a Country Without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study, 12 CLINICAL LAW REVIEW 417 (2006) (co-author)

Political Interference in Clinical Programs: Lessons from the U.S. Experience, 7 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION 83 (2006)

Lawyer Ethics and the Expanding Role of the Media in Criminal Cases, 17 PROFESSIONAL LAWYER 1 (2006) (co-author)

Prosecution Clinics: Dealing with Professional Role, 74 MISSISSIPPI LAW JOURNAL 955 (2005)

Criminal Law Clinics in the United States: Variation, History and the Quality of Student Representation, 7 WASEDA PROCEEDINGS OF COMPARATIVE LAW 93 (2005)

Reflection in Action: Constructing New Clinical Teacher Training by Using Lessons Learned from New Clinicians, 11 CLINICAL LAW REVIEW 49 (2004) (co-author)

Teaching Ethics in the Criminal Law Course, 48 ST. LOUIS UNIVERSITY LAW J. 1239 (2004)

The Ethical Obligations of Law School Clinic Students as Student Lawyers, 45 SOUTH TEXAS LAW REVIEW 815 (2004)

Evolution of ABA Externship Standards: Steps in the Right Direction, 10 CLINICAL LAW REVIEW 681 (2004)

The Relationship Between Civil Rule 11 and Lawyer Discipline: An Empirical Analysis Suggesting Institutional Choices in the Regulation of Lawyers, 37 LOYOLA OF LOS ANGELES LAW REVIEW 765 (2004)

An Ethics Critique of Interference in Law School Clinics, 71 FORDHAM LAW REVIEW 1971 (2003) (co-author)

The Law School Clinic as a Model Ethical Law Office, 30 WILLIAM MITCHELL LAW REVIEW 35 (2003)

Teaching Ethics in Evidence, 22 QUINNIPIAC LAW REVIEW 961 (2003) (co-author)

Making Ethics Opinions Meaningful: Toward More Effective Regulation of Lawyers= Conduct, 15 GEORGETOWN JOURNAL OF LEGAL ETHICS 313 (2002)

Conflict of Interest and Competency Issues in Law Clinic Practice, 9 CLINICAL LAW REVIEW 493 (2002) (co-author)

A Professionalism Creed for Judges: Leading by Example, 52 SOUTH CAROLINA LAW REVIEW 667 (2001)

Clinical Education for This Millennium: The Third Wave, 7 CLINICAL LAW REVIEW 1 (2000) (co-author)

Political Interference with Clinical Legal Education: Denying Access to Justice, 74 TULANE LAW REVIEW 235 (1999)

Access to Justice, Academic Freedom, and Political Interference: A Clinical Program Under Siege, 4 CLINICAL LAW REVIEW 531 (1998) (co-author)

Submission of the Association of American Law Schools to the Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court's Student Practice Rule, 4 CLINICAL LAW REVIEW 539 (1998) (co-author)

Clinical Scholarship: Improving the Practice of Law, 2 CLINICAL LAW REVIEW 385 (1996)

What We Talk About When We Talk About Professionalism, 7 GEORGETOWN JOURNAL OF LEGAL ETHICS 987 (1994)

The MacCrate Report: Moving Toward Integrated Learning Experiences, 1 CLINICAL LAW REVIEW 401 (1994)

Report of the Committee on the Future of the In-House Clinic, 42 JOURNAL OF LEGAL EDUCATION 508 (1994) (contributor)

Dunleavy v. Local 1617, United Steelworkers: A Shield for Union Members, 19 UNIVERSITY OF TOLEDO LAW REVIEW 355 (1988)

Miscellaneous Publications:

Ethics Columns Co-Authored with Kevin C. McMunigal:

Prosecutors and Use of Subpoenas, 33 ABA Criminal Justice ___ (forthcoming Spring 2018)

Postconviction Prosecutorial Duties, 32 ABA CRIMINAL JUSTICE 53 (Winter 2018)

Prosecutors and Literary or Media Deals: Conflicts of Interest Hiding in Plain Sight, 32 ABA CRIMINAL JUSTICE 41 (Fall 2017)

Lawyers, Marijuana, and Ethics, 32 ABA Criminal Justice 29 (SPRING 2017); reprinted in *Best of ABA Sections*, 34 GP SOLO 72 (July/Aug. 2017)

When Does Monitoring Defendants and Their Lawyers Cross the Line?, 31 ABA CRIMINAL JUSTICE 48 (Winter 2017)

Different Rules for Prosecutors, 31 ABA CRIMINAL JUSTICE 48 (Fall 2016)

Racial Discrimination and Jury Selection, 31 ABA CRIMINAL JUSTICE 43 (Summer 2016)

Misuse of Letterhead by Prosecutors and Attorneys General, 30 ABA CRIMINAL JUSTICE 48 (Winter 2016)

The Ethics of Prosecutorial Disclosure, 30 ABA CRIMINAL JUSTICE 41 (Fall 2015)

Prosecutorial Conflicts of Interest and Excessive Use of Force by Police, 30 ABA CRIMINAL JUSTICE 47 (Summer 2015)

Innocent Defendants Pleading Guilty, 30 ABA CRIMINAL JUSTICE 45 (Spring 2015)

ABA Approves Researching Jurors' Public Presence on Internet, 29 ABA CRIMINAL JUSTICE 50 (Fall 2014)

Confronting Prosecutors With Their Own Words?, 29 ABA CRIMNAL JUSTICE 33 (Summer 2014)

Waivers of Ineffective Assistance of Counsel as Condition of Negotiated Pleas, 29 ABA CRIMINAL JUSTICE 32 (Spring 2014)

The Ethics of Talking to the Media, 29 ABA CRIMINAL JUSTICE 17(Winter 2014) reprinted in *Best of ABA Sections*, 31 GP SOLO 72 (July/Aug. 2014)

Supervisors, Subordinates, and Sanctions, 28 ABA CRIMINAL JUSTICE 43 (Fall 2013)

Internet Marketing, 28 ABA CRIMINAL JUSTICE 43 (Summer 2013)

Ethical Concerns of Internet Communications, 28 ABA CRIMINAL JUSTICE 45 (Winter 2013)

Client or Prospective Client: What's the Difference?, 27 ABA CRIMINAL JUSTICE 51(Fall 2012)

The Ethical Risks of Technology, 27 ABA CRIMINAL JUSTICE (Summer 2012)

Does the Lawyer Make a Difference?, 27 ABA CRIMINAL JUSTICE 46 (Spring 2012)

Contingent Rewards for Prosecutors, 27 ABA CRIMINAL JUSTICE 55 (Fall 2011)

The Problem of Plagiarism as an Ethics Offense, 26 ABA CRIMINAL JUSTICE 56 (Summer 2011)

Confidentiality and Ineffective Assistance of Counsel Claims, 26 ABA CRIMINAL JUSTICE 42 (Winter 2011)

Deceit in Defense Investigations, 25 ABA CRIMINAL JUSTICE 36 (Fall 2010)

Corporate Miranda *Warnings*, 25 ABA CRIMINAL JUSTICE 47 (Summer 2010)

Do Two Wrongs Protect a Prosecutor?, 25 ABA CRIMINAL JUSTICE 23 (Spring 2010)

ABA Explains Prosecutor's Ethical Disclosure Duty, 24 ABA CRIMINAL JUSTICE 41 (Winter 2010)

Amend Rule 11 to Require Disclosure, 24 ABA CRIMINAL JUSTICE 59 (Fall 2009)

Incriminating Evidence – Too Hot to Handle?, 24 ABA CRIMINAL JUSTICE 42 (Summer 2009)

Are We Blind to Innocence?, 24 ABA CRIMINAL JUSTICE 49 (Spring 2009)

Conceding Guilt, 23 ABA CRIMINAL JUSTICE 57 (Fall 2008)

Confidentiality and Wrongful Incarceration, 23 ABA CRIMINAL JUSTICE 46 (Summer 2008)

New Rules for Scientific and Exculpatory Evidence, 23 ABA CRIMINAL JUSTICE 44 (Spring 2008)

Counsel or Client – Who's in Charge?, 23 ABA CRIMINAL JUSTICE 34 (Winter 2008)

Prosecutorial Disclosure of Exculpatory Information in the Guilty Plea Context: Current Law, 22 ABA CRIMINAL JUSTICE 50 (Fall 2007)

Prosecutorial Disclosure of Exculpatory Information During Plea Negotiations, 22 ABA CRIMINAL JUSTICE 42 (Summer 2007)

Implicit Plea Agreements and Brady Disclosure, 22 ABA CRIMINAL JUSTICE (Spring 2007)

Campaign Pledges to Prosecute, 22 ABA CRIMINAL JUSTICE 40 (Winter 2007)

Client Autonomy and Choice of Counsel, 21 ABA CRIMINAL JUSTICE 57 (Fall 2006)

Corporate Privilege Waivers in Plea Negotiations, 21 ABA CRIMINAL JUSTICE 42 (Summer 2006)

To Tape or Not to Tape: Secret Recordings, 21 ABA CRIMINAL JUSTICE 36 (Spring 2006) reprinted in *The Best Articles Published by the ABA*, 23 GP SOLO 26 (Sept. 2006)

Destroying Documents, 20 ABA CRIMINAL JUSTICE 50 (Winter 2006)

Why Should Prosecutors "Seek Justice"?, 20 ABA CRIMINAL JUSTICE 65 (Summer 2005)

Are a Prosecutor's Responsibilities "Special"? 20 ABA CRIMINAL JUSTICE 58 (Spring 2005)

Should Prosecutors Use Inconsistent Arguments?, 19 ABA CRIMINAL JUSTICE 47 (Winter 2005)

The Role of Lawyers in Client Media Campaigns, 19 ABA CRIMINAL JUSTICE 48 (Fall 2004)

Trial by Media: Arguing Cases in the Court of Public Opinion, 19 ABA CRIMINAL JUSTICE 47 (Summer 2004)

Clients, Lawyers, and the Media, 19 ABA CRIMINAL JUSTICE 77 (Spring 2004)

Thou Shalt Not Use Religion in Closing Argument, 19 ABA CRIMINAL JUSTICE 43 (Winter 2004)

Brother's Keeper: Must You Protect Opponent's Confidentiality?, 18 ABA CRIMINAL JUSTICE 43 (Fall 2003) reprinted in *The Best Articles Published by the ABA*, 21 GP-SOLO 20 (March, 2004)

Has Gideon's Promise Been Fulfilled?, 18 ABA CRIMINAL JUSTICE 46 (Summer 2003)

Inadequate Representation and Wrongful Convictions, 18 ABA CRIMINAL JUSTICE 57 (Spring 2003)

The Alternative Perpetrator Strategy, 18 ABA CRIMINAL JUSTICE 32 (Winter 2003)

The Ethics of Witness Preparation, 17 ABA CRIMINAL JUSTICE (Fall 2002)

The Supreme Court and Defense Counsel Conflicts, 17 ABA CRIMINAL JUSTICE 40 (Spring 2002)

Anti-Contact Rule in Criminal Cases, 17 ABA CRIMINAL JUSTICE 44 (Winter 2002)

Disclosing Exculpatory Material in Plea Negotiations, 16 CRIMINAL JUSTICE 41 (Fall, 2001)

Other Miscellaneous Writings:

Battering Down Sentence, THE COMMON READER (Apr. 2017) (Reviewing HEATHER ANN THOMPSON, BLOOD IN THE WATER: THE ATTICA UPRISING OF 1971 AND ITS LEGACY (2016))

When Justice is Unequal, NEW YORK TIMES, Feb. 1, 2016, at http://nyt.ms/1WXYUB8 (letter to the editor)

Prosecutors' Misconduct, NEW YORK TIMES, April 21, 2015, at A22 (letter to the editor)

How Damage Caps Harm Public Safety and Justice, NEW YORK TIMES, Jan. 7, 2015, at A22 (letter to the editor)

ENCYCLOPEDIA OF THE FIRST AMENDMENT (Vile et al. eds. CQ Press 2009) entries:
"*Bar Admissions*," at 135
"*In re R.M.J*. (1982)," at 601
"*Konigsberg v. State Bar* (1961)," at 644

Spaulding v. Zimmerman: Exploring the Ethics and Morality of Lawyers and Physicians in Practice, 1277 JURISUTO 80 (2004)

Law Students in Court: Providing Access to Justice, EJOURNAL USA ISSUES OF DEMOCRACY, Aug. 2004, *available at* http://usinfo.state.gov/journals/itdhr/0804/ijde/joy.htm

Professional Legal Ethics: A Comparative Perspective, (2002) *available at* http://papers.ssrn.com/paper.taf?abstract_id-=321700 (contributor)

AALS Issues a Strong Statement in Support of Academic Freedom for All Clinical Faculty, 1 CLINICAL LEGAL EDUCATION NEWSLETTER 35 (2001) (with McCormack)

'Pay to Play' Justice, NEW YORK TIMES, Jan. 15, 2000, at A18 (letter to the editor)

Insulation Needed for Elected Judges, NATIONAL LAW JOURNAL, Jan. 10, 2000, at A19.

Clinical Experience Translates to Client Experience, 11 NATIONAL ASSOCIATION LAW PLACEMENT BULLETIN (1998)

Ethics Perspectives: What Are the Ethical Ramifications of an "Of Counsel" Affiliation? 68 CLEVELAND BAR JOURNAL 20 (1997)

Amendments to Disciplinary Rules Create New Expectations for Ohio Lawyers, LAW & FACT, Jan.-Feb. 1997, at 12

Clients Are Consumers, Too, 82 ABA JOURNAL 120 (April, 1996)

Losing Titles, OHIO LAWYER, Jan.-Feb. 1996, at 14.

A Time to Disrobe to Save Your Honor, NATIONAL LAW JOURNAL, Aug. 14, 1995, at A19.

Preserving the Bill of Rights, LAW & FACT, Jan.-Feb. 1991, at 3

Professional Responsibility Problems for First Year Courses, distributed to every ABA accredited and fee paid law school through Case Western Reserve University School of Law, 1991

Joinder and Severance, PUBLIC DEFENDER REPORTER, 17 (Nov.-Dec., 1979) (co-author)

Editorial and Columnist Positions:

Columnist (previous title Contributing Editor), ABA CRIMINAL JUSTICE, 2001-present
Board of Editors, INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 2015 -present
ABA Section of Legal Education and Admissions to the Bar Publications Committee, 2015-present
Board of Editors, CLINICAL LAW REVIEW, 2005-11
Board of Editors, OHIO LAWYER, 1996-98

Presentations (Current Period):

"The Great Recession and American Legal Education," The Fourth Waseda and UC-Berkeley Joint Conference on Professional Legal Education, Tokyo Japan (December 2017)

"Why Clinicians Should Develop Best Practices for Clinical Legal Education for Their Country," concurrent session INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION Conference, Newcastle Upon Tyne, UK (July 2017)

"Early Effects of New Experiential Education Standards on Law Schools," lunch plenary at the AALS Directors Conference, Denver, Colorado (May 2017)

"Tumultuous Ten Years and Beyond: Experiences and Prospects of Clinical Legal Education in Japan," concurrent session at the AALS Clinical Conference, Denver, Colorado (May 2017)

"Case Disposition and Its Consequences in Misdemeanor Cases," panel moderator, at Judicial Responsibility for Justice in Criminal Courts National Conference sponsored by the Freedman Institute at Hofstra University School of Law (April 2017)

"Blueprint for the Future of Clinical Legal Education," Campbell Oration, Monash University Law School, Melbourne, Australia (May 2016)

"Emerging Ethics Issues with New Technology," presentation to faculty, students, and alumni at University of Missouri-Columbia School of Law (January 2016)

"ABA Standards, Clinical Legal Education, and the New Normal: Has Anything Changed?," concurrent session at the AALS Clinical Conference, Rancho Mirage, California (May 2015)

"Unequal Assistance of Counsel," KANSAS JOURNAL OF LAW & PUBLIC POLICY Symposium, Lawrence, Kansas (February 2015)

"Prosecutorial Ethics and Criminal Discovery," Japan Federation of Bar Associations (JFBA), Tokyo, Japan (December 2013)

"Criminal Discovery," Hitotsubashi University Law School, Kinatachi, Japan (December 2013)

"Systemic Barriers to Effective Assistance of Counsel in Plea Bargaining," faculty workshop at the University of Denver School of Law, Denver, Colorado (November 2013)

"Systemic Barriers to Effective Assistance of Counsel in Plea Bargaining," IOWA LAW REVIEW Symposium, Iowa City, Iowa (October 2013)

"Strengthening Clinical Legal Education by Developing Best Practices: Comparing Approaches," INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION Conference keynote, Brisbane, Australia (July 2013)

"Are We Abandoning the In-House Clinic? In-House Clinics, Community-Based/Community Lawyering Hybrid Clinics, and Experiential Practicum/Lab Courses," concurrent session at the AALS Clinical Conference, San Juan, Puerto Rico (May 2013)

"Law Schools and the Legal Profession: A Way Forward," AKRON LAW REVIEW Symposium, Akron, Ohio (March 2013)

"Evidence of Innocence and Prosecutorial Ethics," Japan Federation of Bar Associations (JFBA), Tokyo, Japan (December 2012)

"Prosecutorial Ethics," Hitotsubashi University Law School, Kinatachi, Japan (December 2012)

"Generational Differences and Criminal Justice Issues in Clinical Courses: From *Perry Mason* and *Andy Griffith* to *LA Law* and *Hill City Blues* to *Law & Order* and *the Wire*," Midwest Clinical Conference, St. Louis University Law School, St. Louis, Missouri (November 2012)

"The Criminal Discovery Problem: Is Legislation a Solution?, faculty workshop at Elon University School of Law, Greensboro, North Carolina (October 2012)

"Federal Criminal Discovery Reform: A Legislative Approach," MERCER LAW REVIEW Symposium, Macon, Georgia (October 2012) (commentator)

"Hired Gun? The Principle and Limits of Zealous Advocacy as a Measure of the Ethical Lawyer," University of Northumbria Law School (March 2012)

"Curriculum Development for Improving Legal Education: Building on *Best Practices for Legal Education* and *Educating Lawyers*," faculty workshop, University of Baltimore School of Law (March 2012)

"Does the First Amendment Protect Attorney Advice, Assistance, and Representation?," moderator, AALS Annual Meeting Professional Responsibility Section Program, Washington, D.C. (January 2012)

"Academic Freedom in Contexts of Experiential Learning and Community-Based Research," State University of New York at Buffalo, School of Law (February 2011)

"Government Control of Law School Clinics," Government Speech Symposium, sponsored by the CASE WESTERN RESERVE LAW REVIEW (November 2010)

"Developing Professional Identity for Lawyers," INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION Conference keynote, Newcastle upon Tyne, United Kingdom (July 2010)

"Ensuring the Ethical Representation of Clients in the Face of Excessive Caseloads," Broke and Broken: Can We Fix Our State Indigent Defense Systems?", sponsored by the MISSOURI LAW REVIEW (February 2010)

"What Makes an Ethical Lawyer?," Visiting Professor inaugural lecture, University of Northumbria Law School (November 2009)

"Curriculum Development," University of Indiana-Bloomington School of law faculty presentation (November 2009)

"Best Practices for Prosecutors' Offices to Overcome Cognitive Biases," 2009 Hofstra Legal Ethics Conference, Power, Politics & Public Service: The Legal Ethics of Lawyers in Government, Hostra University School of Law (October 2009)

"Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility," lunch keynote at AALS Clinic Directors Conference, Cleveland, Ohio (May 2009)

"The Clinician in Today's Legal Academy," plenary speaker, 2009 Midwest Clinical Conference, University of Indiana-Bloomington School of Law (October 2008)

"Exploring How Large U.S. Law Firms Promote Ethical Practice," Third International Ethics Conference, Brisbane, Australia (July 2008); Monash University Law School faculty seminar, Melbourne, Australia (July 2008)

"Teaching Ethics and Professional Development: Legal Education at a Crossroads," 34th ABA National Conference on Professional Responsibility, Boston, Massachusetts (May 2008)

"Commemoration of the Founding of the Japan Clinical Legal Education Association (JCLEA): Opportunities for Collaboration," keynote, Tokyo, Japan (April 2008)

"*Best Practices* for *Educating Lawyers* & Assessing Clinical Students," 2007 Midwest Clinical Conference, Drake University School of Law (October 2007)

"*Best Practices* for *Educating Lawyers* & Law School Curriculum Planning," University of New Mexico School of Law faculty and staff presentation (October 2007); NOVA School of Law faculty presentation (September 2007)

"Challenging Assumptions About Legal Education: *Best Practices* for *Educating Lawyers*," Association of Legal Writing Directors Conference keynote, University of Denver School of Law (June 2007); Southeast Legal Writing Faculty Conference keynote, NOVA University School of Law (September 2007)

"Legal Education and the Ethical Development of the Legal Professional: Promoting Justice and

Fairness," INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION Conference, Johannesburg, South Africa (July 2007)

"Criminal Clinical Legal Education in the World: A Professor's View," Criminal Clinical Education in the U.S. and Japan Workshop, sponsored by Waseda University Law School, Tokyo, Japan (March 2007)

"*Brady* and Jailhouse Snitches: Responding to Injustice," Prosecutorial Ethics and the Right to a Fair Trial: The Role of the *Brady* Rule in the Modern Criminal Justice System Symposium, sponsored by the CASE WESTERN RESERVE LAW REVIEW (January 2007)

"Practical Pointers for Developing a Research and Scholarship Agenda," 2006 Midwest Clinical Conference, University of Notre Dame Law School (October 2006)

"The Relationship Between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System," Preventing Wrongful Convictions Symposium, sponsored by the WISCONSIN LAW REVIEW (November 2005)

"The Globalization of Clinical Legal Education," Sixth International Clinical Conference, sponsored by UCLA and University of London, Lake Arrowhead, California (October 2005)

"Political Interference in Clinical Programs: Lessons from the U.S. Experience," Third INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION and Eighth Australian Clinical Legal Education Conferences, Melbourne, Australia (July 2005)

"The Birth of the Waseda Law Clinics: Bridging Theory and Practice," Dedication Lecture at the Opening Ceremony for the Waseda Law School Clinical Program, Tokyo, Japan (May 2005)

"Clinical Legal Education from a Student's Perspective: Learning How to Think and Act Like a Lawyer," Dean's Invited Lecture, Kokugakuin Law School, Tokyo, Japan (May 2005)

Lessons Learned from New Clinicians, CLEA New Clinical Teachers Conference, Cleveland (2009), New Orleans (2007), Chicago (2005) and Vancouver, Canada (2003)

"Challenges of Providing Clinical Programs for Part Time Students," Omiya Law School, Omiya, Japan (December 2004)

"Conflicts of Interest in the Legal and Medical Professions," Legal and Medical Ethics Conference sponsored by the University of Tokyo (December 2004)

"Ready from Day One: What Should Law Graduates Be Able to Do?," 2004 ABA Annual Meeting, Atlanta, Georgia (August 2004)

"The Three Hardest Questions For Clinical Legal Education in Japan," Public Lecture sponsored by the Japan Federation of Bar Associations, Tokyo, Japan (June 2004)

"Challenges Facing the Waseda Law Faculty in Starting a Criminal Clinic," Waseda University Law School (June 2004)

"*Spaulding v. Zimmerman*: Exploring the Ethics and Morality of Lawyers and Physicians in Practice," University of Tokyo (July 2004)

"Teaching Legal Ethics in Law School," Aichi University, Nagoya, Japan (July 2004)

"Legal Ethics and Lawyer Discipline in the United States," sponsored by the ABA-Asia Law Initiative, Komite Kerja Advokat Indonesia, and Pusat Studi Hukum & Kebijakan Indonesia, Workshop on the Indonesian Advocate=s Code of Ethics: Steps Towards Enforcement, Jakarta, Indonesia (February 2004)

"The Ethics of Law Students as Student Lawyers," Faculty Workshop, Kansas University School of Law (November 2003)

ARationing Legal Services in Clinical Programs,@ 2003 Midwest Clinical Teachers Conference, sponsored by University of Minnesota, Hamline, and William Mitchell, St. Paul, Minnesota (November 2003)

"The Ethics of Law School Clinic Students as Student Lawyers,@ SOUTH TEXAS COLLEGE OF LAW REVIEW Symposium (October 2003)

"Recent Developments in Clinical Legal Education and Ethics Instruction in American Law

Schools, Meeting of the Legal Education Committee of the Japan Federation of Bar Associations, Tokyo, Japan (July 2003)

"The Ethics of Law School Students and Professors," 2003 ABA 29th National Conference on Professional Responsibility, Chicago, Illinois (May 2003)

"Evolution of ABA Externship Standards: Steps in the Right Direction," National Externship Conference, sponsored by The Catholic University School of Law (March 2003)

Presentations (Beyond Current Period):

Numerous presentations on various subjects at annual meetings and conferences sponsored by the American Bar Association (ABA), Federal Judicial Center, Association of American Law Schools (AALS), the Clinical Legal Education Association (CLEA), as well as conferences or lectures sponsored by Aoyama Gakuin University, Case Western Reserve University, DePaul University, Hitotsubashi University, Kokugakuin University, Rutgers Law School-Newark, University of Minnesota, Monash University, Northumbria University, Stanford University's Keck Center on Legal Ethics and the Legal Profession, St. Louis University, University of Illinois, University of Kansas, University of Michigan, University of South Carolina, University of Tokyo, Washington University in St. Louis, Waseda University, William Mitchell Law School, and University of

Wisconsin. Featured speaker at the Cleveland City Club and the Cleveland Council on World Affairs.

Numerous continuing legal education (CLE) presentations to lawyers and judges on a wide range of subjects sponsored by the ABA, state and local bar associations, The Federal Judicial Center, federal district courts, state courts, professional organizations, state and federal prosecutor and public defender offices, and law schools in several states.

Education:

J.D., CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW (1977);
Martin Luther King, Jr. Award

A.B., *summa cum laude*, Political Science, YOUNGSTOWN STATE UNIVERSITY (1974);
The Vindicator Award; *Phi Kappa Phi* Honor Society; Gould Honor Society

Practice of Law:

Practice of law in connection with clinical teaching in Ohio and Missouri, supervising attorney and direct representation of clinic clients from 1978-98 in Ohio and supervising attorney from 1998 to present in Missouri; representation of private clients from 1978-98 in Ohio; legal ethics consulting and pro bono representation of clients from 1998 to present in Missouri

MECKLER AND MECKLER, Cleveland, Ohio
Of Counsel (1980-88), primarily civil practice; accepted appointments from the Cuyahoga County Court of Common Pleas as an arbitrator and guardian ad litem

CENTER FOR HUMAN SERVICES, Cleveland, Ohio
Consultant Mediator (1983-88)

LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL (LSCRRC), Atlanta, Georgia
National Co-Director (1977-78)

Professional Ethics Service:

Association of American Law Schools Professional Responsibility Section (Chair, 2011) (Executive Committee, 2008-2012)

American Bar Association Asia Law Initiative, Indonesia, 2004 (ethics consultant)

Special Investigator for the Ohio Supreme Court Board of Commissioners on Character and Fitness (1990-91)

Cleveland Bar Association Ethics Committee (1987-98) and Advertising Committee (1989-90)

Cuyahoga County Bar Association B Ethics Committee (1989-90, 1991-98, Vice-Chair, 1997-98)

Judicial Selection/Standards Committee (1994-98)

Joint Cleveland-Cuyahoga County Bar Admissions Committee (1987-92)

Bar Admission, Memberships and Activities:

Admitted, Ohio (1977); District of Columbia (1979) (inactive); Missouri (1998); 6th (1983), 3rd (1984), 5th (1999) and 8th (1999) Circuits; U.S. Supreme Court (1995)

American Bar Association, ABA Center for Professional Responsibility, Missouri Bar Association, and former member of the Ohio Bar Association, Cleveland Bar Association, and Cuyahoga County Bar Association

Public Comment:

Quoted in various print and electronic media, including *The BBC, The Economist, The New York Times, The Wall Street Journal, Christian Science Monitor, Newsweek, Time Magazine, The New Yorker, ABC News, CBS News, CNN, ESPN, Dateline NBC, Reuters, National Public Radio, Canada National Television, China Central TV, USA Today, AP Wire, The Progressive, St. Louis Public Radio, The Los Angeles Times, The Boston Herald, The Cleveland Plain Dealer, The St. Louis Post-Dispatch, ABA Journal, ABA Journal eReport, ABA Student Lawyer, The American Lawyer, LawyersUSA, Legal Affairs, The Legal Times, Law360, The National Law Journal, National Jurist, WNYC,* and other media outlets.

Consulting and Public Service:

Outside reviewer for book proposals and articles submitted to: Cambridge University Press; Oxford University Press; Ashgate Publishing; Aspen Publishing; University of Notre Dame Press; *The International Journal of Clinical Legal Education*; *The Journal of Legal Education*; *The Journal of Law, Medicine & Ethics*; *Social Science & Medicine*; and *Nonprofit Management & Leadership*

Qualified as an expert witness for legal ethics and lawyer professional negligence by state and federal courts in Ohio, Missouri, and Kansas and prepared reports for matters in other states

AV Rating Martindale-Hubbell, 1980-present

Massachusetts Rules of Professional Conduct (Mass.R.Prof.C.), Rule 7.2
Massachusetts General Laws Annotated Currentness
Rules of the Supreme Judicial Court (Refs & Annos)
Chapter Three. Ethical Requirements and Rules Concerning the Practice of Law
Rule 3:07. Massachusetts Rules of Professional Conduct and Comments (Refs & Annos)
Information About Legal Services

Rule 7.2. Advertising

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory including an electronic or computer-accessed directory, newspaper or other periodical, outdoor advertising, radio or television, or through written, electronic, computer-accessed or similar types of communication not involving solicitation prohibited in Rule 7.3.

(b) A copy or recording of an advertisement or written communication of services offered for a fee shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization;

(3) pay for a law practice in accordance with Rule 1.17;

(4) pay referral fees permitted by Rule 1.5(e); and

(5) share a statutory fee award or court-approved settlement in lieu thereof with a qualified legal assistance organization in accordance with Rule 5.4(a)(4).

(d) Any communication made pursuant to this rule shall include the name of the lawyer, group of lawyers, or firm responsible for its content.

CREDIT(S)

Adopted June 9, 1997, effective January 1, 1998. Amended December 8, 1997, effective January 1, 1998; amended August 31, 1999, effective October 1, 1999.

COMMENT

2006 Main Volume

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising.
[2] [Reserved]
[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Television and other electronic media, including computer-accessed communications, are now among the most powerful media for getting information to the public. Prohibiting such advertising, therefore, would impede the flow of information about

legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

[3A] The advertising and solicitation rules can generally be applied to computer-accessed or other similar types of communications by analogizing the communication to its hard-copy form. Thus, because it is not a communication directed to a specific recipient, a web site or home page would generally be considered advertising subject to this rule, rather than solicitation subject to Rule 7.3. For example, when a targeted e-mail solicitation of a person known to be in need of legal services contains a hot-link to a home page, the e-mail message is subject to Rule 7.3 but the home page itself need not be because the recipient must make an affirmative decision to go to the sender's home page. Depending upon the circumstances, posting of comments to a newsgroup, bulletin board or chat group may constitute targeted or direct contact with prospective clients known to be in need of legal services and may therefore be subject to Rule 7.3. Depending upon the topic or purpose of the newsgroup, bulletin board, or chat group, the posting might also constitute an association of the lawyer or law firm's name with a particular service, field, or area of law amounting to a claim of specialization under Rule 7.4 and would therefore be subject to the restrictions of that rule. In addition, if the lawyer or law firm uses an interactive forum such as a chat group to solicit for a fee professional employment that the prospective client has not requested, this conduct may constitute prohibited personal solicitation under Rule 7.3(d).

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

[6] A lawyer is allowed to pay for advertising permitted by this Rule and for the purchase of a law practice in accordance with the provisions of Rule 1.17, but otherwise is not permitted to pay another person for channeling professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule. Paragraph (c) also excepts from its prohibition the referral fees permitted by Rule 1.5(e).

Corresponding ABA Model Rule. Substantially similar to Model Rule 7.2, except minor differences in (a) and (b), subclauses (4) and (5) were added to paragraph (c), and paragraph (d) was modified.

Corresponding Former Massachusetts Rule. DR 2-101 (B); see DR 2-103.

LIBRARY REFERENCES

2006 Main Volume

Attorney and Client 32(2), 32(9).
Westlaw Topic No. 45.
C.J.S. Attorney and Client §§ 42 to 43, 45 to 46, 87.

Current with amendments received through 3/15/11.

Massachusetts General Laws Annotated
Rules of the Supreme Judicial Court (Refs & Annos)
Chapter Three. Ethical Requirements and Rules Concerning the Practice of Law
Rule 3:07. Massachusetts Rules of Professional Conduct and Comments (Refs & Annos)
Information About Legal Services

Massachusetts Rules of Professional Conduct (Mass.R.Prof.C.), Rule 7.2

Rule 7.2. Advertising

Currentness

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan, not-for-profit lawyer referral service, or qualified legal assistance organization;

(3) pay for a law practice in accordance with Rule 1.17;

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement; and

(5) pay fees permitted by Rule 1.5(e) or Rule 5.4(a)(4).

(c) Any communication made pursuant to this Rule shall include the name of the lawyer, group of lawyers, or firm responsible for its content.

Credits

Adopted June 9, 1997, effective January 1, 1998. Amended December 8, 1997, effective January 1, 1998; amended August 31, 1999, effective October 1, 1999. Amended March 26, 2015, effective July 1, 2015.

COMMENT

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of **advertising**.

[2] [Reserved]

[3] [Reserved]

[3A] The **advertising** and solicitation rules can generally be applied to computer-accessed or other similar types of communications by analogizing the communication to its hard-copy form. Thus, because it is not a communication directed to a specific recipient, a website or home page would generally be considered **advertising** subject to this Rule, rather than solicitation subject to Rule 7.3. For the distinction between **advertising** governed by this Rule and solicitations governed by Rule 7.3, see Comment 1 to Rule 7.3.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Except as permitted under paragraphs (b)(1)-(b)(5), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for **advertising** and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, Internet-based advertisements, and group **advertising**. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff and website designers. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers; Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[6] A lawyer may pay the usual charges of a legal service plan, not-for-profit lawyer referral service, or qualified legal assistance organization. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service is a consumer-oriented organization that provides unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and affords other client protections, such as complaint procedures or malpractice insurance requirements. A qualified legal assistance organization is defined by Rule 1.0(j).

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rules 5.3 and 8.4(a). Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, **advertising** must not be false or misleading, as would be

the case if the communications of a group **advertising** program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a non-lawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Such arrangements are governed by Rule 1.7, and therefore require the client's informed consent in writing. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Relevant Additional Resources

Additional Resources listed below contain your search terms.

LIBRARY REFERENCES

Attorney and Client 32(2), 32(9).
Westlaw Topic No. 45.
C.J.S. Attorney and Client §§ 42 to 43, 45 to 46, 87.

RESEARCH REFERENCES

Treatises and Practice Aids

1 **Mass**. Prac. Series § 2:4, **Advertising** of Divorce and Family Law Services.
1 **Mass**. Prac. Series § 2:6, Computer-Assisted Communications.
41 **Mass**. Prac. Series RPC **R** 5.4, Professional Independence of a Lawyer.

S.J.C. Rule 3:07, Massachusetts Rules of Professional Conduct (**Mass**. **R**. Prof. **C**.), Rule **7**.**2**, MA **R** S CT RULE 3:07 RPC Rule **7**.**2**

Current with amendments received thru January 15, 2016.
(**C**) 2016 Thomson Reuters.

End of Document

EX. 242

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

Expert Report of Hal R. Lieberman

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

Hal R. Lieberman
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue, 10th Floor
New York, NY 10020
212-763-5000

On behalf of Labaton Sucharow LLP ("Labaton"), I have been retained to provide an expert ethics opinion responding, in part, to the "Ethical Report for Special Master Gerald E. Rosen" authored by Professor Stephen Gillers. Specifically, my opinions will address Professor Gillers' contention that the fee-splitting arrangement between Labaton and the referring law firm, Chargois & Herron ("Chargois"), constituted an unethical payment for the recommendation of a client, and not a valid division of fee arrangement in accordance with the applicable Massachusetts Rule of Professional Conduct ("Mass. Rule") 1.5(e).

My primary opinion, based on my experience as an attorney whose practice for the past thirty-five years has focused on legal ethics and professional discipline in Massachusetts and New York, based on relevant case law, and based on standard treatises, including one interpreting the Massachusetts Rules of Professional Conduct,[1] is that Professor Gillers is incorrect. For the reasons more fully set forth below, in my view the fee-splitting arrangement at issue constituted an ethically valid and enforceable agreement, in accordance with Mass. Rule 1.5(e), because:

- Mass Rule 1.5(e) does not require that a referring law firm (Chargois) perform any work in order to receive a portion of the fee award allocated to trial counsel (Labaton and other firms);
- Mass. Rule 1.5(e) does not require disclosure to the client of the precise fee division to which the lawyers have agreed;

[1] *See*, e.g., *The Restatement (Third) of the Law Governing Lawyers*, ALI (2000); the ABA's *Annotated Rules of Professional Conduct* (8th Ed., 2015); *Massachusetts Professional Responsibility*, Gilda Tuoni Russell (Lexis Nexis, 2nd Ed., 2003).

- While Mass. Rule 1.5(e) requires disclosure to the client of the fee-splitting arrangement, Labaton substantially complied with that obligation, and the facts fully support the conclusion that Labaton's client, the Arkansas Teacher Retirement System ("ARTRS"), knowingly consented thereto;
- Even if Labaton's compliance with Mass. Rule 1.5(e)'s disclosure to client requirement was deemed technically deficient – which I do not believe would be appropriate - insofar as the successor Executive Director of ARTRS did not assent in writing at the time to a fee-splitting agreement with Chargois specifically, given the factual circumstances, in my opinion that insubstantial "deficiency" is not a basis to sanction, discipline, or penalize Labaton.

The opinions set forth *infra* are offered as my best professional assessment of the pertinent ethical concerns raised by the Court and its Special Master, and the reasonable and customary standards that apply. My compensation in connection with this matter is $750 per hour.

I. Professional Qualifications

My qualifications as an expert on lawyers' ethics and disciplinary enforcement are set forth in detail in the resume that is attached hereto as Exhibit "A." It describes my educational background, legal experience, bar admissions, academic affiliations, professional activities, bar committee memberships, publications and participation as a lecturer at bar seminars or on CLE panels related to professional responsibility or attorney discipline. In brief, I have worked in the field of legal ethics and attorney discipline on a full-time basis for the past thirty-five years, initially (1984 – 1987) as an Assistant Bar Counsel in the Massachusetts Office of the Bar Counsel, and subsequently, from June, 1987 until June, 1998, as Principal Trial Counsel and then

as Chief Counsel to the Departmental Disciplinary Committee (the "Committee") for New York's First Judicial Department (covering approximately 75,000 lawyers in Manhattan and the Bronx). In those positions, I reviewed literally thousands of lawyer disciplinary matters, including numerous cases involving interpretation of the lawyer disciplinary rules and rules of professional conduct concerning, among other things, the ethics of referral fees. During the same period, I formally prosecuted more than 50 cases involving lawyer misconduct, and personally handled hundreds of less serious matters.

Further, in my capacity as Chief Counsel to New York's disciplinary committee, I provided my professional opinion on legal ethics and disciplinary issues on numerous occasions to Justices of the Appellate Division and the Appellate Term, to the New York Office of Court Administration, to other state and federal judges (including, frequently, the Chair of the Grievance Committee for the Southern District of New York), to lawyer and non-lawyer members of the Committee, to bar committees, and to members of the bar who sought my advice. Additionally, for thirteen years I was a member of the adjunct faculty of Brooklyn Law School, where I taught a course entitled The Legal Profession, was recently an Adjunct Professor at Columbia Law School teaching legal ethics, and have been a visiting lecturer on legal ethics at a number of other law schools, including Harvard Law School in Massachusetts. I have also published articles for professional journals on the subject of legal ethics and professional discipline, have lectured widely in the field, and have served on New York State, New York City and New York County bar committees concerned with professional discipline and professional responsibility. In 1996, I was elected to membership in the American Law Institute and served on the Members' Consultative Group for the Restatement of the Law Governing Lawyers. I was formerly a member of the Ethics Committee of the Boston Bar Association, a member of the

Committee on Professional Ethics of the New York City Bar Association, a member of the Committee on Professional Responsibility of the New York City Bar Association, the principal author of N.Y. City Op. 2000-1 (2000), and I was Chair of the Committee on Professional Discipline of the New York City Bar Association. Since 1998, I have provided expert testimony on legal ethics, professional discipline, and legal malpractice in approximately 40 cases, state and federal. I am co-author of *NEW YORK ATTORNEY DISCIPLINE: PRACTICE AND PROCEDURE* (ALM, 2017) and a regular columnist for the *New York Law Journal* on the subject of Professional Discipline.

II. Assumed Facts

For purposes of the opinions expressed below, I rely upon the following facts provided to me by Labaton's counsel as well as the Declaration of George Hopkins, Executive Director of ARTRS:

A. Background

Labaton Sucharow ("Labaton") is a plaintiffs' law firm that focuses on large-scale and complex class action litigation, which often involves securities matters. In the context of its securities work, Labaton frequently acts as "monitoring counsel" for its clients. In that role, Labaton monitors the client's portfolio of securities investments for signs of possible securities law violations, such as a drop in stock price. *See, e.g.*, Portfolio Monitoring and Case Evaluation[2]; LBS017739-41. In doing so, Labaton uses sophisticated in-house investigators and analysts to monitor the securities market. Keller Dep. Day 1 35:2-14. If Labaton believes a client's portfolio may have been involved in a securities violation that could lead to a viable case, Labaton may ask the client whether it would be interested in serving as lead plaintiff in a

[2] *Available at* http://www.labaton.com/en/practiceareas/Institutional-Investor-Protection-Services.cfm (last visited March 9, 2018).

class action case. Portfolio Monitoring and Case Evaluation; LBS017739-41. If the client agrees, Labaton may represent the client in the litigation. *Id.*; *see also* Sucharow 2d Dep. 115:13-116:15.

Because of its complex role as monitoring counsel, it "takes a while for people to . . . understand [Labaton's work] to the point where it can be useful to them." Keller Dep. Day 1 24:20-23. Thus, Labaton relies on informational presentations that explain Labaton's work to potential clients, such as institutional investors. Keller Dep. Day 1 21:8-18, 24:10-27:10. These presentations are often the first step in Labaton's retention by a potential client. From there, Labaton typically participates in a submission process before being selected to represent an institutional investor. Keller Dep. Day 1 37:19-38:10.

B. Labaton's Relationship with Damon Chargois

Chargois & Herron was a law firm based in Little Rock, Arkansas. Labaton's relationship with Chargois & Herron originated through Labaton partner, Eric Belfi. Belfi met Damon Chargois, a partner at Chargois & Herron, in approximately 2004, when Belfi worked at a different law firm and came into contact with Chargois during a litigation matter pending in the Southern District of New York. *See* Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Interrogatories to Labaton Sucharow LLP ("Response to Supplemental Interrogatories") at 4; Belfi 2d Dep. 12:21-13:4.[3]

Belfi joined Labaton Sucharow in 2006. He focused on building and maintaining client relationships for Labaton. Belfi Dep. 9:7-23. Early in Belfi's tenure at Labaton, he was approached by Chargois, who told him that he had "some opportunities" to introduce Labaton to "pension plans in the Texas, Arkansas, Oklahoma region." Belfi 2d Dep at 13:10-13. Belfi

[3] Chargois apparently did not recall this meeting during his deposition, because he testified that he first met Belfi through a friend, when Belfi was already working at Labaton. Chargois Dep. 16:8-23.

"asked him to proceed." *Id.* By mid-2007, Chargois was focused on introducing Labaton to the Arkansas Teachers Retirement System ("ARTRS"), along with other entities that may have been interested in Labaton's services. Keller Dep. Day 1 156:6-13; LBS031465. In addition, beginning in spring of 2007, Chargois served as local counsel for Labaton on a class action case pending in Texas. Keller Dep. Day 1 146:8-149:19; LBS017411. In that role, Chargois participated in mediation and performed other legal work. Chargois Dep. 17:7-18:22; 121:4-22:12; Keller Dep. Day 1 175:20-176:11; LBS031585.

C. Labaton's Early Contact with ARTRS

Tim Herron, Chargois' partner in his Little Rock office, knew Steve Farris, an Arkansas state senator who served in an oversight role with respect to ARTRS. *See* LBS040318; LBS017432; Chargois Dep. 33:16-21; Hopkins 2d Dep. 35:6-36:8 (explaining that Farris served on the Arkansas legislature's Joint Committee on Public Retirement and Social Security Programs); Ark. Code Ann. §§ 10-3-701 and 10-3-703 (2017) (assigning oversight responsibilities to the joint committee).

Herron arranged for Belfi and his Labaton partner Chris Keller to meet with Senator Farris in August of 2007. Keller viewed this initial meeting as educational in nature and designed to explain Labaton's work as monitoring counsel to Senator Farris. Keller Dep. Day 1 20:3-21:18. In connection with that meeting, Chargois informed Belfi and Keller that they would need to "impress[] the Senator with [their] firm's credentials" in order to have a chance to retain ARTRS as a client. Keller Dep. Day 1 157:6-159:9; LBS017432. Apparently, Chargois remarked after the meeting that Belfi and Keller "did well" and "represent[ed] the firm very well" in the meeting with Senator Farris. LBS040322; LBS017438; Keller Dep. Day 1 20:3-10. Chargois later stated that he and Herron felt "very optimistic about Labaton firm's doing a lot of

good things in Arkansas. This is thanks to [Belfi and Keller] representing the firm very well" to Farris. LBS017437.[4]

After this initial meeting, Senator Farris and/or Herron introduced Belfi and Keller to Paul Doane, the Executive Director of ARTRS at the time. Belfi 2d Dep. 38:10-15. In September or October 2007, Doane visited Labaton's offices in New York City while he was in the area on other business. Belfi 2d Dep. 38:2-6, 41:11-13. Belfi was traveling at the time, so Doane met with Keller during that trip. Keller Dep. Day 1 33:10-34:18; LBS040524-A. Keller introduced Doane to members of the firm and showed him the office. Keller Dep. Day 1 35:2-23. Doane expressed interest in Labaton after the meeting but explained that retention of Labaton would require further review by ARTRS and a request for proposals. LBS040524-A; Keller Dep. Day 1 180:7-21.

According to Chargois, during the fall of 2007 Senator Farris maintained contact with Doane regarding the possibility that Labaton would represent ARTRS as monitoring counsel. LBS017442.[5] Chargois and Tim Herron continued to relay information regarding Senator Farris' contact with ARTRS and other funds that could potentially be interested in Labaton's services. LBS017450; Keller Dep. Day 1 193:2-196:2. Similarly, in spring of 2008, Herron communicated information regarding Senator Farris' contact with Doane and the possibility that ARTRS would retain Labaton. LBS017451; LBS017453; Keller Dep. Day 1 218:18-224:16.

---

[4] The testimony regarding this initial meeting is somewhat inconsistent. Chargois testified that, at Senator Farris' suggestion, he placed a "cold" telephone call to ARTRS director Paul Doane. Chargois Dep. 33:12-35:7. During this conversation, Chargois explained that Chargois & Herron was a local firm working with a New York firm specializing in representing institutional investors. *Id.* As a result, according to Chargois, Doane met with Eric Belfi and possibly Chris Keller in Little Rock. Chargois Dep. 35:8-36:20. However, while Keller testified that he met Senator Farris in Little Rock, he does not believe that Doane was present. Keller Dep. Day 1 32:12-33:23.

[5] Concurrently, Chargois purportedly continued to seek introductions for Labaton with other entities. *E.g.*, LBS031472 ("Damon is really moving [on] all of the fronts.").

D. ARTRS' Retention of Labaton

In mid-2008, ARTRS issued a Request for Qualifications ("RFQ") which invited firms to submit qualifications to become additional monitoring counsel to the fund. Labaton and Chargois & Herron submitted a joint RFQ response on July 30, 2008. LBS017738-55; LBS017756-67. Labaton contemplated that, if selected as panel monitoring counsel, both firms would work on the litigation, if any, filed on ARTRS's behalf. Belfi 2d Dep. 18:14-19; Keller Dep. Day 1 47:24-49:3. Labaton would serve as the lead counsel, and Chargois & Herron would work with ARTRS in Little Rock. Belfi 2d Dep. 26:15-27:15; Keller Dep. Day 1 44:8-46:21.

On October 13, 2008, ARTRS's Chief Counsel, Christa Clark, emailed Belfi and informed him that "ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system." LBS017456. Clark further stated:

> I would like to speak with you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.
>
> If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or utilize them as independent contractors, if you deem is appropriate [*sic*], on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conductive to a joint proposal.

Id. [6]

After receiving this email, Belfi had a telephone conversation with Clark. Belfi 2d Dep. 114:2-22, 117:20-118:10. Belfi explained to Clark that Labaton "would be working with

[6] Given the nature of the relationship, discussed below, the payment to Chargois & Herron was never an "expense of a case." Keller Dep. Day 2 302:24-304:8. Except where they appeared as counsel in Court, Chargois & Herron only received a portion of Labaton's attorneys' fees, which themselves were awarded on a percentage basis that were unrelated to "expenses."

Chargois & Herron" and that Chargois & Herron "were going to be involved in the relationship." Belfi 2d Dep 117:20-118:10.

In October 2008, very shortly after ARTRS selected Labaton as monitoring counsel, Doane departed as ARTRS's executive director. *See* Arkansas Times, "Doane to depart," Oct. 28, 2008.[7] The new Executive Director, George Hopkins, began in or about December 2008. Hopkins Dep. 10:17-21. Meanwhile, Clark – ARTRS' Chief Counsel – remained in her position at ARTRS until approximately October 2009. *See* Arkansas Democrat-Gazette, "Faulted on Contracts, Teacher-System Lawyer Quits," October 22, 2009.[8]

Unlike Doane, Hopkins did not know Tim Herron or the Chargois & Herron firm. Hopkins 2d Dep. 21:5-10. A few months after Hopkins began at ARTRS, Belfi and then-managing partner Lawrence Sucharow met with him in Little Rock. Belfi 2d Dep. 27:18-21. Because Belfi got along well with Hopkins, and because Hopkins desired a direct relationship without intermediaries, Belfi became Hopkins' primary contact with regard to Labaton's monitoring relationship. Belfi 2d Dep. 27:21-28:7, 56:22-57:10; Hopkins 2d Dep. 60:8-62:16. Thus, Chargois & Herron were uninvolved with ARTRS as Belfi's relationship with Hopkins developed. Belfi 2d Dep. 57:5-19.

On September 24, 2010, Belfi sent Hopkins a draft retention letter for the State Street matter, which contained the following provision:

> Arkansas Teacher agrees that Labaton may divide fees with other attorneys for serving as local counsel, as referral fees, or for other services performed in connection with the litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting the prosecution of an action. The division of fees with other counsel is Labaton's sole

[7] *Available at* https://www.arktimes.com/ArkansasBlog/archives/2008/10/23/doane-to-depart (last visited March 9, 2018).

[8] *Available at* https://www.pressreader.com/usa/arkansas-democrat-gazette/20091022/283927403838722 (last visited March 9, 2018).

> responsibility and will not increase the fees payable upon a successful resolution of the litigation.

LBS019948-50. On February 8, 2011, Belfi sent a slightly revised, final retention letter to Hopkins with a modified first sentence to the quoted paragraph: "Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation." LBS011061. Throughout this case, Chargois & Herron's portion of the State Street fee has been referred to by witnesses and in documents as, among other things, a "referral fee," a "local counsel" fee, and a "liaison fee."

During Labaton's representation of ARTRS, Belfi spoke with Hopkins about "how fees worked." Belfi 2d Dep. 23:17-23. According to Belfi, Hopkins said that "he only wanted to deal with [Labaton] and wasn't concerned about how [Labaton] would cut fees up if [they were] working with other firms." *Id.* Hopkins was only interested in the aggregate attorney fee amount, rather than allocations of that aggregate fee among various firms. *Id.* at 23:24-24:5. According to Belfi, Hopkins "was not concerned with who [Labaton was] splitting fees with." *Id.* at 120:11-22. Belfi believed that Hopkins "didn't want to deal with" allocations of fees between lawyers. *Id.* Hopkins' testimony supports this belief. Hopkins 2d Dep. 68:23-69:3 ("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."); *id.* at 73:11-19 ("I don't feel misled because I made it real clear to them that I didn't want to be the gatekeeper on all this attorney relationship. And I think if they thought 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."); *see also id.* at 74:10-75:8.

E. Labaton's Agreement with Chargois

Early in the relationship between Labaton and Chargois & Herron, Belfi, Keller, and Damon Chargois discussed the terms of an agreement between the two firms. The crux of the agreement was that when Chargois & Herron facilitated the introduction between Labaton and a client, Chargois & Herron would receive up to 20% of the gross attorney fees Labaton earned representing that client, if the client was a named plaintiff and Labaton was appointed lead or co-lead counsel. *See, e.g.*, LBS031185; Keller Dep. Day 1 42:15-46:14; Chargois Dep. 50:11-52:24, 162:19-164:2. Initially, the understanding was that Chargois would play a local counsel role relative to the entities with which he facilitated introductions, and that he would be active assisting in litigating Labaton's cases if needed. *See* Belfi 2d Dep. 26:15-23, 27:11-15; Keller Dep. Day 1 44:8-46:21.

Labaton's agreement with Chargois was never reduced to a formal written contract. However, as Labaton's relationship with ARTRS developed, Chargois and Labaton began to formalize their agreement. In February 2009, Chargois indicated that he expected a relatively informal arrangement, but expressed the terms as he understood them in a written email. LBS030990. Roughly one week later, Chargois inquired whether a written "letter agreement" would be necessary. LBS030993; Keller Dep. Day 1 255:16-257:4. Chargois and Keller discussed via email the terms of the potential contract. LBS031492; Keller Dep. Day 1 258:8-19. In April 2009, Chargois sent a draft letter agreement to Belfi and Keller seeking to memorialize the previous discussions in writing. LBS030985-87. Keller edited the document and sent a return draft that, among other things, inserted an arbitration clause. LBS031192-95. While a written agreement was never finalized (Response to Supplemental Interrogatories at 8), Chargois at least viewed it as enforceable. LBS031137; Belfi 2d Dep. 58:1-22. As time passed,

Labaton and Chargois maintained the basic referral arrangement of an 80/20 fee split, if ARTRS became a named plaintiff and Labaton was appointed lead or co-lead counsel.[9]

Because ARTRS was the only named plaintiff in Civil Action No. 11-cv-10230 MLW, i.e., the action on behalf of the putative class of customers of State Street,[10] the three Customer Class Law Firms (Labaton, Lieff Cabraser, and the Thornton Law Firm) agreed in 2013 that they would share in paying the allocation to Chargois & Herron from their own fee awards. LBS027776. Garrett Bradley of the Thornton firm handled the discussions with Lieff Cabraser and Chargois regarding this point. *Id.*; Bradley 2d Dep. 53:14-54:10.[11]

In June 2016, well after a settlement agreement-in-principle had been reached, Bradley reached out to Chargois for further discussions regarding Chargois' fee allocation. TLF-SST-060973. Bradley negotiated an agreement that Chargois & Herron would receive an amount equal to 5.5% of the total fee award (basically, a percentage that would be approximately equivalent to 20% of Labaton's anticipated share of the total fee), which would be funded by the three Customer Class Law Firms, by agreement, from their respective shares of the award. LBS040924; Bradley 2d Dep. 93:16-22.[12]

---

[9] Although it became apparent that Chargois' total contribution would be limited to the initial assistance in introducing Labaton to ARTRS, Chargois maintained that he was entitled to 20% of any fee earned by Labaton. LBS017594; LBS030876; Belfi 2d Dep. 58:5-15. Chargois intimated that he would seek legal redress to vindicate his perceived contractual right, if necessary. Belfi 2d Dep. 58:5-59:22; Chargois Dep. 59:6-60:4; Keller Dep. Day 1 130:19-131:12. Labaton was concerned by the possibility of litigation in Texas state court. *See* Belfi 2d Dep. 58:16-59:22; Keller Dep. Day 1 130:22-132:3; Keller Dep. Day 2 541:19-543:23.

[10] Civil Action Nos. 11-cv-12049 MLW and 12-cv-11698 MLW, involving the ERISA Plaintiffs, were consolidated with the customer action for pre-trial purpose.

[11] Bradley explained that he took on the role of negotiating with Chargois & Herron because he had a friendly relationship with Chargois, and he wanted to reach agreement out of concern that, because ARTRS was the only named (non-ERISA) plaintiff, Chargois could say his firm was entitled to 20% of the overall fee award, not just the portion that Labaton Sucharow received. Bradley 2d Dep. 53:14-54:10; *see also* Belfi 2d Dep. 94:5-23; Keller Dep. Day 1 122:6-124:19.

[12] In that June 21, 2016 email to Chargois cited above, Bradley discussed ERISA counsel and what percentage would be allocated to them in the context of his dialogue with Chargois about what percentage would be paid to

Given his desire not to be informed of the allocation of fees among counsel (Hopkins Dec. at ¶¶10-12, 14), George Hopkins personally was unaware of the Chargois agreement until August or September of 2017. Id. ¶ 7. Thereafter, when informed of the details of the fee-sharing agreement between the Customer Class Law Firms and Chargois in this case, Hopkins expressly consented to and ratified the agreement. *Id.* at ¶¶ 16-17.

The fee-sharing arrangement was not disclosed to the Court or to the class. No local rule or court rule required disclosure to the Court, nor did the Court have a standing order, or case specific order, requiring disclosure.

III. Questions Posed

1) Whether the facts support the conclusion that Labaton substantially complied with its obligation under Mass. Rule 1.5(e) to disclose to its client, ARTRS, that its fees would be shared with Chargois?
Answer: Yes.

2) Whether, because disclosure to ARTRS of its fee-splitting arrangement with Chargois may have been imperfect in that ARTRS' new Executive Director did not consent in writing to a division of fee with Damon Chargois or Chargois & Herron specifically, Labaton should therefore be sanctioned, disciplined, otherwise penalized by this Court?
Answer: No.

3) Whether the payment to Chargois violated Mass. Rule 1.5(a)?
Answer: No.

Chargois & Herron. TLF-SST-060973. No Labaton lawyers were copied on this communication, and there is no evidence in the record suggesting that lawyers from Labaton saw it before this investigation. *Id.* Bradley explained that he was simply providing the context of the ERISA firms as background and as a negotiating point with Chargois. Bradley 2d Dep. 84:9-85:20; Keller Dep. Day 2 534:23-535:24. Bradley's reference in that 2016 conversation did nothing to change the agreement that the ERISA lawyers had struck with Customer Counsel more than two years earlier.

IV. Opinions

Mass. Rule 1.5(e) is a more liberal rule with respect to fee sharing among unaffiliated law firms than similar provisions in the prior ABA Model Code, the current ABA Model Rules, and fee-splitting rules in most other jurisdictions.

In February 2011, when ARTRS engaged Labaton for the State Street litigation, Mass. Rule 1.5(e) stated, in pertinent part:

> (e) 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 participation and the total fee is reasonable.

At that time, the Supreme Judicial Court had applied a gloss to Rule 1.5(e) through its decision in *Saggese v. Kelly*, 445 Mass. 434 (2005), which construed the rule prospectively to require written consent obtained before the referral. However, that interpretation was not codified. On March 15, 2011, the following version of 1.5(e) was adopted:

> (e) 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.
>
> Comments [7] and [7A] also provide as follows:
>
> *Division of Fee*
>
> [7] A division of fee is single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee if the client has been informed that a division of fees will be made and consents in writing. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. *See* Rule 1.1.

> [7A] Paragraph (e), unlike ABA Model Rule 1.5(e), does not require that the division of fees be in proportion to the services performed by each lawyer unless, with a client's written consent, each lawyer assumes joint responsibility for the representation. 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.

Notably, under either version of the Rule, there is no requirement that any work be performed, or responsibility assumed, by the referring lawyer or law firm, nor that disclosure of the precise division of fees be made unless the client so requests.

A) *Contrary to Professor Gillers' central argument, the facts support the conclusion that Labaton substantially complied with its obligation under Mass. Rule 1.5(e) to disclose to its client, ARTRS, that its fees could be shared with Chargois.*

Specifically, the record reflects that in mid-2008, in response to a Request for Qualifications ("RFQ") by ARTRS, inviting firms to submit proposals (qualifications) to become additional monitoring counsel to the funds, Labaton and Chargois submitted a *joint* RFQ response. LBS017738-55; LBS017756-67. Following that, a Labaton partner had discussions with ARTRS's then counsel, Christa Clark, regarding the joint submission, during which the Labaton partner expressly informed Clark that Labaton would be working with Chargois and that Chargois "were going to be involved in the relationship." Belfi 2d Dep 117:20-118:10.

Subsequently, in 2010, the Labaton partner sent ARTRS's new executive director, George Hopkins, a draft retention letter for the instant (litigation) matter, which contained a provision that clearly disclosed the fact that Labaton would be authorized to pay referral fees to other attorneys serving as local counsel, but that the overall fee would not increase. LBS019948-50. A slightly modified version of the retention letter, in final form, was sent to Hopkins in 2011. It too contained an almost identical provision, to wit:

> "Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation." LBS011061.

Both the Labaton partner who interacted with Hopkins, and Hopkins himself, have testified to conversations about allocation of fees among law firms. Belfi 2d Dep. 23:17-24:5; Hopkins 2d Dep. 73:11-19. Hopkins has also recently provided a Declaration confirming that he retroactively approves of the instant fee-splitting arrangement. Indeed, Hopkins has affirmatively stated that he did not wish to be involved in discussions concerning fee allocation, or becoming a referee between law firms, because that would have distracted him from focusing on protecting the class. His only concern about fees was that the overall attorney fee award remained the same. Declaration of George Hopkins ¶¶ 10-15.

The forgoing facts support the conclusion that Labaton obtained ARTRS' consent to divide its fees with Chargois, and therefore complied with Rule 1.5 (e), as it then existed. My opinion does not change even when considering the Supreme Judicial Court's uncodified statements in *Saggese*. 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. Professor Gillers' overly technical focus on the failure to obtain formal *written* consent from Mr. Hopkins elevates form over substance, ignores relevant case law, and is inconsistent with the policies and goals of Mass. Rule 1.5(e), as discussed below.

B) *Even if Labaton's disclosure to Hopkins and the ARTRS was imperfect because the written consent did not contain any details of the arrangement (which the rule did not require), Professor Gillers cites no controlling authority for the proposition that Labaton should be sanctioned, disciplined, or otherwise penalized, because there is none.*

There is no support in Massachusetts or First Circuit case law, let alone premised in simple fairness, for the proposition that Labaton's fee-splitting arrangement was invalid, or that Labaton engaged in unethical conduct under Mass. Rule 7.2 by paying a "person" to refer the State Street case. In *Saggese v. Kelley*, 445 Mass. 434, 442-443 (2007), Professor Gillers concedes that the Supreme Judicial Court *enforced* an oral agreement between a referring and referred lawyers where the client, who was not a fiduciary, was only later notified of the agreement (Gillers Report, p. 64).

Notably, to the best of my knowledge, neither lawyer in *Saggese* was subsequently disciplined following the Court's opinion. Nor is there any evidence that the Massachusetts Board of Bar Overseers took (or has ever taken) the position that lawyers who engage in imperfectly documented but nonetheless enforceable fee-splitting arrangements, are thereby automatically subject to discipline or sanctions for violating Mass. Rule 7.2 by sending a forwarding fee, not to another law firm, but to a "person." I am not aware of any such bootstrapped interpretation or application of Rule 7.2 in *any* jurisdiction, and Professor Gillers cites no authority beyond his own expansive reading of the Rules.

The same applies with even more force as regards Professor Gillers' analysis of *Daynard v. Ness, Motley et al.*, 188 F. Supp. 2d 115 (D. Mass. 2002). In that case, law Professor Richard Daynard, in the context of his substantial contributions to plaintiffs in ground-breaking tobacco litigation, sought to enforce an *oral* fee-splitting agreement "made in contravention of the rules of professional conduct," *Daynard*, 188 F. Supp. 2d at 117. The District Court, per then Chief Judge William Young, held that under Massachusetts law, "*even if the alleged agreement was made in contravention of the rules of professional conduct, it was enforceable*." (emphasis added).

Professor Gillers labors mightily to distinguish the circumstances in *Saggese* and *Daynard* by focusing on what he terms the "equities." (Gillers Report, pp. 65-66) He claims that the "equities" are somehow different here, because in *Saggese* the lawyer tried to keep the fee for himself justifying that claim, in part, by the fact that the referring lawyer did no work, and in *Daynard*, that the law professor, as referring counsel, contributed substantially to the success of the litigation. But neither of these alleged differentiating rationales holds water. Mass. Rule 1.5(e) does *not* require the referring firm to do any work on the case, as Professor Gillers is aware. It is also unclear why the "equities" here are any different with respect to *Daynard*. Labaton and its co-counsel achieved an excellent result for their client, ARTRS, and the class clients it represented. Labaton may not have been able to do so absent Chargois' introduction of Labaton to ARTRS. It is also undisputed that ARTRS is very satisfied with the outcome of the litigation, and that it's Executive Director, Hopkins, ratified the fee-splitting arrangement when he repeatedly testified that he was disinterested in the details of the fee-split as long as the overall fee paid to lawyers was fair and reasonable to his organization, which it indisputably was.

In short, in my opinion the equities here are *not* meaningfully different. The possible payment of a referral or forwarding fee was not kept from ARTRS, which agreed through its engagement letter that Labaton was free to pay referral fees to other law firms. LBS011061. Hopkins, on behalf of ARTRS, ratified the fee-splitting arrangement as well. Declaration of George Hopkins ¶¶ 10-17. As a matter of good policy and the public interest, it is well recognized that the bar should encourage fee sharing relationships that serve the client by helping to ensure that cases, especially litigation matters, like this one, are handled by the best, most experienced lawyer in the particular area of the law. That is exactly what happened here, and the results speak for themselves.

Finally – and critically – even if Labaton did not technically comply with the Court's construction in *Saggese*, it should not be sanctioned for conduct that was not prohibited by a Rule of Professional Conduct during the relevant time period. The Mass. Rules provide the codified notice of what behavior is permissible, and what behavior is not. It would be manifestly unfair to impose a sanction for conduct that did not violate a Rule, but did – arguably – imperfectly comply with the judicial gloss on a Rule. 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. This would present a due process problem, and would not comport with the spirit of the Rules of Professional Conduct in any jurisdiction. Respectfully, no sanction is warranted.

C) *The Payment to Chargois Did Not Violate Rule 1.5(a).*

I understand that Professor Gillers recently testified that the payment to Chargois may have violated Mass. Rule 1.5(a). In my opinion, this does not withstand scrutiny. On its face, Mass. Rule 1.5(e) applies to fee divisions and requires only that "the total fee is reasonable." The Rule does not require that each segment of the fee be reasonable. Beyond the plain reading of Mass. Rules 1.5(e) and 1.5(a), in my experience I cannot recall a single instance in which a referral fee was scrutinized for reasonability under the Mass. Rules, nor do I understand how a referral fee even could be scrutinized under the factors set forth in Mass. Rule 1.5(a).

V. Conclusion

Thus, in my opinion, to a reasonable degree of professional certainty, Labaton's payment of a referral fee to Chargois was not ethically improper. Nor is there any basis, in my view, to sanction, discipline or otherwise penalize Labaton.

Dated: March 26, 2018

Respectfully submitted,

Hal R. Lieberman

EX. 243

Expert Report – March 26, 2018
Professor W. Bradley Wendel

I. Introduction, Qualifications, and Summary of Opinion.

I have been retained by Labaton Sucharow ("Labaton") to testify concerning the firm's compliance with the applicable Rules of Professional Conduct. I am a tenured full Professor of Law and the Associate Dean for Academic Affairs at Cornell Law School in Ithaca, New York. My primary area of teaching and research specialization is legal ethics, professional responsibility, and the law governing lawyers. I am a co-editor of a widely adopted law school casebook, Hazard, Koniak, Cramton, Cohen & Wendel, The Law and Ethics of Lawyering, now in its Sixth Edition with Foundation Press; the sole author of a textbook, Wendel, Professional Responsibility: Examples and Explanations, now in its Fifth Edition, with Wolters Kluwer; and co-editor of a rules supplement, Martyn, Fox & Wendel, The Law Governing Lawyers: National Rules, Standards, Statutes, and State Lawyer Codes, also with Wolters Kluwer. In addition I have published numerous law review articles on these topics. I have regularly taught law school courses on legal ethics and professional responsibility for 18 years, frequently teach CLE programs on legal ethics for practicing lawyers throughout the country, including a recent North Carolina Bar Association statewide CLE on truthfulness in the practice of law, at which I was the keynote presenter. Since 2007, I have been a member of the drafting committee for the Multistate Professional Responsibility Examination (MPRE). In 2011-12 I served as a Reporter to a working group within the ABA Commission on Ethics 20/20, which considered amendments to the ABA Model Rules of Professional Conduct. In 2012 I was the recipient of the Sanford D. Levy Memorial Award from the New York State Bar Committee on Professional Ethics. In 2015 I served as Vice Chair and Subcommittee Co-Chair for the New York State Commission on Statewide Attorney Discipline.

Within the last four years, I have testified by deposition in *Wadler v. Bio-Rad Laboratories, Inc.*, U.S. District Court, N.D. California, Case No. 3:15-CV-2356 JCS, on November 17, 2016. I was retained by counsel for plaintiff, the former general counsel of a corporation who was fired for blowing the whistle on violations of the Foreign Corrupt Practices Act.

II. Facts Assumed for this Opinion.

The following statement of facts was prepared by counsel for Labaton. I assume these facts to be true for the purposes of my opinion. I have reviewed the documents supporting the statement of facts prepared by counsel. I have also reviewed Labaton's Response to the Special Master Report, the Ethical Report of Professor Stephen Gillers, and the Expert Declaration of Camille F. Sarrouf.

A. Background.

Labaton is a plaintiffs' law firm that focuses on large-scale and complex class action litigation, which often involves securities matters. In the context of its securities work, Labaton frequently acts as "monitoring counsel" for its clients. In that role, Labaton monitors the client's portfolio of securities investments for signs of possible securities law violations, such as a drop in stock price. *See, e.g.*, Portfolio Monitoring and Case Evaluation[1]; LBS017739-41. In doing so, Labaton uses sophisticated in-house investigators and analysts to monitor the securities market. Keller Dep. Day 1 35:2-14. If Labaton believes a client's portfolio may have been involved in a securities violation that could lead to a viable case, Labaton may ask the client whether it would be interested in serving as lead plaintiff in a class action case. Portfolio Monitoring and Case

[1] *Available at* http://www.labaton.com/en/practiceareas/Institutional-Investor-Protection-Services.cfm (last visited March 9, 2018).

Evaluation; LBS017739-41. If the client agrees, Labaton may represent the client in the litigation. *Id.*; *see also* Sucharow 2d Dep. 115:13-116:15.

Because of its complex role as monitoring counsel, it "takes a while for people to . . . understand [Labaton's work] to the point where it can be useful to them." Keller Dep. Day 1 24:20-23. Thus, Labaton relies on informational presentations that explain Labaton's work to potential clients, such as institutional investors. Keller Dep. Day 1 21:8-18, 24:10-27:10. These presentations are often the first step in Labaton's retention by a potential client. From there, Labaton typically participates in a submission process before being selected to represent an institutional investor. Keller Dep. Day 1 37:19-38:10.

B. Labaton's Relationship with Damon Chargois.

Chargois & Herron was a law firm based in Little Rock, Arkansas. Labaton's relationship with Chargois & Herron originated through Labaton partner, Eric Belfi. Belfi met Damon Chargois, a partner at Chargois & Herron, in approximately 2004, when Belfi worked at a different law firm and came into contact with Chargois during a litigation matter pending in the Southern District of New York. *See* Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Interrogatories to Labaton Sucharow LLP ("Response to Supplemental Interrogatories") at 4; Belfi 2d Dep. 12:21-13:4.[2]

Belfi joined Labaton Sucharow in 2006. He focused on building and maintaining client relationships for Labaton. Belfi Dep. 9:7-23. Early in Belfi's tenure at Labaton, he was approached by Chargois, who told him that he had "some opportunities" to introduce Labaton to "pension plans in the Texas, Arkansas, Oklahoma region." Belfi 2d Dep at 13:10-13. Belfi "asked him to proceed." *Id.* By mid-2007, Chargois was focused on introducing Labaton to the

[2] Chargois apparently did not recall this meeting during his deposition, because he testified that he first met Belfi through a friend, when Belfi was already working at Labaton. Chargois Dep. 16:8-23.

Arkansas Teachers Retirement System ("ARTRS"), along with other entities that may have been interested in Labaton's services. Keller Dep. Day 1 156:6-12, LBS031465. In addition, beginning in spring of 2007, Chargois served as local counsel for Labaton on a class action case pending in Texas. Keller Dep. Day 1 146:8-149:18; LBS017411. In that role, Chargois participated in mediation and performed other legal work. Chargois Dep. 17:7-18:22; 121:4-22:12 Keller Dep. Day 1 175:20-176:11; LBS031585.

C. Labaton's Early Contact with ARTRS.

Tim Herron, Chargois' partner in his Little Rock office, knew Steve Farris, an Arkansas state senator who served in an oversight role with respect to ARTRS. *See* LBS040318; LBS017432; Chargois Dep. 33:16-21; Hopkins 2d Dep. 35:6-36:8 (explaining that Farris served on the Arkansas legislature's Joint Committee on Public Retirement and Social Security Programs); Ark. Code Ann. §§ 10-3-701 and 10-3-703 (2017) (assigning oversight responsibilities to the joint committee).

Herron arranged for Belfi and his Labaton partner Chris Keller to meet with Senator Farris in August of 2007. Keller viewed this initial meeting as educational in nature and designed to explain Labaton's work as monitoring counsel to Senator Farris. Keller Dep. Day 1 20-21. In connection with that meeting, Chargois informed Belfi and Keller that they would need to "impress[] the Senator with [their] firm credentials" in order to have a chance to retain ARTRS as a client. Keller Dep. Day 1 157:6-159:9; LBS017432. Apparently, Chargois remarked after the meeting that Belfi and Keller "did well" and "represent[ed] the firm very well" in the meeting with Senator Farris. LBS040322; LBS017438; Keller Dep. Day 1 20:3-10. Chargois later stated that he and Herron felt "very optimistic about Labaton firm's doing a lot of good

things in Arkansas. This is thanks to [Belfi and Keller] representing the firm very well" to Farris. LBS017437.[3]

After this initial meeting, Senator Farris and/or Herron introduced Belfi and Keller to Paul Doane, the Executive Director of ARTRS at the time. Belfi 2d Dep. 38:10-15. In September or October 2007, Doane visited Labaton's offices in New York City while he was in the area on other business. Belfi 2d Dep. 38:2-6, 41:11-13. Belfi was traveling at the time, so Doane met with Keller during that trip. Keller Dep. Day 1 33:10-34:18; LBS040524-A. Keller introduced Doane to members of the firm and showed him the office. Keller Dep. Day 1 35:2-23. Doane expressed interest in Labaton after the meeting but explained that retention of Labaton would require further review by ARTRS and a request for proposals. LBS040524-A; Keller Dep. Day 1 180:7-21.

According to Chargois, during the fall of 2007 Senator Farris maintained contact with Doane regarding the possibility that Labaton would represent ARTRS as monitoring counsel. LBS017442.[4] Chargois and Tim Herron continued to relay information regarding Senator Farris' contact with ARTRS and other funds that could potentially be interested in Labaton's services. LBS017450; Keller Dep. Day 1 193:2-196:2. Similarly, in spring of 2008, Herron communicated information regarding Senator Farris' contact with Doane and the possibility that ARTRS would retain Labaton. LBS017451; LBS017453; Keller Dep. Day 1 218:18-224:16.

[3] The testimony regarding this initial meeting is somewhat inconsistent. Chargois testified that, at Senator Farris' suggestion, he placed a "cold" telephone call to ARTRS director Paul Doane. Chargois Dep. 33:12-35:74. During this conversation, Chargois explained that Chargois & Herron was a local firm working with a New York firm specializing in representing institutional investors. *Id.* As a result, according to Chargois, Doane met with Eric Belfi and possibly Chris Keller in Little Rock. Chargois Dep. 35:8-36:20. However, while Keller testified that he met Senator Farris in Little Rock, he does not believe that Doane was present. Keller Dep. Day 1 32:12-33:23.

[4] Concurrently, Chargois purportedly continued to seek introductions for Labaton with other entities. *E.g.*, LBS031472 ("Damon is really moving on all of the fronts.").

D. ARTRS' Retention of Labaton.

In mid-2008, ARTRS issued a Request for Qualifications ("RFQ") which invited firms to submit qualifications to become additional monitoring counsel to the fund. Labaton and Chargois & Herron submitted a joint RFQ response on July 30, 2008. LBS017738-55; LBS017756-67. Labaton contemplated that, if selected as panel monitoring counsel, both firms would work on the litigation, if any, filed on ARTRS's behalf. Belfi 2d Dep. 18:14-19; Keller Dep. Day 1 47:24-49:3. Labaton would serve as the lead counsel, and Chargois & Herron would work with ARTRS in Little Rock. Belfi 2d Dep. 26:15-27:15; Keller Dep. Day 1 44:8-46:21.

On October 13, 2008, ARTRS's Chief Counsel, Christa Clark, emailed Belfi and informed him that "ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system." LBS017456. Clark further stated:

> I would like to speak with you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.
>
> If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or utilize them as independent contractors, if you deem is appropriate [*sic*], on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conductive to a joint proposal.

Id. [5]

After receiving this email, Belfi had a telephone conversation with Clark. Belfi 2d Dep. 114:2-22, 117:20-118:10. Belfi explained to Clark that Labaton "would be working with

[5] Given the nature of the relationship, discussed below, the payment to Chargois & Herron was never an "expense of a case." Keller Dep. Day 2 302:24-304:8. Except where they appeared as counsel in Court, Chargois & Herron only received a portion of Labaton's attorneys' fees, which themselves were awarded on a percentage basis that were unrelated to "expenses."

Chargois & Herron" and that Chargois & Herron "were going to be involved in the relationship." Belfi 2d Dep 117:20-118:10.

In October 2008, very shortly after ARTRS selected Labaton as monitoring counsel, Doane departed as ARTRS's executive director. *See* Arkansas Times, "Doane to depart," Oct. 28, 2008.[6] The new Executive Director, George Hopkins, began in or about December 2008. Hopkins Dep. 10:17-21. Meanwhile, Clark – ARTRS' Chief Counsel – remained in her position at ARTRS until approximately October 2009. *See* Arkansas Democrat-Gazette, "Faulted on Contracts, Teacher-System Lawyer Quits," October 22, 2009.[7]

Unlike Doane, Hopkins did not know Tim Herron or the Chargois & Herron firm. Hopkins 2d Dep. 21:5-10. A few months after Hopkins began at ARTRS, Belfi and then-managing partner Lawrence Sucharow met with him in Little Rock. Belfi 2d Dep. 27:18-21. Because Belfi got along well with Hopkins, and because Hopkins desired a direct relationship without intermediaries, Belfi became Hopkins' primary contact with regard to Labaton's monitoring relationship. Belfi 2d Dep. 27:21-28:7, 56:22-57:10; Hopkins 2d Dep. 60:8-62:16. Thus, Chargois & Herron were uninvolved with ARTRS as Belfi's relationship with Hopkins developed. Belfi 2d Dep. 57:5-19.

On September 24, 2010, Belfi sent Hopkins a draft retention letter for the State Street matter, which contained the following provision:

> Arkansas Teacher agrees that Labaton may divide fees with other attorneys for serving as local counsel, as referral fees, or for other services performed in connection with the litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting the prosecution of an action. The division of fees with other counsel is Labaton's sole

[6] *Available at* https://www.arktimes.com/ArkansasBlog/archives/2008/10/23/doane-to-depart (last visited March 9, 2018).

[7] *Available at* https://www.pressreader.com/usa/arkansas-democrat-gazette/20091022/283927403838722 (last visited March 9, 2018).

> responsibility and will not increase the fees payable upon a successful resolution of the litigation.

LBS019948-50. On February 8, 2011, Belfi sent a slightly revised, final retention letter to Hopkins with a modified first sentence to the quoted paragraph: "Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation." LBS011061. Throughout this case, Chargois & Heron's portion of the State Street fee has been referred to by witnesses and in documents as, among other things, a "referral fee," a "local counsel" fee, and a "liaison fee."

During Labaton's representation of ARTRS, Belfi spoke with Hopkins about "how fees worked." Belfi 2d Dep. at 23:17-23. According to Belfi, Hopkins said that "he only wanted to deal with [Labaton] and wasn't concerned about how [Labaton] would cut fees up if [they] were working with other firms." *Id*. Hopkins was only interested in the aggregate attorney fee amount, rather than allocations of that aggregate fee among various firms. *Id.* at 23:24-24:5. According to Belfi, Hopkins "was not concerned with who [Labaton was] splitting fees with." *Id.* at 120:11-22. Belfi believed that Hopkins "didn't want to deal with" allocations of fees between lawyers. *Id.* Hopkins' testimony supports this belief. Hopkins 2d Dep.68:23-69:3 ("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."); *id.* at 73:11-19 ("I don't feel misled because I made it real clear to them that I didn't want to be the gatekeeper on all this attorney relationship. And I think if they thought 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."); *see also id.* at 74:10-75:8.

E. Labaton's Agreement with Chargois.

Early in the relationship between Labaton and Chargois & Herron, Belfi, Keller, and Damon Chargois discussed the terms of an agreement between the two firms. The crux of the agreement was that when Chargois & Herron facilitated the introduction between Labaton and a client, Chargois & Herron would receive up to 20% of the gross attorney fees Labaton earned representing that client, if the client was a named plaintiff and Labaton was appointed lead or co-lead counsel. *See*, *e.g.*, LBS031185; Keller Dep. Day 1 42:15-46:14; Chargois Dep. 50:11-52:24, 162:19-164:2. Initially, the understanding was that Chargois would play a local counsel role relative to the entities with which he facilitated introductions, and that he would be active assisting in litigating Labaton's cases if needed. *See* Belfi 2d Dep. 26:15-23, 27:11-15; Keller Dep. Day 1 44:8-46:21.

Labaton's agreement with Chargois was never reduced to a formal written contract. However, as Labaton's relationship with ARTRS developed, Chargois and Labaton began to formalize their agreement. In February 2009, Chargois indicated that he expected a relatively informal arrangement, but expressed the terms as he understood them in a written email. LBS030990. Roughly one week later, Chargois inquired whether a written "letter agreement" would be necessary. LBS030993; Keller Dep. Day 1 255:16-257:4. Chargois and Keller discussed via email the terms of the potential contract. LBS031492; Keller Dep. Day 1 258:8-19. In April 2009, Chargois sent a draft letter agreement to Belfi and Keller seeking to memorialize the previous discussions in writing. LBS030985-87. Keller edited the document and sent a return draft that, among other things, inserted an arbitration clause. LBS031192-95. While a written agreement was never finalized (Response to Supplemental Interrogatories at 8), Chargois at least viewed it as enforceable. LBS031137; Belfi 2d Dep. 58:1-22. As time passed, Labaton and

Chargois maintained the basic referral arrangement of an 80/20 fee split, if ARTRS became a named plaintiff and Labaton was appointed lead or co-lead counsel.[8]

Because ARTRS was the only named plaintiff in Civil Action No. 11-cv-10230 MLW, i.e., the action on behalf of the putative class of customers of State Street,[9] the three Customer Class Law Firms (Labaton, Lieff Cabraser, and the Thornton Law Firm) agreed in 2013 that they would share in paying the allocation to Chargois & Herron from their own fee awards. LBS027776. Garrett Bradley of the Thornton firm handled the discussions with Lieff Cabraser and Chargois regarding this point. *Id.*; Bradley 2d Dep. 53:14-54:10.[10]

In June 2016, well after a settlement agreement-in-principle had been reached, Bradley reached out to Chargois for further discussions regarding Chargois' fee allocation. TLF-SST-060973. Bradley negotiated an agreement that Chargois & Herron would receive an amount equal to 5.5% of the total fee award (basically, a percentage calculated off the top that would be approximately equivalent to 20% of Labaton's anticipated share of the total fee), which would be funded by the three Customer Class Law Firms from their respective shares of the award. LBS040924; Bradley 2d Dep. 93:16-22.[11]

---

[8] Although it became apparent that Chargois' total contribution would be limited to the initial assistance in introducing Labaton to ARTRS, Chargois maintained that he was entitled to 20% of any fee earned by Labaton. LBS017594; LBS030876; Belfi 2d Dep. 58:5-15. Chargois intimated that he would seek legal redress to vindicate his perceived contractual right, if necessary. Belfi 2d Dep. 58:5-59:22; Chargois Dep. 59:6-60:4; Keller Dep. Day 1 130:19-131:12. Labaton was concerned by the possibility of litigation in Texas state court. *See* Belfi 2d Dep. 58:16-59:22; Keller Dep. Day 1 130:22-132:3; Keller Dep. Day 2 541:19-543:23.

[9] Civil Action Nos. 11-cv-12049 MLW and 12-cv-11698 MLW, involving the ERISA Plaintiffs, were consolidated with the customer action for pre-trial purpose.

[10] Bradley explained that he took on the role of negotiating with Chargois & Herron because he had a friendly relationship with Chargois, and he wanted to reach agreement out of concern that, because ARTRS was the only named (non-ERISA) plaintiff, Chargois could say his firm was entitled to 20% of the overall fee award, not just the portion that Labaton Sucharow received. Bradley 2d Dep. 53:15-54:10; *see also* Belfi 2d Dep. 94:5-23; Keller Dep. Day 1 122:6-124:19.

[11] In that June 21, 2016 email to Chargois cited above, Bradley discussed ERISA counsel and what percentage would be allocated to them in the context of his dialogue with Chargois about what percentage

Given his desire not to be informed of the allocation of fees among counsel (Hopkins Dec. at ¶¶ 10-12, 14), George Hopkins personally was unaware of the Chargois agreement until August or September of 2017. *Id.* ¶ 7. Thereafter, when informed of the details of the fee-sharing agreement between the Customer Class Law Firms and Chargois in this case, Hopkins expressly consented to and ratified the agreement. *Id.* at ¶¶ 16-17.

The fee-sharing arrangement was not disclosed to the Court or to the class. No local rule or court rule required disclosure to the Court, nor did the Court have a standing order, or case specific order, requiring disclosure.

III. Opinion.

A. Labaton Obtained the Written Consent of ARTRS to the Fee-Sharing Arrangement.

A national law firm such as Labaton must dedicate effort and resources to building and maintaining relationships with clients. The Texas law firm of Chargois & Herron had relationships with a State Senator in Arkansas who had an oversight role with respect to a potential client, ARTRS. Either the Senator or Chargois & Herron partner Tim Herron introduced a Labaton partner to the Executive Director of ARTRS, Paul Doane. Subsequently, Labaton and Chargois & Herron jointly submitted a proposal to serve as counsel for the ARTRS, with Chargois & Herron serving in a role as local liaison and relationship-management counsel. Labaton and Chargois & Herron initially intended that both firms would provide legal services to the ARTRS. However, for reasons related to state procurement procedures, counsel for the

---

would be paid to Chargois & Herron. TLF-SST-060973. No Labaton lawyers were copied on this communication, and there is no evidence in the record suggesting that lawyers from Labaton saw it before this investigation. *Id.* Bradley explained that he was simply providing the context of the ERISA firms as background and as a negotiating point with Chargois. Bradley 2d Dep. 84:9-85:20; Keller Dep. Day 2 534:23-535. Bradley's reference in that 2016 conversation did nothing to change the agreement that the ERISA lawyers had struck with Customer Counsel more than two years earlier.

ARTRS, Christa Clark, requested that Labaton be listed as the sole firm serving as monitoring counsel. Aware of Labaton's association with Chargois & Herron, Clark agreed that Labaton could share responsibility for the representation with the local firm. She wrote: "Your firm may affiliate [Chargois & Herron] or utilize them as independent contractors, if you deem is appropriate [sic], on a case by case basis." Labaton partner Eric Belfi orally explained to Clark that Labaton would continue to work in association with Chargois & Herron.

The retainer letter agreed upon by Labaton and the ARTRS indicates that "Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation."

The applicable rule on sharing fees with other lawyers is Mass. R. Prof. Conduct 1.5(e) in effect at the time of the engagement in February 2011,[12] which provided:

> 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 participation and the total fee is reasonable.

The client was notified of the association of Labaton with Chargois & Herron at the outset of the monitoring relationship and the retainer letter for the litigation that was a product of the monitoring permitted a division of fees. Both Eric Belfi and new ARTRS Executive Director George Hopkins testified that Belfi and Hopkins had conversations about the division of fees, and that Hopkins said, essentially, that he did not care how the firms divided up the fee as long as the total amount was reasonable. In my opinion, the writings exchanged by Labaton and the ARTRS constitutes client "consent[] to the joint participation," as was required by Mass. RPC 1.5(e). Unlike the version of Rule 1.5(e) in the ABA Model Rules, the Massachusetts rule does

[12] For the reasons given on pp. 55-56 of his Report, I agree with Prof. Gillers that the Massachusetts Rules of Professional Conduct govern the conduct of the lawyers in this matter.

not require that the client give consent to the "share each lawyer will receive" of the joint fee. *Compare* Model Rules of Prof'l Conduct, Rule 1.5(e).

Prof. Gillers relies on additional requirements set out in *Saggese v. Kelley*, 837 N.E.2d 699 (Mass. 2005). Prof. Gillers reads *Saggese* to impose a requirement of contemporaneous written consent by the client to the fee-sharing agreement. In my opinion, the email from Christa Clark and the retainer letter satisfy the writing requirement and they also satisfy the timing requirement, because both were acknowledged in writing by the client before the commencement of the representation. Prof. Gillers argues that the email from Christa Clark and the subsequent engagement letter fail to satisfy the writing requirement of Mass. RPC 1.5(e). *See* Gillers Report, p. 59. But there is no reason to believe these writings are insufficient. Discussing the requirement in the conflict of interest rules that informed consent be "confirmed in writing," Comment [20] to Mass. RPC 1.7 states: "Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(c). See also Rule 1.0(q) (writing includes electronic transmission)." Exchanges of emails are frequently sufficient to constitute written consent (or "consent confirmed in writing") to important decisions such as a client waiving a conflict of interest.

It is important to recognize that the court's concern in *Saggese* was with so-called midstream modifications of fee agreements. *Saggese*, 837 N.E.2d at 705-06. It is true that modifications of existing fee agreements are regarded with considerable skepticism because of the fiduciary nature of the lawyer-client relationship. *See* ABA Comm. on Ethics and Prof'l Resp., Formal Op. 11-458 (2011). Additional, very specific disclosures, as well as a substantive showing of changed circumstances, may be required for a midstream modification of an existing fee agreement. The interpretation by the Supreme Judicial Court of the fee-sharing rule is aligned

with this concern to avoid pressure on clients to accede to a lawyer's request for a modified (and presumably more favorable to the lawyer) fee arrangement. *See Saggese*, 837 N.E.2d at 706. In this case, the agreement to share fees with Chargois & Herron was not adopted after the commencement of the representation. Rather, the relationship with Chargois & Herron, and the sharing of fees, was within the contemplation of the parties from the outset.

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. It is worth noting again, however, that the text of the fee-sharing rule in effect at the time the fee agreement between Labaton and the ARTRS was entered into does not require written consent, although the *Saggese* opinion does. *See Saggese*, 445 Mass. 434, 443. The amendment to Rule 1.5(e) formally requiring written consent took effect on March 15, 2011. Labaton sent its final engagement letter to the ARTRS on February 8, 2011. Thus, the agreement was not subject to the requirement of written consent, unless pursuant to a court decision without the benefit of rulemaking and the rule. As noted above, even if it were, my opinion is that it satisfies the requirement. From the standpoint of proper professional conduct, however, it is significant that the firm (which was admitted *pro hac vice* from out of state, and thus not as likely to be familiar with recent cases interpreting the Massachusetts Rules of Professional Conduct) complied with the requirements of the rule in effect at the time.

In substance, both Mass. RPC 1.5(e) and *Saggese* are concerned with the client having sufficient information to be able to object to the lawyer's proposed fee arrangement. As ARTRS Executive Director George Hopkins testified, he was uninterested *at the time the contract pertaining to the matter was formed* with the details of any sharing of fees among law firms

representing the ARTRS. In his Declaration he reaffirmed that he was concerned with ensuring that the total fee was reasonable, but he did not want to play the role of referee between law firms regarding their arrangement for dividing up the total fee. See Hopkins Dec. ¶¶ 11-12. (Hopkins is a lawyer and was presumably well aware of the considerations that the law firms may take into account in deciding how to divide up the total fee.) His subsequent express ratification of the fee-sharing arrangement is evidence that it did not disadvantage the client in any way, but it is clear under both the text of Mass RPC 1.5(e) and *Saggese* that the consent requirement then in effect was met.

B. Even if Labaton Had Failed to Perfect Its Fee-Sharing Agreement with Chargois, the Matter Does Not Fall Within Rule 7.2(b), on Referrals by Non-Lawyers.

Prof. Gillers makes a creative, and as far as I know unprecedented, argument in his Report to the Special Master. *See* Gillers Dep. at 52-56. He contends that, in the event a fee-sharing agreement with another lawyer does not comply with every element of Mass. RPC 1.5(e), the counterparty should be treated as a non-lawyer and the situation governed by the rule prohibiting payments to non-lawyers for referrals. *See* Mass. RPC 7.2(b) (providing that "[a] lawyer shall not give anything of value to a person for recommending the lawyer's services"). In essence, his argument is that an unperfected agreement to engage in otherwise permissible sharing of fees by lawyers not associated in the same law firm transforms the situation into one in which a non-lawyer is providing client referrals. I am unaware of any ethics opinion, reported case, or disciplinary proceeding that takes this position.

To put the matter differently, Prof. Gillers contends that there is a generally applicable rule prohibiting payments for referrals, Mass. RPC 7.2(b), which is subject to a limited exception for lawyer fee-sharing agreements, as provided in Mass. RPC 1.5(e). Assuming this structure, he

then contends that an imperfect (under Rule 1.5(e)) fee-sharing agreement should throw the matter back under the default rule of Rule 7.2(b). *See* Gillers Report, pp. 61, 66. But this is not the right way to understand the relationship of these rules to each other. They are not related as default rule with exceptions; instead, they govern completely different types of activities. Rule 7.2(b) includes a number of exceptions, including not-for-profit lawyer referral services and paying for the reasonable cost of advertising. Rule 7.2(b) is intended to deal with referrals from non-lawyers. Lawyers are disciplined under this rule for employing "runners" or "cappers" to solicit personal-injury clients at accident scenes or hospitals, paying physicians or chiropractors for referring personal-injury clients, using non-lawyer marketing firms to tout a lawyer's services in seminars, and participating in online referral services other than those run by a bar association or a not-for-profit organization. *See* Ellen J. Bennett, et al., *Annotated Model Rules of Professional Conduct* (7th ed. 2011); ABA/BNA *Lawyers' Manual on Professional Conduct* ¶ 81:706-11; 2 Geoffrey C. Hazard, Jr., et al., *The Law of Lawyering* § 56.5 (3d ed. & Supp. 2014). None of these standard reference works on legal ethics discusses Rule 1.5(e) as an exception to Rule 7.2(b), or even mentioned lawyer fee-sharing in connection with the prohibition on payments for referrals. Indeed, in his casebook Prof. Gillers does not mention the purported rule + exception structure in his discussion of solicitation by class-action lawyers. *See* Stephen Gillers, *Regulation of Lawyers: Problems of Law and Ethics* 879-80 (9th ed. 2012).

The Rules of Professional Conduct in Massachusetts differ from the ABA Model Rules in permitting so-called "bare" referral fees, in which the referring law firm need not assume joint responsibility for the representation, nor receive a fee proportional to the value of the legal services it provides. *Compare* ABA Model Rules, RPC 1.5(e). When Massachusetts changed from a system of professional-conduct rules based on the 1969 ABA Model Code to one based

on the 1983 (amended in 2002) Model Rules, the Supreme Judicial Court elected to continue the practice in Massachusetts of allowing bare referral fees. *See Saggese v. Kelley*, 837 N.E.2d 699, 705 (Mass. 2005). That type of attorney fee-sharing has a long-established history in Massachusetts. *See also* Expert Declaration of Camille F. Sarrouf, Sr. Thus, even if Prof. Gillers's interpretation of the evidence is correct, and Chargois & Herron was compensated only for referring a client to Labaton, this type of arrangement is permissible under the Massachusetts Rules of Professional Conduct.

For this reason, the Illinois appellate court decision relied upon by Prof. Gillers (see Gillers Dep. at 54-57, 81-85), *Holstein v. Grossman*, 616 N.E.2d 1224 (Ill. App. Ct. 1993), does not shed any light on what a lawyer ethically may do in Massachusetts. The *Holstein* case differentiates between a bare referral and an agreement under which the referring law firm will assume joint responsibility for the representation or perform additional legal service. *Id.* at 1232-33. Leaving aside the issue of whether Chargois & Herron provided services beyond a mere referral (which, in my opinion, it did), the public policy of Massachusetts and Illinois is very different with respect to bare referral fees. Law firms, in their capacity as such, and not as non-lawyers subject to Rule 7.2(b), are permitted in Massachusetts to receive compensation for client referrals.

C. Massachusetts Law Permits Enforcement of Imperfect Fee Agreements.

The *Saggese* case, upon which Prof. Gillers relies heavily in his Report, does not regard the lack of consent to a fee-sharing agreement as fatal to its enforceability. "Between lawyers, a fee-sharing agreement that fails to comply with the disciplinary rules is not necessarily unenforceable." *See Saggese*, 837 N.E.2d at 704. In another case involving an "imperfect fee agreement" – in that case, imperfect because the lawyer did not obtain the clients' consent – the

District Court in Massachusetts applied a multi-factor test to determine whether to enforce the fee contract. *See Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 188 F. Supp. 2d 115, 125-31 (D. Mass. 2002) (*citing and applying Town Planning & Eng'g Assoc. v. Amesbury Specialty Co.*, 342 N.E.2d 706 (Mass. 1976)). The court explained that "[t]here is no public policy against fee-splitting agreements per se," and ultimately concluded that the policy concerns underlying Mass. RPC 1.5(e) would not be undermined by enforcement of an imperfect fee-sharing agreement. *Id.* at 131.

D. Any Technical Imperfections in the Fee-Sharing Agreement Are Not Sanctionable.

As discussed above, it is my opinion that the writings exchanged by ARTRS representatives and Labaton lawyers satisfy Mass. RPC 1.5(e). The *Saggese* case does caution that, although an imperfect fee agreement – which this was not -- is enforceable, non-compliance with Rule 1.5(e) may nevertheless subject both lawyers to discipline. *See Saggese*, 837 N.E.2d at 706. Even if the fee agreement here is deemed technically out of compliance with Rule 1.5(e), it is an insignificant violation. Both *Saggese* and *Daynard* emphasize that the purpose of the fee-sharing rule is to inform the client of the arrangement between the lawyers, so that the client can object to anything it believes is disadvantageous in the fee-sharing arrangement. *See Daynard*, 188 F. Supp. 2d at 129; *Saggese*, 837 N.E.2d at 704-05. The retainer letter shows that ARTRS representatives consented to Labaton paying referral fees; and, to the extent that it could be deemed necessary, the Clark email shows that Labaton informed ARTRS that Labaton intended to share those fees with Chargois & Herron. If one were to accept the improper assumption that there was a violation of the letter of the rule even though it was followed in spirit, responsibility for determining whether to impose a disciplinary sanction is committed to an independent statewide process, not to individual courts. *See* ABA/BNA *Lawyers' Manual on Prof'l Conduct*

¶ 101:2001; Restatement (Third) of the Law Governing Lawyers § 5, cmt. b (2000). Federal courts do have the inherent authority to sanction lawyers, but this authority is limited to cases of bad-faith conduct. *See Chambers v. Nasco, Inc.*, 501 U.S. 32, 43-45 (1991). 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.

E. The Massachusetts Fee-Sharing Rule Does Not Consider the Reasonableness of the Fee Division, But Only the Reasonableness of the Total Fee.

The Massachusetts fee-sharing rule, like ABA Model Rule 1.5(e), requires that the total fee to the client be reasonable. *See* Mass RPC 1.5(e) (". . . and the total fee is reasonable"). The reasonableness of the total fee is evaluated using an eight-factor test in Mass. RPC 1.5(a). The plain text of Mass. RPC 1.5(e) does not permit a reviewing court or disciplinary authority to second-guess the division of fees agreed upon by two or more law firms, as long as the total fee is reasonable. George Hopkins has testified that the total fee is reasonable (Hopkins Dec. ¶ 6), but of course in a class action the court must also approve a fee award, which it did here. From the point of view of legal ethics, however, the most important aspect of the relationship between Rule 1.5(a) (reasonableness) and Rule 1.5(e) (fee-sharing) is that the client has an opportunity to be informed of the fee-sharing arrangement. If the client objects, the client may refuse to consent or renegotiate the fee arrangement. (That is why *Saggese* and ABA Opinion 11-458 require additional scrutiny for the modification of a fee contract during the course of an existing attorney-client relationship.) Hopkins testified that he was indifferent to the agreement the firms made between themselves for sharing the fee, stating that he had no desire to act as a referee between law firms, including national and local counsel. Hopkins Dec. ¶ 12. From the client's point of view, what matters is that the total fee is reasonable. Mass. RPC 1.5(a) and Mass. RPC

1.5(e) both require a reasonable total fee. But neither rule requires that the division of the fee satisfy the reasonableness criteria in Mass. RPC 1.5(a).

Further support for this conclusion comes from the comparison of the Massachusetts fee-sharing rule with the version in the ABA Model Rules. Unlike Massachusetts, which permits "bare" referral fees, the ABA fee-sharing rule requires that "the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation." ABA Model Rules of Prof'l Conduct, Rule 1.5(e)(1). In other words, there is a reasonableness requirement in the ABA version, requiring the fee to reflect *either* the amount of work performed by each law firm or each firm's willingness to be on the hook for potential malpractice liability. The Massachusetts Supreme Judicial Court declined to adopt the ABA Model Rules in all their particulars, and adhered to the state's traditional permission for bare referral fees in Mass. RPC 1.5(e). If the Court had intended to permit scrutiny of the reasonableness of the fee for each law firm, it could have adopted the ABA Model Rules language.

F. The Massachusetts Rules Did Not Mandate Additional Disclosure to the Court.

This opinion relies solely on the Massachusetts Rules of Professional Conduct, although I believe the result is the same under the Federal Rules of Civil Procedure and other federal law, such as that governing the district court's inherent authority. Prof. Gillers seeks to ground an obligation to disclose in Mass. RPC 3.3(a) and RPC 8.4(c). *See* Gillers Report, pp. 71-72. Mass. RPC 3.3(a) states: "A lawyer shall not knowingly . . . 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." Mass. RPC 8.4(c) backstops this obligation by providing that a lawyer may not

"engage in conduct involving dishonesty, fraud, deceit or misrepresentation."[13] Because there is no record of any affirmative false statement of fact made by Labaton lawyers to the court, and none is cited in his report, Prof. Gillers's position must depend on Comment [3] to Mass. RPC 3.3: "There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation." It is the case that a statement may be literally true but substantively misleading. Prof. Gillers cites the well-known U.S. Supreme Court case, *Bronston v. United States*, 409 U.S. 352 (1973), which turned on this exchange:

> Q. Do you have any bank accounts in Swiss banks Mr. Bronston?
> A. No, sir.
> Q. Have you ever?
> A. The Company . . . had an account there for about six months, in Zurich.

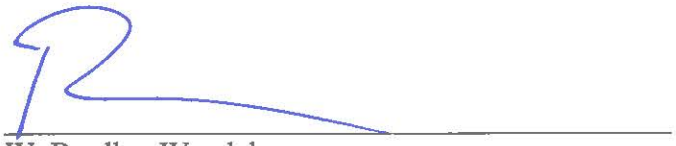
In fact, the defendant had a *personal* bank account in Zurich for about six months. The defendant's answer to the question, "have *you* ever had a Swiss bank account?", was literally true – the company did have a Swiss bank account – but intended to throw the questioner off the trail of Mr. Bronston's personal account.

Prof. Gillers reads Comment [3] to Mass. RPC 3.3 to prohibit that kind of literally-true-but-misleading statement, regardless of what the result would be under the criminal law of perjury, and I agree with that interpretation. *See* Ellen J. Bennett, et al., *Annotated Model Rules of Professional Conduct* 327-29 (7th ed. 2011). The trouble with his argument is not the law but the facts. I am aware of no statement in the record – and Prof. Gillers does not cite any in his Report – that would be a *Bronston*-type statement that misleads by omission. The substantive truth of the matter is that Labaton represented its clients effectively, and was entitled to a fee

[13] In this case the citation of Rule 8.4(c) is redundant with Rule 3.3(a), which covers the same ground and sets out the duties of lawyers with specificity. The non-redundant role of Rule 8.4(c) in the ecosystem of the Rules of Professional Conduct is to cover dishonesty by lawyers in connection with conduct that occurs outside the practice of law, but nevertheless bears on the lawyer's character and fitness to practice law. *See* ABA/BNA *Lawyers' Manual on Prof'l Conduct* ¶ 101:401.

award. Part of the effective representation of clients may include working with local counsel who help manage the client relationship. It is also a long-standing practice in the plaintiffs' bar – expressly permitted by the Massachusetts Rules of Professional Conduct – for one firm to act as a source of referrals for another firm that handles the lion's share of the litigation. *See, e.g.*, Nora Freeman Engstrom, *Attorney Advertising and the Contingency Fee Paradox*, 65 Stan. L. Rev. 633, 674-78 (2013) (noting that "[s]ome aggressive attorney advertisers are mostly case brokers; they advertise heavily and, in exchange for a referral fee, distribute the cases they receive to other practitioners"). The client in question – the ARTRS – was aware that Labaton was working with a local law firm, and its current Executive Director indicated that it would not involve itself in the details of how the fee was allocated between Labaton and the local firm. At no time did a Labaton lawyer seek to shade this truth or tiptoe around full disclosure to the court. Even if the truth was that Chargois & Herron really was nothing more than a referring law firm – and again, I believe the evidence is that the parties had contemplated that Chargois & Herron would perform legal services in connection with the representation – there is no evidence that Labaton tried to hide the payment of a referral fee. Nor was there any obvious reason to hide such a fee, in that it would be permitted under the Massachusetts Rules of Professional Conduct.

Dated this 26th day of March, 2018



W. Bradley Wendel

EX. 244

EXPERT REPORT OF TIMOTHY DACEY

I have been retained by the firm of Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") to provide an expert opinion in connection with proceedings before the Special Master in the case of *Arkansas Teachers Retirement System v. State Street Bank & Trust Company,* No. 11-cv-10230 MLW (D. Mass.). My qualifications to render such an opinion are summarized in Attachment A.

Specifically, I have been asked whether, in my opinion, lawyers at Lieff Cabraser violated the Massachusetts Rules of Professional Conduct by failing to disclose to the Court or to class members that a portion of the fee awarded by the Court would be shared with the firm of Chargois & Herron. In my opinion, they did not. To violate the duty of candor imposed by Rules 3.3 and 8.4(c), a lawyer must have actual knowledge that his or her statements are false or misleading. Based on the facts as I understand them, the lawyers at Lieff Cabraser lacked the requisite state of mind to establish a violation of these Rules. It is also my opinion that neither Rule 1.2 nor Rule 1.4 of the Rules of Professional Conduct required lawyers at Lieff Cabraser to disclose the incomplete and inaccurate information available to them about the Chargois arrangements to class members when the motion for an award of attorneys' fees was filed in 2016.

I explain the factual and legal basis for my opinion in more detail below.

I. FACTUAL BACKGROUND

In reaching my opinion, I have consulted the documents listed on Attachment B. The relevant facts, as I understand them, are as follows.

a. Overview of the State Street Litigation

Since 2008, the firm of Labaton Sucharow LLP has represented the Arkansas Teacher Retirement System ("ATRS") as one of its securities monitoring counsel. Sometime in 2009, ATRS retained Labaton to investigate whether ATRS had claims against State Street Bank, which served as custodian for assets held by ATRS, relating to foreign exchange transactions executed by the Bank on ATRS's behalf. With the knowledge and approval of ATRS, Labaton subsequently associated with Lieff Cabraser and the Thornton Law Firm, both of which had relevant previous experience in litigation involving foreign exchange transactions by custodial banks.

In 2011, ATRS, represented by the three firms, filed a Class Action Complaint against State Street in the United States District Court for the District of Massachusetts, claiming among other things that State Street's practices in executing certain types of foreign exchange trades violated the Massachusetts Consumer Protection Act, Mass. Gen. Laws c. 93A. The complaint alleged that ATRS brought the suit on its own behalf and on behalf of a class consisting of all funds for which State Street served as custodial bank and executed the specific types of foreign exchange trades at issue. Complaint ¶ 20. In 2012, the Court appointed Labaton interim lead counsel, the Thornton firm as liaison counsel, and Lieff Cabraser as additional counsel. The 2011 lawsuit has sometimes been referred to as the "Customer Class Action" and the three law firms as "Customer Counsel."

In late 2012, the Customer Class Action was consolidated for pre-trial purposes with three class action lawsuits brought against State Street of behalf of ERISA plans for which State Street served as custodian and the individual participants in such funds, asserting statutory

ERISA claims distinct from the claims asserted in the Customer Class Action on behalf of all State Street custodial customers. These lawsuits have been referred to as the "ERISA Actions" and the three law firms representing the plaintiffs in those lawsuits as "ERISA Counsel." In 2013, Class Counsel and ERISA Counsel reached an agreement that ERISA Counsel would share in 9% of any fee awarded by the Court in the consolidated cases, later increased to 10%.

In July 2016, after extensive negotiations overseen by an experienced mediator, Jonathan Marks, the parties to the consolidated actions reported to the Court that settlement had been reached and filed the Settlement Agreement with the Court. Under the terms of the Agreement, State Street agreed to create a settlement fund of $300 million in full satisfaction of the claims asserted in both the Customer Class Action and the ERISA Class Actions. The Agreement designated the Labaton firm as Lead Counsel for the entire settlement class, subject to approval by the Court, and provided that Lead Counsel would apply for an award of attorneys' fees, expenses, and service awards from the $300 million in an amount not to exceed $76,400,000, or approximately 25% of the settlement fund. The Agreement disclosed that 9% of the fee awarded by the Court would be distributed to ERISA Counsel and 91% to Customer Counsel, as agreed between Customer and ERISA Counsel in 2013. The Agreement further provided:

> If Customer Counsel disagree about the amount of the fee to be distributed amongst Customer Counsel by Lead Counsel, they shall mediate their dispute with Jonathan B. Marks, Esq. and, if unsuccessful, present the dispute to the Court for a determination. Settlement Agreement ¶ 21.

I understand that the method for allocating the aggregate fee award described in Paragraph 21 is widely used in class actions. *See* Expert Report of William Rubenstein dated March 27, 2018, ¶3 and n. 6. ("Second Rubenstein Report).

After notice and hearing, the Court gave preliminary approval to the settlement, approved a settlement class, appointed Labaton as Lead Counsel, and approved the sending of a Notice of

Settlement to members of the settlement class. The Notice of Settlement informed class members that Lead Counsel would apply for an award of attorneys' fees not to exceed $74,541,250, litigation expenses of no more than $1,750,000, and service awards in the aggregate of $85,000, which together total approximately 25% of the settlement fund. Notice of Settlement, pages 5, 17. For additional details about the settlement, the Notice directed class members to the Labaton firm website and to www.StateStreetIndirectFXClassSettlement.com. The Notice did not address the allocation of fees among counsel. No class member objected to the proposed settlement or opted out of the class.

In September 2016, Lead Counsel filed a Motion for Final Approval of the Settlement and for Approval of Attorneys' Fees, supported by an affidavit by Lawrence Sucharow of the Labaton firm (the "Affidavit") and affidavits from Customer Counsel, ERISA Counsel, and three other law firms that had filed appearances in the ERISA cases. The motion sought a total award of fees for all plaintiffs' counsel in the total amount of $74,541,250, an amount equal to 24.85% of the settlement fund. Affidavit ¶ 162. The affidavits of the individual law firms disclosed, in summary tabular form, the hours worked by each attorney and paralegal on the consolidated cases, the customary hourly charge for each professional, and the lodestar amount for each firm. An exhibit to the affidavit added up the individual firm lodestars to produce a total lodestar for use as a cross-check on the requested fee award. Affidavit, Ex. 25. The Affidavit represented that the fee award requested in the Motion for Approval of Attorneys' Fees was 1.8 times the total lodestar amount disclosed in the law firms' affidavits. Affidavit ¶ 178.

On November 2, 2016, the Court heard argument on the Motions for Final Approval and for Approval of Attorneys' fees. Attorney David Goldsmith of the Labaton firm spoke on behalf of all the law firms representing the plaintiffs. After ruling from the bench that the class was

properly certified and the settlement amount of $300 million was fair to the class, the Court turned to the issue of attorneys' fees, prefacing the discussion by observing that it was appropriate to use the percentage of a common fund approach in determining the attorneys' fees to be awarded. Hearing Transcript at 22-23. Mr. Goldsmith argued that a fee award of 25% of the settlement fund was reasonable in light of the results achieved, citing and discussing cases in the First Circuit and elsewhere that used the percentage approach. Mr. Goldsmith also acknowledged that many courts apply a "lodestar cross check" and that, if the Court awarded a 25% fee, the lodestar multiple would be 1.8, which he characterized as "pretty low under the circumstances." Tr. at 30. The Court did not ask how the fee would be divided among the plaintiffs' counsel. At the conclusion of the hearing, the Court, applying the percentage of the common fund approach and a lodestar cross-check, found that the total fee requested was reasonable. Tr. at 35. Final judgment entered that same day.

b. Discovery of Errors in the Lodestar Calculation.

On November 8, 2016, a reporter for *The Boston Globe* contacted the Thornton firm and raised questions about the lodestar figures submitted to the Court. Further investigation revealed that some staff attorney time listed on Labaton's and Lieff Cabraser's affidavits had also been included in Thornton's lodestar figures and that some attorneys had been assigned different rates by different firms. On November 10, 2016, after consultation among the three law firms, Mr. Goldsmith wrote the Court to disclose the mistakes and provide corrected lodestar information. The corrections resulted in a reduction of 9,322.9 in total hours, a reduction of $4,058,654.50 in the total lodestar used as a cross-check on the fee award, and an increase in the lodestar multiplier from 1.8 to 2.0. Goldsmith Letter, p. 3. Even as adjusted, the lodestar multiplier was comfortably within the range of multipliers approved by the courts in other class action cases.

Expert Declaration of William B. Rubenstein dated July 31, 2017, ¶45 ("First Rubenstein Report").

c. Labaton's Arrangement with Chargois & Herron

I understand that the Labaton firm was first introduced to ATRS by attorneys at the firm of Chargois & Herron in 2007. In exchange for Chargois' help in making the introduction, Labaton agreed to pay the Chargois firm a maximum of 20% of any fee that Labaton received representing an institutional investor introduced by the Chargois firm, including ATRS. The agreement did not require the Chargois firm to perform any additional work in connection with the cases that Labaton brought or assume any responsibility for such cases. This agreement is referred to on page 33 of Professor Gillers' Report as the "Chargois Arrangement." The Gillers Report raises questions about whether the Chargois Arrangement was properly disclosed to and approved by ATRS, as required by Rule 1.5(e).

Lieff Cabraser first became aware that Labaton had some relationship with the Chargois firm in April 2013, when Garrett Bradley of the Thornton firm circulated an email stating that Labaton had an obligation to share 20% of its fee in the State Street litigation with Damon Chargois, whom Bradley described as "local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System." Mr. Bradley proposed that Mr. Chargois instead get 4% "off the top" of any total attorneys' fees awarded in the State Street litigation. Bradley asked Robert Lieff to confirm that whatever Labaton owed the Chargois firm would be paid "off the top," thereby spreading the cost of Mr. Chargois' fee among all Customer Counsel, before Customer Counsel divided any fee award among themselves. Mr. Lieff agreed. *See* Email string dated April 24, 2013 (LCHB 0053538-39).

In August 2015, Dan Chiplock of Lieff Cabraser inquired about the details of the proposed allocation of attorneys' fees amongst Class Counsel, including how "ERISA and local Arkansas counsel fits in." Mr. Bradley replied by indicating he had re-sent a copy of the April 2013 email exchange concerning the Chargois firm. *See* Email string dated August 29-30, 2015 (LCHB 0053531-32).

In July 2016, in connection with further negotiations among counsel about allocation of fees, Garrett Bradley sent an email to attorneys on the Customer Counsel team including Bob Lieff and Dan Chiplock reporting that Damon Chargois was willing to accept 5.5% of the total fee awarded in the State Street case, to be paid "off the top." The email described Chargois as "the local attorney in this matter who has played an important role." *See* Email dated July 8, 2016 (LCHB 0053542).

Other emails sent or received by Lieff Cabraser attorneys consistently described the Chargois firm as "local counsel." See Response by Lieff Cabraser Heimann & Bernstein to Special Master's September 7, 2017 Request for Supplemental Submission ("Lieff Cabraser Response to September 7 Request"), ¶¶2-4.

I understand that no attorney at Lieff Cabraser had any direct contact with Damon Chargois or anyone else associated with his firm. No attorney knew the terms of the Chargois Arrangement, apart from was what was disclosed in Garrett Bradley's emails. Based on the very limited information provided in Bradley's emails, both Robert Lieff and Dan Chiplock believed that Chargois & Herron was performing the role of local counsel dealing directly with ATRS personnel in Arkansas about the State Street litigation, similar to the role that Lieff Cabraser's local counsel in Ohio played in the BNY Mellon litigation. Lieff Dep. Transcript at 60-61, 73-74; Chiplock Dep. Transcript at 102-116. No one at Lieff Cabraser was aware that the Chargois

firm had performed no work on the State Street lawsuit, or understood that there may be an issue about whether the fee-sharing agreement between Labaton and the Chargois firm had been properly approved by ATRS, until September 2017, when the underlying arrangement between Labaton and Chargois first came to light in the deposition of Eric Belfi, a Labaton attorney, taken by the Special Master. Lieff Cabraser Response, ¶ 6. That deposition took place ten months after the hearing on the motions for final approval of the settlement and award of attorneys' fees.

II. OPINION

I agree that the Massachusetts Rules of Professional Conduct govern the conduct of the Lieff Cabraser lawyers who appeared in the State Street lawsuit, for the reasons given in Professor Gillers' Report at 55-56. In this Report, I will focus on a lawyer's duty of candor under Rules 3.3 and 8.4(c) of the Massachusetts Rules and will then briefly address Professor Gillers' contention that Rules 1.2 and 1.4 imposes additional obligations of disclosure to absent class members. In applying the Massachusetts Rules, I have tried to keep in mind the following admonition in paragraph 5 of the Scope section of the Rules:

> The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act on uncertain or incomplete evidence of the situation. (*Emphasis added).*

a. Rule 3.3

Rule 3.3 provides, in relevant part:

> (a) A lawyer shall not knowingly:
>
> (1) 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; . . .
>
> (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. . . .

> (d) 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**.** *(Emphasis added).*

The critical terms "knowingly," "knows," and "know" are defined in the Terminology section of the Rules as follows:

> "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. Rule 1.0(g).

The second sentence permits a Court or disciplinary agency to find that a lawyer had actual knowledge of a fact from circumstantial evidence, even if the lawyer denies such knowledge.

The standard of actual knowledge differs from the "reasonably should know" standard employed in some Rules. *See, e.g.*, Rule 4.3. Under the Rules, "reasonably should know" means what "a lawyer of reasonable prudence and competence" would ascertain regarding the matter in question. Rule 1.0(m).

b. Rule 8.4(c).

Rule 8.4(c) provides:

It is professional misconduct for a lawyer to:

> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; . . .

This Rule, unlike Rule 3.3, does not expressly define the state of mind required to find a violation of the Rule. The term "fraud," however, is defined in the Rules as conduct "that is fraudulent under substantive or procedural law and has a purpose to deceive." Rule 1.0(e). Moreover, Massachusetts decisions applying Rule 8.4 require proof that the lawyer's conduct was knowing. *See, e.g., Matter of Zak*, 476 Mass. 1034, 1038 (2017) (lawyer's statements contained "deliberate falsehoods"); *Matter of Murray*, 455 Mass. 872, 881 (2010) (no violation because the lawyer had "no intent to deceive."). I conclude, therefore, that the mental element required to show a violation of 8.4(c) is the same as the mental element required under Rule 3.3:

a lawyer must have actual knowledge that his or her statements or other conduct are false or misleading.

c. Application of Duty of Candor to Lieff Cabraser Attorneys.

In applying Rules 3.3 and 8.4(b) to the conduct of the Lieff Cabraser attorneys in this case, I find it helpful to distinguish the different ways in which a statement may be fraudulent or misleading.

First, a statement of fact may itself be incorrect. The total lodestar amount reported to the Court in the Motion for Attorneys' Fees was false in this primary sense. The error was, however, unintentional and was corrected as soon as it came to the lawyers' attention, so there was no violation of Rule 3.3 or 8.4(b).

Second, a statement of fact may be true as far as it goes but omit some critical information necessary to understand the significance of the statement for the purpose it was made, thus creating a misleading impression. An example of this type of fraud can be found in *Kannavos v. Annino*, 356 Mass. 42 (1969), which has been cited and followed in disciplinary cases. *See Matter of O'Toole*, 2015 WL 9309021 (Ma.St.Bar.Disp.Bd.), cited in Professor Gillers' Report at 71. In *Kannavos*, an owner advertised a building for sale as a multi-family, income-producing property. The owner knew but did not disclose that multi-family use in that location was illegal under the city's zoning ordinance. The Court held that the owner's statements about the use of the property were materially incomplete and therefore constituted fraud. As the Court explained:

> Although there may be 'no duty imposed upon one party to a transaction to speak for the information of the other * * * if he does speak with reference to a given point of information, voluntarily or at the other's request, he is bound to speak honestly and to divulge all the material facts bearing upon the point that lie within his knowledge. Fragmentary information may be as misleading * * * as active misrepresentation, and

> half-truths may be as **712 actionable as whole lies * * *.' *See* Harper & James, Torts, s 7.14. *Kannavos v. Annino*, 356 Mass. 42, 48, 247 N.E.2d 708, 711–12 (1969).

In *Kannavos,* the owner's statements were intended to and did in fact attract a buyer who was interested in an income-producing property. The fact that the use of the property was illegal was plainly "a material fact bearing upon the point" of the owner's statement.

In the present case, the attorneys for the plaintiffs collectively applied for a single fee award for all legal services rendered based on a percentage of the fund recovered for the class, which I understand from Professor Rubenstein's First Report is consistent with the law in the First Circuit and the most common approach courts take to awarding fees in common fund cases. Rubenstein First Report ¶ 12 and n. 4. In addition, most of the firms that filed appearances in the State Street litigation also provided summary information about hours worked and billing rates to permit the Court to calculate a lodestar and perform a lodestar cross-check. To perform a lodestar cross-check, as I understand it, the Court divides the total lodestar number into the fee award requested, yielding a lodestar multiple. The multiple facilitates comparison with fee awards in other case, *see Manual for Complex Litigation,* §14.122, and a high multiple may indicate that the fee requested is disproportionate to the time and effort the lawyers put into the case and the risks they undertook. As Professor Rubenstein explains in his First Report,

> ". . . [U]sing a lodestar cross-check enables a court to make a rough estimate of counsel's lodestar for the purpose of ensuring against a windfall." First Rubenstein Report, ¶ 15.

Nothing in the lodestar affidavits served as an implied representation that the fee award will be distributed in proportion to the lodestars of the individual firms or that the firms submitting affidavits were all the firms who might share in the award. *See* Second Rubenstein

Report, ¶ 13(a). [1] In fact, the Settlement Agreement disclosed that the fee award would be allocated among counsel by agreement, unless a dispute arose. Agreement, ¶ 21. Accordingly, nothing in the limited and inaccurate information available to Lieff Cabraser lawyers in 2016 would have alerted them that they needed to say something about the Chargois Arrangement in order to permit the Court to perform an appropriate lodestar cross-check. Accordingly, I conclude that the Lieff Cabraser lawyers' failure to disclose what little they knew about the Chargois Arrangement was not fraudulent in this second sense.

Third, a statement may be fraudulent if a person knows that he or she is under a duty to speak but says nothing. A duty to speak without being asked commonly arises in fiduciary relationships. See e.g. *Restatement (Third) Of Agency* § 8.11 (2006); *Restatement (Third) of the Law Governing Lawyers* § 20 (2000). An example of this type of duty is found in Rule 3.3(d), which requires that a lawyer in an *ex parte* proceedings disclose material facts known to the lawyer to the court, even if the facts are adverse. Comment [14A] to the Massachusetts version of Rule 3.3 recognizes that the duties in Rule 3.3(d) may apply when adversaries jointly request relief from a court, "such as a joint petition to approve the settlement of a class action lawsuit."

To establish this third type of fraud, it is essential to show that a person knew he or she had a duty to speak without being prompted. In my experience, lawyers who wish to understand their duties in connection with pending litigation start by consulting the Federal Rules of Civil Procedure. I assume for purposes of my opinion that the lawyers at Lieff Cabraser were familiar with the Rules and thus had actual knowledge of what the Rules required. Rule 23(h)(1) specifies that a claim for an award of attorneys' fees in a class action must be made by motion

[1] As Professor Rubenstein points out in his Second Report, there are a variety of reasons why Lead Counsel might have legitimately decided to omit the Chargois firm from the lodestar submission. Rubenstein Second Report, ¶14, n. 66.

"in accordance with Rule 54(d)(2)." Rule 54(d)(2) in turn specifies what issues a motion for fees must address, including "the terms of any agreement for fees," but only if the court so orders. Rule 54(d)(2)(B)(iv). Thus a lawyer who consulted Rules 23 and 54(d) would not be aware of any duty to disclose the terms of agreements among the lawyers about allocation of fees in the absence of a court order, because there is none under those rules.

A lawyer may also know that there is a duty to disclose if the Local Rules or customary practices of the courts where the lawyer appears establish such a duty. Unlike the local rules of some other jurisdictions (such as the Southern and Eastern Districts of New York), there is no Local Rule in the District of Massachusetts addressing motions for an award of fees in class actions or other cases. To determine the customary practices in District of Massachusetts, I have relied on Professor Rubenstein's Second Report, which reports the results of a survey of all in class action settlements in the District of Massachusetts since February 2011. The survey established that there were 127 such cases. In none of these cases did the court order that fee agreements be disclosed. In only a handful of the cases were fee agreements even mentioned. Second Rubenstein Report at ¶ 7. Thus, a lawyer familiar with the customary practices in the District of Massachusetts would conclude that there was no duty to disclose fee agreements unless the court specifically so ordered.

During oral argument on the Motion for Attorneys' Fees in the State Street litigation, the Court did ask one question about Labaton's agreement with ATRS, which Mr. Goldsmith answered. Hearing Transcript, p. 26 The Court did not ask any other questions about fee agreements or allocations and did not order any further disclosures. Nothing in these facts establishes that the lawyers at Lieff Cabraser knew of any duty to say more.

Professor Gillers also contends that a duty to disclose fee arrangements has been established by judicial precedent. I have reviewed the cases cited in the Gillers Report at pages 68-71. In most of those cases, the lawyers brought a dispute about fees to the court's attention for resolution. The cases stand for the general proposition that the court is not bound by agreements among counsel allocating fees and has the power to award fees itself. Language in *In re Agent Orange Product Liability Litigation*, 818 F.2d 216, 226 (2d Cir. 1987) to the effect that lawyers have a duty to disclose fee allocation agreements without being asked reflects the local rules applicable in the Eastern District of New York where the case was tried. *See* Second Rubenstein Report, ¶12, n. 45. In *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3rd 132, 138 n.2 (2d Cir. 2016), the Second Circuit recognized that Rule 23(h) itself does not require such disclosure. Citing precedent in another Circuit applying the local rules of different District Court does not establish that the Lieff Cabraser lawyers were aware that they had a duty to disclose what they knew about proposed fee payments to the Chargois firm.

d. Professor Gillers' Revised Opinion Regarding the Duty of Lieff Cabraser Lawyers.

At his deposition on March 20, Professor Gillers conceded that the lawyers involved in the State Street lawsuit were not required by the Federal Rules of Civil Procedure to disclose fee allocations among counsel of record unless ordered to do so by the Court. Gillers Depos. Vol. I at 216-217. He also acknowledged that Lieff Cabraser's lawyers did not know all the terms of the Chargois Arrangement, and that they thought the Chargois firm was local counsel for ATRS and had rendered valuable services in connection with the class action. Gillers Depos. Vol. I at 225. Nevertheless, he contended that the size of the payment to the Chargois firm triggered a duty to investigate what Chargois had done to earn his fee. Gillers Depos. Vol. I at 226. Presumably, the argument goes, had the Lieff Cabraser attorneys performed such an

investigation, they would have discovered facts leading them to agree with Professor Gillers that the Chargois Arrangement did not comply with Rule 1.5(e) and that the Chargois fee was clearly excessive under Rule 1.5(a), and would then have been under a duty to report the Chargois Arrangement to the Court.

At best, this is an argument that the Lieff Cabraser lawyers reasonably should have known that the description of Mr. Chargois' role and function provided by co-counsel raised some questions that required further investigation. It certainly does not establish that the Lieff Cabraser lawyers actually knew they had duty to say something about Mr. Chargois' fee interest in 2016 when the Motion for a Fee Award was submitted to the Court. In my opinion, without such actual knowledge, there is no violation of the duty of candor established by Rules 3.3 and 8.4(c).

Moreover, the premise of Professor Gillers' argument is that the Lieff Cabraser lawyers had enough information in 2016 to realize that there was something unusual about Labaton's agreement with Chargois that warranted further investigation. When the motion of an award of fees was submitted the Court in 2016, the Lieff Cabraser lawyers understood that Labaton had agreed to share 20% of its of its fee with the Chargois firm, that the Chargois firm was acting as local counsel, and that Chargois was performing valuable services for the case.[2] On the basis of these facts, Mr. Bradley, presumably speaking for Labaton as well, proposed to pay Chargois 5.5% of the total fee. It is not obvious that an agreement to split a fee 94.5%/5.5% between trial counsel and local counsel is so unusual that it triggers a duty among co-counsel to investigate further, and I found nothing in the record to support such a conclusion. Moreover, none of the

[2] As Professor Rubenstein points out, Lieff Cabraser lawyers would have been justified in assuming that Labaton decided not to submit the Chargois firm's time as part of the lodestar submission for a variety of legitimate reasons. Second Rubenstein Report, ¶ 14(a), n. 66. Thus the absence of a lodestar declaration from the Chargois firm did not require the Lieff Cabraser attorneys to investigate further.

information available to Lieff Cabraser lawyers at the time suggested that ATRS had not properly authorized Mr. Chargois' role and share of the fee. I therefore disagree with Professor Gillers' contention that the limited and misleading information available to Lieff Cabraser attorneys triggered some duty to conduct a further investigation.

e. The Duty of Lieff Cabraser Attorneys to Class Members.

In his Report at pages 75-78, Professor Gillers also contends that each of the firms designated as attorneys for the class had an ethical duty to disclose the Chargois Arrangement to absent class members, citing Rules 1.2 and 1.4 of the Rules of Professional Conduct. It is undoubtedly true attorneys for the class have fiduciary duties to the class as a whole. It is not, however, feasible to require class counsel to follow the letter of Rules 1.2 and 1.4 in dealing with absent class members. For example, an individual client has the absolute right under Rule 1.2(a) to accept or reject settlement for any reason or no reason. Applying such a rule in class actions would make settlement impossible. Similarly, Rules 1.2(a) and 1.4(a)(2) require a lawyer to consult with an individual client about the means by which the client's objectives are to be accomplished, including such issues as the expenses to be incurred and the impact legal tactics on the interests of third parties. *See* Rule 1.2, Comment [2]. It is plainly impractical to require lawyers for a class to consult with absent class members about the means for achieving their objectives. Accordingly, courts have recognized that duties of lawyers to individual clients cannot be mechanically applied in class actions. *See, e.g., In re Agent Orange Prod. Liab. Litig.*, 800 F.2d 14, 19 (2d Cir. 1986) (holding that the traditional rules governing the representation of individual clients should not be mechanically applied in the settlement of class actions); Advisory Committee's Notes to Rule 23(g) of the Federal Rules of Civil Procedure (recognizing

that the duties of class counsel may be different than "the customary obligations of counsel to individual clients.")

In practice, lawyers for a class communicate with absent class members about settlement and about any application for fees by following the notice provisions in Rules 23(e)(1) and 24(h)(1) of the Rules of Civil Procedure, and by posting relevant documents relating to the settlement on a website accessible to class members. Those procedures were followed in the State Street case. Nothing in the Federal Rules or applicable case law requires class counsel to disclose proposed fee allocations in the notice to absent class members. *See* Second Rubenstein Report, ¶¶ 17-20. Professor Gillers' claim that the Lieff Cabraser lawyers had a duty to disclose the Chargois Arrangement to class members is simply a variant of his claim that they duty to disclose the arrangement to the Court: namely, that on the basis of the limited and misleading information available to them in 2016, they should have realized that there was something problematic about letting Chargois share in the fee award and conducted a further investigation, which would have led them to conclude that absent class members needed to know about the Chargois Arrangement. In my opinion, that is Monday morning quarterbacking, not a fair description of the fiduciary duties of Lieff Cabraser lawyers at the time notice was given to the class in 2016.

III. CONCLUSION

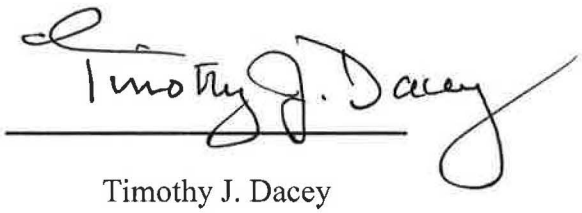
In summary, it is my opinion that:

1. The Lieff Cabraser lawyers did not knowingly make a false statement of fact to the Court.

2. The Lieff Cabraser lawyers were not required to disclose what they knew about the Chargois Arrangement in order to permit the Court to calculate an appropriate percentage of the settlement to award as a fee or to perform a lodestar cross-check.
3. Nothing in the Federal Rules of Civil Procedure, the Local Rules of the District of Massachusetts, or the customary practices of lawyers in this District required Lieff Cabrasser attorneys to disclose what they knew about the Chargois Arrangement without being ordered to do so.
4. The limited and incorrect information about the Chargois Arrangement known to the Lieff Cabrasser attorneys in 2016 did not trigger a duty of disclosure to the Court or to class members or a duty to further investigate the Arrangement.

Accordingly, I conclude that the Lieff Cabrasser attorneys did not violate the Massachusetts Rules of Professional Conduct. Professor Gillers' contrary opinion, it seems to me, ignores the admonition in the Scope section of the Rules of Professional Conduct that a lawyer's conduct should be judged "on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act on uncertain or incomplete evidence of the situation." Scope, ¶5.

Dated: March 26, 2018



Timothy J. Dacey

ATTACHMENT A

Statement of Qualifications of Timothy J. Dacey

I have been asked to state my qualifications to express an opinion regarding the professional conduct of lawyers.

I graduated from law school in 1969 and became a member of the bar of the Massachusetts Supreme Judicial Court in 1970. Since 1970, I have practiced as a trial lawyer in Boston, Massachusetts at the firms of Hill & Barlow and Goulston & Storrs, representing clients before Massachusetts state and federal courts and arbitration panels in a wide variety of matters, including contract disputes, antitrust cases, construction litigation, probate matters, and professional malpractice cases involving accountants, architects and engineers.

Beginning in the mid-1980's, a substantial portion of my practice (half or more of my time) has been representing lawyers and law firms in malpractice claims and partnership disputes before the Massachusetts Superior Court, the federal district court, and arbitration panels, and in disciplinary matters before the Massachusetts Board of Bar Overseers. I have also regularly advised lawyers, law firms, and corporate law departments concerning compliance with the Rules of Professional Conduct and other law governing lawyers.

At Hill & Barlow, I was the loss prevention partner and chair of the Ethics Committee. In these positions, I was responsible for managing claims against the firm for professional malpractice and in advising other attorneys in the firm about their ethical responsibilities. Since joining Goulston & Storrs, I have served as Assistant General Counsel to the firm with responsibilities similar to those I performed at Hill & Barlow.

I have been a member of the Committee on Professional Ethics of the Massachusetts Bar Association since 1984 and Vice-Chair of the Committee since 1991. During my tenure, the Committee has issued several hundred opinions (published and unpublished) for the guidance of

members of the Massachusetts bar. In addition, as Vice-Chair of the Committee, I have been responsible for providing emergency advice on ethical issues to inquiring lawyers who needed answers before the next regularly scheduled meeting of the Committee.

In 2005 and 2006, I was a member of the American Bar Association's Standing Committee on Ethics and Professional Responsibility.

Since 2012, I have been a member of the Advisory Committee on the Rules of Professional Conduct. The Committee is appointed by the Massachusetts Supreme Judicial Court to advise the Court concerning proposed amendments to the Rules of Professional Conduct.

Since 2012, I have been a Lecturer at Harvard Law School, where I teach a course on the Legal Profession in the Fall Semester. The primary focus of the course is on the Rules of Professional Conduct.

I have not testified as an expert witness in the last four years.

I am being compensated at the rate of $710 per hour.

Additional information is on the attached resume.

Timothy J. Dacey

RESUME

Timothy J. Dacey
Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110

Education:

1964: College of the Holy Cross, A.B., *summa cum laude*

1969: Harvard Law School, J.D., *cum laude.*

Employment Experience:

1969-1970: Law Clerk for Hon. Frank M. Coffin
United States Court of Appeals for the First Circuit
Portland, ME.

1970-2003: Associate, then partner and member.
Hill & Barlow, P.C.
Boston, MA

2003-2010: Director
Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110

2010-Present Of Counsel
Goulston & Storrs PC

Bar Memberships:

Massachusetts Supreme Judicial Court
United States District Court, District of Massachusetts
United States Court of Appeals for the First Circuit
United States Court of Appeals for the Federal Circuit
United States Supreme Court

Publications in the last ten years:

"Retaining Privilege Despite Losing Control of your Subsidiary," New England In-House (January 2008)(with Partrick Curran)

"Does Your Partnership Agreement Violate the Rules of Professional Conduct,"

Law Firm Partnership & Benefits Report (February 2009)

Chapter on Attorney's Fees in *Ethical Lawyering in Massachusetts*, Massachusetts Continuing Legal Education, 4th ed. 2015.

ATTACHMENT B

LIST OF DOCUMENTS CONSULTED BY TIMOTHY DACEY

The following documents relate to the case of *Arkansas Teacher Retirement System v. State Street Corporation,* 1:11-cv-10230-MLW.

1. Docket entries.
2. Complaint.
3. Stipulation and Agreement of Settlement.
4. 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.
5. Memo of Law in Support of Motion for Approval of Settlement.
6. Memo of Law in Support of Motion for Attorneys' Fees.
7. Declaration of Lawrence Sucharow in Support of Motions for Approval of Settlement and for Attorneys' Fees.
8. Transcript of Hearing on Class Action Settlement on 11/2/16
9. Letter from D. Goldsmith to Hon. Mark L. Wolf dated 11/10/16.
10. Memorandum and Order dated 2/6/17.
11. Memorandum and Order appointing Judge Rosen as Special Master dated 3/8/17.
12. Expert Declaration of William Rubenstein dated 7/31/17.
13. Consolidated Response by Labaton Sucharow LLP, Lieff Cabraser Heimann & Bernstein LLP, and Thorton Law Firm to Special Master's July 5, 2017 Request for Supplemental Submission dated 8/1/17.
14. Expert Declaration of Camille Sarrouf dated 10/13/17.
15. Response by Lieff Cabraser Heimann & Bernstein LLP to Special Master's September 7, 2017 Request for Supplemental Submission dated 11/3/17.
16. Ethical Report for Special Master Gerald E. Rosen by Professor Stephen Gillers dated 2/23/18.
17. Expert Report of William Rubenstein dated 3/26/18.
18. Deposition of Stephen Gillers taken on 3/20/18.
19. Continued Deposition of Stephen Gillers taken on 3/21/18.

20. Deposition of Daniel P. Chiplock taken on 9/8/17.

21. Deposition of Robert L. Lieff taken on 9/11/17.

22. Emails produced by Lieff Cabraser Heimann & Bernstein LLP to the Special Master relating to the Chargois Arrangement.

EX. 245

Date	Timekeeper	Narrative	Hours	Task Code	
7/10/2008	Mike Thornton	Call with Richard Heinmann re potential litigation	0.3		
8/11/2008	Mike Lesser	Call with Steve Fineman re: potential litigation	1.5		
8/11/2008	Mike Thornton	Call with Steve Fineman re: potential litigation	1.5		
10/7/2008	Mike Lesser	Call with LCHB re: potential STT case	2		
10/7/2008	Mike Thornton	Call with LCHB re: potential STT case	2		
10/8/2008	Mike Lesser	Call with LCHB re: potential STT case	1.4		
10/8/2008	Mike Thornton	Call with LCHB re: potential STT case	1.4		
11/24/2008	Mike Lesser	Call with Lexi Hazam re: obtaining FX data	0.3		
7/16/2009	Mike Thornton	Email to Steve Fineman re: [redacted]	0.4		
10/2/2009	Mike Lesser	Emails to Steve Fineman re: [redacted]	0.3		
10/6/2009	Mike Lesser	Conference call with LCHB re: strategy for filing and communication with clients	1		
10/6/2009	Mike Thornton	Conference call with LCHB re: strategy for filing and communication with clients	1		
10/23/2009	Mike Lesser	Call with Phil Michael and LCHB re: possible class representative candidates	1.2		
10/27/2009	Mike Lesser	Emails to co-counsel re: client retention and strategy for same	1.5		
10/27/2009	Mike Thornton	Emails to co-counsel re: client retention and strategy for same	1.5		
11/5/2009	Garrett Bradley	Review case and research same	3		
11/9/2009	Garrett Bradley	Telephone call with co counsel and communicate with potential clients	2		
11/23/2009	Garrett Bradley	Research case; data review; telephone call with co counsel re communication with client	2.5		
11/24/2009	Garrett Bradley	call with co-counsel re client communication; review case	2		
12/2/2009	Mike Lesser	Emails to co-counsel re: review of fx trading data for potential clients	0.4		
12/2/2009	Mike Thornton	Emails to co-counsel re: review of fx trading data for potential clients	0.4		
12/10/2009	Evan Hoffman	memo and research re [redacted]	7		
12/11/2009	Mike Lesser	Call with co-counsel re: status of litigation and data review	0.7		

12/11/2009	Mike Thornton	Call with co-counsel re: status of litigation and data review	0.7		
1/4/2010	Mike Thornton	Call with R. Heinmann re case	0.3		
1/11/2010	Garrett Bradley	Research case	5		
1/12/2010	Garrett Bradley	Review data, call with co-cousnel re prosepctive clients	3		
1/20/2010	Evan Hoffman	review and sort pension fund FX trading data	3.8		
1/20/2010	Garrett Bradley	Review case status and emails	2.5		
1/21/2010	Evan Hoffman	review and sort pension fund FX trading data	7.9		
1/22/2010	Evan Hoffman	review and sort pension fund FX trading data	7		
1/25/2010	Evan Hoffman	review and sort pension fund FX trading data	5.8		
1/28/2010	Evan Hoffman	Call with co-counsel re: status of case and draft complaint	0.8		
1/28/2010	Evan Hoffman	review and sort pension fund FX trading data	7.7		
1/28/2010	Garrett Bradley	Call with co-counsel re: status of case and draft complaint	0.8		
1/28/2010	Mike Lesser	Call with co-counsel re: status of case and draft complaint	0.8		
1/28/2010	Mike Thornton	Call with co-counsel re: status of case and draft complaint	0.8		
2/1/2010	Evan Hoffman	review and sort pension fund FX trading data	8		
2/2/2010	Evan Hoffman	review and sort pension fund FX trading data	6		
2/4/2010	Evan Hoffman	review and sort pension fund FX trading data	5.5		
2/4/2010	Garrett Bradley	Research case and complaint issues and 93A issues	3.5		
2/5/2010	Evan Hoffman	review and sort pension fund FX trading data	8.6		
2/9/2010	Evan Hoffman	review and sort pension fund FX trading data	6.8		
2/10/2010	Evan Hoffman	review and sort pension fund FX trading data	7.4		
2/11/2010	Evan Hoffman	review and sort pension fund FX trading data	8		
2/12/2010	Evan Hoffman	review and sort pension fund FX trading data	7.8		
2/15/2010	Evan Hoffman	review and sort pension fund FX trading data	6		
2/16/2010	Evan Hoffman	review and sort pension fund FX trading data	9		
2/25/2010	Mike Lesser	Call with co-counsel re status of non-qui tam ligitation	0.5		
2/25/2010	Mike Thornton	Call with co-counsel re status of non-qui tam ligitation	0.5		
3/2/2010	Evan Hoffman	sorting and review of pension fund FX trading data	6.8		
3/23/2010	Evan Hoffman	Research [redacted]; compile info on [redacted];	6.9		
3/24/2010	Evan Hoffman	review and sort pension fund FX trading data	5		
3/24/2010	Mike Lesser	Emails to co-counsel re [redacted]	0.3		
3/24/2010	Mike Thornton	Emails to co-counsel re [redacted]	0.2		

3/27/2010	Mike Thornton	Emails to Steve Fineman re [redacted]	0.3		
4/7/2010	Evan Hoffman	Create [redacted]	8		
4/8/2010	Evan Hoffman	Emails to Mike Lesser re [redacted]; emails to Mike Lesser and research in to [redacted] continue work on [redacted]	4.7		
4/8/2010	Garrett Bradley	Review emails re [redacted]	0.5		
4/8/2010	Mike Lesser	Emails to Dan Chiplock re 93A research	0.2		
4/8/2010	Mike Lesser	Emails to Dan Chiplock re [redacted]	0.8		
4/13/2010	Mike Lesser	Emails to Dan Chiplock re 93A research	0.1		
4/14/2010	Evan Hoffman	emails re: 93A claims; continue work on IM chart	3.7		
4/14/2010	Mike Lesser	emails re: 93A claims	0.7		
4/15/2010	Evan Hoffman	continue work on IM chart project	3.2		
4/15/2010	Mike Lesser	Emails to co-counsel re status of 93A claim	0.8		
4/15/2010	Mike Thornton	Emails to co-counsel re status of 93A claim	0.5		
4/18/2010	Evan Hoffman	review and sort pension fund FX trading data; continue work on IM Chart	7		
4/20/2010	Dave Rosenberg	formatting and translating AR trade data to be sent to expert	5		
4/20/2010	Evan Hoffman	formatting and translating AR trade data to be sent to expert	7.2		
4/20/2010	Garrett Bradley	Research data and review trade data to be sent to expert	1		
4/21/2010	Dave Rosenberg	formatting and translating AR trade data to be sent to expert	3		
4/21/2010	Evan Hoffman	formatting and translating AR trade data to be sent to expert	6.6		
4/22/2010	Evan Hoffman	formatting and translating AR trade data to be sent to expert	5.9		
4/23/2010	Evan Hoffman	formatting and translating AR trade data to be sent to expert	3		
4/26/2010	Mike Lesser	emails and coordination of uploading ARTRS FX trade data for expert analysis	0.2		
4/27/2010	Mike Lesser	emails with expert and co counsel re analysis of ARTRS data	0.3		

4/28/2010	Evan Hoffman	formatting and translating AR FX crossdeals trade data to be sent to expert	7.9		
4/29/2010	Evan Hoffman	formatting and translating AR FX crossdeals trade data to be sent to expert	7		
4/30/2010	Evan Hoffman	emails with MAL and consulting expert re Arkansas trade data	1		
4/30/2010	Mike Lesser	emails with expert re trade data issues	1		
5/5/2010	Mike Lesser	emails and discussion with expert re analysis of FX data	0.3		
5/6/2010	Mike Lesser	review of expert analysis of FX trading data for ARTRS	1.2		
5/10/2010	Mike Lesser	prep and call with Labaton co cpinsel re ARTRS data and analysis; emails re the same	1		
5/11/2010	Evan Hoffman	compile, review, sort, and categorize pension fund FX trading data	7.7		
5/11/2010	Evan Hoffman	compile, review, sort, and categorize pension fund FX trading data	8		
5/11/2010	Mike Lesser	review of revised expert analysis of ARTRS FX data and emails re the same	1.5		
5/12/2010	Mike Lesser	emails with co counsel re ARTRS contracts and RFP docs; review contracts	2.7		
5/13/2010	Evan Hoffman	compile, review, sort, and categorize pension fund FX trading data	8		
5/13/2010	Mike Lesser	development of class case	0.8		
5/14/2010	Mike Lesser	emails with co counsel re class development	0.5		
5/17/2010	Mike Lesser	emails with co counsel re client and case development; emails re ARTRS contracts	1.6		
5/18/2010	Mike Lesser	emails re case development	0.1		
5/19/2010	Mike Lesser	emaols with clients and co counsel re case development	0.5		
5/19/2010	Mike Lesser	review of custodian list from S&P publications	2		
5/20/2010	Mike Lesser	case development and research	1.5		
5/21/2010	Mike Lesser	case development and research	2		
5/24/2010	Evan Hoffman	Compile all information and data re [redacted]	6		
5/24/2010	Garrett Bradley	Call to co-counsel re research; review emails and data compiled	2		
5/24/2010	Mike Lesser	compile for R. Heimann [redacted]	2.5		
5/25/2010	Mike Lesser	case development and research; emails with consultant	0.3		

5/27/2010	Mike Lesser	emails with co counsel re development scheduling	0.1		
5/29/2010	Mike Lesser	emails with expert re trading data	0.1		
6/1/2010	Mike Lesser	emails with co counsel and consultant re case development	0.3		
6/2/2010	Mike Lesser	emails with co counsel and consultant re case development	0.2		
6/2/2010	Mike Thornton	Emails to Steve Fineman re finding new potential clients	0.3		
6/3/2010	Mike Lesser	emails with co counsel and consultant re case development	0.3		
6/3/2010	Mike Thornton	call with S. Fineman re status of efforts to obtain clients	0.3		
6/4/2010	Mike Lesser	emails with co counsel and consultant re case development	0.5		
6/7/2010	Mike Lesser	emails with co counsel and consultant re case development	0.2		
6/8/2010	Mike Lesser	call with S. Fineman and [redacted] re [redacted]	1.2		
6/9/2010	Mike Lesser	Emails to Lexi Hazam re netting issues in FX data analysis	0.4		
6/9/2010	Mike Lesser	research and compile list of STT custodial Taft Hartley clients in MA; case research and development	2.6		
6/10/2010	Mike Lesser	case research and development	5.2		
6/11/2010	Mike Lesser	draft liability presenation and overview/research development	8		
6/11/2010	Mike Thornton	Call with Steve Fineman re status of various pension funds	0.4		
6/12/2010	Mike Lesser	draft liability presenation and overview/research development	1		
6/13/2010	Mike Lesser	draft liability presenation and overview/research development	2.5		
6/14/2010	Mike Lesser	draft liability presenation and overview/research development; emails with co counsel re case development	5.5		
6/15/2010	Mike Lesser	meeting with consultant and emails with co counsel re case development	2.5		
6/16/2010	Mike Lesser	development and research of case; emails with co counsel re the same	5		
6/17/2010	Mike Lesser	development and research of case; emails with co counsel re the same	1		
6/18/2010	Mike Lesser	development and research of case; emails with co counsel re the same	2.2		

6/21/2010	Garrett Bradley	Review case and outstanding issues; call with co-counsel re preparing update for client	2		
6/21/2010	Mike Lesser	development and research of case; emails with co counsel re the same	2		
6/22/2010	Mike Lesser	development and research of case; emails with co counsel re the same	2.1		
6/23/2010	Mike Lesser	development and research of case; emails with co counsel re the same	1.3		
6/23/2010	Mike Thornton	Emails with Steve Fineman re Bernstein Litowitz potential involvement in case	0.3		
6/24/2010	Garrett Bradley	Call with LCHB re status and strategy	0.6		
6/24/2010	Mike Lesser	Call with LCHB re status and strategy; review memo re WSIB meeting minutes; custody search and emails re the same	2.9		
6/24/2010	Mike Thornton	Call with LCHB re status and strategy	0.6		
6/25/2010	Mike Lesser	emails with co counsel re case development	1.8		
6/26/2010	Mike Lesser	emails with co counsel re case development	0.5		
6/30/2010	Mike Lesser	Emails to Dan Chiplock re Berntein Litowitz involvement and presentation	0.4		
7/2/2010	Mike Lesser	development and emails with expert re FX analysis and data	0.9		
7/7/2010	Mike Lesser	emails with expert re FX analysis	0.3		
7/7/2010	Mike Thornton	Call with Steve Fineman re status of client outreach	0.8		
7/9/2010	Garrett Bradley	Review emails with counsel; research [redacted]	1.5		
7/9/2010	Mike Lesser	Emails with co-counsel re client outreach and other class issues; prepare for and call with co counsel and client	1.7		
7/9/2010	Mike Thornton	Emails with co-counsel re client outreach and other class issues; prepare for and call with co counsel and client	1.7		
7/12/2010	Mike Lesser	emails with co counsel re case development	0.2		
7/13/2010	Mike Lesser	Call with co-counsel re [redacted]; emails with [redacted]	0.8		
7/13/2010	Mike Thornton	Call with co-counsel re [redacted]	0.4		
7/14/2010	Mike Lesser	review [redacted]; emails re same	0.4		
7/15/2010	Garrett Bradley	Call with LCHB re [redacted] and analysis of same	0.8		

7/15/2010	Mike Lesser	Call with LCHB re [redacted] and analysis of same	1.5		
7/15/2010	Mike Thornton	Call with LCHB re [redacted] and analysis of same	0.8		
7/16/2010	Mike Lesser	discussion and emails w expert re client data and data review	1.7		
7/19/2010	Mike Lesser	emails with expert re client data review	0.3		
7/20/2010	Mike Lesser	emails to client and co counsel re data review	1.1		
7/27/2010	Mike Lesser	emails to client re data review	0.1		
7/28/2010	Mike Lesser	emails to expert and co counsel re ongoing data review	1.1		
7/29/2010	Mike Lesser	emails to co counsel re data review	0.3		
7/30/2010	Mike Thornton	Call with Steve Fineman re status of client outreach	0.4		
8/2/2010	Mike Lesser	case development and meeting with potential client; call with client re data review questions	2.3		
8/3/2010	Mike Lesser	emails to expert and client re client inquiry	0.3		
8/11/2010	Mike Lesser	Emails with LCHB re class client outreach	0.4		
8/11/2010	Mike Thornton	Call with Steve Fineman re class client outreach	0.5		
8/30/2010	Garrett Bradley	Call with co counsel re communication with client and research outstanding issues re same	1.5		
8/30/2010	Mike Lesser	emails and call with expert and [redacted]	1.2		
8/31/2010	Mike Lesser	emails with co counsel and exprt re FX analysis and consultant meeting	1		
9/1/2010	Mike Lesser	emails with expert and co counsel re data analysis presentation	1.4		
9/2/2010	Mike Lesser	emails with expert and co counsel re FX data presentation to client	1.5		
9/3/2010	Mike Lesser	emails with expert re data analysis and consulting agreement; review of documents re the same	2.5		
9/6/2010	Mike Lesser	emails with consultant re ARTRS data review	0.2		
9/7/2010	Mike Lesser	emails with expert and co counsel re FX data presentation to client and consultant; doc review re the same; preparation for meeiting	6		
9/8/2010	Evan Hoffman	research and memo preparation for consultant on STT custodied funds	2		
9/8/2010	Mike Lesser	preparation for Chicago presenation to client and consultnt	4		
9/9/2010	Mike Lesser	travel to Chicago for meeting with expert client and consultant; meeting with client and consultant and expert and co counsel; travel back from Chicago	10.5		

9/9/2010	Mike Lesser	emails re [redacted] emails with [redacted]	0.4		
9/9/2010	Mike Thornton	travel to Chicago for meeting with expert client and consultant; meeting with client and consultant and expert and co counsel; travel back from Chicago	10.5		
9/10/2010	Garrett Bradley	Conference call with co-counsel to discuss status and strategy issues	2		
9/10/2010	Mike Lesser	emails with co counsel re client data review and dcouments; emails with co counsel re STT public pension clients	0.5		
9/13/2010	Mike Lesser	emails with co counsel and counsel for [redacted] conference call re the same	1.3		
9/13/2010	Mike Thornton	emails with co counsel and counsel for [redacted] conference call re the same	1.3		
9/14/2010	Garrett Bradley	Prepare for and meeting with co counsel re potential class litigation	8.2		
9/14/2010	Mike Lesser	Prepare for and meeting with co-counsel re potential class litigation against STT	8.2		
9/14/2010	Mike Thornton	Prepare for and meeting with co-counsel re potential class litigation against STT	8.2		
9/15/2010	Mike Lesser	emails with co counsel re damages; draft summary of client damages for co counsel	3.7		
9/16/2010	Garrett Bradley	Review emails; call with co-counsel re data compiled on loss charts for ATRS	2.5		
9/16/2010	Mike Lesser	draft summary presentation re client damages for co counsel; emails with expert and co counsel re damages	4.7		
9/17/2010	Evan Hoffman	research re drafting fact section of complaint	4		
9/17/2010	Garrett Bradley	Draft client memorandum; review draft complaint and research potential calls representtive	3		
9/17/2010	Mike Lesser	emails with co counsel and expert re damages analysis and presentation; emails and research re drafting of complaint fact section	4.5		
9/20/2010	Evan Hoffman	revieew [redacted]	1		
9/20/2010	Evan Hoffman	draft complaint introduction	3.3		
9/20/2010	Mike Lesser	Emails to LCHB re drafting class complaint; draft introduction to complaint	4.3		
9/20/2010	Mike Lesser	revieew [redacted]	1.5		

9/21/2010	Evan Hoffman	Calls with LCHB and Labaton re class complaint drafting; emails re the same; review documents re the same	2		
9/21/2010	Garrett Bradley	Calls with LCHB and Labaton re class complaint drafting	1.4		
9/21/2010	Mike Lesser	Calls with LCHB and Labaton re class complaint drafting; emails re the same; review documents re the same	2.1		
9/21/2010	Mike Thornton	Calls with LCHB and Labaton re class complaint drafting	1.4		
9/22/2010	Mike Lesser	Emails with [redacted]	0.5		
9/23/2010	Mike Lesser	emails with co counsel re [redacted]	0.2		
9/24/2010	Garrett Bradley	Review retainer and contracts; call with co-counsel re same; research same	4.5		
9/24/2010	Mike Lesser	email with co counsel re contracts	0.1		
9/27/2010	Evan Hoffman	draft complaint fact section	4.9		
9/27/2010	Mike Lesser	draft complaint fact section for co counsel review	5		
9/28/2010	Evan Hoffman	Draft fact section of complaint	4.4		
9/28/2010	Mike Lesser	draft fact section of complaint for co counsel review	6.5		
9/29/2010	Mike Lesser	emails with co counsel re custodial contracts; develop damages model for client	2.2		
9/30/2010	Garrett Bradley	Review emails and case memos	1.5		
10/5/2010	Garrett Bradley	Revise draft complaint and research	2		
10/5/2010	Mike Lesser	emails with co counsel re breach of fiduciary duty claims	0.2		
10/6/2010	Mike Lesser	edit review excel file sorting client FX trades and email expert	0.9		
10/7/2010	Mike Lesser	edit review excel file sorting client FX trades and email expert; edit spreadsheet with client data analysis	1.3		
10/8/2010	Mike Lesser	emails and review of [redacted]; emails to co counsel re [redacted]	1.8		
10/13/2010	Mike Lesser	emails and excel file review with expert and co consel re client data review	1.5		
10/14/2010	Mike Lesser	emails and excel file review with expert and co consel re client data review	1		
10/15/2010	Mike Lesser	emails with co counsel and client re data review	1.2		
10/18/2010	Garrett Bradley	emails and conference call with expert and client and co counsel re data review	1		
10/18/2010	Mike Lesser	emails and conference call with expert and client and co counsel re data review	1.1		

10/18/2010	Mike Lesser	emails and conference call with expert and client and co counsel re data review	1		
10/20/2010	Mike Lesser	emails with expert and co couinsel re data review and requests	0.8		
10/21/2010	Mike Lesser	Emails to co-counsel re potential class representative	0.2		
10/21/2010	Mike Thornton	Emails to co-counsel re potential class representative	0.2		
10/26/2010	Evan Hoffman	review emails from co counsel re 93A cases	1		
10/26/2010	Mike Lesser	review emails from co counsel re 93A cases	1		
10/27/2010	Evan Hoffman	emails and discussions with co counsel and clients re [redacted]; research related to [redacted]	2.2		
10/27/2010	Mike Lesser	emails and discussions with co counsel and clients re [redacted]; research related to [redacted]	2.5		
10/28/2010	Mike Lesser	excel analysis and pivot tables re [redacted]; emails with co counsel re [redacted]	1.8		
10/30/2010	Mike Lesser	emails with co counsel re [redacted]	0.2		
11/1/2010	Mike Lesser	emails with expert re [redacted]; emails to co counsel re [redacted]	1.4		
11/2/2010	Garrett Bradley	Continue revision of draft complaint and case research	2.5		
11/2/2010	Mike Lesser	emails to co counsel re client contract and litigation theory	0.3		
11/3/2010	Garrett Bradley	Call with co counsel re communication with clients; review emails and draft complaint	2.5		
11/3/2010	Mike Lesser	emails to co counsel re client questions; drafting of client damages analysis and eails to co counsel re same	3.8		
11/4/2010	Garrett Bradley	Meetings with client and co-cousnel to provide update on case and discuss outstanding issues and case research	7		
11/5/2010	Garrett Bradley	Review communication from State Street and in-house meeting to discuss status update re client meeting	1.5		
11/5/2010	Mike Lesser	emails with co counsel and expert re STT response to data request	1.1		
11/8/2010	Garrett Bradley	Telephone conference with co-counsel in preparation for 11/9/2010 meeting; call with co-counsel re communication with client; prepare materials	3.5		
11/8/2010	Mike Lesser	emails with co counsel re client inquiries	0.2		

11/9/2010	Mike Thornton	Meetings with Bob Lieff and Larry Sucharow to discuss case; travel to and from NYC	7		
11/10/2010	Mike Lesser	emails with co counsel re emails from custodian	0.1		
11/11/2010	Evan Hoffman	research for MAL re possible witnesses	1		
11/11/2010	Mike Lesser	emails and analysis for co counsel re possible witnesses	0.3		
11/12/2010	Garrett Bradley	Prepare communication for client	1.5		
11/12/2010	Mike Lesser	emails and analysis for co counsel re possible witnesses; review of client emails to bank re FX pricing	0.7		
11/15/2010	Mike Lesser	review of client email to bank re FX pricing	0.2		
11/16/2010	Evan Hoffman	emails and analysis of possible witnesses	0.4		
11/16/2010	Mike Lesser	emails and analysis of possible witnesses	0.4		
11/17/2010	Garrett Bradley	Review and revise complaint; research same and telephone conference with client	3		
11/17/2010	Mike Lesser	emails with expert re trade terminology; emails and analysis re trading information from bank; emails with experts and co counsel re the same	1.9		
11/18/2010	Garrett Bradley	telephone call with co-counsel re communication with client	1		
11/18/2010	Mike Lesser	emails with co counsel re litigation course and next steps	0.3		
11/19/2010	Mike Lesser	emails with co counsel re potential witnesses	0.1		
11/22/2010	Evan Hoffman	emails and conference call re complaint drafting	0.6		
11/22/2010	Mike Lesser	emails and conference call re complaint drafting	0.6		
11/23/2010	Evan Hoffman	assist MAL with researching draft questions for witnesses	3.9		
11/23/2010	Garrett Bradley	Communicate with client	1		
11/23/2010	Mike Lesser	preparation of draft questions/topics for witness interviews; emails to co counsel re the same	5.6		
11/24/2010	Garrett Bradley	Review emails; case status and research; telephone call with co-counsel re communication with client	4		
11/24/2010	Mike Lesser	review of witness information	0.2		
11/25/2010	Mike Lesser	emails with co counsel re witness questions	0.4		
11/29/2010	Garrett Bradley	Review, revise draft communication to client; telephone call with co-counsel re same	2		
11/29/2010	Mike Lesser	emails and review of excel data with expert	2.5		
12/1/2010	Garrett Bradley	Review documents and emails	1.5		
12/1/2010	Mike Lesser	emails to co counsel re FX data analysis of three trades; emails to co counsel re data analysis	1.4		
12/2/2010	Evan Hoffman	Draft responses to Bank's arguments	1.8		

12/2/2010	Garrett Bradley	meeting with Labaton attorneys to discuss case	2.5		
12/2/2010	Mike Lesser	emails to co counsel re possible bank witnesses; draft reponses to Bank's defensive positions; review Bank's claim of currency inventory	3.2		
12/2/2010	Mike Thornton	meeting with Labaton attorneys to discuss case	2.5		
12/3/2010	Evan Hoffman	draft response to Bank's positions; draft complaint	5.5		
12/3/2010	Garrett Bradley	Review emails and research	2		
12/3/2010	Mike Lesser	Emails to Lexi Hazam re STT explanation of its FX procedures; draft responses to STT's defensive positions and send to co counsel; draft and edit complaint fact section; email and description of response to Bank's position to client/ co counsel	8.4		
12/6/2010	Evan Hoffman	draft complaint and edit fact section	2		
12/6/2010	Evan Hoffman	Call with Lexi Hazam re status of drafting complaint	0.5		
12/6/2010	Garrett Bradley	Review status of case, draft of complaint	2		
12/6/2010	Mike Lesser	Call with Lexi Hazam re status of drafting complaint	0.5		
12/6/2010	Mike Lesser	Draft complaint fact section; review witness notes from investigator	3.5		
12/7/2010	Garrett Bradley	Document review; telephone call with co-counsel	3		
12/7/2010	Mike Lesser	review witness notes and info and redrafting of summary for client	1.5		
12/8/2010	Evan Hoffman	draft complaint fact section	3.3		
12/8/2010	Garrett Bradley	Review emails; review data re 93A issues and outstanding issues	2		
12/8/2010	Mike Lesser	draft/edit complaint fact section	4		
12/9/2010	Evan Hoffman	draft and edit complaint	5.9		
12/9/2010	Garrett Bradley	Document review	3		
12/9/2010	Mike Lesser	draft/edit complaint fact section	6.5		
12/10/2010	Evan Hoffman	draft and edit complaint	3		
12/10/2010	Garrett Bradley	Review draft complaint & 93A research; discuss with in-house counsel	3		
12/10/2010	Mike Lesser	draft and edit complaint; emails to co counsel re complaint; review of investigator memo re bank witnesses and emails to co counsel re the same	3.7		
12/13/2010	Garrett Bradley	Review emails, complaint and 93A draft memorandum	3		
12/13/2010	Mike Lesser	emails and call with expert and client re data; review investigator witness list	0.8		
12/14/2010	Garrett Bradley	Review research re 93A issues; review and revise memorandum	4		

12/14/2010	Mike Lesser	emails with expert re data discussed during call; emails with expert and client re Bank meeting	0.5		
12/14/2010	Mike Thornton	call with co counsel re preparation for bank meeting	1		
12/15/2010	Evan Hoffman	Draft 93A Demand Letter	6.9		
12/15/2010	Garrett Bradley	Research 93A; review complaint	3		
12/15/2010	Mike Lesser	emails with experts and co counsel and review file re additional FX analysis by expert; emails and calls with client re documents to review	2		
12/15/2010	Mike Thornton	Meeting with FX Transparency re STT	1		
12/16/2010	Garrett Bradley	Review emails on draft complaint and 93A issues	2		
12/16/2010	Mike Lesser	review of expert analysis re certain FX trades; emails to co counsel re the same	0.7		
12/17/2010	Garrett Bradley	Document review	3		
12/17/2010	Mike Lesser	emails to expert and co counsel re client's consultant's understanding of FX pricing	0.5		
12/18/2010	Mike Lesser	emails with co counsel re status of amended complaint	0.1		
12/20/2010	Evan Hoffman	Research 93A issues re differences between sections 9 and 11 for damages and liability issues	4.6		
12/20/2010	Garrett Bradley	Meeting in Boston with co-counsel to discuss case and outstanding issues	6		
12/20/2010	Mike Lesser	prepare for meeting with bank, expert, and client; review of investment manager guides from client	2.1		
12/20/2010	Mike Lesser	meeting with State Street	6		
12/20/2010	Mike Thornton	meeting with State Street	6		
12/21/2010	Evan Hoffman	Continued research re 93A sections 9 and 11; begin draft of memo re the same	5.6		
12/21/2010	Garrett Bradley	Review case; inhoues meeting re assignments and research	3.5		
12/21/2010	Mike Lesser	emails with expert and co counsel re data reporting format for report; emails with co counsel re client and bank responses	0.5		
12/22/2010	Evan Hoffman	Finish memo to MAL re 93A sections 9 vs 11	7.2		
12/22/2010	Garrett Bradley	Review 93A memo	3		
12/22/2010	Mike Lesser	Emails to Lexi Hazam re thoughts on draft complaint; review of memo on 93A; emails with expert and cient re conversations with lms	1.1		
12/22/2010	Mike Thornton	meeting with J. Gardner re case	1		
12/23/2010	Evan Hoffman	research and memo to MPT and MAL re [redacted]	7		

12/23/2010	Garrett Bradley	Discuss research, memo and related issues with co-counsel	2		
12/23/2010	Mike Lesser	Review ERH memo on 93A; review of Bank's letter of direction from lms and disussions with experts re the same; requests to client re IM guides back to 2000; emails with expert and client re custodial contract language	4.7		
12/26/2010	Mike Lesser	emails with co counsel re Bank's FX pricing regime	1.1		
12/27/2010	Mike Lesser	emails with co counsel and expert re FX trading logistics and procedure	0.7		
12/28/2010	Mike Lesser	emails with expert re data and client questions	1.5		
12/29/2010	Mike Lesser	emails with expert and co counsel re meeting	0.3		
12/31/2010	Mike Lesser	emails with expert re client IM's	0.1		
1/3/2011	Garrett Bradley	Review and research 93A issues and emails	2.5		
1/3/2011	Mike Lesser	emails with expert re client lms and FX trading; review of report and info	1.6		
1/4/2011	Garrett Bradley	Telephone call to co-counsel re communication with client; discuss strategy; review emails and memos re potential class reps	2.5		
1/4/2011	Mike Lesser	Emails to Lexi Hazam re status of potential class reps	0.3		
1/5/2011	Evan Hoffman	Compile and organize and analyze IM guides from STT cd	6		
1/5/2011	Garrett Bradley	meeting with MAL; MPT and FX Transaparency re STT	1		
1/5/2011	Garrett Bradley	Calls and emails with inhouse counsel re co counsel and complaint draft	1		
1/5/2011	Mike Lesser	calls and emails with G. Bradley and Labaton lawyers re drafting of complaint; meeting with MPT and GJB and FX Transparency; review of IM guides produced on disk by STT	2.5		
1/5/2011	Mike Thornton	meeting with MAL; GJB and FX Transaparency re STT	1		
1/6/2011	Evan Hoffman	prepare summary of IM guides	3		
1/6/2011	Garrett Bradley	Review, revise draft complaint & 93A memo	2		
1/6/2011	Mike Lesser	emails with co counsel re client and client FX data; review of IM guides and preparation of short summary for co counsel	3.4		
1/7/2011	Evan Hoffman	research [redacted]; email to MAL re the same	2		
1/7/2011	Garrett Bradley	Continue review of complaint	1.5		
1/7/2011	Mike Lesser	research of [redacted] and email to co counsel	1.2		

1/10/2011	Evan Hoffman	complaint drafting fact section	2		
1/10/2011	Garrett Bradley	Review emails and research	3		
1/10/2011	Mike Lesser	Complaint fact drafting	6		
1/11/2011	Garrett Bradley	Review revised documents and research	3.5		
1/11/2011	Mike Lesser	emails with co counsel re meetiong with client and expert; emails with expert re outstanding questions about FX process; emails and review of draft 93a claim for complaint	1.4		
1/12/2011	Garrett Bradley	Continue drafting complaint, memo and research issues	4		
1/12/2011	Mike Lesser	emails with expert re draft responses related to discovery requests	0.2		
1/13/2011	Evan Hoffman	edits to IM guide chart; addings additional changes and additional guides	4.4		
1/13/2011	Mike Lesser	review and chart creation related to IM guide language	1.3		
1/18/2011	Garrett Bradley	Review emails and case strategy	3		
1/18/2011	Mike Lesser	emails with expert, co counsel, and client re review of IM guides, IM procedures and drafting explanation for client	2		
1/19/2011	Garrett Bradley	Review and revise guide chart	3		
1/19/2011	Mike Lesser	review of draft complaint and fact section redlines	2		
1/20/2011	Garrett Bradley	Review complaint drafts	2		
1/21/2011	Garrett Bradley	Review research from clerks; document review	3.5		
1/21/2011	Mike Lesser	emails with co counsel re client and presentation to board	0.2		
1/24/2011	Mike Lesser	Emails to Lexi Hazam re IM guide changes; edit/draft revised STT IM guide co	1.5		
1/25/2011	Evan Hoffman	Track all IM guide changes from 1999 to present; create chart and list re the same	7.3		
1/25/2011	Garrett Bradley	Continue drafting complaint, memo and research issues	3		
1/26/2011	Evan Hoffman	annotate and edit draft complaint; edits to MAL and meetings re the same	4.9		
1/26/2011	Garrett Bradley	Review complaint; discussions with co-counsel re same	4		
1/26/2011	Mike Lesser	Review IM guide chart; comments and edits re the same	1.2		
1/27/2011	Garrett Bradley	Telephone call with co-counsel re communication with client; discuss complaint, memorandum and strategy	5		
1/28/2011	Evan Hoffman	review of co counsel memo on 93A and other MA claims	1.1		
1/28/2011	Garrett Bradley	Review, revise complaint; telephone call with co-counsel regarding same	2.5		

1/28/2011	Mike Lesser	review of co counsel memo on 93A and other MA claims	1.1		
1/29/2011	Mike Lesser	emails with co counsel re clients	0.1		
2/1/2011	Garrett Bradley	Review 93A memo; complaint	4		
2/1/2011	Mike Lesser	review of draft JV agreement; emails with co counsel re client questions	1		
2/1/2011	Mike Thornton	travel to San Francisco for meeting with B. Lieff and L. Hazam re STT case and strategy	11.5		
2/2/2011	Evan Hoffman	Research and draft 93a Demand Letter; emails with MAL re the same	7		
2/2/2011	Garrett Bradley	emails with ERH and MAL re summaries for 93A to be sent to client	0.3		
2/2/2011	Mike Lesser	emails with ERH and GJB re section 9 and 11 summary; review edit 93A memo	1.3		
2/3/2011	Evan Hoffman	draft letter to client explaining procedures for filing 93A letter in advance of suit; sections 9 vs. 11; send to GJB for review	4.3		
2/3/2011	Garrett Bradley	Review memorandum and research; review ERH letter to client re 93A steps	2.5		
2/3/2011	Mike Lesser	Review ERH draft analysis of ch. 93A Demand Letter	1.5		
2/4/2011	Evan Hoffman	Annotations to complaint; emails to co counsel re the same	1.8		
2/4/2011	Garrett Bradley	Telephone discussion with co-counsel regarding client telephone call; discussed continued strategy issues; research	4		
2/4/2011	Mike Lesser	emails to co counsel re annotations to complaint; edits re the same	1.4		
2/6/2011	Evan Hoffman	review and edit 93A demand letter draft	3		
2/6/2011	Mike Lesser	emails with co counsel re review of draft complaint; review and edit complaint clean version; review/edit 93A demand letter	5.7		
2/7/2011	Evan Hoffman	Call with LCHB re Complaint	0.3		
2/7/2011	Evan Hoffman	Research and draft [redacted]	2.8		
2/7/2011	Garrett Bradley	Reviewed emails;telephone calls with co-counsel regarding complaint and ongoing strategy; continue working on complaint	5		
2/7/2011	Mike Lesser	Call with LCHB re Complaint	0.3		
2/7/2011	Mike Lesser	Emails with LCHB re [redacted] review and edit [redacted]	3.6		

2/7/2011	Mike Thornton	Call with LCHB re Complaint	0.3		
2/7/2011	Mike Thornton	Call with Bob Lieff re [redacted]	0.3		
2/8/2011	Evan Hoffman	Emails and call with co-counsel re draft complaint	2.5		
2/8/2011	Garrett Bradley	Review emails; review and revise complaint; telphone call with co-counsel	5		
2/8/2011	Mike Lesser	Emails and call with co-counsel re draft complaint	2.5		
2/8/2011	Mike Thornton	Emails and call with co-counsel re draft complaint	2.5		
2/9/2011	Evan Hoffman	emails with co counsel re complaint filing and procedure	0.4		
2/9/2011	Garrett Bradley	Review updated complaint; research	5		
2/9/2011	Mike Lesser	emails with co counsel re complaint filing and procedure	0.4		
2/10/2011	Evan Hoffman	Call with co-counsel re complaint filing; preparation of cover sheets for USDC filing	2.1		
2/10/2011	Garrett Bradley	Review co-counsel emails and discussion regarding complaint filing	4		
2/10/2011	Mike Lesser	Emails to Lexi Hazam re ethics opinion of representing qui tam relators and pursuing class action cases	0.2		
2/10/2011	Mike Lesser	Call with co-counsel re complaint filing; preparation of cover sheets for USDC filing	2		
2/10/2011	Mike Thornton	Call with co-counsel re complaint filing	1		
2/11/2011	Garrett Bradley	Document review and research	5		
2/11/2011	Mike Lesser	review of emails re custodial contract	0.8		
2/14/2011	Garrett Bradley	Document review; telephone call with co-counsel	2		
2/15/2011	Garrett Bradley	Research and review case; call with co-counsel	3.5		
2/15/2011	Mike Lesser	Emails to Lexi Hazam re discovery issues; review of 93A demand letter	1.3		
2/16/2011	Mike Lesser	emails and calls with co counsel re client class action question; emails with co counsel re possible new client and case status	1.4		
2/17/2011	Evan Hoffman	Conference call with co-counsel re case status and strategy	1.1		
2/17/2011	Garrett Bradley	Continue research and review of case	5		
2/17/2011	Mike Lesser	Conference call with co-counsel re case status and strategy	1.1		
2/17/2011	Mike Thornton	Conference call with co-counsel re case status and strategy	1.1		
2/21/2011	Garrett Bradley	Review of emails and memos re case	3		
2/22/2011	Garrett Bradley	Continue research of 93A issues	3.5		
2/22/2011	Mike Lesser	draft/edit letter to expert	1.3		
2/23/2011	Garrett Bradley	Document review	5		
2/24/2011	Evan Hoffman	Review drafts of discovery from co-counsel	1.3		

2/24/2011	Garrett Bradley	Review discovery drafts from co-counsel;continue document review and research	6		
2/24/2011	Mike Lesser	Review drafts of discovery from co-counsel	1.3		
2/25/2011	Garrett Bradley	Document review; discussion with co-counsel re client communication	5		
2/25/2011	Mike Lesser	emails with expert about specific client trades	0.6		
2/28/2011	Evan Hoffman	Call with co-counsel re status and strategy	0.5		
2/28/2011	Mike Lesser	Call with co-counsel re status and strategy	0.5		
2/28/2011	Mike Thornton	Call with co-counsel re status and strategy	0.5		
3/1/2011	Garrett Bradley	Document review	8		
3/1/2011	Mike Lesser	emails with expert re new client data reviews	0.4		
3/2/2011	Garrett Bradley	Review case; call with co-counsel re client communication	2		
3/2/2011	Mike Lesser	meeting with MPT and FX Transparency re STT class issues	1		
3/2/2011	Mike Thornton	meeting with MAL and FX Transparency re STT class issues	1		
3/3/2011	Garrett Bradley	Meeting in Rhode Island to discuss case	4		
3/3/2011	Mike Lesser	conference call with D. Goldsmith re case and damages analyses; emails re additional expert analysis of client FX data; review emails from co counsel re disclosure of bank FX practices; emails with co counsel re media questions about filed cases	2.5		
3/3/2011	Mike Thornton	meeting with Prof. Rubenstein at Harvard Law re ethics opinion for STT class case	3		
3/4/2011	Garrett Bradley	call with co-counsel re client communicaiton; document review	4		
3/4/2011	Mike Lesser	call with M. Rogers and co counsel re stratgey and issues; ERISA issues; mystatetsreet.com issues	2.8		
3/7/2011	Evan Hoffman	Revise and edit IM guide charts showing changes in STT language re FX; copy to disks; memo to MPT re client representation issues	6.9		
3/7/2011	Garrett Bradley	Research case; call with co-counsel re client communication	5		
3/7/2011	Mike Lesser	Email with Dan Chiplock re class rep issues; emails with D. Goldsmith re FX Transparency meetings	0.4		
3/7/2011	Mike Thornton	review ERH memo re client representation issues	1		
3/8/2011	Evan Hoffman	conference with co counsel re regarding DOJ investigation; internal meetings re the same	2.4		

3/8/2011	Garrett Bradley	conference with co counsel re regarding DOJ investigation; internal meetings re the same	2.4		
3/8/2011	Garrett Bradley	Review emails; continue review of status	3		
3/8/2011	Mike Lesser	conference with co counsel re regarding DOJ investigation; internal meetings re the same	2.4		
3/8/2011	Mike Thornton	conference with co counsel re regarding DOJ investigation; internal meetings re the same	2.4		
3/10/2011	Evan Hoffman	Further edits to IM Guide charts; emails re the same	2.3		
3/10/2011	Garrett Bradley	call with co-counsel re client communication; document review	3		
3/11/2011	Evan Hoffman	Call with Steve Fineman re FX Transparency meeting	0.5		
3/11/2011	Garrett Bradley	Traveled to NY to meet with expert	12		
3/11/2011	Mike Lesser	Call with Steve Fineman re FX Transparency meeting; emails with co counsel re possible witness interviews	1.4		
3/11/2011	Mike Thornton	Call with Steve Fineman re FX Transparency meeting	0.5		
3/14/2011	Garrett Bradley	Research expert issues	2.5		
3/14/2011	Mike Lesser	Emails with Dan Chiplock re employee interview memos	0.8		
3/15/2011	Evan Hoffman	Emails with co-counsel re 93A issues	0.8		
3/15/2011	Garrett Bradley	Continue research; review emails with co-counsel re 93A issues	2		
3/15/2011	Mike Lesser	Emails with co-counsel re 93A issues; draft Firm description for complaint	1		
3/16/2011	Evan Hoffman	Calls with co-counsel re case status	0.9		
3/16/2011	Garrett Bradley	Calls with co-counsel re case status	0.9		
3/16/2011	Mike Lesser	Calls with co-counsel re case status; review of draft motion for class certification	2		
3/17/2011	Evan Hoffman	emails with co counsel re FX transparency data and discovery issues	0.5		
3/17/2011	Garrett Bradley	Review case status, emails	3		
3/17/2011	Mike Lesser	emails with co counsel re FX transparency data and discovery issues	0.7		
3/21/2011	Garrett Bradley	Review motion and all correspondence to and from all parties	3		
3/22/2011	Garrett Bradley	Review motion and research issues	1.5		
3/23/2011	Garrett Bradley	Continue to review issues re motion	3		
3/23/2011	Mike Lesser	Call with Dan Chiplock re lead counsel papers	1		
3/23/2011	Mike Thornton	Call with Dan Chiplock re lead counsel papers	1		
3/24/2011	Evan Hoffman	emails with co counsel re ECF login information and pro hac issues	1		

3/24/2011	Garrett Bradley	emails with Labaton attorneys re federal court login issues	0.8		
3/24/2011	Mike Lesser	emails with co counsel re press inquiries; emails and review of draft lead counsel motion; review Barroway complaint	3.2		
3/25/2011	Garrett Bradley	e-mail soliciting thoughts on FX Transparency rebuttal to W. Paine letter responding to Joel H. Bernstein settlement demand	4		
3/25/2011	Mike Lesser	emails with co counsel re MTD decisions	0.2		
3/28/2011	Evan Hoffman	memo to MAL and MPT re summarizing changes in STT IM guides and key language to focus on	3		
3/28/2011	Garrett Bradley	Document review	4		
3/28/2011	Mike Lesser	emails with co counsel re expert damages analysis and costs	0.2		
3/29/2011	Evan Hoffman	Prepare and file pro hac motion for co-counsel	2.3		
3/29/2011	Garrett Bradley	Conference with co counsel regarding claims, regarding complaint, regarding clients, regarding investigation and consultant	4		
3/29/2011	Mike Thornton	Conference with co counsel regarding claims, regarding complaint, regarding clients, regarding investigation and consultant	3.5		
3/30/2011	Garrett Bradley	Review revised documents and research	3		
4/1/2011	Evan Hoffman	emails with co counsel re discovery schedule and motion to dismiss	1		
4/1/2011	Garrett Bradley	Call to co-counsel re communication with client	1.5		
4/1/2011	Mike Lesser	emails with co counsel re discovery schedule and motion to dismiss	1		
4/4/2011	Garrett Bradley	Review amended complaint	1		
4/5/2011	Evan Hoffman	emails with co counsel re fx expert review of data	0.2		
4/5/2011	Mike Lesser	emails with co counsel re fx expert review of data	0.2		
4/6/2011	Evan Hoffman	Prepare and file motions for appointment of class counsel	1.3		
4/7/2011	Evan Hoffman	File motions with court re class counsel	0.4		
4/7/2011	Mike Lesser	emails with co counsel re interested possible class rep	0.4		
4/8/2011	Garrett Bradley	Review file; call to co-counsel to discuss communication with client	3		
4/8/2011	Mike Lesser	emails with co counsel re IM guides	0.3		
4/11/2011	Garrett Bradley	emails with co-counsel regarding status of case	1		
4/12/2011	Evan Hoffman	Research and draft memo re [redacted]	7.1		

4/12/2011	Garrett Bradley	Emails with co-counsel re class time period issues	0.3		
4/13/2011	Evan Hoffman	Review emails from co-counsel re allegations and facts to be included in proposed complaint; research re the same; emails to co-counsel incorporating the same	8.1		
4/13/2011	Garrett Bradley	Emails with co-counsel re factual allegations in proposed amended complaint	0.3		
4/14/2011	Evan Hoffman	Conferences, telephone calls, emails to/from Labaton and Lieff counsel regarding amended complaint; draft, amend, and edit same	6.4		
4/14/2011	Evan Hoffman	Emails with Labaton co-counsel re STT assets under custody	0.6		
4/14/2011	Garrett Bradley	Conferences, telephone calls, emails to/from Labaton and Lieff counsel regarding amended complaint	2		
4/14/2011	Mike Lesser	Conferences, telephone calls, emails to/from Labaton and Lieff counsel regarding amended complaint; draft, amend, and edit same	3		
4/15/2011	Evan Hoffman	Review proposed Amended Complaint draft; edits and comments to MAL re the same; emails with co counsel re the same	3.8		
4/15/2011	Evan Hoffman	Prepare and file Amended Complaint	1.8		
4/15/2011	Garrett Bradley	Review file; call to co-counsel to discuss communication with client	2.5		
4/15/2011	Mike Lesser	Emails to co-counsel re IM guide language	0.4		
4/15/2011	Mike Lesser	Review proposed Amended Complaint draft; edits and comments to co counsel re the same	4.1		
4/18/2011	Mike Thornton	Travel to and from San Francisco [on 17th and 19th]; meetings with B. Lieff re STT strategy and updates	20		
4/20/2011	Garrett Bradley	Review documentation received from client	2		
4/21/2011	Garrett Bradley	Review SEC inquiry; call to co-counsel to discuss same	2		
4/21/2011	Mike Lesser	emails with co counsel re [redacted]	0.2		
4/22/2011	Garrett Bradley	Call with J. Bernstein re SEC	0.4		
4/25/2011	Garrett Bradley	Research outstanding issues regarding recent inquiry	2		
4/29/2011	Mike Thornton	prepare and meet with Professor Rubenstein re ehtics opinion	1.5		
5/4/2010	Evan Hoffman	research and compile [redacted]	4		
5/5/2011	Mike Lesser	review of Barroway SEPTA Complaint	1.5		
5/6/2011	Evan Hoffman	Edits and updates to STT IM guide chart	2		

5/6/2011	Mike Lesser	Review updated IM Guide project	0.5		
5/19/2011	Mike Lesser	review of draft expert opinion re class action	3		
5/26/2011	Mike Lesser	Review emails from co counsel re briefing issues	0.1		
5/26/2011	Mike Thornton	Review emails from co counsel re briefing issues	0.1		
5/27/2011	Garrett Bradley	calls with C. Keller re case strategy	2		
5/31/2011	Garrett Bradley	Call to co-counsel re communication with client	0.5		
6/1/2011	Garrett Bradley	Call to co-counsel re communication with client and discuss strategy	1.5		
6/2/2011	Evan Hoffman	emails to co counsel re motion to dismiss briefing	0.3		
6/2/2011	Mike Lesser	emails to co counsel re motion to dismiss briefing	0.3		
6/3/2011	Garrett Bradley	Review motions filed; research same; call to co-counsel re client communication	4		
6/6/2011	Evan Hoffman	Arrange and file pro hac motion for Dan Chiplock; review STT IM Guide Update and email MAL re the same	2.6		
6/6/2011	Garrett Bradley	Emails to Dan Chiplock re pro hac	0.2		
6/7/2011	Mike Lesser	emails with co counsel re ethics opinions	0.2		
6/7/2011	Mike Thornton	emails with co counsel re ethics opinions	0.2		
6/8/2011	Evan Hoffman	Meeting re assignments for motion to dismiss	1		
6/8/2011	Garrett Bradley	Call with co-counsel re motion to dismiss assignments; internal meeting re the same	1		
6/8/2011	Mike Lesser	Meeting re assignments for motion to dismiss	1		
6/8/2011	Mike Thornton	travel to and from NYC for meeting with L. Sucharow and S. Fineman re STT updates and strategy	6		
6/8/2011	Mike Thornton	Call with co-counsel re motion to dismiss assignments; internal meeting re the same	1		
6/10/2011	Garrett Bradley	Review emails; motion; memo; research issues in response to same	4		
6/17/2011	Garrett Bradley	Document review and research	2		
6/21/2011	Mike Lesser	Emails with co counsel re fx expert issues	0.5		
6/22/2011	Evan Hoffman	Research re Negligent Misrepresentation in MA case law for assigned briefing for Opp to MTD	6		
6/22/2011	Mike Lesser	draft client letter and emails re maintenance of class action case	2.2		
6/23/2011	Evan Hoffman	Research re Negligent Misrepresentation for Opp to MTD; draft memo to MAL re the same; emails with co counsel re the same	6.5		
6/23/2011	Mike Lesser	Review and edit memo re Negligent Misrep.; emails with co counsel re the same	2.7		
6/24/2011	Evan Hoffman	Conference call with fx expert and co counsel re MTD issues	1.1		

6/24/2011	Mike Lesser	Conference call with fx expert and co counsel re MTD issues	1.1		
6/27/2011	Evan Hoffman	Call with co-counsel re MTD assignments; internal meetings re the same	2.5		
6/27/2011	Mike Lesser	Call with co-counsel re MTD assignments; internal meetings re the same	2.5		
7/6/2011	Evan Hoffman	Call with co-counsel re MTD assignment progress	0.7		
7/6/2011	Mike Lesser	Call with co-counsel re MTD assignment progress	0.7		
7/6/2011	Mike Thornton	travel to and from NYC for meeting with L. Sucharow and S. Fineman re STT updates and strategy	4.5		
7/7/2011	Evan Hoffman	Draft Negligent Misrep. Section of Opp to MTD	5		
7/7/2011	Mike Lesser	edits/draft negligent misrepresentation section of MTD	2		
7/8/2011	Evan Hoffman	Further drafting of Negligent Misrep. Section of Opp to MTD; review co-counsel section drafts	4.4		
7/8/2011	Mike Lesser	review co counsel section drafts; emails re the same	2.7		
7/9/2011	Evan Hoffman	review co counsel section drafts; emails re the same	3.7		
7/9/2011	Mike Lesser	review co counsel section drafts; emails re the same	4		
7/11/2011	Evan Hoffman	Further drafting of Negligent Misrep. Section of Opp to MTD	4.2		
7/11/2011	Mike Lesser	draft and edits to neg. misrep. Section of MTD	3		
7/12/2011	Evan Hoffman	Call with co counsel re progress of MTD sections	0.8		
7/14/2011	Evan Hoffman	emails with co counsel re motion to dimsiss edits	0.4		
7/14/2011	Mike Lesser	emails with co counsel re motion to dimsiss edits	0.5		
7/15/2011	Evan Hoffman	Edits and further drafting Negligent Misrep. Section of Opp to MTD; memo and research re fiduciary language in STT custodial contracts	6.9		
7/15/2011	Mike Lesser	review/edit entire MTD draft	2		
7/18/2011	Evan Hoffman	Finish draft of Negligent Misrep. Section of Opp to MTD; send to co counsel	5		
7/18/2011	Mike Lesser	Review draft of Negligent Misrep. Section of Opp to MTD	1.5		
7/19/2011	Evan Hoffman	Incorporate edits and comments from co counsel in to draft of Negligent Misrep. Section of Opp to MTD; further research re the same	6.2		
7/19/2011	Mike Lesser	emails with co counsel re drafts and edits of MTD	0.6		
7/20/2011	Evan Hoffman	Finish Negligent Misrep. Section of Opp to MTD; send to co counsel	2.9		
7/23/2011	Mike Bradley	Document review	1		
8/4/2011	Evan Hoffman	Memo to MAL and MPT re Hill securities case decision and impacts on class case.	6.4		

8/5/2011	Evan Hoffman	emails with co counsel re notice of supplemental authority after Gertner decision	0.3		
8/5/2011	Mike Lesser	emails with co counsel re notice of supplemental authority after Gertner decision	0.3		
8/5/2011	Mike Thornton	emails with co counsel re notice of supplemental authority after Gertner decision	0.3		
8/17/2011	Garrett Bradley	Meeting in NYC with J. Bernstein re strategy and progress; travel to and from	6		
8/17/2011	Mike Thornton	Meeting in NYC with J. Bernstein re strategy and progress; travel to and from	6		
8/19/2011	Garrett Bradley	Review draft briefs, motions	1		
8/22/2011	Garrett Bradley	Review reply memorandum, inhouse research and emails	3		
8/27/2011	Mike Lesser	emails w D. Chiplock re status meeting at Labaton	0.1		
8/30/2011	Mike Lesser	emails with expert re additional FX data reviews	0.2		
9/1/2011	Mike Lesser	review and summarize [redacted]	0.5		
9/2/2011	Evan Hoffman	emails to co counsel re Judge Wolf and case status	0.4		
9/2/2011	Mike Lesser	emails to co counsel re Judge Wolf and case status	0.4		
9/2/2011	Mike Thornton	emails to co counsel re Judge Wolf and case status	0.4		
9/6/2011	Mike Lesser	review and summarize [redacted]	0.6		
9/15/2011	Evan Hoffman	emails with co-counsel re status of case and strategy meeting	0.2		
9/15/2011	Evan Hoffman	research [redacted]	3		
9/15/2011	Garrett Bradley	emails with co-counsel re status of case and strategy meeting	0.2		
9/15/2011	Mike Lesser	research re [redacted]	0.2		
9/15/2011	Mike Lesser	emails with co-counsel re status of case and strategy meeting	0.2		
9/15/2011	Mike Thornton	emails with co-counsel re status of case and strategy meeting	0.2		
9/16/2011	Evan Hoffman	emails with co-ounsel re case strategy meeting	0.4		
9/16/2011	Mike Lesser	emails with co-ounsel re case strategy meeting	0.4		
9/16/2011	Mike Thornton	emails with co-ounsel re case strategy meeting	0.4		
9/19/2011	Mike Lesser	Meeting with co-counsel re strategy; travel to and from MYC	6.5		
9/19/2011	Mike Thornton	Meeting with co-counsel re strategy; travel to and from MYC	6.5		
9/20/2011	Evan Hoffman	review and summarize [redacted]	1.9		

9/20/2011	Mike Lesser	review of [redacted]; research re [redacted]; emails with co counsel re [redacted]	1.6		
9/21/2011	Mike Lesser	emails and review of [redacted]; preparation of litigation summary and exhibits relevant to [redacted]	2.5		
9/27/2011	Garrett Bradley	emails with D. Chiplock re pro hac	0.1		
10/5/2011	Garrett Bradley	Review emails and discuss case with inhouse counsel	1		
10/14/2011	Evan Hoffman	Conference call with LCHB re [redacted]	1		
10/14/2011	Mike Lesser	Conference call with LCHB re [redacted]	1		
10/14/2011	Mike Thornton	Conference call with LCHB re [redacted]	1		
10/17/2011	Evan Hoffman	Call with co-counsel re [redacted]	0.6		
10/17/2011	Mike Lesser	Call with co-counsel re [redacted]	0.6		
10/17/2011	Mike Thornton	Call with co-counsel re [redacted]	0.6		
10/18/2011	Mike Lesser	emails with D. Chiplock re client info in ERISA case	0.5		
10/21/2011	Garrett Bradley	Travel to Rhode Island for meeting	2.5		
10/21/2011	Garrett Bradley	Meeting in Rhode Island to discuss case	2.5		
12/5/2011	Mike Thornton	meeting and Labaton with co counsel; travel to and from NYC re the same	6		
12/12/2011	Garrett Bradley	Review file; call to co-counsel re stratgy and analysis and status meeting	2		
12/13/2011	Mike Thornton	conference call with J. Bernstein re status	0.6		
1/10/2012	Garrett Bradley	Call to co-counsel regarding communication with potential client	1		
1/11/2012	Mike Thornton	travel to and from NYC for meeting with B. Lieff re case status and strategy	4		
1/12/2012	Evan Hoffman	emails and phone calls with co counsel re oral argument date and strategy	0.7		
1/12/2012	Garrett Bradley	Review order, call to co-counsel for status on conference and client communication	1		
1/12/2012	Mike Lesser	emails and phone calls with co counsel re oral argument date and strategy	0.7		
1/12/2012	Mike Thornton	emails and phone calls with co counsel re oral argument date and strategy	0.7		
1/17/2012	Garrett Bradley	travel to and from NYC for meeting with Labaton co counsel re case status and strategy	8		

1/17/2012	Mike Thornton	travel to and from NYC for meeting with Labaton co counsel re case status and strategy	8		
1/24/2012	Garrett Bradley	emails with D. Chiplock re oral argument	0.1		
2/16/2012	Evan Hoffman	emails with co counsel re cancelation of oral argument	0.4		
2/16/2012	Garrett Bradley	emails with co counsel re cancelation of oral argument; calls re the same	0.6		
2/16/2012	Mike Lesser	emails with co counsel re cancelation of oral argument	0.4		
2/16/2012	Mike Thornton	emails with co counsel re cancelation of oral argument	0.4		
2/17/2012	Evan Hoffman	emails with co counsel re status of mtd hearing	0.2		
2/17/2012	Mike Lesser	emails with co counsel re status of mtd hearing	0.2		
2/17/2012	Mike Thornton	emails with co counsel re status of mtd hearing	0.2		
2/28/2012	Evan Hoffman	emails with co counsel re STT press	0.1		
2/28/2012	Mike Lesser	emails with co counsel re STT press	0.1		
2/28/2012	Mike Thornton	emails with co counsel re STT press	0.1		
3/22/2012	Garrett Bradley	Review file; call to co-counsel re communication with client	1.5		
4/13/2012	Evan Hoffman	emails with co counsel re new hearing date	0.1		
4/13/2012	Mike Lesser	emails with co counsel re new hearing date	0.1		
4/13/2012	Mike Thornton	emails with co counsel re new hearing date	0.1		
4/25/2012	Evan Hoffman	emails with co counsel re oral argument	0.2		
4/25/2012	Mike Lesser	emails with co counsel re oral argument	0.2		
4/25/2012	Mike Thornton	emails with co counsel re oral argument	0.2		
5/1/2012	Evan Hoffman	Conference call with co-counsel re 5/28 MTD hearing	0.5		
5/1/2012	Garrett Bradley	Conference call with co-counsel re 5/28 MTD hearing	0.5		
5/1/2012	Mike Lesser	Conference call with co-counsel re 5/28 MTD hearing	0.5		
5/1/2012	Mike Thornton	Conference call with co-counsel re 5/28 MTD hearing	0.5		
5/2/2012	Garrett Bradley	call with D. Goldsmith re hearing	0.3		
5/8/2012	Evan Hoffman	Prepare and attend Judge Wolf MTD Hearing	6		
5/8/2012	Garrett Bradley	Prepare and attend Judge Wolf MTD Hearing	6		
5/8/2012	Mike Lesser	Prepare and attend Judge Wolf MTD Hearing	6		
5/8/2012	Mike Thornton	Prepare and attend Judge Wolf MTD Hearing	6		
5/9/2012	Garrett Bradley	Call with co-counsel re client communication;	1.5		
5/9/2012	Mike Thornton	Call with B. Lieff re strategy	0.5		
5/10/2012	Evan Hoffman	Call with co-counsel re settlement and class issues	0.5		
5/10/2012	Mike Lesser	Call with co-counsel re settlement and class issues	0.5		
5/10/2012	Mike Thornton	Call with co-counsel re settlement and class issues	0.5		
5/11/2012	Mike Lesser	emails with co counsel re scheduling call to discuss mediation	0.2		
5/11/2012	Mike Thornton	emails with co counsel re scheduling call to discuss mediation	0.2		
5/12/2012	Garrett Bradley	Prepare and attend Judge Wolf MTD Hearing	6		

5/15/2012	Evan Hoffman	emails with D. Chiplock re hearing transcript	0.2		
5/15/2012	Evan Hoffman	Call with co-counsel re strategy after Wolf denial of MTD and settlement discussion suggestion	0.4		
5/15/2012	Garrett Bradley	Call with co-counsel re recent court decision and inhouse discussion on stratgey; research re same	2.5		
5/15/2012	Mike Lesser	Call with co-counsel re strategy after Wolf denial of MTD and settlement discussion suggestion	0.4		
5/15/2012	Mike Thornton	Call with co-counsel re strategy after Wolf denial of MTD and settlement discussion suggestion	0.4		
5/17/2012	Evan Hoffman	emails with co counsel re mediation issues	0.4		
5/17/2012	Mike Lesser	emails with co counsel re mediation issues	0.4		
5/17/2012	Mike Thornton	emails with co counsel re mediation issues	0.4		
5/18/2012	Garrett Bradley	Reviewed and discuss with co-counsel materials to be sent to client from co-counsel	2.5		
5/18/2012	Mike Lesser	emails with co counsel re SEC at hearing	0.1		
5/18/2012	Mike Thornton	emails with co counsel re SEC at hearing	0.1		
5/24/2012	Evan Hoffman	emails and calls re mediation meeting	0.3		
5/24/2012	Garrett Bradley	Continue review of materials to be sent to client; research same	3.5		
5/24/2012	Mike Lesser	emails and calls re mediation meeting	0.3		
5/24/2012	Mike Thornton	emails and calls re mediation meeting	0.3		
5/29/2012	Evan Hoffman	emails and calls re mediation meeting	0.5		
5/29/2012	Mike Lesser	emails and calls re mediation meeting	0.5		
5/29/2012	Mike Thornton	emails and calls re mediation meeting	0.5		
6/6/2012	Mike Lesser	review emails from co counsel re mediation	0.2		
6/6/2012	Mike Thornton	emails with co counsel re mediation issues	0.2		
6/8/2012	Mike Lesser	emails with co counsel re mediation dates and pension fund data and damanes	0.4		
6/8/2012	Mike Thornton	emails with co counsel re mediation dates and pension fund data and damages	0.4		
6/13/2012	Garrett Bradley	Call with co-counsel regarding mediation and communication with client	1		
6/13/2012	Mike Lesser	travel to and from NYC for stratgey meeting and mediation	7		
6/13/2012	Mike Thornton	Travel to NYC	2		
6/13/2012	Mike Thornton	Meeting with B. Lieff and L. Sucharow re meditation	3		
6/13/2012	Mike Thornton	Travel back to BOS	2		
6/14/2012	Garrett Bradley	Review case status and discussion with co-counsel regarding client meeting	2.5		

6/20/2012	Evan Hoffman	Conferences and telephone calls with and emails to/from co counsel re draft settlement language, re mediators, re case strategy; analyze State Street Investment Manager Guide re same; draft and amend draft settlement agreement;	5		
6/20/2012	Garrett Bradley	Conferences and telephone calls with and emails to/from co counsel re draft settlement language, re mediators, re case strategy; analyze State Street Investment Manager Guide re same; draft and amend draft settlement agreement;	5		
6/20/2012	Mike Lesser	Conferences and telephone calls with and emails to/from co counsel re draft settlement language, re mediators, re case strategy; analyze State Street Investment Manager Guide re same; draft and amend draft settlement agreement;	5		
6/20/2012	Mike Thornton	Conferences and telephone calls with and emails to/from co counsel re draft settlement language, re mediators, re case strategy; analyze State Street Investment Manager Guide re same; draft and amend draft settlement agreement;	5		
6/21/2012	Evan Hoffman	Calls with co-counsel re mediation meeting with STT counsel	1.1		
6/21/2012	Garrett Bradley	Continue case review; call with co-counsel re meeting with defense counsel	4		
6/21/2012	Mike Lesser	Calls with co-counsel re mediation meeting with STT counsel	1.1		
6/21/2012	Mike Thornton	Calls with co-counsel re mediation meeting with STT counsel	1.1		
6/22/2012	Evan Hoffman	meetings with STT counsel and co-counsel re settlement; conference and conference call with co counsel re settlement proposals, re mediation, re discussions with FX Transparency	6.1		
6/22/2012	Garrett Bradley	meetings with STT counsel and co-counsel re settlement; conference and conference call with co counsel re settlement proposals, re mediation, re discussions with FX Transparency	6.1		
6/22/2012	Mike Lesser	meetings with STT counsel and co-counsel re settlement; conference and conference call with co counsel re settlement proposals, re mediation, re discussions with FX Transparency	6.1		

6/22/2012	Mike Thornton	meetings with STT counsel and co-counsel re settlement; conference and conference call with co counsel re settlement proposals, re mediation, re discussions with FX Transparency	6.1		
6/23/2012	Mike Lesser	emails with co counsel re FX Transparency data and questions	1.2		
6/23/2012	Mike Thornton	emails with co counsel re FX Transparency data and questions	1.2		
6/24/2012	Evan Hoffman	emails with co counsel re mediation; calls with co counsel re FX Transparency data	0.7		
6/24/2012	Mike Lesser	emails with co counsel re mediation; calls with co counsel re FX Transparency data	0.7		
6/24/2012	Mike Thornton	emails with co counsel re mediation	0.1		
6/25/2012	Evan Hoffman	emails and calls with co counsel re [redacted]	1.1		
6/25/2012	Mike Lesser	emails and calls with co counsel re [redacted]	1.1		
6/25/2012	Mike Thornton	emails and calls with co counsel re [redacted]	1.1		
7/2/2012	Evan Hoffman	emails with co counsel re mediation and hearing statement	0.8		
7/2/2012	Garrett Bradley	Call with co-counsel; discuss research	0.5		
7/2/2012	Mike Lesser	emails with co counsel re mediation and hearing statement	0.8		
7/5/2012	Evan Hoffman	emails and calls with co counsel re damages chart for ARTRS	1		
7/5/2012	Mike Lesser	emails and calls with co counsel re damages chart for ARTRS	1		
7/5/2012	Mike Thornton	emails and calls with co counsel re damages chart for ARTRS	1		
7/10/2012	Evan Hoffman	E-mails to/from co counsel re: mediation dates re: submission to court re: artrs DATA analysis; analysis re: same	2.5		
7/10/2012	Mike Lesser	E-mails to/from co counsel re: mediation dates re: submission to court re: artrs DATA analysis; analysis re: same	2.5		
7/10/2012	Mike Thornton	E-mails to/from co counsel re: mediation dates re: submission to court re: artrs DATA analysis	1.5		
7/10/2012	Mike Thornton	Meeting w B. Lieff re case status	2		

7/11/2012	Evan Hoffman	emails and calls with co counsel re requests for more info from STT	1		
7/11/2012	Mike Lesser	emails and calls with co counsel re requests for more info from STT	1		
7/13/2012	Evan Hoffman	emails to co counsel re status report to court	0.1		
7/13/2012	Mike Lesser	emails to co counsel re status report to court	0.1		
7/16/2012	Evan Hoffman	emails to co counsel re potential mediators	0.6		
7/16/2012	Garrett Bradley	Review research and discuss case with co-counsel	2		
7/16/2012	Mike Lesser	emails to co counsel re potential mediators	0.6		
7/16/2012	Mike Thornton	emails to co counsel re potential mediators	0.6		
7/18/2012	Mike Lesser	emails to co counsel re ARTRS data requests	0.8		
7/20/2012	Mike Lesser	emails to co counsel re ARTRS data requests	0.6		
7/23/2012	Mike Lesser	Emails to co-counsel re mediation dates	0.4		
7/23/2012	Mike Thornton	Emails to co-counsel re mediation dates	0.4		
7/24/2012	Mike Lesser	emails to co counsel re mediators	0.2		
7/24/2012	Mike Thornton	emails to co counsel re mediators	0.2		
7/27/2012	Evan Hoffman	emails to co counsel re mediation	0.3		
7/27/2012	Mike Lesser	emails to co counsel re mediation	0.3		
7/27/2012	Mike Thornton	emails to co counsel re mediation	0.3		
8/1/2012	Evan Hoffman	memo on Henriquez complaint; emails to co counsel re the same	3.9		
8/1/2012	Garrett Bradley	Review emails and call with co-counsel	1		
8/1/2012	Mike Lesser	analyze Henriquez complaint; emails to co counsel re the same	1.3		
8/1/2012	Mike Thornton	analyze Henriquez complaint; emails to co counsel re the same	1.3		
8/7/2012	Evan Hoffman	Conference call with co-counsel, mediator, and defense counsel re [redacted]	1.4		
8/7/2012	Garrett Bradley	Conference call with co-counsel, mediator, and defense counsel re [redacted]	1.4		
8/7/2012	Mike Lesser	Conference call with co-counsel, mediator, and defense counsel re [redacted]	1.4		
8/7/2012	Mike Thornton	Conference call with co-counsel, mediator, and defense counsel re [redacted]	1.4		
8/8/2012	Evan Hoffman	Emails and phone calls with co-counsel re data requests for mediation	1.8		
8/8/2012	Mike Lesser	Emails and phone calls with co-counsel re data requests for mediation	1.8		
8/9/2012	Evan Hoffman	call with co counsel and defense counsel re data requests for mediation; emails re same	1.5		

8/9/2012	Garrett Bradley	Review case and participated in conference call	2.5		
8/9/2012	Mike Lesser	call with co counsel and defense counsel re data requests for mediation; emails re same	1.5		
8/9/2012	Mike Thornton	call with co counsel and defense counsel re [redacted]	1.5		
8/13/2012	Mike Lesser	Compile and send documents to LCHB	2		
8/14/2012	Mike Lesser	emails with co counsel re scope of information and data request to State Street in mediatio	1.5		
8/14/2012	Mike Thornton	Travel to and from NYC and meet with D. Goldsmith and Labaton co counsel re status and strategy	7.4		
8/15/2012	Evan Hoffman	E-mails to/from co counsel re: information request to State Street; telephone conference with co counsel re the same	2.3		
8/15/2012	Mike Lesser	E-mails to/from co counsel re: information request to State Street; telephone conference with co counsel re the same	2.3		
8/21/2012	Mike Lesser	Telephone conference with Mike Rogers re: request for information	0.2		
8/22/2012	Mike Thornton	Call with LCHB re case status	0.2		
8/23/2012	Evan Hoffman	Call with LCHB re case status and mediation; emails re the same; emails re ERISA complaint	2.8		
8/23/2012	Mike Lesser	Call with LCHB re case status and mediation; emails re the same; emails re ERISA complaint	2.8		
8/23/2012	Mike Thornton	Call with LCHB re case status and mediation; emails re the same; emails re ERISA complaint	2.8		
8/24/2012	Evan Hoffman	emails to co counsel re CA documents	1		
8/24/2012	Mike Lesser	emails to co counsel re CA documents	1		
8/27/2012	Evan Hoffman	emails to co counsel re mediation scheduling and logistics	0.5		
8/27/2012	Mike Lesser	emails to co counsel re mediation scheduling and logistics	0.5		
8/27/2012	Mike Thornton	emails to co counsel re mediation scheduling and logistics	0.5		
8/28/2012	Mike Thornton	Telephone conference with D. Goldsmith re: posture re: Henriquez ERISA class action and mediation	0.3		
8/29/2012	Evan Hoffman	Emails with co-counsel re extensions for defendants; meditation dates	0.8		
8/29/2012	Mike Lesser	Emails with co-counsel re extensions for defendants; meditation dates	0.8		

8/29/2012	Mike Thornton	Emails with co-counsel re extensions for defendants; meditation dates	0.8		
8/30/2012	Evan Hoffman	E-mails internally and with co-counsel re: ERISA action, intervention, mediation strategy issues	0.8		
8/30/2012	Mike Lesser	E-mails internally and with co-counsel re: ERISA action, intervention, mediation strategy issues	0.8		
8/30/2012	Mike Thornton	E-mails internally and with co-counsel re: ERISA action, intervention, mediation strategy issues	0.8		
8/31/2012	Evan Hoffman	emails with co counsel re mediation logistics and ERISA plainiffs	0.1		
8/31/2012	Mike Lesser	emails with co counsel re mediation logistics and ERISA plainiffs	0.1		
9/4/2012	Evan Hoffman	emails and calls re mediation logistics and strategy	1		
9/4/2012	Garrett Bradley	Call with co-counsel for status on client meeting	1		
9/4/2012	Mike Lesser	emails and calls re mediation logistics and strategy	1		
9/4/2012	Mike Thornton	emails and calls re mediation logistics and strategy	1		
9/5/2012	Evan Hoffman	Telephone conference with co-counsel re: ERISA action, intervention, coordination, consolidation, mediation issues; post-call discussion re: same	1		
9/5/2012	Garrett Bradley	Telephone call with co-counsel	0.5		
9/5/2012	Mike Lesser	Telephone conference with co-counsel re: ERISA action, intervention, coordination, consolidation, mediation issues; post-call discussion re: same	1		
9/5/2012	Mike Thornton	Telephone conference with co-counsel re: ERISA action, intervention, coordination, consolidation, mediation issues; post-call discussion re: same	1		
9/6/2012	Garrett Bradley	Review file, emails, research and discussions re mediation	4		
9/7/2012	Garrett Bradley	Prepare for mediation; call with co-counsel re status of meeting	3		
9/10/2012	Evan Hoffman	Conference call with co counsel re: ERISA claims; telephone conference with co counsel re damages estimates	2.5		
9/10/2012	Mike Lesser	Conference call with co counsel re: ERISA claims; telephone conference with co counsel re damages estimates	2.5		
9/10/2012	Mike Thornton	Conference call with co counsel re: ERISA claims; telephone conference with co counsel re damages estimates	2.5		
9/11/2012	Evan Hoffman	Travel to NYC	2		

9/11/2012	Evan Hoffman	Meeting with LCHB and Labaton re mediation goals, strategy.	4		
9/11/2012	Garrett Bradley	travel to nyc	2		
9/11/2012	Garrett Bradley	Meeting with LCHB and Labaton re mediation goals, strategy.	4		
9/11/2012	Mike Lesser	Travel to NYC	2		
9/11/2012	Mike Lesser	Meeting with LCHB and Labaton re mediation goals, strategy.	4		
9/11/2012	Mike Thornton	Travel to NYC	2		
9/11/2012	Mike Thornton	Meeting with LCHB and Labaton re mediation goals, strategy.	4		
9/13/2012	Evan Hoffman	Ex-parte meeting with mediator; discussion with co counsel afterwards	5		
9/13/2012	Evan Hoffman	Travel back from NYC to BOS	2		
9/13/2012	Garrett Bradley	Ex-parte meeting with mediator; discussion with co counsel afterwards	5		
9/13/2012	Garrett Bradley	Ex-parte meeting with mediator	3		
9/13/2012	Garrett Bradley	Travel back from NYC to BOS	2		
9/13/2012	Mike Lesser	Ex-parte meeting with mediator; discussion with co counsel afterwards; review of ERISA complaint	6.2		
9/13/2012	Mike Lesser	Travel back from NYC to BOS	2		
9/13/2012	Mike Thornton	Ex-parte meeting with mediator; discussion with co counsel afterwards	5		
9/13/2012	Mike Thornton	Travel back from NYC to BOS	2		
9/17/2012	Mike Lesser	emails to co counsel re damages estimates and liability	0.4		
9/18/2012	Mike Lesser	emails with co counsel re ERISA complaint	0.1		
9/26/2012	Evan Hoffman	emails with co counsel re ADR bills	0.3		
9/26/2012	Mike Lesser	emails with co counsel re ADR bills	0.3		
9/28/2012	Evan Hoffman	emails and calls with co counsel re mediation and ERISA case	0.6		
9/28/2012	Mike Lesser	emails and calls with co counsel re mediation and ERISA case	0.6		
9/28/2012	Mike Thornton	emails and calls with co counsel re mediation and ERISA case	0.6		
10/1/2012	Mike Lesser	emails with co counsel re mediation and data productions	0.5		
10/2/2012	Evan Hoffman	emails and calls with co counsel re mediation	0.5		
10/2/2012	Mike Lesser	emails and calls with co counsel re mediation	0.5		
10/2/2012	Mike Thornton	emails and calls with co counsel re mediation	0.5		

10/3/2012	Mike Thornton	conference call with co counsel and preparation for meetings	0.5		
10/9/2012	Evan Hoffman	emails and calls to co counsel re mediation and settlement issues	1.7		
10/9/2012	Mike Lesser	meeting with defense counsel and co counsel re settlement and mediation issues; emails and calls to co counsel re the same	4.7		
10/9/2012	Mike Thornton	meeting with defense counsel and co counsel re settlement and mediation issues; emails and calls to co counsel re the same	4.7		
10/10/2012	Evan Hoffman	Assist MAL with compilation of damages estimates based on STT data; emails to co counsel re the same	3.9		
10/10/2012	Mike Lesser	Compile damages estimates based on STT data; emails to co counsel re the same	6.1		
10/11/2012	Evan Hoffman	Investigation and research in to [redacted]; conference call with David Goldsmith,D. Chiplock and MAL re: [redacted]	1.9		
10/11/2012	Mike Lesser	Emails with D. Chiplock re [redacted] conference call with David Goldsmith,D. Chiplock and E. Hoffman re: [redacted] revise and edit [redacted]	3.3		
10/12/2012	Evan Hoffman	Research and assist MAL with [redacted]	2.2		
10/12/2012	Mike Lesser	Create [redacted]; emails to co-counsel re the same	3.1		
10/15/2012	Evan Hoffman	emails to co cousnel re STT data	0.6		
10/15/2012	Mike Lesser	emails to co cousnel re STT data	0.6		
10/16/2012	Evan Hoffman	Call with STT counsel re STT data and production issues; assist MAL in creating spreadsheet for damages estimates	3.3		
10/16/2012	Mike Lesser	Call with STT counsel re STT data and production issues; create spreadsheet showing damages estimates and permutations; emails to co counsel re the same	5.5		
10/16/2012	Mike Thornton	Emails with co-counsel re mediation	0.6		
10/17/2012	Evan Hoffman	Emails with co-counsel re mediation	0.2		
10/17/2012	Mike Lesser	Emails with co-counsel re mediation; revise and edit damages spreadsheet; emails to co counsel re the same	2.2		
10/17/2012	Mike Thornton	Emails with co-counsel re mediation	0.2		
10/18/2012	Mike Lesser	produce [redacted]	4		

10/18/2012	Mike Thornton	travel to and from NYC re meeting with L Sucharow re mediation	7.5		
10/19/2012	Evan Hoffman	emails with co counsel re mediation; assist MAL with damages revision	1.3		
10/19/2012	Mike Lesser	emails with co counsel re [redacted]; revise [redacted]; emails with co counsel re [redacted]	4.8		
10/19/2012	Mike Thornton	emails with co counsel re mediation	0.3		
10/22/2012	Evan Hoffman	Prepare for mediation; review key documents re the same	3.1		
10/22/2012	Garrett Bradley	Prepare for mediation; research; review file	4		
10/22/2012	Mike Lesser	Prepare for mediation; review key documents re the same	2		
10/23/2012	Evan Hoffman	Meeting with co-counsel pre-mediation	1		
10/23/2012	Evan Hoffman	Mediation with STT counsel	6		
10/23/2012	Garrett Bradley	Meeting with co-counsel pre-mediation	1		
10/23/2012	Garrett Bradley	Mediation with STT counsel	6		
10/23/2012	Mike Lesser	Meeting with co-counsel pre-mediation	1		
10/23/2012	Mike Lesser	Mediation with STT counsel	6		
10/23/2012	Mike Thornton	Meeting with co-counsel pre-mediation	1		
10/23/2012	Mike Thornton	Mediation with STT counsel	6		
10/24/2012	Evan Hoffman	Continued mediation with STT	3		
10/24/2012	Garrett Bradley	Continued mediation with STT	3		
10/24/2012	Mike Lesser	Continued mediation with STT	3		
10/24/2012	Mike Thornton	Continued mediation with STT	3		
10/25/2012	Evan Hoffman	Emails with co counsel re data to be requested from defendants	1		
10/25/2012	Mike Lesser	Emails with co counsel re data to be requested from defendants	1.2		
10/26/2012	Evan Hoffman	Emails and calls with co-counsel re information exchange with STT; edits and drafts of the same	3.9		
10/26/2012	Mike Lesser	Emails and calls with co-counsel re information exchange with STT; edits and drafts of the same	4.2		
10/30/2012	Evan Hoffman	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8		
10/30/2012	Garrett Bradley	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8		
10/30/2012	Mike Lesser	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8		

10/30/2012	Mike Thornton	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8		
10/31/2012	Mike Thornton	Call to Judge Wolf's clerk	0.5		
11/1/2012	Evan Hoffman	Review Defendant's draft Joint Status report; emails to co-counsel re the same	1		
11/1/2012	Mike Lesser	Review Defendant's draft Joint Status report; emails to co-counsel re the same	1		
11/1/2012	Mike Thornton	Call to Judge Wolf's clerk	0.5		
11/2/2012	Evan Hoffman	Review latest draft of joint status report and protective order; edits and emails to co counsel re the same	3		
11/2/2012	Mike Lesser	Review latest draft of joint status report and protective order; edits and emails to co counsel re the same	3.1		
11/2/2012	Mike Thornton	Review latest draft of joint status report and protective order; edits and emails to co counsel re the same	1.1		
11/6/2012	Mike Lesser	Review emails from co counsel re protective order; comments re the same	0.5		
11/8/2012	Evan Hoffman	Telephone conference with co counsel re: mediation discovery issues and strategy, protective order status, Nov. 15 status conference; address order setting Nov. 15 status conference	1		
11/8/2012	Mike Lesser	Telephone conference with co counsel re: mediation discovery issues and strategy, protective order status, Nov. 15 status conference; address order setting Nov. 15 status conference	1		
11/12/2012	Evan Hoffman	Emails with co counsel re 11/14 hearing; call re the same	2		
11/12/2012	Mike Lesser	Emails with co counsel re 11/14 hearing; call re the same	2		
11/12/2012	Mike Thornton	Emails with co counsel re 11/14 hearing; call re the same	2		
11/13/2012	Evan Hoffman	Emails with co counsel re draft status report	1.2		
11/13/2012	Mike Lesser	Emails with co counsel re draft status report	1.2		
11/13/2012	Mike Thornton	Emails with co counsel re draft status report	1.2		
11/15/2012	Evan Hoffman	Pre meeting with co counsel for Judge Wolf meeting	1		
11/15/2012	Garrett Bradley	Pre meeting with co counsel for Judge Wolf meeting	1		
11/15/2012	Mike Lesser	Pre meeting with co counsel for Judge Wolf meeting	1		
11/15/2012	Mike Thornton	Pre meeting with co counsel for Judge Wolf meeting	1		
11/15/2012	Mike Thornton	Meeting with Judge Wolf	1		
11/16/2012	Evan Hoffman	Emails with co counsel re order and stay; status and discovery	1.5		

11/16/2012	Mike Lesser	Emails with co counsel re order and stay; status and discovery	1.5		
11/16/2012	Mike Thornton	Emails with co counsel re order and stay; status and discovery	1.1		
11/19/2012	Evan Hoffman	emails with co counsel re meetings and logistics	0.5		
11/19/2012	Mike Lesser	emails with co counsel re meetings and logistics	0.5		
11/19/2012	Mike Thornton	emails with co counsel re meetings and logistics	0.5		
11/20/2012	Mike Lesser	Meeting with co counsel re strategy, meditation sessions, discovery issues; travel to and from NYC	7		
11/20/2012	Mike Thornton	Meeting with co counsel re strategy, meditation sessions, discovery issues; travel to and from NYC	7		
11/26/2012	Mike Lesser	Emails with co counsel re mediation dates and topics for January 2013	0.6		
11/26/2012	Mike Thornton	Emails with co counsel re mediation dates and topics for January 2013	0.6		
11/27/2012	Evan Hoffman	Review defendant's document request templates	0.8		
11/27/2012	Evan Hoffman	Review co-counsel emails re January mediation	0.2		
11/27/2012	Mike Lesser	Review defendant's document request templates	0.8		
11/27/2012	Mike Lesser	Review co-counsel emails re January mediation	0.2		
11/27/2012	Mike Thornton	Review co-counsel emails re January mediation	0.2		
11/29/2012	Evan Hoffman	Email and call with co counsel re document review and mediation schedule	1.1		
11/29/2012	Mike Lesser	Email and call with co counsel re document review and mediation schedule	1.1		
11/29/2012	Mike Thornton	Email and call with co counsel re document review and mediation schedule	1.1		
11/30/2012	Mike Lesser	Emails with co counsel re discovery and strategy	1.1		
11/30/2012	Mike Thornton	Emails with co counsel re discovery and strategy	1.1		
12/5/2012	Evan Hoffman	Emails with co counsel re document review and mediation	0.8		
12/5/2012	Mike Lesser	Emails with co counsel re document review and mediation	0.8		
12/6/2012	Evan Hoffman	Emails and calls to co counsel re margin info and document review	1.5		
12/6/2012	Mike Lesser	Emails and calls to co counsel re margin info and document review	1.5		
12/7/2012	Mike Lesser	review of STT proposal re data production	0.3		
12/10/2012	Evan Hoffman	Emails and calls with co counsel re doc review status and procedure	2		

12/10/2012	Mike Lesser	Emails and calls with co counsel re doc review status and procedure	2		
12/11/2012	Evan Hoffman	Call with co counsel re ERISA claims and doc review issues	1.9		
12/11/2012	Mike Lesser	Call with co counsel re ERISA claims and doc review issues	1.9		
12/17/2012	Evan Hoffman	emails with co counsel re mediation stratgey and deadlines	1		
12/17/2012	Mike Lesser	emails with co counsel re mediation stratgey and deadlines	1		
12/17/2012	Mike Thornton	emails with co counsel re mediation stratgey and deadlines	1		
12/18/2012	Evan Hoffman	Emails with co counsel and defense counsel re document production	0.9		
12/18/2012	Mike Lesser	Emails with co counsel and defense counsel re document production	0.9		
12/23/2012	Mike Lesser	Emails with co counsel re doc production	0.2		
12/26/2012	Evan Hoffman	emails to co counsel re CD document production from STT	1		
12/26/2012	Mike Lesser	emails to co counsel re CD document production from STT	1		
12/27/2012	Evan Hoffman	emails with co counsel re document production from State Street	0.2		
12/27/2012	Mike Lesser	emails with co counsel re document production from State Street	0.2		
1/4/2013	Evan Hoffman	Calls and emails with co-counsel and defense re data requests and 3rd party discovery	1.3		
1/4/2013	Mike Lesser	Calls and emails with co-counsel and defense re data requests and 3rd party discovery	1.3		
1/7/2013	Garrett Bradley	Review file, emails and call with co-counsel regarding communication with client	2.5		
1/8/2013	Mike Lesser	E-mails to/from co counsel and STT counsel re: ARTRS investment managers	0.8		
1/9/2013	Mike Lesser	Emails with co counsel re mediation prep	0.4		
1/9/2013	Mike Thornton	Emails with co counsel re mediation prep	0.4		
1/11/2013	Mike Lesser	Emails with co counsel and defense re mediation	0.9		
1/11/2013	Mike Thornton	Emails with co counsel and defense re mediation	0.9		
1/14/2013	Evan Hoffman	Emails and calls with co counsel and defendants re mediation and damages issues	1.5		

1/14/2013	Mike Lesser	Emails and calls with co counsel and defendants re mediation and damages issues	1.5		
1/16/2013	Mike Lesser	Email to co counsel re margin and spread issues	1		
1/17/2013	Mike Lesser	emails to co counsel re call with ERISA counsel re: documents and mediator meeting	0.5		
1/18/2013	Evan Hoffman	Draft supplemental margin requests; email to co counsel re the same; Telephone conference with co counsel re discovery issues, strategy for January 24 mediation meeting;	4.9		
1/18/2013	Mike Lesser	Draft supplemental margin requests; email to co counsel re the same; Telephone conference with co counsel re discovery issues, strategy for January 24 mediation meeting;	5.5		
1/21/2013	Evan Hoffman	prep for mediation and mediator call	3		
1/21/2013	Mike Lesser	prep for mediation and mediator call	1		
1/21/2013	Mike Thornton	prep for mediation and mediator call	1		
1/22/2013	Evan Hoffman	Conference call with mediator and co counsel; follow-up call with ERISA co counsel	3.7		
1/22/2013	Mike Lesser	Conference call with mediator and co counsel	2		
1/22/2013	Mike Thornton	Conference call with mediator and co counsel	2		
1/23/2013	Evan Hoffman	Edits and comments to MAL email re spread calculations; emails re mediation preparation; prepare for same	3.6		
1/23/2013	Mike Lesser	Email to co counsel re spread calculations; emails re mediation preparation; prepare for same	5		
1/23/2013	Mike Thornton	emails with co counsel re meidation preparation; prepare for same	3		
1/24/2013	Evan Hoffman	Travel to DC	2		
1/24/2013	Evan Hoffman	Attend Mediation in DC	4		
1/24/2013	Evan Hoffman	Travel back from DC to BOS	2		
1/24/2013	Garrett Bradley	Call with co-counsel regarding communication with client	0.5		
1/24/2013	Mike Lesser		2		
1/24/2013	Mike Lesser	Attend Mediation in DC	4		
1/24/2013	Mike Lesser	Travel back from DC to BOS	2		
1/24/2013	Mike Thornton	Travel to DC	2		
1/24/2013	Mike Thornton	Attend Mediation in DC	4		
1/24/2013	Mike Thornton	Travel back from DC to BOS	2		
1/25/2013	Evan Hoffman	Assist MAL in compiling new damages model for STT data	3		

1/25/2013	Mike Lesser	Create new version of damages estimation and model based on STT data production; emails to co counsel re the same	7		
1/28/2013	Mike Lesser	Supplement damages estimation with ERISA info; emails to co counsel re the same	0.8		
1/29/2013	Evan Hoffman	emails to co counsel and defense counsel re document review	0.5		
1/29/2013	Mike Lesser	emails to co counsel and defense counsel re document review	0.6		
1/31/2013	Andrea Caruth	Participate in Catalyst doc review training	1		
1/31/2013	Evan Hoffman	Participate in Catalyst doc review training	1		
1/31/2013	Evan Hoffman	Review emails and comments from MAL re damages methodology	0.5		
1/31/2013	Mike Lesser	Speak to FX consultant re appropriate methodology for determining spreads and damages; emails to co counsel re the same	2.8		
2/1/2013	Mike Lesser	Draft document re plaintiff's methodology in determining spreads for damages calculation; Emails to defense counsel and co-counsel re the same	2.2		
2/5/2013	Mike Thornton	Call with L. Sucharow and B. Lieff re steering committee	0.5		
2/6/2013	Evan Hoffman	emails with co counsel re damages estimates	0.6		
2/6/2013	Mike Lesser	emails with co counsel re damages estimates	0.6		
2/7/2013	Evan Hoffman	Assist MAL in [redacted]	3.3		
2/7/2013	Mike Lesser	Emails to co counsel re damages calculations	0.3		
2/7/2013	Mike Lesser	Create [redacted]	5.1		
2/8/2013	Mike Lesser	Finish [redacted] emails to co counsel re the same	2.1		
2/11/2013	Evan Hoffman	emails and calls with co counsel re document issues	0.3		
2/11/2013	Mike Lesser	emails and calls with co counsel re document issues	0.3		
2/12/2013	Evan Hoffman	Emails with co counsel re mediation issues	0.3		
2/12/2013	Mike Lesser	Emails with co counsel re mediation issues	0.3		
2/12/2013	Mike Thornton	Emails with co counsel re mediation issues	0.3		
2/13/2013	Andrea Caruth	Attend Catalyst doc review training	1		
2/13/2013	Evan Hoffman	Attend Catalyst doc review training	1		
2/13/2013	Jotham Kinder	Attend Catalyst doc review training	1		
2/13/2013	Mike Lesser	Attend Catalyst doc review training	1		
2/14/2013	Evan Hoffman	Assist MAL with amended STT damages methodology spreadsheets	4.3		

2/14/2013	Mike Lesser	Draft 3 more versions of STT damages methodology with varying assumptions; email to co counsel re the same	6.3		
2/15/2013	Mike Lesser	Edits to revised damages methodologies; emails to co counsel re the same	1.2		
2/19/2013	Evan Hoffman	Create terms for document review staff to search	0.5		
2/19/2013	Mike Lesser	Email co-counsel suggested search terms, people, and topics for document review team	1		
2/20/2013	Mike Lesser	emails with co counsel and defense re video conferencing; calls with ERISA counsel and co counsel re CA data	0.6		
2/21/2013	Evan Hoffman	emails to co counsel and defense counsel re video conference	0.5		
2/27/2013	Evan Hoffman	Contact STT defense counsel IT for videoconferencing support	0.3		
3/1/2013	Mike Lesser	emails with co counsel re document review process and notes	0.5		
3/4/2013	Evan Hoffman	Call with co counsel re data analysis and document review	0.6		
3/4/2013	Mike Lesser	Call with co counsel re data analysis and document review	0.6		
3/5/2013	Andrea Caruth	Attend document review training for STT	1.5		
3/5/2013	Evan Hoffman		1.5		
3/5/2013	Jotham Kinder	Document review tutorial	1.5		
3/5/2013	Jotham Kinder	Document review	2.5		
3/5/2013	Mike Lesser	Train staff for document review	1.5		
3/6/2013	Evan Hoffman	Emails to internal doc review team re batches and coding questions	0.8		
3/6/2013	Jotham Kinder	Document review	6		
3/7/2013	Andrea Caruth	Document review	3		
3/7/2013	Evan Hoffman	Email complaint and draft summary of the case for M. Bradley for his document review	1.3		
3/7/2013	Evan Hoffman	Call with LCHB re CA data; emails re the same	0.4		
3/7/2013	Jotham Kinder	Document review	3		
3/7/2013	Mike Lesser	Call with LCHB re CA data; emails re the same	0.4		
3/8/2013	Andrea Caruth	Document review	6		
3/8/2013	Evan Hoffman	Call and emails with co counsel and ERISA counsel re CA data and mediation	1.6		
3/8/2013	Jotham Kinder	Document review	6		

3/8/2013	Mike Lesser	Call and emails with co counsel and ERISA counsel re CA data and mediation	1.6		
3/10/2013	Jotham Kinder	Document review	2.5		
3/11/2013	Andrea Caruth	Document review	4.5		
3/11/2013	Evan Hoffman	Emails to co counsel and ERISA counsel re damages calculations	0.4		
3/11/2013	Jotham Kinder	Document review	4		
3/11/2013	Mike Lesser	Emails to co counsel and ERISA counsel re damages calculations	0.4		
3/12/2013	Andrea Caruth	Document review	4.5		
3/12/2013	Evan Hoffman	Call with M. Bradley re STT case introduction and document platform training	2.2		
3/12/2013	Jotham Kinder	Document review	5.5		
3/12/2013	Mike Bradley	Call with E. Hoffman re state street case information for my review	2.2		
3/12/2013	Mike Thornton	Travel to NYC	2		
3/12/2013	Mike Thornton	Meeting with B. Lieff and L. Sucharow re STT videoconference	1.5		
3/13/2013	Andrea Caruth	Document review	5		
3/13/2013	Evan Hoffman	Travel to NYC	2		
3/13/2013	Evan Hoffman	Call with mediator on status of mediation	0.5		
3/13/2013	Evan Hoffman	Travel back from NYC to BOS	2		
3/13/2013	Evan Hoffman	Video conference with STT re spreadsheet data methodologies	1.5		
3/13/2013	Jotham Kinder	Document review	5.5		
3/13/2013	Mike Lesser	Travel to NYC	2		
3/13/2013	Mike Lesser	Call with mediator on status of mediation	0.5		
3/13/2013	Mike Lesser	Travel back from NYC to BOS	2		
3/13/2013	Mike Lesser	Video conference with STT re spreadsheet data methodologies	1.5		
3/13/2013	Mike Thornton	Call with mediator on status of mediation	0.5		
3/13/2013	Mike Thornton	Travel back from NYC to BOS	2		
3/13/2013	Mike Thornton	Video conference with STT re spreadsheet data methodologies	1.5		
3/14/2013	Andrea Caruth	Document review	5.5		
3/14/2013	Jotham Kinder	Document review	4		
3/14/2013	Mike Lesser	revise edit damages model v.6	3.5		
3/15/2013	Jotham Kinder	Document Review	4.5		
3/15/2013	Evan Hoffman	emails with co counsel re document production from STT	0.2		
3/15/2013	Evan Hoffman	Assist MAL with revised ERISA damages estimates	1		

3/15/2013	Mike Lesser	emails with co counsel re document production from STT	0.2		
3/15/2013	Mike Lesser	Adjust damages calculation models based on revised ERISA numbers; emails to co counsel re the same	1.4		
3/18/2013	Andrea Caruth	Document review	4		
3/18/2013	Jotham Kinder	Document review	4		
3/18/2013	Mike Lesser	revise/edit damages model v. 6	1.5		
3/18/2013	Mike Thornton	conference call with mediator and B. Lieff and L. Sucharow	0.8		
3/19/2013	Andrea Caruth	Document review	4.5		
3/19/2013	Evan Hoffman	Phone call with Mike Bradley re Catalyst document training issues	1		
3/19/2013	Jotham Kinder	Document review	3		
3/19/2013	Mike Bradley	Phone call with E. Hoffman re document review platform	1		
3/19/2013	Mike Lesser	Emails to D. Chiplock re meeting at Labaton	0.2		
3/19/2013	Mike Thornton	Emails to D. Chiplock re meeting at Labaton	0.2		
3/20/2013	Andrea Caruth	Document review	5		
3/20/2013	Evan Hoffman	Draft possible plan of allocation scenarios to send to team; emails re the same	1		
3/20/2013	Evan Hoffman	Document review	2		
3/20/2013	Jotham Kinder	Document review	6.5		
3/20/2013	Mike Lesser	Emails to co counsel re plan of allocation factors; follow-up emails re the same	1.6		
3/21/2013	Andrea Caruth	Document review	3		
3/21/2013	Evan Hoffman	Emails to co counsel re plans of allocation scenarios	0.5		
3/21/2013	Evan Hoffman	Document review	2		
3/21/2013	Jotham Kinder	Document review	7		
3/21/2013	Mike Lesser	Emails to co counsel re plans of allocation scenarios	0.7		
3/22/2013	Andrea Caruth	Document review	5		
3/22/2013	Evan Hoffman	emails with co counsel re plan of allocation; create POA models with MAL for review	4		
3/22/2013	Evan Hoffman	Document review	2		
3/22/2013	Evan Hoffman	Review co counsel emails re STT allocation ideas	0.3		
3/22/2013	Jotham Kinder	Document review	1.5		
3/22/2013	Mike Bradley	Document review	0.8		0.7
3/22/2013	Mike Lesser	draft POA ideas; emails with co counsel re the same	3.3		
3/22/2013	Mike Lesser	Emails to co counsel re STT allocation baskets and types of plans in each	0.5		
3/23/2013	Jotham Kinder	Document review	1		
3/25/2013	Jotham Kinder	document review	6.5		
3/25/2013	Andrea Caruth	Document review	4.5		

3/25/2013	Mike Bradley	Document review	2		1.9
3/26/2013	Andrea Caruth	Document review	4.5		
3/26/2013	Evan Hoffman	Document review	2		
3/26/2013	Evan Hoffman	Retrieve and analyze Arkansas fee agreement language for MAL	0.8		
3/26/2013	Evan Hoffman	Review emails from co counsel re Carver ERISA complaint	0.2		
3/26/2013	Jotham Kinder	Document review	4.5		
3/26/2013	Mike Bradley	Document review	1.5		1.7
3/26/2013	Mike Lesser	Emails with D. Chiplock re fee agreement	0.2		
3/26/2013	Mike Lesser	Review emails from co counsel re Carver ERISA complaint	0.2		
3/26/2013	Mike Thornton	Review emails from co counsel re Carver ERISA complaint	0.2		
3/27/2013	Evan Hoffman	Document review	1		
3/27/2013	Evan Hoffman	Create excel chart of all hot STT docs to date; assist MAL with compiling them into chart; review for relevancy and coding	4.4		
3/27/2013	Mike Bradley	Document review	2		2.2
3/27/2013	Jotham Kinder	document review	6		
3/27/2013	Mike Lesser	Create index of substantive STT hot docs with bates numbers, authors, description and relevance; email to E. Hoffman for review	5.9		
3/27/2013	Mike Lesser	Review email from defendants re public fund data by year; emails to co-counsel re the same	1		
3/28/2013	Andrea Caruth	Document review	3		
3/28/2013	Evan Hoffman	emails to co counsel re mediation statements and plan of allocation issues	0.4		
3/28/2013	Jotham Kinder	Document review	5		
3/28/2013	Mike Lesser	emails to co counsel re mediation statements and plan of allocation issues	0.5		
3/28/2013	Mike Lesser	Review email from L. Sucharow re next steps	0.3		
3/28/2013	Mike Thornton	Review email from mediator re next steps	0.3		
3/28/2013	Mike Thornton	Review email from L. Sucharow re next steps	0.3		
3/29/2013	Jotham Kinder	Document review	6		
3/29/2013	Mike Bradley	Document review	2		2.1
3/29/2013	Mike Thornton	follow up conference call with mediator and STT counsel	0.5		
4/1/2013	Andrea Caruth	Document review	5		
4/1/2013	Evan Hoffman	Research into STT Street FX product and language for MAL; email re the same	1		

4/1/2013	Evan Hoffman	Prepare and compile binder of all WSIB docs, RFPs, contracts for MAL	3.6		
4/1/2013	Evan Hoffman	Emails and calls with co counsel re 93A and plan of allocation ideas	1		
4/1/2013	Jotham Kinder	Document review	5		
4/1/2013	Mike Lesser	Emails to co counsel re [redacted]	0.8		
4/1/2013	Mike Lesser	Emails and calls with co counsel re [redacted]	1		
4/2/2013	Andrea Caruth	Document review	4.5		
4/2/2013	Evan Hoffman	Calls with co-counsel re plan of allocation permutations; issues with mediation	2.6		
4/2/2013	Jotham Kinder	Document review	3.5		
4/2/2013	Mike Bradley	Document review	2		
4/2/2013	Mike Lesser	Calls with co-counsel re plan of allocation permutations; issues with mediation	2.6		
4/3/2013	Andrea Caruth	Document review	4.5		
4/3/2013	Jotham Kinder	Document review	4.5		
4/3/2013	Mike Bradley	Document review	2.6		2.5
4/4/2013	Andrea Caruth	Meeting with doc review team to discuss progress and coding issues	1		
4/4/2013	Andrea Caruth	Document review	4		
4/4/2013	Evan Hoffman	Meeting with doc review team to discuss progress and coding issues	1		
4/4/2013	Jotham Kinder	Meeting with doc review team to discuss progress and coding issues	1		
4/4/2013	Mike Bradley	Document review	2.2		2.3
4/4/2013	Mike Lesser	Meeting with doc review team to discuss progress and coding issues	1		
4/4/2013	Mike Lesser	Edits to settlement ideas document to be sent to defendants; emails re the same	1		
4/4/2013	Mike Lesser	Edits to settlement ideas document to be sent to defendants	0.5		
4/5/2013	Andrea Caruth	Document review	8		
4/5/2013	Mike Bradley	Document review	2.8		2.6
4/8/2013	Andrea Caruth	Document review	4		
4/8/2013	Evan Hoffman	Document review	2		
4/8/2013	Evan Hoffman	Review draft bullet point memo to be sent to mediator re plan of allocation	0.3		
4/8/2013	Jotham Kinder	Document review	4		

4/8/2013	Mike Bradley	Document review	2		1.9
4/8/2013	Mike Lesser	Review draft bullet point memo to be sent to mediator re plan of allocation	0.3		
4/8/2013	Mike Thornton	Review draft bullet point memo to be sent to mediator re plan of allocation	0.3		
4/9/2013	Andrea Caruth	Document review	3.5		
4/9/2013	Evan Hoffman	Document review	2		
4/9/2013	Jotham Kinder	Document review	5.5		
4/9/2013	Mike Bradley	Document review	1.5		
4/9/2013	Mike Lesser	Comments on [redacted] emails to co counsel re the same	1		
4/10/2013	Andrea Caruth	Document review	4		
4/10/2013	Evan Hoffman	emails with co counsel re bullet point list for mediator	0.6		
4/10/2013	Jotham Kinder	Document review	6.5		
4/10/2013	Mike Lesser	emails with co counsel re bullet point list for mediator	0.6		
4/11/2013	Andrea Caruth	Document review	3.5		
4/11/2013	Garrett Bradley	Review research and emails	1.5		
4/11/2013	Jotham Kinder	Document review	2		
4/11/2013	Mike Bradley	Document review	2		1.7
4/11/2013	Mike Lesser	Emails with co counsel re ERISA issues with mediation statement	0.6		
4/11/2013	Mike Thornton	Emails with co counsel re ERISA issues with mediation statement	0.6		
4/12/2013	Andrea Caruth	Document review	3.5		
4/12/2013	Jotham Kinder	Document review	4.5		
4/12/2013	Mike Bradley	Document review	2		
4/15/2013	Jotham Kinder	Document review	2		
4/15/2013	Mike Lesser	Emails with co counsel re mediation and ERISA issues	0.2		
4/15/2013	Mike Thornton	Emails with co counsel re mediation and ERISA issues	0.2		
4/16/2013	Evan Hoffman	Emails with co counsel to coordinate time to review issues with document coders	0.4		
4/16/2013	Jotham Kinder	Document review	4		
4/16/2013	Mike Bradley	Document review	1.8		1.6
4/16/2013	Mike Lesser	Emails with co counsel to coordinate time to review issues with document coders	0.4		
4/17/2013	Andrea Caruth	Meeting with document review team to discuss issues re coding	1		
4/17/2013	Evan Hoffman	Meeting with document review team to discuss issues re coding	1		

4/17/2013	Jotham Kinder	Meeting with document review team to discuss issues re coding	1		
4/17/2013	Mike Lesser	Meeting with document review team to discuss issues re coding	1		
4/17/2013	Mike Lesser	Emails to D. Chiplock re mediation issues	0.1		
4/18/2013	Evan Hoffman	Call and emails with co counsel re document review status and issues	1.8		
4/18/2013	Jotham Kinder	Document review	2		
4/18/2013	Mike Bradley	Document review	1.4		1.5
4/18/2013	Mike Lesser	Call and emails with co counsel re document review status and issues	1.8		
4/19/2013	Evan Hoffman	emails with co counsel re document review	0.2		
4/19/2013	Mike Lesser	emails with co counsel re document review	0.2		
4/22/2013	Andrea Caruth	Document review	4		
4/22/2013	Evan Hoffman	Review email from MAL re document review topic suggestions	0.2		
4/22/2013	Mike Lesser	Emails to co counsel re suggested search terms and topics for doc review	1.4		
4/23/2013	Andrea Caruth	Document review	3.5		
4/23/2013	Mike Lesser	Emails with co counsel re mediation updates	0.5		
4/24/2013	Evan Hoffman	Emails to co counsel re DOJ opinion in BNYM case and mediation status	0.5		
4/24/2013	Mike Lesser	Emails to co counsel re DOJ opinion in BNYM case and mediation status	0.5		
4/24/2013	Mike Thornton	Emails to co counsel re DOJ opinion in BNYM case and mediation status	0.3		
4/25/2013	Andrea Caruth	Document review	3		
4/25/2013	Evan Hoffman	Meeting with MPT, G. Bradley, M. Lesser re status of mediation and allocation issues	0.8		
4/25/2013	Garrett Bradley	Meeting with E. Hoffman, M. Thornton, M. Lesser re status of mediation and allocation issues	0.8		
4/25/2013	Mike Bradley	Document review	2.4		2.3
4/25/2013	Mike Lesser	Meeting with E. Hoffman, G. Bradley, M. Thornton re status of mediation and allocation issues	0.8		
4/25/2013	Mike Thornton	Meeting with E. Hoffman, G. Bradley, M. Lesser re status of mediation and allocation issues	0.8		
4/26/2013	Andrea Caruth	Document review	4		
4/26/2013	Jotham Kinder	Document review	5.5		
4/26/2013	Mike Bradley	Document review	2.2		2.3
4/29/2013	Andrea Caruth	Document review	2		

4/30/2013	Andrea Caruth	Document review	2		
4/30/2013	Mike Bradley	Document review	1.5		
4/30/2013	Mike Thornton	meeting in NYC with B. Lieff and E. Cabraser re status of case and strategy; travel to and from re the same	7.5		
5/1/2013	Andrea Caruth	Document review	3		
5/1/2013	Jotham Kinder	document review	5.5		
5/1/2013	Mike Bradley	Document review	2		1.8
5/2/2013	Andrea Caruth	Document review	3		
5/2/2013	Jotham Kinder	Document review	6		
5/2/2013	Mike Bradley	Document review	1		
5/3/2013	Andrea Caruth	Document review	3.5		
5/3/2013	Garrett Bradley	Review research and emails; call to counsel on client communication	2		
5/3/2013	Jotham Kinder	Document review	5.5		
5/6/2013	Andrea Caruth	Document review	2		
5/6/2013	Jotham Kinder	Document review	6		
5/7/2013	Andrea Caruth	Document review	3		
5/7/2013	Jotham Kinder	Document review	3.5		
5/8/2013	Andrea Caruth	Document review	3		
5/8/2013	Evan Hoffman	Review email from D. Chiplock re [redacted]	0.3		
5/8/2013	Jotham Kinder	Document review	6		
5/8/2013	Mike Lesser	Review email from D. Chiplock re [redacted]	0.3		
5/8/2013	Mike Thornton	Review email from D. Chiplock re [redacted]	0.2		
5/9/2013	Andrea Caruth	Document review	4		
5/9/2013	Jotham Kinder	Document review	6.2		
5/10/2013	Andrea Caruth	Document review	5		
5/13/2013	Andrea Caruth	Document review	5		
5/14/2013	Andrea Caruth	Document review	3.5		
5/14/2013	Mike Bradley	Document review	2		
5/15/2013	Andrea Caruth	Document review	4		
5/15/2013	Mike Thornton	Review mediator's update re status of mediation	0.4		
5/16/2013	Andrea Caruth	Document review	4.5		
5/16/2013	Evan Hoffman	Review mediator's update re status of mediation	0.4		
5/16/2013	Mike Bradley	Document review	2.4		
5/16/2013	Mike Lesser	Review mediator's update re status of mediation; emails to co counsel re the same	0.5		
5/17/2013	Andrea Caruth	Document review	5		
5/20/2013	Andrea Caruth	Document review	4		

5/20/2013	Mike Bradley	Document review	3		2.8
5/21/2013	Andrea Caruth	Document review	3		
5/21/2013	Evan Hoffman	Emails with co-counsel re [redacted] research in to [redacted]; create chart re the same	5.8		
5/21/2013	Mike Bradley	Document review	1.5		1.4
5/22/2013	Andrea Caruth	Document review	4		
5/22/2013	Evan Hoffman	Emails with doc review team and co counsel re Catalyst issues	0.4		
5/22/2013	Evan Hoffman	Review State Street doc at request of co counsel for relevance	0.3		
5/22/2013	Mike Lesser	Review State Street doc at request of co counsel for relevance	0.3		
5/23/2013	Andrea Caruth	Document review	4		
5/23/2013	Mike Bradley	Document review	1.5		
5/24/2013	Andrea Caruth	Document review	2		
5/24/2013	Mike Bradley	Document review	1		0.9
5/28/2013	Andrea Caruth	Document review	4		
5/29/2013	Andrea Caruth	Document review	4		
5/29/2013	Evan Hoffman	Calls and emails with LCHB re mediation status	0.4		
5/29/2013	Mike Bradley	Document review	1.8		1.7
5/29/2013	Mike Lesser	Calls and emails with LCHB re mediation status	0.4		
5/30/2013	Andrea Caruth	Document review	2		
5/31/2013	Evan Hoffman	Emails with LCHB re Jonathan Marks summary; internal meetings re the same	1		
5/31/2013	Mike Lesser	Emails with LCHB re Jonathan Marks summary; internal meetings re the same	1		
5/31/2013	Mike Thornton	Emails with LCHB re Jonathan Marks summary; internal meetings re the same	1		
6/3/2013	Andrea Caruth	Document review	3.5		
6/3/2013	Evan Hoffman	Emails with M. Rogers re STT hot document and relevance	0.9		
6/3/2013	Mike Lesser	Emails with co counsel re mediation	1.5		
6/3/2013	Mike Thornton	Emails with co counsel re mediation	1.5		
6/4/2013	Andrea Caruth	Document review	4		
6/4/2013	Evan Hoffman	emails and calls with co counsel re: meeting with co-counsel next week re: mediation re: parties' suggestions re: allocation, class definition	1.7		
6/4/2013	Jotham Kinder	Document review	3		

6/4/2013	Mike Bradley	Document review	3		1
6/4/2013	Mike Lesser	emails and calls with co counsel re: meeting with co-counsel next week re: mediation re: parties' suggestions re: allocation, class definition	1.7		
6/4/2013	Mike Thornton	emails and calls with co counsel re: meeting with co-counsel next week re: mediation re: parties' suggestions re: allocation, class definition	1.7		
6/6/2013	Evan Hoffman	Calls and emails with co counsel re mediation documents and counter proposals	2.2		
6/6/2013	Mike Bradley	Document review	2		
6/6/2013	Mike Lesser	Calls and emails with co counsel re mediation documents and counter proposals; draft proposed calss exclusion and response for co counsel review	4.6		
6/7/2013	Evan Hoffman	Assist MAL with updated ERISA damages chart; emails to co counsel re the same	1.1		
6/7/2013	Mike Bradley	Document review	2.5		2.6
6/7/2013	Mike Lesser	Draft updated damages summaries with ERISA numbers; emails to co counsel re the same; revise and edit class exclusion proposal re mediation	4.8		
6/10/2013	Evan Hoffman	Emails with co counsel re ERISA mediation issues	1		
6/10/2013	Mike Bradley	Document review	1		1.1
6/10/2013	Mike Lesser	Emails with co counsel re ERISA mediation issues	1		
6/11/2013	Andrea Caruth	Document review	3.5		
6/11/2013	Garrett Bradley	Review research and mediation issues	2.5		
6/11/2013	Mike Bradley	Document review	2		
6/11/2013	Mike Lesser	Emails to co counsel re damages allocations; emails re mediation submissions	0.6		
6/12/2013	Andrea Caruth	Document review	4		
6/12/2013	Evan Hoffman	Edits to Summary of Issues document for discussion at mediation; emails re the same; prepare for mediation	3		
6/12/2013	Mike Lesser	Edits to co-counsel ERISA document; emails re the same; revise meidation memo; prepare for mediation	5.8		
6/12/2013	Mike Thornton	Travel to NYC	2		
6/12/2013	Mike Thornton	Meeting with B. Lieff re case status	2		
6/13/2013	Andrea Caruth	Document review	4.5		
6/13/2013	Mike Lesser	Travel to NYC	2		
6/13/2013	Mike Lesser	Attend mediation at Labaton re mediation proposals and next steps; emails and calls with mediator and team re the same	3.1		
6/13/2013	Mike Lesser	Travel back from NYC to BOS	2		

6/13/2013	Mike Thornton	Attend mediation at Labaton re mediation proposals and next steps	2		
6/13/2013	Mike Thornton	Travel back from NYC to BOS	2		
6/14/2013	Evan Hoffman	Analyze [redacted] memo re the same; analyze and create [redacted]	6.9		
6/14/2013	Mike Lesser	review and summarzie public STT documents on custody FX	8		
6/17/2013	Andrea Caruth	Document review	4		
6/17/2013	Evan Hoffman	chart and review all public STT statements on FX	3.2		
6/17/2013	Mike Lesser	review and summarize public STT documents on custody FX	6		
6/18/2013	Andrea Caruth	Document review	5		
6/18/2013	Evan Hoffman	Emails To LCHB re status and discovery	0.3		
6/18/2013	Mike Bradley	Document review	2		2.2
6/18/2013	Mike Lesser	Emails To LCHB re status and discovery; document review and coding	6.8		
6/18/2013	Mike Thornton	Emails To LCHB re status and discovery	0.3		
6/19/2013	Mike Lesser	E-mails to/from M. Rogers e: communications with J. Marks re: mediation session on July 9; document review and coding	7.8		
6/20/2013	Evan Hoffman	Research for MAL re [redacted]	2.2		
6/20/2013	Mike Lesser	Review and edits to [redacted] review and summarize [redacted]	6.2		
6/21/2013	Evan Hoffman	E-mails to/from co counsel re: redactions in defendants' production re: strategy to address with defendants	2.9		
6/21/2013	Mike Bradley	Document review	1.4		1.2
6/21/2013	Mike Lesser	E-mails to/from co counsel re: redactions in defendants' production re: strategy to address with defendants	2.9		
6/24/2013	Mike Lesser	research, review, and evaluate [redacted]	2.5		
6/25/2013	Andrea Caruth	Document review	4.5		
6/25/2013	Evan Hoffman	Emails to co counsel re mediation preparation	0.4		
6/25/2013	Evan Hoffman	Review email from MAL re hot docs	0.2		
6/25/2013	Mike Bradley	Document review	1.4		
6/25/2013	Mike Lesser	Emails to co counsel re mediation preparation; documet review and coding	7.4		
6/25/2013	Mike Lesser	Email to ERH re relevance of selected STT hot documents from production	0.7		

6/25/2013	Mike Lesser	Emails with co counsel re relevant STT docs	0.2		
6/25/2013	Mike Thornton	Emails to co counsel re mediation preparation	0.4		
6/25/2013	Mike Thornton	Telephone conference with R. Lieff, L. Sucharow; L. Sarko re: mediation and settlement strategy and July 8 meeting	0.6		
6/26/2013	Andrea Caruth	Document review	4.5		
6/26/2013	Evan Hoffman	Emails to co counsel re relevancy of STT document	0.7		
6/26/2013	Mike Lesser	Emails to co counsel re hot STT document; document review and coding	4.1		
6/27/2013	Andrea Caruth	Document review	5		
6/27/2013	Evan Hoffman	Email to MAL re mistakenly coded hot docs	0.6		
6/27/2013	Mike Bradley	Document review	2.5		
6/27/2013	Mike Lesser	document review and coding	6.5		
6/28/2013	Andrea Caruth	Document review	5		
6/28/2013	Evan Hoffman	Analyze hot documents produced by SST; e-mails to/from co counsel re: same	1.4		
6/28/2013	Mike Lesser	Analyze hot documents produced by SST; e-mails to/from co counsel re: same; document review and coding	3.4		
7/1/2013	Mike Bradley	Document review	1		
7/2/2013	Evan Hoffman	emails to co counsel re mediation logistics; review and edit MAL ppt for meditation	2.2		
7/2/2013	Mike Lesser	emails to co counsel re mediation logistics; preapre PPT for internal review of mediation issues; document review and coding	5.3		
7/3/2013	Mike Lesser	document review and coding	1.5		
7/5/2013	Evan Hoffman	Prepare STT PPT presentation for co counsel to use ahead of meditation	4.4		
7/5/2013	Mike Lesser	Prepare PPT for internal review of all issues in advance of mediation; emails to co counsel re the same	7.1		
7/8/2013	Evan Hoffman	Meeting and conference call with co counsel at Labaton for pre-mediation meeting	2.7		
7/8/2013	Mike Lesser	Meeting and conference call with co counsel at Labaton for pre-mediation meeting	2.7		
7/8/2013	Mike Thornton	Travel to NYC	2		
7/8/2013	Mike Thornton	Attend pre mediation session at Labaton; calls with co counsel	2.7		
7/9/2013	Andrea Caruth	Document review	4.5		
7/9/2013	Evan Hoffman	Travel to NYC	2		

7/9/2013	Evan Hoffman	Attend mediation; follow up emails and calls re the same	4		
7/9/2013	Evan Hoffman	Travel back from NYC to BOS	2		
7/9/2013	Garrett Bradley	Call with inhouse counsel re medition and review of emails	1		
7/9/2013	Mike Lesser	Travel to NYC	2		
7/9/2013	Mike Lesser	Attend mediation; follow up emails and calls re the same	4		
7/9/2013	Mike Lesser	Travel back from NYC to BOS	2		
7/9/2013	Mike Thornton	Travel back from NYC to BOS	2		
7/10/2013	Andrea Caruth	Document review	4.5		
7/10/2013	Evan Hoffman	Emails to co counsel re requests for further information	0.9		
7/10/2013	Mike Lesser	Emails to co counsel re requests for further information	0.9		
7/11/2013	Andrea Caruth	Document review	4		
7/11/2013	Evan Hoffman	Compile for MAL folder of hot docs	4.4		
7/11/2013	Mike Bradley	Document review	1.5		1.6
7/11/2013	Mike Lesser	Emails to co counsel re mediation logistics and invoices	0.3		
7/12/2013	Andrea Caruth	Document review	4.5		
7/12/2013	Evan Hoffman	Emails and phone calls with co counsel re mediation and sample class notice and plans of allocations	1.2		
7/12/2013	Mike Bradley	Document review	2.5		2.5
7/12/2013	Mike Lesser	Emails and phone calls with co counsel re mediation and sample class notice and plans of allocations	1.2		
7/15/2013	Mike Bradley	Document review	1.4		1.5
7/16/2013	Evan Hoffman	Review document production progress; report re the same	0.5		
7/16/2013	Mike Bradley	Document review	1.5		1.6
7/18/2013	Mike Bradley	Document review	2.4		2.4
7/22/2013	Mike Bradley	Document review	1.4		1.2
7/23/2013	Evan Hoffman	emails to co counsel re notice and POA	0.6		
7/23/2013	Mike Lesser	emails to co counsel re notice and POA; draft versions re the same	0.9		
7/29/2013	Mike Bradley	Document review	2.5		2.3
7/29/2013	Mike Lesser	Emails to co counsel re plans of allocations ideas	0.2		
7/30/2013	Andrea Caruth	Document review	5		
7/30/2013	Evan Hoffman	Review emails to co counsel re draft settlement agreement	0.1		
7/30/2013	Mike Bradley	Document review	1.5		1.7
7/30/2013	Mike Lesser	Emails to co counsel re draft settlement agreement	0.2		
7/30/2013	Mike Thornton	Review emails to co counsel re draft settlement agreement	0.1		

7/31/2013	Andrea Caruth	Document review	4.5		
7/31/2013	Mike Bradley	Document review	1.8		1.7
8/1/2013	Andrea Caruth	Document review	5		
8/2/2013	Andrea Caruth	Document review	5		
8/6/2013	Mike Bradley	Document review	2		1.8
8/8/2013	Mike Bradley	Document review	1.5		1.4
8/12/2013	Andrea Caruth	Document review	4.5		
8/12/2013	Mike Lesser	emails to co counsel re draft settlement papers; edits re the same	1.8		
8/13/2013	Andrea Caruth	Document review	5		
8/13/2013	Evan Hoffman	emails with co counsel re settlement stipulation	1		
8/13/2013	Mike Lesser	emails with co counsel re settlement stipulation	1		
8/13/2013	Mike Thornton	emails with co counsel re settlement stipulation	1		
8/14/2013	Andrea Caruth	Document review	5		
8/14/2013	Garrett Bradley	Call with co-counsel to discuss ongoing research and issues, strategy and analysis of research	2		
8/14/2013	Mike Bradley	Document review	1		1.1
8/15/2013	Evan Hoffman	Emails to co counsel re doc review progress	0.4		
8/15/2013	Mike Bradley	Document review	2.4		2.2
8/15/2013	Mike Lesser	Emails to co counsel re doc review progress	0.2		
8/16/2013	Mike Lesser	Emails to co counsel re revised draft settlement agreement	0.6		
8/17/2013	Mike Lesser	Review draft settlement agreement	0.2		
8/17/2013	Mike Thornton	Review draft settlement agreement	0.2		
8/19/2013	Garrett Bradley	Review research	1.5		
8/20/2013	Evan Hoffman	Emails to co counsel re draft settlement papers	0.2		
8/20/2013	Mike Bradley	Document review	2		2
8/20/2013	Mike Lesser	Emails to co counsel re draft settlement papers	0.2		
8/21/2013	Mike Lesser	e-mails to/from M. Rogers re: pre-settlement papers	1.1		
8/22/2013	Mike Lesser	Edit and amend draft notice and plan of allocation; e-mails to/from co counsel re the same	2		
8/23/2013	Evan Hoffman	Analyze draft pre-settlement papers; e-mails to/from co counsel re: same	1		
8/23/2013	Mike Lesser	Analyze draft pre-settlement papers; e-mails to/from co counsel re: same	1.8		
8/26/2013	Evan Hoffman	Emails to M. Rogers re progress of document review	0.2		
8/26/2013	Garrett Bradley	Review of emails re progress of document review and draft settlement papers	1		
8/26/2013	Mike Bradley	Document review	1.5		1.5
8/26/2013	Mike Lesser	Emails with co counsel re draft settlement papers	0.3		
8/26/2013	Mike Thornton	Emails with co counsel re draft settlement papers	0.3		

8/27/2013	Evan Hoffman	Emails and calls with co counsel re draft settlement papers	2.4		
8/27/2013	Mike Bradley	Document review	2		1.8
8/27/2013	Mike Lesser	Draft settlement papers; emails and calls with co counsel re the same	4.2		
8/27/2013	Mike Thornton	Emails and calls with co counsel re draft settlement papers	1.1		
8/28/2013	Mike Lesser	Emails with co counsel re ERISA counsel agreement	0.3		
8/28/2013	Mike Thornton	Emails with co counsel re ERISA counsel agreement	0.3		
8/29/2013	Evan Hoffman	Emails to co counsel re proposed settlement papers	0.8		
8/29/2013	Mike Lesser	Emails to co counsel re proposed settlement papers	0.8		
8/29/2013	Mike Thornton	Emails to co counsel re proposed settlement papers	0.8		
8/30/2013	Mike Lesser	Emails and phone call with co counsel re settlement papers and ERISA	1		
8/30/2013	Mike Thornton	Emails and phone call with co counsel re settlement papers and ERISA; emails re fee split with ERISA counsel	2.4		
8/31/2013	Evan Hoffman	Emails to co counsel re draft settlement agreement and ERISA counsel comments	0.7		
8/31/2013	Mike Lesser	Emails to co counsel re draft settlement agreement and ERISA counsel comments	0.9		
8/31/2013	Mike Thornton	Emails to co counsel re draft settlement agreement and ERISA counsel comments	0.4		
9/2/2013	Mike Lesser	document review and coding	4		
9/3/2013	Evan Hoffman	Emails and phone calls with co counsel re draft settlement papers and mediation strategies	1.5		
9/3/2013	Mike Bradley	Document review	2		2.1
9/3/2013	Mike Lesser	Emails and phone calls with co counsel re draft settlement papers and mediation strategies; document review and coding	4.9		
9/3/2013	Mike Thornton	Emails and phone calls with co counsel re draft settlement papers and mediation strategies	1.5		
9/4/2013	Evan Hoffman	Call with co counsel re mediation and settlement papers	0.8		
9/4/2013	Mike Lesser	Call with co counsel re mediation and settlement papers; document review and coding	3.8		
9/4/2013	Mike Thornton	Call with co counsel re mediation and settlement papers	0.8		
9/5/2013	Andrea Caruth	Internal doc review team meeting re progress and issues	1		
9/5/2013	Andrea Caruth	Document review	4.5		

9/5/2013	Evan Hoffman	Internal doc review team meeting re progress and issues	1		
9/5/2013	Jotham Kinder	Internal doc review team meeting re progress and issues	1		
9/5/2013	Mike Lesser	Internal doc review team meeting re progress and issues	1		
9/6/2013	Andrea Caruth	Document review	4.5		
9/6/2013	Evan Hoffman	Incorporate new assumptions into allocation plans re STT damages for MAL	1.1		
9/6/2013	Evan Hoffman	Call with co counsel re mediation	1		
9/6/2013	Mike Lesser	Draft revised allocation plans document with varying assumptions; Emails to co counsel re the same	2.6		
9/6/2013	Mike Lesser	Call with co counsel re mediation	1		
9/6/2013	Jotham Kinder	document review	5.5		
9/6/2013	Mike Thornton	Call with co counsel re mediation	1		
9/9/2013	Andrea Caruth	Document review	4.5		
9/9/2013	Evan Hoffman	Emails with co counsel re [redacted]	0.3		
9/9/2013	Evan Hoffman	Compile for MAL [redacted]	5.5		
9/9/2013	Evan Hoffman	Emails with co counsel re draft settlement agreement; analyze same	2.9		
9/9/2013	Mike Bradley	Document review	1		1
9/9/2013	Mike Lesser	Emails with co counsel re [redacted]	0.3		
9/9/2013	Mike Lesser	Emails with co counsel re draft settlement agreement; analyze same	2.5		
9/9/2013	Jotham Kinder	document review	5.5		
9/9/2013	Mike Thornton	Emails with co counsel re draft settlement agreement; analyze same	1.9		
9/10/2013	Andrea Caruth	Document review	4.5		
9/10/2013	Evan Hoffman	Emails and calls with ERISA counsel and co counsel re edits to draft settlement papers	1.8		
9/10/2013	Jotham Kinder	document review	6		
9/10/2013	Mike Lesser	Emails and calls with ERISA counsel and co counsel re edits to draft settlement papers	1.8		
9/11/2013	Andrea Caruth	Document review	4		
9/11/2013	Evan Hoffman	Review final draft of settlement agreement; emails to co counsel re the same	0.5		
9/11/2013	Mike Bradley	Document review	1		1.1
9/11/2013	Mike Lesser	Review final draft of settlement agreement; emails to co counsel re the same	0.7		
9/11/2013	Jotham Kinder	document review	5.5		

9/11/2013	Mike Thornton	Review final draft of settlement agreement; emails to co counsel re the same	0.2		
9/12/2013	Andrea Caruth	Document review	4.5		
9/12/2013	Evan Hoffman	Emails with team re ERISA counsel status and mediation	0.9		
9/12/2013	Mike Bradley	Document review	3		2.7
9/12/2013	Jotham Kinder	document review	5.5		
9/12/2013	Mike Lesser	Emails with team re ERISA counsel status and mediation	0.9		
9/12/2013	Mike Thornton	Emails with team re ERISA counsel status and mediation	0.9		
9/13/2013	Evan Hoffman	Calls with co counsel re mediation status	1		
9/13/2013	Garrett Bradley	Prepare for mediation; review files, emails	3		
9/13/2013	Mike Lesser	Calls with co counsel re mediation status	1		
9/13/2013	Jotham Kinder	document review	4.5		
9/13/2013	Mike Thornton	Calls with co counsel re mediation status	1		
9/16/2013	Evan Hoffman	Draft further document requests to be sent to STT; emails to co counsel re the same	3.7		
9/16/2013	Garrett Bradley	Review draft document requests, emails and file in preparation for mediation	3		
9/16/2013	Mike Lesser	Draft further document requests to be sent to STT; emails to co counsel re the same	4.6		
9/17/2013	Andrea Caruth	Document review	5		
9/17/2013	Evan Hoffman	Travel to NYC	2		
9/17/2013	Evan Hoffman	Attend mediation with mediator; pre and post sessions with co counsel	4.5		
9/17/2013	Evan Hoffman	Travel back from NYC to BOS	2		
9/17/2013	Garrett Bradley	Travel to NYC	4		
9/17/2013	Garrett Bradley	Attend Mediation with mediator	2		
9/17/2013	Garrett Bradley	Travel back from NYC to Boston	4		
9/17/2013	Mike Bradley	Document review	2		2
9/17/2013	Mike Lesser	Travel to NYC	2		
9/17/2013	Mike Lesser	Attend mediation with mediator; pre and post sessions with co counsel	4.5		
9/17/2013	Mike Lesser	Travel back from NYC to BOS	2		
9/17/2013	Mike Thornton	Travel to NYC	2		
9/17/2013	Mike Thornton	Attend mediation with mediator; pre and post sessions with co counsel	4.5		
9/17/2013	Mike Thornton	Travel back from NYC to BOS	2		
9/18/2013	Jotham Kinder	document review	6.1		
9/19/2013	Jotham Kinder	document review	6.1		

9/19/2013	Andrea Caruth	Document review	4.5		
9/20/2013	Evan Hoffman	Call with co counsel re mediation de briefing and Hill case updates	0.5		
9/20/2013	Mike Lesser	Call with co counsel re mediation de briefing and Hill case updates	0.5		
9/20/2013	Jotham Kinder	document review	2.5		
9/20/2013	Mike Thornton	Call with co counsel re mediation de briefing and Hill case updates	0.5		
9/23/2013	Andrea Caruth	Document review	5		
9/23/2013	Jotham Kinder	Document review	7		
9/23/2013	Mike Bradley	Document review	1.5		1.4
9/24/2013	Andrea Caruth	Document review	5		
9/24/2013	Evan Hoffman	Research into [redacted]; emails to co counsel re the same	1.6		
9/24/2013	Jotham Kinder	Document review	6.5		
9/24/2013	Mike Lesser	Emails with co counsel re [redacted]	0.7		
9/25/2013	Evan Hoffman	Research in to [redacted]; emails to co counsel re the same	2.2		
9/25/2013	Jotham Kinder	Document review	6.5		
9/25/2013	Mike Bradley	Document review	1.5		1.5
9/25/2013	Mike Lesser	Research in to [redacted]; emails to co counsel re the same	3.1		
9/26/2013	Evan Hoffman	E mails to co counsel re CA AG discovery	0.3		
9/26/2013	Mike Lesser	E mails to co counsel re CA AG discovery	0.4		
9/27/2013	Andrea Caruth	Document review	5		
9/28/2013	Evan Hoffman	Review email from Jonathan Marks re future mediation plans	0.2		
9/28/2013	Mike Lesser	Review email from Jonathan Marks re future mediation plans	0.2		
9/28/2013	Mike Thornton	Review email from Jonathan Marks re future mediation plans	0.2		
9/30/2013	Evan Hoffman	Review co counsel letter re Hill case discovery; emails re the same	0.3		
9/30/2013	Garrett Bradley	Review co counsel letter re Hill case discovery; emails re the same	0.1		
9/30/2013	Mike Lesser	Review co counsel letter re Hill case discovery; emails re the same; document review and coding	3.8		
9/30/2013	Jotham Kinder	document review	7		

9/30/2013	Mike Thornton	Review co counsel letter re Hill case discovery; emails re the same	0.2		
10/1/2013	Andrea Caruth	Document review	5.5		
10/1/2013	Evan Hoffman	Further edits and review of Hill letter to be sent to STT; emails re the same	0.2		
10/1/2013	Garrett Bradley	Review Hill letter, emails and work on discovery issues	2		
10/1/2013	Jotham Kinder	Document review	6.5		
10/1/2013	Mike Lesser	Further edits and review of Hill letter to be sent to STT; emails re the same; document review and coding	3.9		
10/2/2013	Andrea Caruth	Document review	5		
10/2/2013	Jotham Kinder	document review	4.5		
10/2/2013	Mike Bradley	Document review	1.5		1.4
10/2/2013	Mike Lesser	document review and coding	5.5		
10/3/2013	Andrea Caruth	Document review	4.5		
10/3/2013	Mike Bradley	Document review	1.4		1.2
10/3/2013	Jotham Kinder	document review	6.4		
10/3/2013	Mike Lesser	document review and coding	2		
10/4/2013	Jotham Kinder	Document review	4.5		
10/4/2013	Mike Lesser	document review and coding	5		
10/7/2013	Andrea Caruth	Document review	5		
10/7/2013	Evan Hoffman	emails to co counsel re hot documents from production; analyze same	0.6		
10/7/2013	Mike Bradley	Document review	2		2.1
10/7/2013	Mike Lesser	Email co counsel hot doc from STT production; analyze same; document review and coding	7.6		
10/8/2013	Andrea Caruth	Document review	5		
10/8/2013	Jotham Kinder	document review	6.2		
10/8/2013	Mike Lesser	document review and coding	6.7		
10/9/2013	Andrea Caruth	Document review	5		
10/9/2013	Mike Bradley	Document review	2		2
10/9/2013	Mike Lesser	Emails to co counsel re relevance of STT hot docs	0.3		
10/9/2013	Mike Lesser	document review and coding	6		
10/10/2013	Andrea Caruth	Document review	4.5		
10/10/2013	Jotham Kinder	Document review	5.5		
10/10/2013	Mike Bradley	Document review	2		1.8
10/10/2013	Mike Lesser	document review and coding	2		
10/11/2013	Andrea Caruth	Document review	4.5		
10/11/2013	Garrett Bradley	Review document research; call with co-counsel re client communication	1.5		
10/11/2013	Mike Lesser	document review and coding	2.6		
10/15/2013	Andrea Caruth	Document review	5.5		

10/15/2013	Evan Hoffman	Review email from STT counsel re continuation of stay and discovery issues	0.2		
10/15/2013	Garrett Bradley	Review letter from SEC; emails re the same	1		
10/15/2013	Jotham Kinder	Document review	3.5		
10/15/2013	Mike Lesser	Review email from STT counsel re continuation of stay and discovery issues; document review and coding	2.2		
10/15/2013	Mike Thornton	Travel to and from NYC re meeting with L. Sucharow re status of meditation	7.5		
10/15/2013	Mike Thornton	Review email from STT counsel re continuation of stay and discovery issues	0.2		
10/16/2013	Andrea Caruth	Document review	4.5		
10/16/2013	Evan Hoffman	Call with co counsel re mediation status and Hill status	0.9		
10/16/2013	Jotham Kinder	document review	5.5		
10/16/2013	Garrett Bradley	Call with co counsel re mediation status and Hill status	0.9		
10/16/2013	Mike Lesser	Call with co counsel re mediation status and Hill status; emails re follow up letter to be sent to STT; document review and coding	3.7		
10/16/2013	Mike Thornton	Call with co counsel re mediation status and Hill status	0.9		
10/17/2013	Andrea Caruth	Document review	5		
10/17/2013	Evan Hoffman	Call with D. Chiplock re [redacted]	1		
10/17/2013	Mike Lesser	Call with D. Chiplock re [redacted]; document review and coding	3		
10/18/2013	Andrea Caruth	Document review	4.5		
10/18/2013	Mike Lesser	document review and coding	4		
10/21/2013	Andrea Caruth	Document review	5.5		
10/21/2013	Garrett Bradley	Review research and SEC issues	2		
10/21/2013	Mike Lesser	document review and coding	3		
10/22/2013	Andrea Caruth	Document review	5		
10/22/2013	Evan Hoffman	Call with co counsel re mediation status and documents; emails re the same	1		
10/22/2013	Garrett Bradley	Review emails and call with inhouse counsel regarding conference call	0.5		
10/22/2013	Jotham Kinder	Document review	6		
10/22/2013	Mike Lesser	Call with co counsel re mediation status and documents; emails re the same; document review and coding	5.5		
10/22/2013	Mike Thornton	Call with co counsel re mediation status and documents; emails re the same	1		
10/23/2013	Andrea Caruth	Document review	4.5		

10/23/2013	Garrett Bradley	Call with co-counsel re client communication and outstanding issues	1		
10/23/2013	Mike Lesser	document review and coding	3		
10/24/2013	Mike Lesser	Emails to co counsel re document production issues with STT; document review and coding	1.3		
10/25/2013	Andrea Caruth	Document review	5		
10/25/2013	Jotham Kinder	document review	3.5		
10/25/2013	Mike Lesser	document review and coding	1.2		
10/28/2013	Evan Hoffman	analysis of RFP responses; e-mails to/from co counsel re the same	2		
10/28/2013	Garrett Bradley	Discussion with co-counsel re SEC issues; emails and call re same	1		
10/28/2013	Mike Lesser	analysis of RFP responses; e-mails to/from co counsel re the same; document review and coding	3.1		
10/29/2013	Andrea Caruth	Document review	5		
10/29/2013	Mike Lesser	E-mails to/from co counsel re: production of ARTRS documents to SST; document review and coding	2.5		
10/29/2013	Mike Thornton	call with L. Sucharow re mediation issues	1		
10/30/2013	Andrea Caruth	Document review	5		
10/30/2013	Mike Lesser	document review and coding	1.4		
10/31/2013	Andrea Caruth	Document review	5.5		
10/31/2013	Garrett Bradley	Review research re discovery issues; call with co-counsel re same	2.5		
10/31/2013	Jotham Kinder	Document review	4.3		
10/31/2013	Mike Bradley	Document review	2		1.8
11/4/2013	Evan Hoffman	Emails to co counsel re additional documents from Hill	0.2		
11/4/2013	Mike Bradley	Document review	1.5		1.4
11/4/2013	Mike Lesser	Emails to co counsel re additional documents from Hill; document review and coding	1.4		
11/5/2013	Andrea Caruth	Document review	4.5		
11/5/2013	Mike Bradley	Document review	2		1.8
11/5/2013	Mike Lesser	emails to co counsel re document production; document review and coding	3.4		
11/6/2013	Andrea Caruth	Document review	5		
11/6/2013	Jotham Kinder	Document review	7		
11/7/2013	Andrea Caruth	Document review	5.5		
11/7/2013	Garrett Bradley	Review emails re discovery responses and discussion of same	1.5		
11/7/2013	Mike Lesser	Review email from co counsel re Hill motion to compel; E-mails co counsel re: ARTRS production	1.1		

11/8/2013	Evan Hoffman	e-mails to/from co-counsel, ERISA counsel and defense counsel re: information exchange	1.5		
11/8/2013	Garrett Bradley	Review of research on discovery issues	2		
11/8/2013	Mike Bradley	Document review	1.5		1.3
11/8/2013	Mike Lesser	e-mails to/from co-counsel, ERISA counsel and defense counsel re: information exchange	1.5		
11/12/2013	Evan Hoffman	Assist MAL in creating new damages estimates from revised STT data	1		
11/12/2013	Mike Lesser	Analyze latest STT data from defense counsel; email synopsis to co counsel re the same	2		
11/13/2013	Evan Hoffman	Travel to NYC	2		
11/13/2013	Evan Hoffman	Attend meditation session; pre and post meetings with co counsel	4		
11/13/2013	Evan Hoffman	Travel back from NYC to BOS	2		
11/13/2013	Garrett Bradley	Travel to NYC	3		
11/13/2013	Garrett Bradley	Attend mediaiton session	3		
11/13/2013	Garrett Bradley	Travel back from NYC to Boston	3		
11/13/2013	Garrett Bradley	Emails with co counsel re December meeting	0.3		
11/13/2013	Mike Bradley	Document review	1.5		1.5
11/13/2013	Mike Lesser	Travel to NYC	2		
11/13/2013	Mike Lesser	Attend meditation session; pre and post meetings with co counsel	4		
11/13/2013	Mike Lesser	Travel back from NYC to BOS	2		
11/13/2013	Mike Thornton	Travel to NYC	2		
11/13/2013	Mike Thornton	Attend meditation session; pre and post meetings with co counsel	4		
11/13/2013	Mike Thornton	Travel back from NYC to BOS	2		
11/14/2013	Andrea Caruth	Document review	4.5		
11/14/2013	Evan Hoffman	Emails to co counsel re December meeting; Conference and e-mails to/from co counsel re: analysis of losses and overcharges re: analysis of hot documents	1.8		
11/14/2013	Mike Bradley	Document review	1.5		1.6
11/14/2013	Mike Lesser	Emails to co counsel re December meeting; Conference and e-mails to/from co counsel re: analysis of losses and overcharges re: analysis of hot documents; revise/edit damages and liability presentation	7.9		
11/15/2013	Andrea Caruth	Document review	5		
11/15/2013	Evan Hoffman	Review motion to stay; emails re the same; revise/edit damages and liability presentation	3.2		

11/15/2013	Mike Lesser	Review motion to stay; emails re the same; revise/edit damages and liability presentation	7.2		
11/15/2013	Mike Thornton	Review motion to stay; emails re the same	0.1		
11/18/2013	Mike Lesser	revise/edit liability and damages presentation	3.5		
11/19/2013	Andrea Caruth	Document review	5.5		
11/19/2013	Evan Hoffman	Emails to co counsel re document review strategy; call re the same	0.9		
11/19/2013	Mike Bradley	Document review	2.4		2.2
11/19/2013	Mike Lesser	Emails to co counsel re document review strategy; call re the same; revise/edit liability and damages presentation	3.6		
11/20/2013	Andrea Caruth	Document review	4.5		
11/20/2013	Mike Lesser	Emails with co counsel re December meeting; revise/edit liability and damages presentation	2.4		
11/20/2013	Mike Thornton	Emails with co counsel re December meeting	0.3		
11/21/2013	Evan Hoffman	assist MAL with liability and damages presentation	3		
11/21/2013	Mike Bradley	Document review	1.8		1.7
11/21/2013	Mike Lesser	revise/edit liability and damages presentation	8		
11/22/2013	Mike Lesser	revise/edit liability and damages presentation	6.8		
11/25/2013	Andrea Caruth	Document review	5		
11/25/2013	Mike Lesser	revise/edit liability and damages presentation	7.5		
11/26/2013	Andrea Caruth	Document review	3		
11/26/2013	Mike Bradley	Document review	2		2.1
11/26/2013	Mike Lesser	revise/edit liability and damages presentation	0.5		
12/2/2013	Andrea Caruth	Document review	3		
12/2/2013	Evan Hoffman	revise/edit liability and damages presentation	2.7		
12/2/2013	Mike Bradley	Document review	1.5		1.5
12/2/2013	Mike Lesser	revise/edit liability and damages presentation	6.7		
12/3/2013	Andrea Caruth	Document review	5.5		
12/3/2013	Garrett Bradley	Review document research; call with co-counsel re client communication	1.5		
12/3/2013	Mike Bradley	Document review	2.4		2.2
12/3/2013	Mike Lesser	revise/edit liability and damages presentation	7.2		
12/4/2013	Garrett Bradley	Review research, emails and file	2		
12/4/2013	Mike Bradley	Document review	1		1
12/4/2013	Mike Lesser	revise/edit liability and damages presentation	6.8		
12/5/2013	Andrea Caruth	Document review	5		
12/5/2013	Evan Hoffman	Prepare internal damages and issues analysis for December meeting	3.5		
12/5/2013	Garrett Bradley	Review damages and issues analysis; call with co-counsel re client meeting	2		

12/5/2013	Mike Lesser	Prepare internal damages and issues analysis for December meeting	5.5		
12/6/2013	Andrea Caruth	Document review	4		
12/6/2013	Evan Hoffman	Prepare internal damages and issues analysis for December meeting; emails to co counsel re same	4		
12/6/2013	Garrett Bradley	Review reseach documentation re internal damages and issues analysis	0.5		
12/6/2013	Mike Lesser	Prepare internal damages and issues analysis for December meeting; emails to co counsel re same	6		
12/9/2013	Evan Hoffman	Prepare internal damages and issues analysis for December meeting	2.3		
12/9/2013	Evan Hoffman	Emails with co counsel re damages presentation phone call	0.2		
12/9/2013	Mike Lesser	Emails with co counsel re damages presentation phone call; fee split arrangement	0.7		
12/9/2013	Mike Lesser	Prepare internal damages and issues analysis for December meeting	5.1		
12/10/2013	Andrea Caruth	Document review	4.5		
12/10/2013	Mike Lesser	revise/edit liability and damages presentation	6		
12/11/2013	Evan Hoffman	create ppt re [redacted]	2		
12/11/2013	Mike Bradley	Document review	2		1.8
12/11/2013	Mike Lesser	revise/edit liability and damages presentation	5.6		
12/12/2013	Andrea Caruth	Document review	5		
12/12/2013	Mike Bradley	Document review	2		1.9
12/12/2013	Mike Lesser	Prepare internal damages and issues analysis for December meeting	3		
12/12/2013	Mike Thornton	Emails with co counsel re ERISA fee split	0.2		
12/13/2013	Evan Hoffman	Edits and annotations to damages issues and analysis presentation for strategy meeting; emails re the same	5.6		
12/13/2013	Mike Lesser	Edits and annotations to damages issues and analysis presentation for strategy meeting; emails re the same	7.2		
12/13/2013	Mike Thornton	Emails and calls with co counsel re strategy session	0.6		
12/15/2013	Mike Lesser	revise/edit liability and damages presentation	2		
12/16/2013	Andrea Caruth	Document review	5.5		
12/16/2013	Mike Lesser	Additions and edits to damages presentation; emails re the same	4.3		
12/17/2013	Mike Bradley	Document review	1.5		1.3
12/17/2013	Mike Lesser	Travel to California for strategy session; dinner meeting with co counsel re the same	13		

12/17/2013	Mike Thornton	Travel to California for strategy session; dinner meeting with co counsel re the same	13		
12/18/2013	Andrea Caruth	Document review	5.5		
12/18/2013	Mike Bradley	Document review	1.5		1.5
12/18/2013	Mike Lesser	Litigation/mediation strategy session with co counsel and ERISA counsel; emails and conferences re the same	7		
12/18/2013	Mike Thornton	Litigation/mediation strategy session with co counsel and ERISA counsel; emails and conferences re the same	7		
12/19/2013	Garrett Bradley	Review emails; call with inhouse counsel re strategy session in CA; call with co-counsel re client communication update	1.4		
12/19/2013	Mike Lesser	Travel from CA to BOS; revise and edit damages and liability presentation	10		
12/19/2013	Mike Thornton	Travel from CA to BOS	8		
12/20/2013	Mike Bradley	Document review	2		1.8
12/20/2013	Mike Lesser	revise/edit liability and damages presentation	2		
12/23/2013	Andrea Caruth	Document review	4.5		
12/27/2013	Mike Bradley	Document review	1.5		1.6
12/30/2013	Mike Bradley	Document review	1.8		1.7
12/31/2013	Mike Bradley	Document review	1.5		
12/31/2013	Mike Lesser	Emails with D. Chiplock re attorney client privilege issues	0.1		
1/2/2014	Mike Lesser	Emails to co counsel re information exchange letter to be sent to mediator	0.4		
1/2/2014	Mike Thornton	Emails to co counsel re information exchange letter to be sent to mediator	0.3		
1/6/2014	Andrea Caruth	Document review	5		
1/6/2014	Mike Bradley	Document review	1.4		1.2
1/7/2014	Mike Bradley	Document review	1.5		1.3
1/7/2014	Mike Lesser	Email to co counsel [redacted]	0.2		
1/8/2014	Andrea Caruth	Document review	4.5		
1/8/2014	Evan Hoffman	e-mails to/from co-counsel and ERISA counsel re exchange of markup numbers for mediator	2		
1/8/2014	Mike Bradley	Document review	2.5		1.5
1/8/2014	Mike Lesser	e-mails to/from co-counsel and ERISA counsel re exchange of markup numbers for mediator	2		

1/8/2014	Mike Thornton	e-mails to/from co-counsel and ERISA counsel re exchange of markup numbers for mediator	2		
1/10/2014	Mike Bradley	Document review	2		1.9
1/14/2014	Mike Thornton	call with B. Lieff and STT counsel	0.5		
1/15/2014	Andrea Caruth	Document review	5		
1/15/2014	Mike Bradley	Document review	1.5		1.5
1/16/2014	Evan Hoffman	e-mails to/from co counsel re: legal position and tactics re request for exchange of markup number and methodology	2		
1/16/2014	Mike Lesser	e-mails to/from co counsel re: legal position and tactics re request for exchange of markup number and methodology	2		
1/17/2014	Andrea Caruth	Document review	4.5		
1/17/2014	Mike Bradley	Document review	2.4		2.2
1/17/2014	Mike Thornton	call with B. Lieff and STT counsel	0.5		
1/23/2014	Andrea Caruth	Document review	4		
1/23/2014	Evan Hoffman	Calls with LCHB re [redacted]	1		
1/23/2014	Mike Bradley	Document review	1.8		1.7
1/23/2014	Mike Lesser	Calls with LCHB re [redacted]	1		
1/23/2014	Mike Thornton	Calls with LCHB re [redacted]	1		
1/24/2014	Andrea Caruth	Document review	4		
1/24/2014	Mike Bradley	Document review	1.8		1.7
1/27/2014	Mike Bradley	Document review	2.4		2.2
1/28/2014	Andrea Caruth	Document review	4.5		
1/28/2014	Mike Bradley	Document review	2.4		2.2
1/29/2014	Mike Thornton	Meeting with B. Lieff re case status	4.5		
1/30/2014	Mike Bradley	Document review	1.8		1.7
2/3/2014	Evan Hoffman	Emails and calls with co counsel re [redacted]	1		
2/3/2014	Mike Lesser	Emails and calls with co counsel re [redacted]	1		
2/3/2014	Mike Thornton	Emails and calls with co counsel re [redacted]	1		
2/5/2014	Evan Hoffman	Call with co counsel re [redacted]	1		
2/5/2014	Mike Lesser	Call with co counsel re [redacted]	1		
2/5/2014	Mike Thornton	Call with co counsel re [redacted]	1		
2/6/2014	Evan Hoffman	emails to co counsel re overcharge estimates	0.6		

2/6/2014	Mike Bradley	Document review	2		1.8
2/6/2014	Mike Lesser	Annotate and edit master damages excel list to send around to co-counsel	3		
2/10/2014	Evan Hoffman	E-mails to/from co counsel re: exchange of data with State Street in advance of mediation	0.6		
2/10/2014	Mike Bradley	Document review	1.5		1.6
2/10/2014	Mike Lesser	E-mails to/from co counsel re: exchange of data with State Street in advance of mediation	0.6		
2/11/2014	Evan Hoffman	emails to co counsel re STT data requests	0.2		
2/11/2014	Mike Lesser	Emails to co counsel re STT response on data requests; E-mails re: State Street data submission re: March 4 mediation; telephone conference with Mike co counsel and Bill Paine re: same	2.3		
2/13/2014	Evan Hoffman	Transfer new STT data into spreadsheet	0.4		
2/13/2014	Mike Lesser	emails to co counsel re updated STT data and permutations; put data into revised spreadsheet to send to defendants	1.5		
2/14/2014	Mike Lesser	Emails to co counsel re updated data from STT	0.2		
2/20/2014	Andrea Caruth	Document review	2		
2/20/2014	Evan Hoffman	Review and comments to Annual FX margin damages sheet	0.2		
2/20/2014	Evan Hoffman	Emails to co counsel re scheduling of next mediation	0.4		
2/20/2014	Mike Bradley	Document review	2		1.8
2/20/2014	Mike Lesser	Draft new Annual FX Margin spreadsheet to estimate damages using new STT spreads; emails to co counsel re the same	2.5		
2/20/2014	Mike Lesser	Emails to co counsel re scheduling of next mediation	0.4		
2/20/2014	Mike Thornton	Review and comments to Annual FX margin damages sheet	0.2		
2/20/2014	Mike Thornton	Emails to co counsel re scheduling of next mediation	0.4		
2/21/2014	Evan Hoffman	Assist MAL in updating damages spreadsheet	1		
2/21/2014	Mike Lesser	Updated version of Annual FX margins for damages calculation spreadsheet; emails to co counsel re the same; emails to co counsel re former STT officer	2.3		
2/24/2014	Mike Bradley	Document review	2		1.8
2/26/2014	Evan Hoffman	Emails to co counsel re mediation preparation and amended damages calculations	0.3		
2/26/2014	Mike Bradley	Document review	2		2
2/26/2014	Mike Lesser	Edits to damages calculations to be sent to ERISA counsel; emails to co counsel re the same	1.2		

2/27/2014	Evan Hoffman	Annotate and update Damages and Issues analysis presentation for co counsel and for use at STT mediation; emails re the same	6.7		
2/27/2014	Garrett Bradley	Review emails re mediation, spreadsheet, damages sheet	1.5		
2/27/2014	Mike Lesser	Update Damages and issues analysis for mediation; send to co counsel	5.2		
2/28/2014	Mike Bradley	Document review	1		1.1
3/3/2014	Evan Hoffman	Review ch. 93A presentation from D. Chiplock in advance of mediation	0.5		
3/3/2014	Mike Lesser	Review ch. 93A presentation from D. Chiplock in advance of mediation	0.3		
3/3/2014	Mike Lesser	Further edits to Damages and Issues Analysis for use at mediation	2.2		
3/3/2014	Mike Thornton	Review ch. 93A presentation from D. Chiplock in advance of mediation	0.4		
3/4/2014	Evan Hoffman	Travel to NYC	2		
3/4/2014	Evan Hoffman	Attend mediation session with mediator	4		
3/4/2014	Evan Hoffman	Travel back from NYC to BOS	2		
3/4/2014	Garrett Bradley	Travel to NYC	3		
3/4/2014	Garrett Bradley	Attend mediaiton session	3		
3/4/2014	Garrett Bradley	Travel back from NYC to Boston	3		
3/4/2014	Garrett Bradley	Review emails; call with inhouse counsel re mediation seesion with mediator; call with co-counsel re client communication update	1		
3/4/2014	Mike Lesser	Travel to NYC	2		
3/4/2014	Mike Lesser	Attend mediation session with mediator	4		
3/4/2014	Mike Lesser	Travel back from NYC to BOS	2		
3/4/2014	Mike Thornton	Travel to NYC	2		
3/4/2014	Mike Thornton	Attend mediation session with mediator	4		
3/4/2014	Mike Thornton	Travel back from NYC to BOS	2		
3/5/2014	Garrett Bradley	Call with co-counsel re communication with client	0.5		
3/7/2014	Evan Hoffman	emails with co counsel re: mediation tasks and strategy	1.8		
3/7/2014	Garrett Bradley	Review emails; call co-counsel regarding client communication; call with inhouse counsel re status update	0.5		
3/7/2014	Mike Lesser	emails with co counsel re: mediation tasks and strategy	1.8		
3/7/2014	Mike Thornton	emails with co counsel re: mediation tasks and strategy	1.8		
3/11/2014	Mike Bradley	Document review	1.5		1.3
3/12/2014	Andrea Caruth	Document review	2		

3/12/2014	Mike Bradley	Document review	2		1.9
3/17/2014	Mike Bradley	Document review	1.5		1.6
3/18/2014	Mike Bradley	Document review	1.5		1.5
3/20/2014	Mike Bradley	Document review	1.5		1.5
3/21/2014	Mike Bradley	Document review	1.5		1.3
3/25/2014	Garrett Bradley	Research outstanding issues; call with co-counsel re meeting with Mike Rogers	0.5		
3/25/2014	Mike Bradley	Document review	1		1.1
3/27/2014	Mike Bradley	Document review	1.5		1.4
3/28/2014	Mike Bradley	Document review	1.4		1.4
4/2/2014	Evan Hoffman	Emails to co counsel re May 9th mediation	0.5		
4/2/2014	Mike Lesser	Emails to co counsel re May 9th mediation	0.5		
4/2/2014	Mike Thornton	Emails to co counsel re May 9th mediation	0.2		
4/3/2014	Evan Hoffman	Emails with co counsel re May9th session	0.2		
4/3/2014	Mike Bradley	Document review	1.4		1.2
4/3/2014	Mike Lesser	Emails with co counsel re mediation session preparation	0.3		
4/7/2014	Evan Hoffman	Call with Labaton re damages presentation; annotations to same	1.6		
4/7/2014	Mike Lesser	Conference call with David Goldsmith, Dan Chiplock re: prepare for May mediation session; e-mails to/from Labaton re documents re: same	2.4		
4/8/2014	Evan Hoffman	Emails with D. Goldsmith and co counsel re preparation for May mediation session	0.3		
4/8/2014	Mike Bradley	Document review	1		1
4/8/2014	Mike Lesser	Emails with D. Goldsmith and co counsel re preparation for May mediation session	0.3		
4/9/2014	Evan Hoffman	Annotate and edit damages and issues presentation for mediation; email to co counsel re the same	5.5		
4/9/2014	Mike Lesser	Review ERH edits to presentation for mediation	1		
4/10/2014	Garrett Bradley	Review presentation and research completed by co-counsel	2		
4/15/2014	Mike Bradley	Document review	1.7		1.6
4/16/2014	Evan Hoffman	Emails with M. Rogers and MAL re [redacted]	0.2		
4/16/2014	Garrett Bradley	Review emails of E. co counsel and M. Rogers regarding [redacted]	1		
4/16/2014	Mike Lesser	Emails with M. Rogers and ERH re [redacted]	0.2		

4/17/2014	Evan Hoffman	Research and compile [redacted] format and email to MAL for review	7.4		
4/17/2014	Mike Bradley	Document review	2		1.8
4/17/2014	Mike Lesser	Review ERH project re STT settlements; comments re the same	0.4		
4/19/2014	Evan Hoffman	compile all bates numbers from documents in damages presentation	1		
4/21/2014	Mike Lesser	Emails to co counsel re STT damages	0.2		
4/23/2014	Mike Bradley	Document review	1.4		1.2
4/23/2014	Mike Lesser	Emails with co counsel re review of Hill documents	0.5		
4/24/2014	Evan Hoffman	Emails with co counsel re mediation dates and expenses; review of Hill documents	1		
4/24/2014	Mike Lesser	Emails with co counsel re mediation dates and expenses; review of Hill documents	1.1		
4/25/2014	Evan Hoffman	Review D. Chiplock memo on ch. 93A analysis; report to MAL re the same	0.4		
4/28/2014	Mike Lesser	Edit and review FX margin spreadsheets; email to co counsel re the same	2.5		
4/29/2014	Mike Bradley	Document review	1.2		1.3
4/30/2014	Evan Hoffman	Edits and revisions to Damages presentation for May 9th mediation	2.1		
4/30/2014	Evan Hoffman	Midpoint analysis research for STT data and damages for MAL	1.2		
4/30/2014	Evan Hoffman	Review Jeremiah report on 93A damages; report to MAL re the same	0.3		
4/30/2014	Jeremiah Meyer-O'Day	Memo to MAL and ERH on ch93A proof of damages analysis	2		
4/30/2014	Mike Bradley	Document review	1.5		1.5
4/30/2014	Mike Lesser	Edits and revisions to Damages presentation for May 9th mediation	3.5		
5/1/2014	Evan Hoffman	Emails, edits, revisions, and comments with co counsel re liability/damages/93A slides for mediation	4.4		
5/1/2014	Mike Lesser	Emails, edits, revisions, and comments with co counsel re liability/damages/93A slides for mediation	6.7		
5/2/2014	Evan Hoffman	Revise damages presentation for mediation; emails with co counsel re the same	2.4		
5/2/2014	Mike Lesser	Revise damages presentation; emails to co counsel explaining changes; comments re the same	3.1		
5/5/2014	Evan Hoffman	Collect and organize items for mediation for MAL	1.3		

5/5/2014	Mike Bradley	Document review	1.5		1.1
5/5/2014	Mike Lesser	Email ERH list of items to prepare for mediation	0.1		
5/5/2014	Mike Lesser	Incorporate co counsel comments to damages presentation; emails re the same	2		
5/6/2014	Evan Hoffman	Prepare for mediation; edit slides; emails with co counsel	3.9		
5/6/2014	Garrett Bradley	Prepare for mediation	2		
5/6/2014	Mike Lesser	Prepare for May 9 mediation presentation; mark-up Powerpoint slides; review latest class certification and damages slides; e-mails with co-counsel; send draft slides to ERISA counsel;	4.1		
5/7/2014	Evan Hoffman	Review Jonathan Marks email re mediation schedule and agenda	0.1		
5/7/2014	Mike Lesser	Review Jonathan Marks email re mediation schedule and agenda	0.1		
5/7/2014	Mike Thornton	Review Jonathan Marks email re mediation schedule and agenda	0.1		
5/8/2014	Evan Hoffman	Travel to NYC	2		
5/8/2014	Garrett Bradley	Travel to NYC	2		
5/8/2014	Mike Lesser	Travel to NYC	2		
5/8/2014	Mike Thornton	Travel to NYC	2		
5/9/2014	Evan Hoffman	Pre-mediation meeting with co counsel; Attend mediation	8		
5/9/2014	Evan Hoffman	Travel back to BOS	2		
5/9/2014	Garrett Bradley	Pre-mediation meeting with co counsel; Attend mediation	8		
5/9/2014	Garrett Bradley	Travel back to BOS	2		
5/9/2014	Mike Lesser	Pre-mediation meeting with co counsel; Attend mediation	8		
5/9/2014	Mike Lesser	Travel back to BOS	2		
5/9/2014	Mike Thornton	Pre-mediation meeting with co counsel; Attend mediation	8		
5/9/2014	Mike Thornton	Travel back to BOS	2		
5/13/2014	Mike Lesser	Calls and emails with co counsel re ARTRS FX trading	0.9		
5/16/2014	Mike Lesser	Call with M. Rogers re ARTRS post-2009 trading	0.4		
5/19/2014	Mike Lesser	Emails with co counsel re updates from mediation	0.3		
5/20/2014	Mike Bradley	Document review	1.4		1.4
5/22/2014	Garrett Bradley	Review emails to/from co-counsel and ERISA counsel re communications with mediator and M. Rogers; call to co-counsel re client communication	1.5		

5/22/2014	Mike Lesser	conference call with and e-mails to/from co-counsel and ERISA counsel re: communications with mediator; e-mails to/from and telephone conference with M. Rogers re: ARTRS FX trading records;	1.5		
5/23/2014	Evan Hoffman	Review motion to stay; review emails from co counsel re mediation status	0.6		
5/23/2014	Mike Lesser	Review draft motion to continue stay; emails with co counsel re updates on mediation posture	1		
5/23/2014	Mike Thornton	Review emails from L. Sucharow re mediation status	0.2		
5/27/2014	Mike Lesser	Emails with co counsel re ARTRS fx trade data	0.7		
5/28/2014	Garrett Bradley	Review emails with co-counsel re trade data and ARTRS fx; call to co-counsel re client communication	1		
5/28/2014	Mike Lesser	Emails to co counsel re ARTRS trade data; calls re the same	2.3		
5/28/2014	Mike Thornton	Emails with co counsel re trade data	1		
5/29/2014	Mike Lesser	Review and comments to joint motion to continue stay; emails re the same; emails re ARTRS fx trade data	2		
6/2/2014	Garrett Bradley	Emails and calls with co counsel re ARTRS FX trade data and analysis	1		
6/2/2014	Mike Bradley	Document review	1.6		1.6
6/2/2014	Mike Lesser	Emails and calls with co counsel re ARTRS FX trade data and analysis	2.6		
6/4/2014	Mike Bradley	Document review	1.2		1.2
6/4/2014	Mike Lesser	Calls and emails with co counsel re ARTRS fx data	0.8		
6/5/2014	Garrett Bradley	Review document research and draft discovery	0.5		
6/6/2014	Mike Bradley	Document review	2		2
6/10/2014	Mike Bradley	Document review	1.4		1.7
6/11/2014	Mike Bradley	Document review	1.3		1.3
6/19/2014	Mike Bradley	Document review	2.5		2.2
6/23/2014	Evan Hoffman	Analyze court orders; emails with co counsel re the same	1		
6/23/2014	Garrett Bradley	Discussion with co-counsel re client communication; review emails	0.5		
6/23/2014	Mike Bradley	Document review	1		1
6/23/2014	Mike Lesser	Analyze court orders; emails with co counsel re the same	1		
6/25/2014	Mike Bradley	Document review	1.8		1.7
6/30/2014	Mike Bradley	Document review	1.5		1.5
7/8/2014	Mike Bradley	Document review	1.8		1.7

7/8/2014	Mike Lesser	Emails with co counsel re remittance of fees to mediator	0.6		
7/9/2014	Mike Bradley	Document review	1.1		1.1
7/10/2014	Mike Lesser	Emails with co counsel re budgetary items	1		
7/14/2014	Mike Bradley	Document review	1.6		1.5
7/15/2014	Mike Bradley	Document review	1.5		1.5
7/16/2014	Mike Bradley	Document review	2		1.9
7/21/2014	Mike Bradley	Document review	1.4		1.4
7/23/2014	Mike Bradley	Document review	1.4		1.4
7/26/2014	Mike Bradley	Document review	1.4		1.6
7/30/2014	Mike Bradley	Document review	1.8		1.7
7/31/2014	Mike Bradley	Document review	1.5		1.5
8/1/2014	Mike Bradley	Document review	2		2
8/4/2014	Mike Bradley	Document review	1.2		1.3
8/7/2014	Mike Bradley	Document review	1.5		1.5
8/14/2014	Mike Bradley	Document review	1.7		1.6
8/18/2014	Mike Bradley	Document review	2		2
8/19/2014	Mike Bradley	Document review	1.9		1.8
8/25/2014	Mike Bradley	Document review	2		2
8/26/2014	Mike Bradley	Document review	1.5		1.5
8/27/2014	Mike Bradley	Document review	1.4		1.4
9/4/2014	Mike Bradley	Document review	1.5		1.5
9/11/2014	Mike Bradley	Document review	2.4		2.2
9/15/2014	Mike Bradley	Document review	1.2		1.2
9/16/2014	Mike Bradley	Document review	1.9		1.8
9/19/2014	Mike Bradley	Document review	2		2
9/22/2014	Evan Hoffman	Analyze letter from defendants re document production; emails with co counsel re the same	0.6		
9/22/2014	Mike Lesser	Analyze letter from defendants re document production; emails with co counsel re the same	0.9		
9/22/2014	Mike Thornton	emails to co counsel and analyze letter from A. Hornstein re: ARTRS document production	0.7		
9/23/2014	Garrett Bradley	Review emails regading discovery issues	0.5		
9/23/2014	Mike Lesser	Emails with co counsel re document production issues	0.7		
9/24/2014	Mike Bradley	Document review	1.8		1.7
9/24/2014	Mike Lesser	Call with co counsel re STT requests for further ARTRS doc production;	1.7		
9/25/2014	Mike Bradley	Document production	1.4		1.4
9/29/2014	Mike Bradley	Document review	1.2		1.2
9/30/2014	Mike Bradley	Document review	1.4		1.4

10/1/2014	Garrett Bradley	Emails with co counsel re communications with Bill Paine	0.5		
10/1/2014	Mike Bradley	Document review	1.2		1.3
10/1/2014	Mike Lesser	Emails with co counsel re communications with Bill Paine	0.5		
10/1/2014	Mike Thornton	Emails with co counsel re communications with Bill Paine	0.5		
10/13/2014	Mike Bradley	Document review	1.8		1.7
10/14/2014	Mike Bradley	Document review	1.9		1.8
10/15/2014	Mike Bradley	Document review	1.4		1.4
10/16/2014	Mike Bradley	Document review	2		2
10/20/2014	Mike Bradley	Document review	1.1		1.1
10/21/2014	Mike Bradley	Document review	1.8		1.7
10/24/2014	Garrett Bradley	Review emails re conf call and to/from co-counsel	0.5		
10/24/2014	Mike Lesser	Listen to STT earnings call; report to co counsel on FX-related matters	1		
10/27/2014	Garrett Bradley	Conference call with co counsel re: mediation scheduling and message for Marks and SST; emails to/from co counsel re: same	1		
10/27/2014	Mike Bradley	Document review	1.5		1.5
10/27/2014	Mike Lesser	Conference call with co counsel re: mediation scheduling and message for Marks and SST; e-mails to/from co counsel re: same	1		
10/27/2014	Mike Thornton	Conference call with co counsel re: mediation scheduling and message for Marks and SST; e-mails to/from co counsel re: same	1		
10/31/2014	Mike Bradley	Document review	2.4		2.3
11/5/2014	Mike Bradley	Document review	1.8		1.7
11/6/2014	Mike Bradley	Document review	2		2
11/10/2014	Mike Lesser	Emails with co counsel re STT SEC disclosures	1		
11/11/2014	Mike Bradley	Document review	1.5		1.5
11/12/2014	Mike Bradley	Document review	1.3		1.2
11/14/2014	Mike Bradley	Document review	1.3		1.2
11/17/2014	Mike Bradley	Document review	1.8		1.7
11/18/2014	Mike Lesser	Emails with co counsel re mediation phone call	0.3		
11/18/2014	Mike Thornton	Emails with co counsel re mediation phone call	0.3		
11/19/2014	Mike Bradley	Document review	1.5		1.5
11/21/2014	Mike Bradley	Document review	1.6		1.5
11/24/2014	Mike Bradley	Document review	1.6		1.5
11/25/2014	Mike Bradley	Document review	1.9		1.8
12/1/2014	Mike Bradley	Document review	1.3		1.4

12/2/2014	Mike Bradley	Document review	1.3		1.2
12/3/2014	Mike Bradley	Document review	1.8		1.7
12/4/2014	Mike Bradley	Document review	1.2		1.3
12/8/2014	Mike Bradley	Document review	1.7		1.5
12/12/2014	Mike Bradley	Document review	1.5		1.5
12/12/2014	Mike Lesser	Call with co counsel re mediation next steps	0.6		
12/12/2014	Mike Thornton	Call with co counsel re mediation next steps	0.6		
12/13/2014	Evan Hoffman	call with co counsel re conference call mediator and defendant's counsel re settlement negotiations	0.7		
12/13/2014	Mike Lesser	call with co counsel re conference call mediator and defendant's counsel re settlement negotiations	0.7		
12/13/2014	Mike Thornton	call with co counsel re conference call mediator and defendant's counsel re settlement negotiations	0.7		
12/14/2014	Evan Hoffman	Review email from L. Sucharow re conversation with defendants and mediator	0.2		
12/14/2014	Mike Lesser	Review email from L. Sucharow re conversation with defendants and mediator	0.2		
12/14/2014	Mike Thornton	Review email from L. Sucharow re conversation with defendants and mediator; call re the same	0.6		
12/15/2014	Evan Hoffman	Call with co counsel and defendants and mediator re mediation and follow up meetings; emails re the same	2		
12/15/2014	Garret Bradley	Call with co counsel and defendants and mediator re mediation and follow up meetings; emails re the same	2		
12/15/2014	Mike Bradley	Document review	1.9		1.8
12/15/2014	Mike Lesser	Call with co counsel and defendants and mediator re mediation and follow up meetings; emails re the same	2		
12/15/2014	Mike Lesser	Draft requests for additional damages requests to be sent to STT; emails with co counsel re same	1		
12/15/2014	Mike Thornton	Call with co counsel and defendants and mediator re mediation and follow up meetings; emails re the same	2		
12/16/2014	Mike Bradley	Document review	2		2
12/22/2014	Garret Bradley	Meetings with M. Rogers re mediation scheduling; emails with co counsel re the same	0.6		
12/22/2014	Mike Bradley	Document review	1.3		1.2
12/22/2014	Mike Lesser	Emails with co counsel re mediation scheduling	0.3		
12/23/2014	Mike Bradley	Document review	1.3		1.2
12/23/2014	Mike Lesser	Emails with co counsel re January 5th mediation	0.5		
12/23/2014	Mike Lesser	Review international FX data produced by STT; emails to co counsel re the same	2		
12/29/2014	Mike Bradley	Document review	1.6		1.6

12/31/2014	Garrett Bradley	Call with co counsel re mediation	1.4		
12/31/2014	Mike Lesser	Call with co counsel re mediation	1.4		
12/31/2014	Mike Thornton	Call with co counsel re mediation	1.4		
1/2/2015	Mike Lesser	Revise [redacted] emails to co counsel re the same	3.2		
1/5/2015	Evan Hoffman	Travel to NYC	2		
1/5/2015	Evan Hoffman	Attend mediation; conferences with co counsel re the same	4		
1/5/2015	Evan Hoffman	Fly back from NYC to BOS	2		
1/5/2015	Mike Bradley	Document review	1.7		1.7
1/5/2015	Mike Lesser	Travel to NYC	2		
1/5/2015	Mike Lesser	Attend mediation; conferences with co counsel re the same	4		
1/5/2015	Mike Lesser	Fly back from NYC to BOS	2		
1/5/2015	Mike Thornton	Travel to NYC	2		
1/5/2015	Mike Thornton	Attend mediation; conferences with co counsel re the same	4		
1/5/2015	Mike Thornton	Fly back from NYC to BOS	2		
1/6/2015	Garrett Bradley	Meetings with co counsel re mediation	0.3		
1/6/2015	Mike Lesser	Emails with co counsel re damages	0.2		
1/8/2015	Evan Hoffman	Calls and emails with co counsel re case strategy	0.6		
1/8/2015	Mike Lesser	Calls and emails with co counsel re case strategy	0.6		
1/8/2015	Mike Thornton	Calls and emails with co counsel re case strategy	0.6		
1/9/2015	Evan Hoffman	Research on Judge Wolf fee application cases; emails to M. Rogers re the same	2.4		
1/9/2015	Garrett Bradley	Call with co-counsel re discovery issues	0.5		
1/9/2015	Mike Bradley	Document review	1.3		1.3
1/9/2015	Mike Lesser	Emails to ERH and M. Rogers re fee application cases in D. Mass	0.2		
1/12/2015	Mike Bradley	Document review	2.2		2.2
1/13/2015	Evan Hoffman	Emails with co counsel re case strategy	1		
1/13/2015	Garrett Bradley	Review emails re case stategy	0.5		
1/13/2015	Mike Bradley	Document review	2.2		2.2
1/13/2015	Mike Lesser	Emails with co counsel re case strategy	1		
1/14/2015	Garret Bradley	Conferences and emails with co counsel re case strategy and analysis of STT documents	1.4		
1/14/2015	Mike Bradley	Document review	2.2		2.2
1/15/2015	Mike Bradley	Document review	1.9		1.8
1/20/2015	Mike Bradley	Document review	2.3		2.3
1/21/2015	Mike Lesser	Analyze and comments to proposed motion to continue stay	1.3		

1/23/2015	Mike Bradley	Document review	2.2		2.1
1/25/2015	Evan Hoffman	Emails with K. Dugar re document review allocations	0.2		
1/25/2015	Mike Lesser	Emails with K. Dugar re document review allocations	0.2		
1/26/2015	Andrew McClelland	Document review	8		
1/26/2015	Mike Bradley	Document review	2.1		2
1/26/2015	Mike Lesser	Emails to MPT re STT mediation	0.2		
1/26/2015	Mike Thornton	Emails with MAL re STT mediation	0.2		
1/27/2015	Andrew McClelland	Document review	8		
1/28/2015	Andrew McClelland	Document review	8		
1/29/2015	Andrew McClelland	Document review	9		
1/29/2015	Evan Hoffman	Calls and emails with co counsel re document review projects and status	2		
1/29/2015	Evan Hoffman	Review STT earnings call; emails with co counsel re the same	1.8		
1/29/2015	Mike Bradley	Document review	2.6		2.5
1/29/2015	Mike Lesser	Calls and emails with co counsel re document review projects and status	2		
1/29/2015	Mike Lesser	Review STT earnings call; emails with co counsel re the same	1.8		
1/30/2015	Andrew McClelland	Document review	8		
1/30/2015	Mike Bradley	Document review	1.6		1.6
2/2/2015	Andrew McClelland	Document review	8		
2/2/2015	Virginia Weiss	Document review	8		
2/3/2015	Andrew McClelland	Document review	9		
2/3/2015	Evan Hoffman	Create and edit charts and slides for STT FX revenue for mediation	2		
2/3/2015	Evan Hoffman	Conferences with co counsel re mediation strategy; damages and volume analyses	5		
2/3/2015	Garrett Bradley	Conferences with co counsel re mediation strategy; damages and volume analyses	5		
2/3/2015	Mike Lesser	Create and edit charts and slides for STT FX revenue for mediation	3.5		

2/3/2015	Mike Lesser	Conferences with co counsel re mediation strategy; damages and volume analyses	5		
2/3/2015	Mike Thornton	Conferences with co counsel re mediation strategy; damages and volume analyses	5		
2/3/2015	Virginia Weiss	Document review	8		
2/4/2015	Andrew McClelland	Document review	8		
2/4/2015	Evan Hoffman	Attend mediation session re damages and settlement issues	6		
2/4/2015	Garrett Bradley	Attend mediation session re damages and settlement issues	6		
2/4/2015	Mike Bradley	Document review	2.1		2
2/4/2015	Mike Lesser	Attend mediation session re damages and settlement issues	6		
2/4/2015	Mike Thornton	Attend mediation session re damages and settlement issues	6		
2/4/2015	Virginia Weiss	Document review	8		
2/5/2015	Andrew McClelland	Document review	8		
2/5/2015	Mike Lesser	Emails to co counsel re STT costs of FX service	0.2		
2/5/2015	Virginia Weiss	Document review	8		
2/6/2015	Andrew McClelland	Document review	8		
2/6/2015	Virginia Weiss	Document review	8		
2/9/2015	Andrew McClelland	Document review	8		
2/9/2015	Chris Jordan	Document review	8		
2/9/2015	Evan Hoffman	Emails with K. Dugar re document reviewers' logistics	0.6		
2/9/2015	Jonathan Zaul	Document review	8		
2/9/2015	Virginia Weiss	Document review	8		
2/10/2015	Andrew McClelland	Document review	9		
2/10/2015	Jonathan Zaul	Document review	8		
2/10/2015	Mike Bradley	Document review	2.3		2.3
2/10/2015	Virginia Weiss	Document review	8		
2/11/2015	Andrew McClelland	Document review	5.5		
2/11/2015	Chris Jordan	Document review	8		
2/11/2015	Jonathan Zaul	Document review	8		
2/11/2015	Virginia Weiss	Document review	8		

2/12/2015	Andrew McClelland	Document review	8		
2/12/2015	Chris Jordan	Document review	8		
2/12/2015	Jonathan Zaul	Document review	8		
2/12/2015	Mike Bradley	Document review	2.4		2.4
2/12/2015	Virginia Weiss	Document review	8		
2/13/2015	Andrew McClelland	Document review	6		
2/13/2015	Chris Jordan	Document review	8		
2/13/2015	Jonathan Zaul	Document review	8		
2/13/2015	Mike Thornton	conference call with B. Lieff and . Sucharow re mediation	1		
2/13/2015	Virginia Weiss	Document review	8		
2/15/2015	Andrew McClelland	Document review	4.5		
2/15/2015	Chris Jordan	Document review	6		
2/16/2015	Chris Jordan	Document review	8		
2/16/2015	Mike Bradley	Document review	2.2		2.2
2/17/2015	Andrew McClelland	Document review	8		
2/17/2015	Chris Jordan	Document review	4.5		
2/17/2015	Jonathan Zaul	Document review	8		
2/17/2015	Virginia Weiss	Document review	8		
2/18/2015	Andrew McClelland	Document review	8		
2/18/2015	Chris Jordan	Document review	7		
2/18/2015	Evan Hoffman	Compile for MAL [redacted]; emails re the same	1.4		
2/18/2015	Jonathan Zaul	Document review	8		
2/18/2015	Jonathan Zaul	Document review	8		
2/18/2015	Mike Bradley	Document review	1.7		1.7
2/18/2015	Mike Lesser	Emails to co counsel re [redacted]; scheduling of [redacted]	1.4		
2/18/2015	Mike Lesser	Compile analysis of [redacted]; email to co counsel re the same	2.8		
2/18/2015	Mike Thornton	Calls and emails with co counsel and mediator re February 26 mediation	1.3		
2/18/2015	Virginia Weiss	Document review	8		

2/19/2015	Andrew McClelland	Document review	8		
2/19/2015	Chris Jordan	Document review	8		
2/19/2015	Evan Hoffman	Emails to co counsel re scheduling of mediation session	0.6		
2/19/2015	Evan Hoffman	Call with mediator, co counsel, and defendants re: [redacted]	0.7		
2/19/2015	Jonathan Zaul	Document review	8		
2/19/2015	Mike Lesser	Emails to co counsel re scheduling of mediation session	0.6		
2/19/2015	Mike Lesser	Call with mediator, co counsel, and defendants re: [redacted]	0.7		
2/19/2015	Mike Thornton	Emails to co counsel re scheduling of mediation session	0.6		
2/19/2015	Virginia Weiss	Document review	8		
2/20/2015	Andrew McClelland	Document review	8		
2/20/2015	Chris Jordan	Document review	5.5		
2/20/2015	Evan Hoffman	Emails and calls with K. Dugar re hot document coding and coordination	0.8		
2/20/2015	Jonathan Zaul	Document review	8		
2/20/2015	Mike Lesser	Email to B. Lieff re [redacted]	0.3		
2/20/2015	Mike Lesser	Emails to ERISA co counsel re volume and damages analysis; calls and emails with co counsel re the same	1.6		
2/20/2015	Virginia Weiss	Document review	8		
2/21/2015	Andrew McClelland	Document review	8		
2/22/2015	Chris Jordan	Document review	6		
2/23/2015	Andrew McClelland	Document review	8		
2/23/2015	Chris Jordan	Document review	8		
2/23/2015	Virginia Weiss	Document review	8		
2/24/2015	Andrew McClelland	Document review	2		
2/24/2015	Chris Jordan	Document review	8		
2/24/2015	Evan Hoffman	Pull and categorize list of hot docs from document review for use in mediation; emails and calls to M. Rogers re the same	3.1		
2/24/2015	Mike Bradley	Document review	1.9		1.9

2/24/2015	Mike Lesser	Review of hot docs and emails and calls to M. Rogers re the same	1.1		
2/24/2015	Virginia Weiss	Document review	8		
2/25/2015	Andrew McClelland	Document review	5		
2/25/2015	Chris Jordan	Document review	8		
2/25/2015	Evan Hoffman	Email hot docs to M. Rogers	0.2		
2/25/2015	Evan Hoffman	Travel to NYC	2		
2/25/2015	Evan Hoffman	Conferences with co counsel re: mediation session; emails re: hot documents	6.1		
2/25/2015	Garrett Bradley	Review outstanding issues re mediation; review emails re same	0.5		
2/25/2015	Jonathan Zaul	Document review	8		
2/25/2015	Mike Bradley	Document review	1.3		1.3
2/25/2015	Mike Lesser	Travel to NYC	2		
2/25/2015	Mike Lesser	Conferences with co counsel re: mediation session; emails re: hot documents	6.1		
2/25/2015	Mike Thornton	Travel to NYC	2		
2/25/2015	Mike Thornton	Conferences with co counsel re: mediation session; emails re: hot documents	6.1		
2/25/2015	Virginia Weiss	Document review	8		
2/26/2015	Andrew McClelland	Document review	8		
2/26/2015	Chris Jordan	Document review	8		
2/26/2015	Evan Hoffman	Attend mediation session; conferences with co counsel re the same	8		
2/26/2015	Evan Hoffman	Travel back from NYC to BOS	2		
2/26/2015	Jonathan Zaul	Document review	8		
2/26/2015	Mike Lesser	Attend mediation session; conferences with co counsel re the same	8		
2/26/2015	Mike Lesser	Travel back from NYC to BOS	2		
2/26/2015	Mike Thornton	Attend mediation session; conferences with co counsel re the same	8		
2/26/2015	Mike Thornton	Travel back from NYC to BOS	2		
2/26/2015	Virginia Weiss	Document review	8		
2/27/2015	Andrew McClelland	Document review	8		
2/27/2015	Chris Jordan	Document review	8		
2/27/2015	Jonathan Zaul	Document review	8		
2/27/2015	Virginia Weiss	Document review	8		

2/28/2015	Andrew McClelland	Document review	5		
3/1/2015	Andrew McClelland	Document review	4		
3/2/2015	Andrew McClelland	Document review	8		
3/2/2015	Chris Jordan	Document review	8		
3/2/2015	Garrett Bradley	Review research; call with co-counsel re client communication	0.5		
3/2/2015	Jonathan Zaul	Document review	8		
3/2/2015	Mike Bradley	Document review	2.2		2.2
3/2/2015	Virginia Weiss	Document review	8		
3/3/2015	Andrew McClelland	Document review	8		
3/3/2015	Chris Jordan	Document review	8		
3/3/2015	Jonathan Zaul	Document review	2		
3/3/2015	Mike Bradley	Document review	1.9		1.9
3/3/2015	Virginia Weiss	Document review	8		
3/4/2015	Andrew McClelland	Document review	8		
3/4/2015	Evan Hoffman	Review email from J. Marks re mediation update; emails to co counsel re the same	0.5		
3/4/2015	Garrett Bradley	Review emails; call with inhouse counsel re emails to co-counsel and mediation update	0.5		
3/4/2015	Jonathan Zaul	Document review	5		
3/4/2015	Mike Bradley	Document review	1.1		1
3/4/2015	Mike Lesser	Review email from J. Marks re mediation update; emails to co counsel re the same	0.5		
3/4/2015	Mike Thornton	Review email from J. Marks re mediation update; emails to co counsel re the same	0.5		
3/4/2015	Virginia Weiss	Document review	8		
3/5/2015	Andrew McClelland	Document review	8		
3/5/2015	Chris Jordan	Document review	5		
3/5/2015	Jonathan Zaul	Document review	4		
3/5/2015	Virginia Weiss	Document review	8		
3/6/2015	Andrew McClelland	Document review	7		
3/6/2015	Evan Hoffman	Emails to MAL re document review updates and progress and payment	0.6		

3/6/2015	Evan Hoffman	Emails to co counsel re secondary hot doc review	0.2		
3/6/2015	Garrett Bradley	Review emails and draft discovery	1		
3/6/2015	Jonathan Zaul	Document review	4		
3/6/2015	Mike Lesser	Emails with ERH re status of document review	0.4		
3/6/2015	Mike Lesser	Emails to co counsel re secondary hot doc review	0.2		
3/6/2015	Virginia Weiss	Document review	8		
3/6/2015	Virginia Weiss	Document review	8		
3/8/2015	Andrew McClelland	Document review	1		
3/9/2015	Andrew McClelland	Document review	8		
3/9/2015	Chris Jordan	Document review	8		
3/9/2015	Evan Hoffman	Emails to co counsel re DOL letter; calls re the same	1.3		
3/9/2015	Garrett Bradley	Review research documents; call to co-counsel re discovery issues	1		
3/9/2015	Jonathan Zaul	Document review	8		
3/9/2015	Mike Bradley	Document review	1.4		1.4
3/9/2015	Mike Lesser	Emails to co counsel re DOL letter; calls re the same	1.3		
3/9/2015	Virginia Weiss	Document review	8		
3/10/2015	Andrew McClelland	Document review	8		
3/10/2015	Chris Jordan	Document review	8		
3/10/2015	Evan Hoffman	Call with K Dugar and M. Rogers re secondary coding of hot documents and issue-specific searches	1		
3/10/2015	Jonathan Zaul	Document review	8		
3/10/2015	Mike Bradley	Document review	2.3		2.3
3/10/2015	Mike Lesser	Update damages analysis spreadsheet to send to ERISA counsel; call re the same	1		
3/10/2015	Mike Lesser	Call with K Dugar and M. Rogers re secondary coding of hot documents and issue-specific searches	1		
3/10/2015	Virginia Weiss	Document review	8		
3/11/2015	Andrew McClelland	Document review	8		
3/11/2015	Chris Jordan	Document review	8		
3/11/2015	Evan Hoffman	Call with ERISA co counsel re damages	1		
3/11/2015	Jonathan Zaul	Document review	8		
3/11/2015	Mike Bradley	Document review	2.2		2.2
3/11/2015	Mike Lesser	Call with ERISA co counsel re damages; emails with co counsel re the same	1.2		
3/11/2015	Rachel Wintterle	Document review	8		
3/11/2015	Virginia Weiss	Document review	8		

3/12/2015	Andrew McClelland	Document review	8		
3/12/2015	Evan Hoffman	Review email from L. Sucharow re updates on STT and SEC and DOJ;	0.1		
3/12/2015	Garrett Bradley	Review emails from co-counsel; call with co-counsel re client communciation	1		
3/12/2015	Jonathan Zaul	Document review	8		
3/12/2015	Mike Bradley	Document review	2.2		2.1
3/12/2015	Mike Lesser	Review email from L. Sucharow re updates on STT and SEC and DOJ; emails with co counsel re the same	0.2		
3/12/2015	Mike Thornton	Review email from L. Sucharow re updates on STT and SEC and DOJ; emails with co counsel re the same	0.3		
3/12/2015	Rachel Wintterle	Document review	8		
3/12/2015	Virginia Weiss	Document review	8		
3/12/2015	Virginia Weiss	Document review	6		
3/13/2015	Andrew McClelland	Document review	8		
3/13/2015	Chris Jordan	Document review	6		
3/13/2015	Evan Hoffman	Emails with M. Rogers and K. Dugar re senior review of coded hot documents	0.2		
3/13/2015	Jonathan Zaul	Document review	8		
3/13/2015	Mike Lesser	Emails with M. Rogers and K. Dugar re senior review of coded hot documents	0.2		
3/13/2015	Rachel Wintterle	Document review	8		
3/13/2015	Virginia Weiss	Document review	8		
3/16/2015	Andrew McClelland	Document review	8		
3/16/2015	Chris Jordan	Document review	8		
3/16/2015	Jonathan Zaul	Document review	8		
3/16/2015	Mike Bradley	Document review	2.4		2.4
3/16/2015	Rachel Wintterle	Document review	8		
3/16/2015	Virginia Weiss	Document review	8		
3/17/2015	Andrew McClelland	Document review	8		
3/17/2015	Chris Jordan	Document review	8		
3/17/2015	Evan Hoffman	Emails with MAL re document review status	0.2		
3/17/2015	Jonathan Zaul	Document review	8		
3/17/2015	Mike Bradley	Document review	1.9		1.9
3/17/2015	Mike Lesser	Emails with ERH re document review status	0.2		
3/17/2015	Rachel Wintterle	Document review	8		
3/17/2015	Virginia Weiss	Document review	8		

3/18/2015	Andrew McClelland	Document review	8		
3/18/2015	Chris Jordan	Document review	8		
3/18/2015	Jonathan Zaul	Document review	8		
3/18/2015	Mike Bradley	Document review	1.5		1.5
3/18/2015	Rachel Wintterle	Document review	8		
3/18/2015	Virginia Weiss	Document review	8		
3/19/2015	Andrew McClelland	Document review	8		
3/19/2015	Chris Jordan	Document review	8		
3/19/2015	Jonathan Zaul	Document review	8		
3/19/2015	Rachel Wintterle	Document review	8		
3/19/2015	Virginia Weiss	Document review	8		
3/20/2015	Andrew McClelland	Document review	5		
3/20/2015	Chris Jordan	Document review	8		
3/20/2015	Jonathan Zaul	Document review	8		
3/20/2015	Rachel Wintterle	Document review	8		
3/20/2015	Virginia Weiss	Document review	8		
3/23/2015	Andrew McClelland	Document review	8		
3/23/2015	Chris Jordan	Document review	8		
3/23/2015	Jonathan Zaul	Document review	8		
3/23/2015	Mike Bradley	Document review	1.8		1.8
3/23/2015	Rachel Wintterle	Document review	8		
3/23/2015	Virginia Weiss	Document review	8		
3/24/2015	Andrew McClelland	Document review	8		
3/24/2015	Chris Jordan	Document review	8		
3/24/2015	Jonathan Zaul	Document review	8		
3/24/2015	Rachel Wintterle	Document review	8		
3/24/2015	Virginia Weiss	Document review	8		
3/25/2015	Andrew McClelland	Document review	6.5		
3/25/2015	Chris Jordan	Document review	8		
3/25/2015	Jonathan Zaul	Document review	8		
3/25/2015	Jonathan Zaul	Document review	8		
3/25/2015	Mike Bradley	Document review	1.2		1.2
3/25/2015	Rachel Wintterle	Document review	8		
3/25/2015	Virginia Weiss	Document review	8		

3/26/2015	Andrew McClelland	Document review	8		
3/26/2015	Chris Jordan	Document review	8		
3/26/2015	Rachel Wintterle	Document review	7.8		
3/26/2015	Virginia Weiss	Document review	8		
3/27/2015	Andrew McClelland	Document review	8		
3/27/2015	Ann Ten Eyck	Document review	8		
3/27/2015	Chris Jordan	Document review	5		
3/27/2015	Evan Hoffman	Review J. Marks email re status report for next mediation; emails re the same	0.2		
3/27/2015	Jonathan Zaul	Document review	8		
3/27/2015	Mike Bradley	Document review	2.3		2.3
3/27/2015	Mike Lesser	Review J. Marks email re status report for next mediation; emails re the same	0.2		
3/27/2015	Mike Thornton	Review J. Marks email re status report for next mediation; emails re the same	0.2		
3/27/2015	Rachel Wintterle	Document review	8		
3/27/2015	Virginia Weiss	Document review	8		
3/28/2015	Chris Jordan	Document review	3		
3/28/2015	Evan Hoffman	Review email from D. Chiplock re [redacted]; emails re the same	0.2		
3/28/2015	Mike Lesser	Review email from D. Chiplock re [redacted]; emails re the same	0.2		
3/28/2015	Mike Thornton	Review email from D. Chiplock re [redacted]	0.1		
3/30/2015	Ann Ten Eyck	Document review	7.3		
3/30/2015	Chris Jordan	Document review	8		
3/30/2015	Jonathan Zaul	Document review	8		
3/30/2015	Rachel Wintterle	Document review	6		
3/30/2015	Virginia Weiss	Document review	8		
3/31/2015	Ann Ten Eyck	Document review	7.8		
3/31/2015	Chris Jordan	Document review	8		
3/31/2015	Evan Hoffman	Emails and calls with co counsel re class certification and April 9th mediation	1		
3/31/2015	Jonathan Zaul	Document review	8		
3/31/2015	Mike Bradley	Document review	2.2		2.2
3/31/2015	Mike Lesser	Emails and calls with co counsel re class certification and April 9th mediation	1		

3/31/2015	Mike Thornton	Emails and calls with co counsel re class certification and April 9th mediation	1		
3/31/2015	Rachel Wintterle	Document review	8		
3/31/2015	Virginia Weiss	Document review	8		
4/1/2015	Ann Ten Eyck	Document review	7.5		
4/1/2015	Chris Jordan	Document review	8		
4/1/2015	Evan Hoffman	Compile and analyze hot docs for STT mediation and MAL review	6		
4/1/2015	Garrett Bradley	Review hot docs for STT mediation	1		
4/1/2015	Jonathan Zaul	Document review	8		
4/1/2015	Mike Lesser	Calls with co counsel and ERISA counsel re mediation meeting	0.9		
4/1/2015	Mike Lesser	Compile and organize hot docs for STT mediation	3.3		
4/1/2015	Rachel Wintterle	Document review	8		
4/1/2015	Virginia Weiss	Document review	8		
4/2/2015	Ann Ten Eyck	Document review	8		
4/2/2015	Chris Jordan	Document review	8		
4/2/2015	Evan Hoffman	Compile and analyze hot docs for STT mediation and MAL review	5.5		
4/2/2015	Jonathan Zaul	Document review	8		
4/2/2015	Rachel Wintterle	Document review	8		
4/2/2015	Virginia Weiss	Document review	8		
4/3/2015	Ann Ten Eyck	Document review	8		
4/3/2015	Chris Jordan	Document review	8		
4/3/2015	Evan Hoffman	Review email from L. Sucharow re update from mediator on STT position with government entities	0.2		
4/3/2015	Jonathan Zaul	Document review	8		
4/3/2015	Mike Lesser	Review email from L. Sucharow re update from mediator on STT position with government entities	0.2		
4/3/2015	Mike Thornton	Review email from L. Sucharow re update from mediator on STT position with government entities	0.2		
4/3/2015	Rachel Wintterle	Document review	8		
4/3/2015	Virginia Weiss	Document review	8		
4/6/2015	Ann Ten Eyck	Document review	8		
4/6/2015	Evan Hoffman	Call with co counsel re mediation meeting and calls with J. Marks and B. Paine	1.3		
4/6/2015	Garrett Bradley	Review emails and discussion inhouse counsel re mediation meeting	1		
4/6/2015	Jonathan Zaul	Document review	8		
4/6/2015	Mike Bradley	Document review	1.9		1.9

4/6/2015	Mike Lesser	Emails to co counsel re DOJ personnel	0.2		
4/6/2015	Mike Lesser	Call with co counsel re mediation meeting and calls with J. Marks and B. Paine	1.3		
4/6/2015	Mike Thornton	Call with co counsel re mediation meeting and calls with J. Marks and B. Paine	1.3		
4/6/2015	Rachel Wintterle	Document review	8		
4/6/2015	Virginia Weiss	Document review	8		
4/7/2015	Ann Ten Eyck	Document review	6		
4/7/2015	Evan Hoffman	Emails with co counsel re remaining document review issues	0.2		
4/7/2015	Evan Hoffman	Calls and e-mails to co counsel re: communications with governmental agencies; conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel re the same; e-mails to/from Eric Belfi, Garrett Bradley, Mike Lesser, Dan Chiplock re: staffing	3		
4/7/2015	Garrett Bradley	Conference call with SEC and D. Goldsmith; calls with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith re: communications with governmental agencies; conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel re the same	3.5		
4/7/2015	Jonathan Zaul	Document review	8		
4/7/2015	Mike Lesser	Emails with co counsel re remaining document review issues	0.2		
4/7/2015	Mike Lesser	Calls and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith re: communications with governmental agencies; conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel re the same; e-mails to/from Eric Belfi, Garrett Bradley, Evan Hoffman, Dan Chiplock re: staffing	3		
4/7/2015	Mike Thornton	Calls and e-mails to co counsel re: communications with governmental agencies; conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel re the same	2.7		
4/7/2015	Virginia Weiss	Document review	8		
4/8/2015	Ann Ten Eyck	Document review	7		
4/8/2015	Evan Hoffman	Telephone conference with co-counsel re: SEC call, mediation issues and strategy, prepare for same;	1.3		
4/8/2015	Evan Hoffman	Call with M. Rogers, K. Dugar, D. Chiplock re document review issues	1.8		
4/8/2015	Evan Hoffman	Review topics sent by MAL; conference re the same	2		

4/8/2015	Garrett Bradley	Telephone conference with co-counsel re: SEC call, mediation issues and strategy, prepare for same;	1.3		
4/8/2015	Jonathan Zaul	Document review	8		
4/8/2015	Mike Bradley	Document review	2.1		2
4/8/2015	Mike Lesser	Telephone conference with co-counsel re: SEC call, mediation issues and strategy, prepare for same;	1.3		
4/8/2015	Mike Lesser	Call with M. Rogers, K. Dugar, D. Chiplock re document review issues	1.8		
4/8/2015	Mike Lesser	Emails to ERH re topics for targeted search review; conference re the same	2.4		
4/8/2015	Mike Lesser	Compile list of topics and explanations for targeted search review	3.3		
4/8/2015	Mike Thornton	Telephone conference with co-counsel re: SEC call, mediation issues and strategy, prepare for same;	1.3		
4/8/2015	Rachel Wintterle	Document review	8		
4/8/2015	Virginia Weiss	Document review	8		
4/9/2015	Ann Ten Eyck	Document review	8		
4/9/2015	Evan Hoffman	Conference calls with and e-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: mediation and progress in governmental actions, e-mails to/from co counsel re: document review	2.8		
4/9/2015	Garrett Bradley	Telephone conference with Larry Sucharow, Eric Belfi, Mike Rogers, co-counsel, defendants, J. Marks re: mediation issues and status; telephone conference with S. curtin, A. Palid re: SEC involvement in settlement negotiations, report to co-counsel; e-mails with co-counsel re: overall government agency issues and strategy; separate telephone conferences with D. Goldsmith	3		
4/9/2015	Jonathan Zaul	Document review	8		
4/9/2015	Mike Bradley	Document review	1.4		1.4
4/9/2015	Mike Lesser	Conference calls with and e-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: mediation and progress in governmental actions, e-mails to/from co counsel re: document review	2.8		
4/9/2015	Mike Thornton	Conference calls with and e-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: mediation and progress in governmental actions	2.5		
4/9/2015	Rachel Wintterle	Document review	8		
4/9/2015	Virginia Weiss	Document review	8		

4/10/2015	Ann Ten Eyck	Document review	8		
4/10/2015	Evan Hoffman	Assist MAL with topics for targeted search review; emails and calls with co counsel re the same	6.7		
4/10/2015	Evan Hoffman	Review proposed revised document requests from D. Chiplock; emails and comments re the same	0.3		
4/10/2015	Jonathan Zaul	Document review	8		
4/10/2015	Mike Lesser	Compile list of topics and explanations for targeted search review; emails and calls with co counsel re the same	7.9		
4/10/2015	Mike Lesser	Review proposed revised document requests from D. Chiplock; emails and comments re the same	0.3		
4/10/2015	Rachel Wintterle	Document review	8		
4/10/2015	Virginia Weiss	Document review	8		
4/13/2015	Ann Ten Eyck	Document review	8		
4/13/2015	Evan Hoffman	Compile for MAL list of prior STT settlements with DOJ, SEC, MASEC	4.2		
4/13/2015	Evan Hoffman	Assist MAL with topics for targeted search review	2.9		
4/13/2015	Mike Bradley	Document review	2.1		2
4/13/2015	Mike Lesser	Compile additional list of topics and explanations for targeted search review; emails and calls with co counsel re the same	5.8		
4/13/2015	Rachel Wintterle	Document review	8		
4/13/2015	Virginia Weiss	Document review	8		
4/14/2015	Ann Ten Eyck	Document review	8		
4/14/2015	Evan Hoffman	Calls and emails with N. Diamand re reviewer invoices	0.3		
4/14/2015	Evan Hoffman	Emails with co counsel re document review and related projects	0.8		
4/14/2015	Garrett Bradley	Telephone conference with C. Moore, A. Palid (SEC, re: potential joint mediation and related issues; set up call; telephone conference with Larry Sucharow re: same; post-call discussion with D. Goldsmith	0.7		
4/14/2015	Mike Lesser	Emails with co counsel re document review and related projects	0.8		
4/14/2015	Rachel Wintterle	Document review	8		
4/14/2015	Virginia Weiss	Document review	8		
4/15/2015	Ann Ten Eyck	Document review	8		
4/15/2015	Evan Hoffman	Emails to co counsel re DOJ status	0.2		
4/15/2015	Evan Hoffman	Emails with co counsel re document review and case strategy	0.7		
4/15/2015	Garrett Bradley	Emails to co counsel re DOJ status	0.2		

4/15/2015	Mike Lesser	Emails to co counsel re DOJ status	0.2		
4/15/2015	Mike Lesser	Emails with co counsel re document review and case strategy	0.7		
4/15/2015	Mike Thornton	Emails to co counsel re DOJ status	0.2		
4/15/2015	Rachel Wintterle	Document review	8		
4/15/2015	Virginia Weiss	Document review	8		
4/16/2015	Ann Ten Eyck	Document review	8		
4/16/2015	Garrett Bradley	Emails to co counsel re mediation session	1		
4/16/2015	Mike Bradley	Document review	2.2		2.1
4/16/2015	Mike Lesser	Create [redacted] emails re the same	1		
4/16/2015	Rachel Wintterle	Document review	7.5		
4/16/2015	Virginia Weiss	Document review	8		
4/17/2015	Ann Ten Eyck	Document review	8		
4/17/2015	Mike Bradley	Document review	1.9		1.9
4/17/2015	Rachel Wintterle	Document review	8		
4/17/2015	Virginia Weiss	Document review	8		
4/20/2015	Ann Ten Eyck	Document review	8		
4/20/2015	Mike Bradley	Document review	2.2		2.2
4/20/2015	Rachel Wintterle	Document review	8		
4/20/2015	Virginia Weiss	Document review	8		
4/21/2015	Ann Ten Eyck	Document review	8		
4/21/2015	Evan Hoffman	Emails with co counsel re targeted search reviewer progress	0.4		
4/21/2015	Mike Lesser	Emails with co counsel re targeted search reviewer progress; compile new list of topics	2		
4/21/2015	Rachel Wintterle	Document review	8		
4/22/2015	Ann Ten Eyck	Document review	8		
4/22/2015	Garrett Bradley	Conference with co counsel re mediation strategy	1		
4/22/2015	Rachel Wintterle	Document review	8		
4/23/2015	Ann Ten Eyck	Document review	8		
4/23/2015	Evan Hoffman	Review email from D. Chiplock re DOJ communications re status of negotiations; emails to co counsel re the same	0.2		
4/23/2015	Garrett Bradley	Review email from D. Chiplock re DOJ communications re status of negotiations; emails to co counsel re the same	0.2		
4/23/2015	Mike Bradley	Document review	2.5		2.5
4/23/2015	Mike Lesser	Review email from D. Chiplock re DOJ communications re status of negotiations; emails to co counsel re the same	0.2		

4/23/2015	Mike Thornton	Review email from D. Chiplock re DOJ communications re status of negotiations; emails to co counsel re the same	0.2		
4/23/2015	Rachel Wintterle	Document review	8		
4/24/2015	Evan Hoffman	Review email from L. Sucharow re call from defendants and scheduling of next mediation session; internal meetings re the same; emails with co counsel re the same	0.8		
4/24/2015	Garrett Bradley	Review email from L. Sucharow re call from defendants and scheduling of next mediation session; emails with co counsel re the same	0.3		
4/24/2015	Mike Lesser	Review email from L. Sucharow re call from defendants and scheduling of next mediation session; internal meetings re the same; emails with co counsel re the same	0.8		
4/24/2015	Mike Lesser	Compile additional research topics for targeted search review; email to co counsel re the same	0.3		
4/24/2015	Mike Thornton	Review email from L. Sucharow re call from defendants and scheduling of next mediation session; internal meetings re the same; emails with co counsel re the same	0.8		
4/24/2015	Rachel Wintterle	Document review	8		
4/27/2015	Ann Ten Eyck	Document review	7		
4/27/2015	Evan Hoffman	Emails to co counsel re latest STT earnings call report and reserves	0.3		
4/27/2015	Garrett Bradley	Calls, emails and conference call with co-counsel re ERISA	2		
4/27/2015	Mike Lesser	Emails to co counsel re latest STT earnings call report and reserves	0.6		
4/27/2015	Rachel Wintterle	Document review	8		
4/28/2015	Ann Ten Eyck	Document review	8		
4/28/2015	Evan Hoffman	Emails to L. Sucharow and D. Chiplock re [redacted]	1		
4/28/2015	Evan Hoffman	Review proposed term sheet	0.4		
4/28/2015	Mike Lesser	Emails to co counsel re [redacted]	0.1		
4/28/2015	Mike Lesser	Review proposed term sheet	0.4		
4/28/2015	Mike Thornton	meeting with L. Sucharow in NYC re mediation prep; travel to and from	7.5		
4/28/2015	Mike Thornton	Review proposed term sheet	0.4		
4/28/2015	Rachel Wintterle	Document review	8		

4/29/2015	Ann Ten Eyck	Document review	8		
4/29/2015	Evan Hoffman	Research into p [redacted] emails to MAL re the same	0.5		
4/29/2015	Evan Hoffman	Mediation preparation session with co counsel	3		
4/29/2015	Garrett Bradley	Mediation preparation session with co counsel	3		
4/29/2015	Mike Bradley	Document review	1.6		1.6
4/29/2015	Mike Lesser	Mediation preparation session with co counsel	3		
4/29/2015	Mike Thornton	Mediation preparation session with co counsel	3		
4/29/2015	Rachel Wintterle	Document review	7		
4/30/2015	Ann Ten Eyck	Document review	8		
4/30/2015	Evan Hoffman	Attend mediation session	4		
4/30/2015	Garrett Bradley	Attend mediation session	4		
4/30/2015	Mike Bradley	Document review	1.5		1.5
4/30/2015	Mike Lesser	Attend mediation session	4		
4/30/2015	Mike Thornton	Attend mediation session	4		
4/30/2015	Rachel Wintterle	Document review	8		
5/1/2015	Ann Ten Eyck	Document review	8		
5/1/2015	Garrett Bradley	Review discovery issues; call with co-counsel resame	3		
5/1/2015	Rachel Wintterle	Document review	7		
5/4/2015	Ann Ten Eyck	Document review	8		
5/4/2015	Rachel Wintterle	Document review	8		
5/5/2015	Ann Ten Eyck	Document review	8		
5/5/2015	Rachel Wintterle	Document review	8		
5/6/2015	Ann Ten Eyck	Document review	8		
5/6/2015	Rachel Wintterle	Document review	8		
5/7/2015	Ann Ten Eyck	Document review	8		
5/7/2015	Evan Hoffman	Emails with co counsel re status of reviewer projects	0.2		
5/7/2015	Mike Lesser	Emails with co counsel re status of reviewer projects	0.2		
5/7/2015	Rachel Wintterle	Document review	8		
5/8/2015	Ann Ten Eyck	Document review	8		
5/8/2015	Rachel Wintterle	Document review	7		
5/11/2015	Ann Ten Eyck	Document review	8		
5/11/2015	Rachel Wintterle	Document review	7.5		
5/12/2015	Ann Ten Eyck	Document review	8		
5/12/2015	Evan Hoffman	Emails with co counsel re status of reviewer projects	0.2		
5/12/2015	Garrett Bradley	Review emails and research compiled	1.5		
5/12/2015	Mike Lesser	Emails with co counsel re status of reviewer projects; compile additional topics for reviewers	1.5		
5/12/2015	Rachel Wintterle	Document review	8		
5/13/2015	Ann Ten Eyck	Document review	8		

5/13/2015	Evan Hoffman	Call with co counsel re talks with STT	1.2		
5/13/2015	Garrett Bradley	Call with co counsel re talks with STT; calls and emails with co counsel re the same	1.9		
5/13/2015	Mike Lesser	Call with co counsel re talks with STT; calls and emails with co counsel re the same	1.9		
5/13/2015	Mike Thornton	Call with co counsel re talks with STT; calls and emails with co counsel re the same	1.9		
5/13/2015	Rachel Wintterle	Document review	8		
5/14/2015	Ann Ten Eyck	Document review	8		
5/14/2015	Evan Hoffman	Emails to co counsel re document review	0.4		
5/14/2015	Mike Lesser	Emails to co counsel re document review	0.4		
5/14/2015	Mike Lesser	Email to co counsel re [redacted]	0.9		
5/14/2015	Rachel Wintterle	Document review	8		
5/15/2015	Ann Ten Eyck	Document review	8		
5/15/2015	Evan Hoffman	Emails to co counsel re mediation strategy	1		
5/15/2015	Garrett Bradley	Emails to co counsel re mediation strategy	1		
5/15/2015	Mike Lesser	Compile [redacted] emails to co counsel re the same	1.8		
5/15/2015	Mike Lesser	Emails to co counsel re mediation strategy	1		
5/15/2015	Mike Thornton	Emails to co counsel re mediation strategy	1		
5/15/2015	Rachel Wintterle	Document review	8		
5/18/2015	Ann Ten Eyck	Document review	8		
5/18/2015	Garrett Bradley	Emails to co counsel re scheduling of call with mediator	0.5		
5/18/2015	Mike Lesser	Emails to co counsel re scheduling of call with mediator	0.5		
5/18/2015	Mike Thornton	Emails to co counsel re scheduling of call with mediator	0.5		
5/18/2015	Rachel Wintterle	Document review	8		
5/19/2015	Ann Ten Eyck	Document review	8		
5/19/2015	Garrett Bradley	Emails to co counsel re scheduling of call with mediator	0.5		
5/19/2015	Mike Lesser	Emails to co counsel re scheduling of call with mediator	0.5		
5/19/2015	Mike Lesser	Call with B. Paine re STT SEC issues	1		
5/19/2015	Mike Thornton	Emails to co counsel re scheduling of call with mediator	0.5		
5/19/2015	Mike Thornton	Call with B. Paine re STT SEC issues	1		
5/19/2015	Rachel Wintterle	Document review	8		
5/20/2015	Ann Ten Eyck	Document review	8		
5/20/2015	Evan Hoffman	Emails with co counsel re document review projects	0.5		
5/20/2015	Mike Lesser	Compile additional topics for targeted review search; emails to co counsel re the same	4.5		
5/20/2015	Rachel Wintterle	Document review	8		
5/21/2015	Ann Ten Eyck	Document review	8		

5/21/2015	Evan Hoffman	Emails with co counsel re document review	0.7		
5/21/2015	Garrett Bradley	prepare for 5/22 mediation	2.5		
5/21/2015	Mike Lesser	Emails with co counsel re document review	0.7		
5/21/2015	Rachel Wintterle	Document review	8		
5/22/2015	Ann Ten Eyck	Document review	8		
5/22/2015	Garrett Bradley	Telephone conference with J. Marks and all parties re: settlement and BNY issues; potential next steps	1		
5/22/2015	Garrett Bradley	Call to G. Shapiro at SEC re scheduling meeting; emails to team re the same; strategy review for mediation	1.8		
5/22/2015	Mike Lesser	Telephone conference with J. Marks and all parties re: settlement and BNY issues; potential next steps	1		
5/22/2015	Mike Thornton	Telephone conference with J. Marks and all parties re: settlement and BNY issues; potential next steps	1		
5/22/2015	Rachel Wintterle	Document review	8		
5/26/2015	Ann Ten Eyck	Document review	8		
5/26/2015	Evan Hoffman	Conference call with e-mails to/from co-counsel and ERISA counsel re: mediation [redacted]	1.2		
5/26/2015	Garrett Bradley	Conference call with e-mails to/from co-counsel and ERISA counsel re: mediation [redacted] emails with local counsel and client	3		
5/26/2015	Mike Lesser	Conference call with e-mails to/from co-counsel and ERISA counsel re: mediation meeting, [redacted]	1.2		
5/26/2015	Mike Thornton	Conference call with e-mails to/from co-counsel and ERISA counsel re: [redacted]	1.2		
5/26/2015	Rachel Wintterle	Document review	8		
5/27/2015	Ann Ten Eyck	Document review	8		
5/27/2015	Evan Hoffman	E-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: scheduling mediation session; e-mails co counsel re: document review	1.8		
5/27/2015	Garrett Bradley	E-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: scheduling mediation session	1.3		
5/27/2015	Mike Lesser	E-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: scheduling mediation session	1.6		

5/27/2015	Mike Lesser	Emails to D. Chiplock re settlement scenarios	0.7		
5/27/2015	Mike Thornton	E-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: scheduling mediation session	1.2		
5/27/2015	Rachel Wintterle	Document review	8		
5/28/2015	Ann Ten Eyck	Document review	8		
5/28/2015	Evan Hoffman	Emails to co counsel re document reviewer project assignments	1		
5/28/2015	Evan Hoffman	Emails to co counsel re upcoming mediation strategy	0.2		
5/28/2015	Garrett Bradley	Emails to co counsel re upcoming mediation strategy	2.5		
5/28/2015	Mike Lesser	Emails to co counsel re upcoming mediation strategy	0.2		
5/28/2015	Mike Thornton	Emails to co counsel re upcoming mediation strategy	0.2		
5/28/2015	Rachel Wintterle	Document review	8		
5/29/2015	Ann Ten Eyck	Document review	8		
5/29/2015	Ann Ten Eyck	Document review	8		
5/29/2015	Garrett Bradley	Emails to J. O'Connell at DOJ re meeting coordination	0.2		
6/1/2015	Ann Ten Eyck	Document review	8		
6/1/2015	Evan Hoffman	Assist MAL to compile settlement scenarios; email to co counsel re the same	1.6		
6/1/2015	Evan Hoffman	Compile completed targeted research document review memos for MAL; review the same	1.2		
6/1/2015	Mike Lesser	Compile settlement scenarios; email to co counsel re the same	3.3		
6/1/2015	Rachel Wintterle	Document review	8		
6/2/2015	Ann Ten Eyck	Document review	8		
6/2/2015	Evan Hoffman	Pre DOJ meeting to discuss strategy	3.5		
6/2/2015	Evan Hoffman	Attend meeting at DOJ re [redacted]	1.5		
6/2/2015	Evan Hoffman	Attend mediation session with defendants at Wilmer Hale re [redacted] meeting with co counsel afterwards	5.5		
6/2/2015	Garrett Bradley	Pre DOJ meeting to discuss strategy	3.5		
6/2/2015	Garrett Bradley	Attend meeting at DOJ re class [redacted]	1.5		
6/2/2015	Garrett Bradley	Attend mediation session with defendants at Wilmer Hale re [redacted] meeting with co counsel afterwards	5.5		
6/2/2015	Mike Lesser	Pre DOJ meeting to discuss strategy	3.5		
6/2/2015	Mike Lesser	Attend meeting at DOJ re class settlement issues and concerns	1.5		

6/2/2015	Mike Lesser	Attend mediation session with defendants at Wilmer Hale re [redacted]	1.3		
6/2/2015	Mike Thornton	Pre DOJ meeting to discuss strategy	3.5		
6/2/2015	Mike Thornton	Attend meeting at DOJ re class settlement issues and concerns	1.5		
6/2/2015	Mike Thornton	Attend mediation session with defendants at Wilmer Hale re [redacted] meeting with co counsel afterwards	5.5		
6/3/2015	Ann Ten Eyck	Document review	8		
6/3/2015	Evan Hoffman	Edits to settlement matrix; emails to co counsel re the same	0.3		
6/3/2015	Evan Hoffman	Emails to co counsel re settlement numbers and ranges	0.2		
6/3/2015	Garrett Bradley	emails to co counsel re settlement matrix	0.2		
6/3/2015	Mike Lesser	emails to co counsel re settlement matrix	0.2		
6/3/2015	Mike Lesser	Emails to co counsel re settlement numbers and ranges	0.2		
6/3/2015	Mike Thornton	Emails to co counsel re settlement numbers and ranges	0.2		
6/3/2015	Rachel Wintterle	Document review	7		
6/4/2015	Ann Ten Eyck	Document review	8		
6/4/2015	Rachel Wintterle	Document review	8		
6/5/2015	Ann Ten Eyck	Document review	8		
6/5/2015	Evan Hoffman	emails with co counsel re DOJ	0.1		
6/5/2015	Garrett Bradley	Emails to R. Connolly at DOJ re scheduling of mediation session; emails with co counsel re the same	0.4		
6/5/2015	Mike Lesser	emails with co counsel re DOJ	0.1		
6/5/2015	Mike Thornton	emails with co counsel re DOJ	0.1		
6/6/2015	Mike Lesser	Revise settlement matrix scenarios for L. Sucharow; emails to co counsel re the same	3.8		
6/8/2015	Ann Ten Eyck	Document review	8		
6/8/2015	Evan Hoffman	Conference call in to meeting at Labaton to discuss 6/9 mediation	2		
6/8/2015	Garrett Bradley	Travel to NYC	2		
6/8/2015	Garrett Bradley	Meeting at Labaton to discuss 6/9 mediation; emails with DOJ	2.2		
6/8/2015	Mike Lesser	Travel to NYC	2		
6/8/2015	Mike Lesser	Meeting at Labaton to discuss 6/9 mediation	2		
6/8/2015	Mike Thornton	Travel to NYC	2		
6/8/2015	Mike Thornton	Meeting at Labaton to discuss 6/9 mediation	2		
6/9/2015	Ann Ten Eyck	Document review	8		
6/9/2015	Garrett Bradley	Attend mediation session	2		
6/9/2015	Garrett Bradley	Travel back from NYC to BOS	2		
6/9/2015	Mike Lesser	Attend mediation session	2		

6/9/2015	Mike Lesser	Travel back from NYC to BOS	2		
6/9/2015	Mike Thornton	Attend mediation session	2		
6/9/2015	Mike Thornton	Travel back from NYC to BOS	2		
6/10/2015	Ann Ten Eyck	Document review	8		
6/11/2015	Ann Ten Eyck	Document review	8		
6/11/2015	Rachel Wintterle	Document review	8		
6/12/2015	Ann Ten Eyck	Document review	8		
6/12/2015	Evan Hoffman	Calls and emails with ERISA co counsel and STT counsel re [redacted]	0.8		
6/12/2015	Mike Lesser	Calls and emails with ERISA co counsel and STT counsel re [redacted] emails to co counsel re the same	4.3	`	
6/12/2015	Mike Thornton	Discussion and emails with MAL re group trust ERISA	0.3		
6/12/2015	Rachel Wintterle	Document review	8		
6/15/2015	Ann Ten Eyck	Document review	8		
6/15/2015	Mike Lesser	Emails to L. Sucharow re ERISA allocation issues	0.2		
6/15/2015	Rachel Wintterle	Document review	8		
6/16/2015	Ann Ten Eyck	Document review	8		
6/16/2015	Evan Hoffman	Emails with co counsel re changing meditation to phone call and strategy	0.4		
6/16/2015	Garrett Bradley	Emails with co counsel re changing meditation to phone call and strategy	0.4		
6/16/2015	Mike Lesser	Emails with co counsel re changing meditation to phone call and strategy	0.3		
6/16/2015	Mike Thornton	Emails with co counsel re changing meditation to phone call and strategy	0.4		
6/16/2015	Rachel Wintterle	Document review	8		
6/17/2015	Ann Ten Eyck	Document review	8		
6/17/2015	Evan Hoffman	Call with mediator, defendants, and co counsel re mediation next steps; follow up call with co counsel re mediation strategy	1		
6/17/2015	Evan Hoffman	Research in to midpoint analyses for MAL	2		
6/17/2015	Garrett Bradley	Call with mediator, defendants, and co counsel re mediation next steps; follow up call with co counsel re mediation strategy	1		
6/17/2015	Mike Lesser	Call with mediator, defendants, and co counsel re mediation next steps; follow up call with co counsel re mediation strategy	1		
6/17/2015	Mike Lesser	Midpoint analysis research for MPT for use in damages calculations estimates	2.5		

6/17/2015	Mike Thornton	Call with mediator, defendants, and co counsel re mediation next steps; follow up call with co counsel re mediation strategy	1		
6/17/2015	Rachel Wintterle	Document review	8		
6/17/2015	Rachel Wintterle	Document review	8		
6/18/2015	Ann Ten Eyck	Document review	8		
6/18/2015	Mike Lesser	Emails to MPT re midpoint damages analysis	0.4		
6/18/2015	Mike Thornton	Review MAL email re midpoint	0.2		
6/18/2015	Rachel Wintterle	Document review	8		
6/19/2015	Ann Ten Eyck	Document review	8		
6/19/2015	Rachel Wintterle	Document review	8		
6/22/2015	Ann Ten Eyck	Document review	8		
6/22/2015	Rachel Wintterle	Document review	8		
6/23/2015	Ann Ten Eyck	Document review	8		
6/23/2015	Evan Hoffman	Emails with T. Kussin re document review targeted search projects	0.2		
6/23/2015	Mike Lesser	Compile additional topics for targeted research project; emails re the same	1.9		
6/23/2015	Rachel Wintterle	Document review	8		
6/24/2015	Ann Ten Eyck	Document review	8		
6/24/2015	Evan Hoffman	Review email from L. Sucharow re mediation update from STT and mediator;	0.1		
6/24/2015	Garrett Bradley	Review email from L. Sucharow re mediation update from STT and mediator;	0.1		
6/24/2015	Mike Lesser	Review email from L. Sucharow re mediation update from STT and mediator;	0.1		
6/24/2015	Mike Thornton	Review email from L. Sucharow re mediation update from STT and mediator;	0.1		
6/24/2015	Rachel Wintterle	Document review	8		
6/25/2015	Ann Ten Eyck	Document review	8		
6/25/2015	Garrett Bradley	Prepare for mediation; document review	5		
6/26/2015	Ann Ten Eyck	Document review	8		
6/26/2015	Evan Hoffman	Phone call with MAL re mediation progress and status	0.3		
6/26/2015	Garrett Bradley	Travel to NYC	2		
6/26/2015	Garrett Bradley	Attend mediation session	8.3		
6/26/2015	Garrett Bradley	Travel back from NYC to BOS	2		
6/26/2015	Mike Lesser	Travel to NYC	2		
6/26/2015	Mike Lesser	Attend mediation session; calls to ERH re the same	8.6		
6/26/2015	Mike Lesser	Travel back from NYC to BOS	2		
6/26/2015	Mike Thornton	Travel to NYC	2		

6/26/2015	Mike Thornton	Attend mediation session	8.3		
6/26/2015	Mike Thornton	Travel back from NYC to BOS	2		
6/26/2015	Rachel Wintterle	Document review	8		
6/28/2015	Evan Hoffman	Review email from L. Sucharow re conversation with mediator and defendants re next mediation session	0.1		
6/28/2015	Garrett Bradley	Review email from L. Sucharow re conversation with mediator and defendants re next mediation session	0.1		
6/28/2015	Mike Lesser	Review email from L. Sucharow re conversation with mediator and defendants re next mediation session	0.1		
6/28/2015	Mike Thornton	Review email from L. Sucharow re conversation with mediator and defendants re next mediation session	0.1		
6/29/2015	Evan Hoffman	Retrieve data analyses and other materials for use in mediation session for MAL; emails and calls with MAL re progress and updates of the same	1		
6/29/2015	Garrett Bradley	Attend mediation session	9		
6/29/2015	Mike Lesser	Call with L. Sarko re mediation strategy	0.2		
6/29/2015	Mike Lesser	Attend mediation session	9		
6/29/2015	Mike Thornton	Attend mediation session	9		
7/1/2015	Evan Hoffman	Emails with co counsel re termination of reviewers	0.2		
7/1/2015	Mike Lesser	Emails with co counsel re termination of reviewers	0.2		
7/6/2015	Garrett Bradley	TC with co-counsel regarding outstanding issues	1.5		
7/6/2015	Mike Lesser	Emails to co counsel re allocation issues	1		
7/16/2015	Garrett Bradley	Conference call with co-counsel re settlement issues; review ERISA and settlement drafts	3		
7/21/2015	Evan Hoffman	conference call with ERISA co counsel re [redacted] conference call with STT counsel re	1.5		
7/21/2015	Garrett Bradley	Conference call with ERISA co counsel re [redacted] conference call with STT counse re	1.5		
7/21/2015	Mike Lesser	conference call with ERISA co counsel re [redacted] conference call with STT counsel re	1.5		
7/21/2015	Mike Thornton	conference call with ERISA co counsel re [redacted] conference call with STT counsel re	1.5		
7/24/2015	Garrett Bradley	Review outstanding settlement issues;telephone call with co-counsel; prepare for conference call	3		
7/27/2015	Garrett Bradley	Review of settlement sheet and emails	1.5		

7/29/2015	Evan Hoffman	Conference call with all co counsel re STT term sheet proposals; DOL allocation issues; timing issue	1.3		
7/29/2015	Garrett Bradley	Conference call with all co counsel re STT term sheet proposals; DOL allocation issues; timing issue	1.3		
7/29/2015	Mike Lesser	Conference call with all co counsel re STT term sheet proposals; DOL allocation issues; timing issue	1.3		
7/29/2015	Mike Thornton	Conference call with all co counsel re STT term sheet proposals; DOL allocation issues; timing issue	1.3		
7/30/2015	Evan Hoffman	conference call with co counsel and DOL re [redacted]	0.5		
8/6/2015	Garrett Bradley	Telephone conference with co-counsel regarding outstanding issues and stratgey; review draft settlement	1.5		
8/7/2015	Garrett Bradley	Telephone conference with co-counsel regarding status and update of case	0.5		
8/7/2015	Mike Thornton	conference call with co counsel re status of case; internal meetings re the same	5		
8/11/2015	Garrett Bradley	Telephone conference with co-counsel regarding case	0.5		
8/12/2015	Garrett Bradley	conference call with co counsel; call with DOL; meeting with B. Lieff and MPT in NYC	8.5		
8/12/2015	Mike Thornton	conference call with co counsel; call with DOL; meeting with B. Lieff and GJB in NYC	8.5		
8/18/2015	Evan Hoffman	Work on draft of Plan of Allocation	1.1		
8/18/2015	Garrett Bradley	Review internal memos, allocation plan and documents; prepare for telephone conference	3.5		
8/19/2015	Evan Hoffman	Call with DOL and co counsel re: [redacted] issues	0.9		
8/19/2015	Mike Lesser	Call with DOL and co counsel re: [redacted] issues	0.9		
8/21/2015	Evan Hoffman	Draft plan of allocation; email to co-counsel for review	2		
8/21/2015	Mike Lesser	Draft plan of allocation; email to co-counsel for review	2		
8/26/2015	Evan Hoffman	Call with DOL [redacted] call with co-counsel re the same; edits to POA	1.3		
8/26/2015	Mike Lesser	Call with DOL [redacted] call with co-counsel re the same; edits to POA	1.3		
8/27/2015	Garrett Bradley	Discuss ongong strategy with co-counsel	2		
9/2/2015	Evan Hoffman	Call with DOL re [redacted] conference with MAL re same	0.3		
9/2/2015	Garrett Bradley	Review emails; In-house discussion on outstanding issues and stragey	1.5		

9/2/2015	Mike Lesser	Call with DOL re plan of allocation and group trust issues; conference with ERH re same	0.3		
9/11/2015	Evan Hoffman	call with MAL re DOL call and next steps	0.2		
9/11/2015	Mike Lesser	conference call with DOL re [redacted] call with ERH re the same	1.3		
9/12/2015	Evan Hoffman	review email from N. Zeiss re DOL call and status of term sheet	0.2		
9/12/2015	Garrett Bradley	review email from N. Zeiss re DOL call and status of term sheet	0.2		
9/12/2015	Mike Lesser	review email from N. Zeiss re DOL call and status of term sheet	0.2		
9/12/2015	Mike Thornton	review email from N. Zeiss re DOL call and status of term sheet	0.2		
9/13/2015	Mike Lesser	emails with co counsel re fee issues and POA in term sheet	0.8		
9/13/2015	Mike Thornton	emails with co counsel re fee issues and POA in term sheet	0.8		
9/22/2015	Mike Lesser	call with DOL, STT, and co counsel re [redacted]	1		
9/22/2015	Evan Hoffman	call with DOL, STT, and co counsel re [redacted]	1		
9/25/2015	Evan Hoffman	call with co-counsel and STT counsel re [redacted]	0.5		
9/25/2015	Mike Lesser	call with co-counsel and STT counsel re [redacted]	0.5		
10/6/2015	Mike Lesser	review of amended POA; comments and emails with co counsel re the same	1.2		
10/15/2015	Mike Lesser	review of POA and emails and calls to co counsel re the same	0.5		
11/4/2015	Mike Lesser	review of POA and emails and calls to co counsel re the same	0.5		
12/21/2015	Mike Lesser	review of amended POA and associated drafts; emails and calls to co counsel re the same	0.4		
12/22/2015	Mike Lesser	review of amended POA and associated drafts; emails and calls to co counsel re the same	0.7		
1/27/2016	Mike Lesser	review of [redacted] emails to co counsel re the same	0.8		
1/29/2016	Mike Lesser	review and edit POA with comments and edits to co counsel	1.5		

2/3/2016	Mike Lesser	call with claims administrator and email with co counsel re the same	0.8		
4/12/2016	Mike Lesser	conference call with administrator and stt counsel re data	0.4		
4/14/2016	Mike Lesser	review of settlement docs and conference call with co counsel re the same	2.5		
4/14/2016	Mike Thornton	review of settlement docs and conference call with co counsel re the same	1		
4/14/2016	Garrett Bradley	review of settlement docs and conference call with co counsel re the same	1		
4/15/2016	Mike Lesser	call with co-counsel re SEC status and term sheet, POA, and notice issues	0.7		
4/15/2016	Evan Hoffman	call with co-counsel re SEC status and term sheet, POA, and notice issues	0.7		
4/16/2016	Mike Lesser	review POA and settlement papers	0.9		
4/16/2016	Evan Hoffman	review POA and settlement papers	0.9		
4/19/2016	Mike Lesser	review settlement docs and email co counsel re the same	1.1		
5/2/2016	Mike Lesser	review stipulation and agreement of settlement and emails with co counsel re the same	1.5		
5/3/2016	Mike Lesser	calculations of non-us volume in settlement; emails to co counsel re the same	0.8		
5/25/2016	Mike Lesser	review of long form notice, emails with co counsel re the same	0.3		
5/26/2016	Mike Lesser	review of long form notice, emails with co counsel re the same	1.4		
5/27/2016	Mike Lesser	emails with co counsel re various provisions in the long form notice and edits thereto	0.4		
5/31/2016	Mike Lesser	review of settlement data re aspect of long form notice and emails with co counsel re the same	0.3		
5/31/2016	Mike Lesser	review of McTigue edits to settlement docs and email to co counsel re the same	0.2		
5/31/2016	Garrett Bradley	emails and calls with co counsel re scheduling of preliminary hearing issues; meeting with clerk; calls to defense counsel re the same	2		
6/2/2016	Mike Lesser	re-review of long form notice, stipulation, and POA with comments to co counsel	2.5		
6/2/2016	Evan Hoffman	review of long form notice, stipulation, and POA	1		

6/2/2016	Garret Bradley	With defense counsel, meeting with Judge Wolf Clerk re: scheduling of upcoming hearings; emails to co counsel re the same	1.6		
6/3/2016	Mike Lesser	review and redraft portions of notice/approval papers; discussions with co counsel re the same	3.5		
6/3/2016	Evan Hoffman	research and retrieve [redacted]	1		
6/5/2016	Mike Lesser	emails with co counsel re notice/approval papers	0.2		
6/7/2016	Mike Lesser	review of summary notice, long form notice, and emails with co counsel re the same	0.8		
6/10/2016	Mike Thornton	review and sign final versions of settlement papers	0.8		
6/23/2016	Garrett Bradley	meeting with co-counsel re: stratgey for joint status report hearing; draft motion request re the same; attend Status Report Hearing with Judge Wolf; emails to co counsel re the same	3		
6/23/2016	Mike Lesser	meeting with co-counsel re: stratgey for joint status report hearing; attend Status Report Hearing with Judge Wolf	1.7		
6/23/2016	Evan Hoffman	meeting with co-counsel re: stratgey for joint status report hearing; attend Status Report Hearing with Judge Wolf	1.7		
8/1/2016	Evan Hoffman	emails with D. Goldsmith and MAL re: powerpoint damages presentation for use in preliminary approval hearing	0.2		
8/8/2016	Mike Lesser	attend preliminary approval hearing in front of Judge Wolf; meetings with co counsel before and after to discuss strategy, crafting language responsive to Judge Wolf's suggestions	3		
8/8/2016	Garrett Bradley	attend preliminary approval hearing in front of Judge Wolf; meetings with co counsel before and after to discuss strategy, crafting language responsive to Judge Wolf's suggestions	3		
8/8/2016	Mike Thornton	attend preliminary approval hearing in front of Judge Wolf; meetings with co counsel before and after to discuss strategy, crafting language responsive to Judge Wolf's suggestions	3		

8/11/2016	Evan Hoffman	emails with co counsel re: delivery of CD containing proposed edits to settlement docs; emails with court clerk re the same; prepare CD and arrange delivery to Court	0.7		

Date	Timekeeper	Narrative	Hours	Task Code		
1/31/2013	Andrea Caruth	Participate in Catalyst doc review training	1			
2/13/2013	Andrea Caruth	Attend Catalyst doc review training	1			
3/5/2013	Andrea Caruth	Attend document review training for STT	1.5			
3/7/2013	Andrea Caruth	Document review	3			
3/8/2013	Andrea Caruth	Document review	6			
3/11/2013	Andrea Caruth	Document review	4.5			
3/12/2013	Andrea Caruth	Document review	4.5			
3/13/2013	Andrea Caruth	Document review	5			
3/14/2013	Andrea Caruth	Document review	5.5			
3/18/2013	Andrea Caruth	Document review	4			
3/19/2013	Andrea Caruth	Document review	4.5			
3/20/2013	Andrea Caruth	Document review	5			
3/21/2013	Andrea Caruth	Document review	3			
3/22/2013	Andrea Caruth	Document review	5			
3/25/2013	Andrea Caruth	Document review	4.5			
3/26/2013	Andrea Caruth	Document review	4.5			
3/28/2013	Andrea Caruth	Document review	3			
4/1/2013	Andrea Caruth	Document review	5			
4/2/2013	Andrea Caruth	Document review	4.5			
4/3/2013	Andrea Caruth	Document review	4.5			
4/4/2013	Andrea Caruth	Meeting with doc review team to discuss progress and coding issues	1			
4/4/2013	Andrea Caruth	Document review	4			
4/5/2013	Andrea Caruth	Document review	8			
4/8/2013	Andrea Caruth	Document review	4			
4/9/2013	Andrea Caruth	Document review	3.5			
4/10/2013	Andrea Caruth	Document review	4			
4/11/2013	Andrea Caruth	Document review	3.5			
4/12/2013	Andrea Caruth	Document review	3.5			
4/17/2013	Andrea Caruth	Meeting with document review team to discuss issues re coding	1			
4/22/2013	Andrea Caruth	Document review	4			
4/23/2013	Andrea Caruth	Document review	3.5			
4/25/2013	Andrea Caruth	Document review	3			
4/26/2013	Andrea Caruth	Document review	4			
4/29/2013	Andrea Caruth	Document review	2			
4/30/2013	Andrea Caruth	Document review	2			
5/1/2013	Andrea Caruth	Document review	3			
5/2/2013	Andrea Caruth	Document review	3			

5/3/2013	Andrea Caruth	Document review	3.5			
5/6/2013	Andrea Caruth	Document review	2			
5/7/2013	Andrea Caruth	Document review	3			
5/8/2013	Andrea Caruth	Document review	3			
5/9/2013	Andrea Caruth	Document review	4			
5/10/2013	Andrea Caruth	Document review	5			
5/13/2013	Andrea Caruth	Document review	5			
5/14/2013	Andrea Caruth	Document review	3.5			
5/15/2013	Andrea Caruth	Document review	4			
5/16/2013	Andrea Caruth	Document review	4.5			
5/17/2013	Andrea Caruth	Document review	5			
5/20/2013	Andrea Caruth	Document review	4			
5/21/2013	Andrea Caruth	Document review	3			
5/22/2013	Andrea Caruth	Document review	4			
5/23/2013	Andrea Caruth	Document review	4			
5/24/2013	Andrea Caruth	Document review	2			
5/28/2013	Andrea Caruth	Document review	4			
5/29/2013	Andrea Caruth	Document review	4			
5/30/2013	Andrea Caruth	Document review	2			
6/3/2013	Andrea Caruth	Document review	3.5			
6/4/2013	Andrea Caruth	Document review	4			
6/11/2013	Andrea Caruth	Document review	3.5			
6/12/2013	Andrea Caruth	Document review	4			
6/13/2013	Andrea Caruth	Document review	4.5			
6/17/2013	Andrea Caruth	Document review	4			
6/18/2013	Andrea Caruth	Document review	5			
6/25/2013	Andrea Caruth	Document review	4.5			
6/26/2013	Andrea Caruth	Document review	4.5			
6/27/2013	Andrea Caruth	Document review	5			
6/28/2013	Andrea Caruth	Document review	5			
7/9/2013	Andrea Caruth	Document review	4.5			
7/10/2013	Andrea Caruth	Document review	4.5			
7/11/2013	Andrea Caruth	Document review	4			
7/12/2013	Andrea Caruth	Document review	4.5			
7/30/2013	Andrea Caruth	Document review	5			
7/31/2013	Andrea Caruth	Document review	4.5			
8/1/2013	Andrea Caruth	Document review	5			
8/2/2013	Andrea Caruth	Document review	5			
8/12/2013	Andrea Caruth	Document review	4.5			
8/13/2013	Andrea Caruth	Document review	5			
8/14/2013	Andrea Caruth	Document review	5			

9/5/2013	Andrea Caruth	Internal doc review team meeting re progress and issues	1			
9/5/2013	Andrea Caruth	Document review	4.5			
9/6/2013	Andrea Caruth	Document review	4.5			
9/9/2013	Andrea Caruth	Document review	4.5			
9/10/2013	Andrea Caruth	Document review	4.5			
9/11/2013	Andrea Caruth	Document review	4			
9/12/2013	Andrea Caruth	Document review	4.5			
9/17/2013	Andrea Caruth	Document review	5			
9/19/2013	Andrea Caruth	Document review	4.5			
9/23/2013	Andrea Caruth	Document review	5			
9/24/2013	Andrea Caruth	Document review	5			
9/27/2013	Andrea Caruth	Document review	5			
10/1/2013	Andrea Caruth	Document review	5.5			
10/2/2013	Andrea Caruth	Document review	5			
10/3/2013	Andrea Caruth	Document review	4.5			
10/7/2013	Andrea Caruth	Document review	5			
10/8/2013	Andrea Caruth	Document review	5			
10/9/2013	Andrea Caruth	Document review	5			
10/10/2013	Andrea Caruth	Document review	4.5			
10/11/2013	Andrea Caruth	Document review	4.5			
10/15/2013	Andrea Caruth	Document review	5.5			
10/16/2013	Andrea Caruth	Document review	4.5			
10/17/2013	Andrea Caruth	Document review	5			
10/18/2013	Andrea Caruth	Document review	4.5			
10/21/2013	Andrea Caruth	Document review	5.5			
10/22/2013	Andrea Caruth	Document review	5			
10/23/2013	Andrea Caruth	Document review	4.5			
10/25/2013	Andrea Caruth	Document review	5			
10/29/2013	Andrea Caruth	Document review	5			
10/30/2013	Andrea Caruth	Document review	5			
10/31/2013	Andrea Caruth	Document review	5.5			
11/5/2013	Andrea Caruth	Document review	4.5			
11/6/2013	Andrea Caruth	Document review	5			
11/7/2013	Andrea Caruth	Document review	5.5			
11/14/2013	Andrea Caruth	Document review	4.5			
11/15/2013	Andrea Caruth	Document review	5			
11/19/2013	Andrea Caruth	Document review	5.5			
11/20/2013	Andrea Caruth	Document review	4.5			
11/25/2013	Andrea Caruth	Document review	5			
11/26/2013	Andrea Caruth	Document review	3			

12/2/2013	Andrea Caruth	Document review	3			
12/3/2013	Andrea Caruth	Document review	5.5			
12/5/2013	Andrea Caruth	Document review	5			
12/6/2013	Andrea Caruth	Document review	4			
12/10/2013	Andrea Caruth	Document review	4.5			
12/12/2013	Andrea Caruth	Document review	5			
12/16/2013	Andrea Caruth	Document review	5.5			
12/18/2013	Andrea Caruth	Document review	5.5			
12/23/2013	Andrea Caruth	Document review	4.5			
1/6/2014	Andrea Caruth	Document review	5			
1/8/2014	Andrea Caruth	Document review	4.5			
1/15/2014	Andrea Caruth	Document review	5			
1/17/2014	Andrea Caruth	Document review	4.5			
1/23/2014	Andrea Caruth	Document review	4			
1/24/2014	Andrea Caruth	Document review	4			
1/28/2014	Andrea Caruth	Document review	4.5			
2/20/2014	Andrea Caruth	Document review	2			
3/12/2014	Andrea Caruth	Document review	2			Caruth Total: 571.5
1/26/2015	Andrew McClelland	Document review	8			
1/27/2015	Andrew McClelland	Document review	8			
1/28/2015	Andrew McClelland	Document review	8			
1/29/2015	Andrew McClelland	Document review	9			
1/30/2015	Andrew McClelland	Document review	8			
2/2/2015	Andrew McClelland	Document review	8			
2/3/2015	Andrew McClelland	Document review	9			
2/4/2015	Andrew McClelland	Document review	8			
2/5/2015	Andrew McClelland	Document review	8			
2/6/2015	Andrew McClelland	Document review	8			
2/9/2015	Andrew McClelland	Document review	8			

2/10/2015	Andrew McClelland	Document review	9			
2/11/2015	Andrew McClelland	Document review	5.5			
2/12/2015	Andrew McClelland	Document review	8			
2/13/2015	Andrew McClelland	Document review	6			
2/15/2015	Andrew McClelland	Document review	4.5			
2/17/2015	Andrew McClelland	Document review	8			
2/18/2015	Andrew McClelland	Document review	8			
2/19/2015	Andrew McClelland	Document review	8			
2/20/2015	Andrew McClelland	Document review	8			
2/21/2015	Andrew McClelland	Document review	8			
2/23/2015	Andrew McClelland	Document review	8			
2/24/2015	Andrew McClelland	Document review	2			
2/25/2015	Andrew McClelland	Document review	5			
2/26/2015	Andrew McClelland	Document review	8			
2/27/2015	Andrew McClelland	Document review	8			
2/28/2015	Andrew McClelland	Document review	5			
3/1/2015	Andrew McClelland	Document review	4			
3/2/2015	Andrew McClelland	Document review	8			
3/3/2015	Andrew McClelland	Document review	8			
3/4/2015	Andrew McClelland	Document review	8			

3/5/2015	Andrew McClelland	Document review	8			
3/6/2015	Andrew McClelland	Document review	7			
3/8/2015	Andrew McClelland	Document review	1			
3/9/2015	Andrew McClelland	Document review	8			
3/10/2015	Andrew McClelland	Document review	8			
3/11/2015	Andrew McClelland	Document review	8			
3/12/2015	Andrew McClelland	Document review	8			
3/13/2015	Andrew McClelland	Document review	8			
3/16/2015	Andrew McClelland	Document review	8			
3/17/2015	Andrew McClelland	Document review	8			
3/18/2015	Andrew McClelland	Document review	8			
3/19/2015	Andrew McClelland	Document review	8			
3/20/2015	Andrew McClelland	Document review	5			
3/23/2015	Andrew McClelland	Document review	8			
3/24/2015	Andrew McClelland	Document review	8			
3/25/2015	Andrew McClelland	Document review	6.5			
3/26/2015	Andrew McClelland	Document review	8			
3/27/2015	Andrew McClelland	Document review	8			McClelland Total: 358.5
3/27/2015	Ann Ten Eyck	Document review	8			
3/30/2015	Ann Ten Eyck	Document review	7.3			
3/31/2015	Ann Ten Eyck	Document review	7.8			
4/1/2015	Ann Ten Eyck	Document review	7.5			

4/2/2015	Ann Ten Eyck	Document review	8			
4/3/2015	Ann Ten Eyck	Document review	8			
4/6/2015	Ann Ten Eyck	Document review	8			
4/7/2015	Ann Ten Eyck	Document review	6			
4/8/2015	Ann Ten Eyck	Document review	7			
4/9/2015	Ann Ten Eyck	Document review	8			
4/10/2015	Ann Ten Eyck	Document review	8			
4/13/2015	Ann Ten Eyck	Document review	8			
4/14/2015	Ann Ten Eyck	Document review	8			
4/15/2015	Ann Ten Eyck	Document review	8			
4/16/2015	Ann Ten Eyck	Document review	8			
4/17/2015	Ann Ten Eyck	Document review	8			
4/20/2015	Ann Ten Eyck	Document review	8			
4/21/2015	Ann Ten Eyck	Document review	8			
4/22/2015	Ann Ten Eyck	Document review	8			
4/23/2015	Ann Ten Eyck	Document review	8			
4/27/2015	Ann Ten Eyck	Document review	7			
4/28/2015	Ann Ten Eyck	Document review	8			
4/29/2015	Ann Ten Eyck	Document review	8			
4/30/2015	Ann Ten Eyck	Document review	8			
5/1/2015	Ann Ten Eyck	Document review	8			
5/4/2015	Ann Ten Eyck	Document review	8			
5/5/2015	Ann Ten Eyck	Document review	8			
5/6/2015	Ann Ten Eyck	Document review	8			
5/7/2015	Ann Ten Eyck	Document review	8			
5/8/2015	Ann Ten Eyck	Document review	8			
5/11/2015	Ann Ten Eyck	Document review	8			
5/12/2015	Ann Ten Eyck	Document review	8			
5/13/2015	Ann Ten Eyck	Document review	8			
5/14/2015	Ann Ten Eyck	Document review	8			
5/15/2015	Ann Ten Eyck	Document review	8			
5/18/2015	Ann Ten Eyck	Document review	8			
5/19/2015	Ann Ten Eyck	Document review	8			
5/20/2015	Ann Ten Eyck	Document review	8			
5/21/2015	Ann Ten Eyck	Document review	8			
5/22/2015	Ann Ten Eyck	Document review	8			
5/26/2015	Ann Ten Eyck	Document review	8			
5/27/2015	Ann Ten Eyck	Document review	8			
5/28/2015	Ann Ten Eyck	Document review	8			
5/29/2015	Ann Ten Eyck	Document review	8			
5/29/2015	Ann Ten Eyck	Document review	8			

6/1/2015	Ann Ten Eyck	Document review	8			
6/2/2015	Ann Ten Eyck	Document review	8			
6/3/2015	Ann Ten Eyck	Document review	8			
6/4/2015	Ann Ten Eyck	Document review	8			
6/5/2015	Ann Ten Eyck	Document review	8			
6/8/2015	Ann Ten Eyck	Document review	8			
6/9/2015	Ann Ten Eyck	Document review	8			
6/10/2015	Ann Ten Eyck	Document review	8			
6/11/2015	Ann Ten Eyck	Document review	8			
6/12/2015	Ann Ten Eyck	Document review	8			
6/15/2015	Ann Ten Eyck	Document review	8			
6/16/2015	Ann Ten Eyck	Document review	8			
6/17/2015	Ann Ten Eyck	Document review	8			
6/18/2015	Ann Ten Eyck	Document review	8			
6/19/2015	Ann Ten Eyck	Document review	8			
6/22/2015	Ann Ten Eyck	Document review	8			
6/23/2015	Ann Ten Eyck	Document review	8			
6/24/2015	Ann Ten Eyck	Document review	8			
6/25/2015	Ann Ten Eyck	Document review	8			
6/26/2015	Ann Ten Eyck	Document review	8			Eyck Total: 514.6
2/9/2015	Chris Jordan	Document review	8			
2/11/2015	Chris Jordan	Document review	8			
2/12/2015	Chris Jordan	Document review	8			
2/13/2015	Chris Jordan	Document review	8			
2/15/2015	Chris Jordan	Document review	6			
2/16/2015	Chris Jordan	Document review	8			
2/17/2015	Chris Jordan	Document review	4.5			
2/18/2015	Chris Jordan	Document review	7			
2/19/2015	Chris Jordan	Document review	8			
2/20/2015	Chris Jordan	Document review	5.5			
2/22/2015	Chris Jordan	Document review	6			
2/23/2015	Chris Jordan	Document review	8			
2/24/2015	Chris Jordan	Document review	8			
2/25/2015	Chris Jordan	Document review	8			
2/26/2015	Chris Jordan	Document review	8			
2/27/2015	Chris Jordan	Document review	8			
3/2/2015	Chris Jordan	Document review	8			
3/3/2015	Chris Jordan	Document review	8			
3/5/2015	Chris Jordan	Document review	5			
3/9/2015	Chris Jordan	Document review	8			
3/10/2015	Chris Jordan	Document review	8			

3/11/2015	Chris Jordan	Document review	8			
3/13/2015	Chris Jordan	Document review	6			
3/16/2015	Chris Jordan	Document review	8			
3/17/2015	Chris Jordan	Document review	8			
3/18/2015	Chris Jordan	Document review	8			
3/19/2015	Chris Jordan	Document review	8			
3/20/2015	Chris Jordan	Document review	8			
3/23/2015	Chris Jordan	Document review	8			
3/24/2015	Chris Jordan	Document review	8			
3/25/2015	Chris Jordan	Document review	8			
3/26/2015	Chris Jordan	Document review	8			
3/27/2015	Chris Jordan	Document review	5			
3/28/2015	Chris Jordan	Document review	3			
3/30/2015	Chris Jordan	Document review	8			
3/31/2015	Chris Jordan	Document review	8			
4/1/2015	Chris Jordan	Document review	8			
4/2/2015	Chris Jordan	Document review	8			
4/3/2015	Chris Jordan	Document review	8			Jordan Total: 288
4/20/2010	Dave Rosenberg	formatting and translating AR trade data to be sent to expert	5			
4/21/2010	Dave Rosenberg	formatting and translating AR trade data to be sent to expert	3			
12/10/2009	Evan Hoffman	memo and research re [redacted]	7			
1/20/2010	Evan Hoffman	review and sort pension fund FX trading data	3.8			
1/21/2010	Evan Hoffman	review and sort pension fund FX trading data	7.9			
1/22/2010	Evan Hoffman	review and sort pension fund FX trading data	7			
1/25/2010	Evan Hoffman	review and sort pension fund FX trading data	5.8			
1/28/2010	Evan Hoffman	Call with co-counsel re: status of case and draft complaint	0.8			
1/28/2010	Evan Hoffman	review and sort pension fund FX trading data	7.7			
2/1/2010	Evan Hoffman	review and sort pension fund FX trading data	8			
2/2/2010	Evan Hoffman	review and sort pension fund FX trading data	6			
2/4/2010	Evan Hoffman	review and sort pension fund FX trading data	5.5			
2/5/2010	Evan Hoffman	review and sort pension fund FX trading data	8.6			
2/9/2010	Evan Hoffman	review and sort pension fund FX trading data	6.8			
2/10/2010	Evan Hoffman	review and sort pension fund FX trading data	7.4			
2/11/2010	Evan Hoffman	review and sort pension fund FX trading data	8			
2/12/2010	Evan Hoffman	review and sort pension fund FX trading data	7.8			
2/15/2010	Evan Hoffman	review and sort pension fund FX trading data	6			

2/16/2010	Evan Hoffman	review and sort pension fund FX trading data	9			
3/2/2010	Evan Hoffman	sorting and review of pension fund FX trading data	6.8			
3/23/2010	Evan Hoffman	Research compile	6.9			
3/24/2010	Evan Hoffman	review and sort pension fund FX trading data	5			
4/7/2010	Evan Hoffman	Create	8			
4/8/2010	Evan Hoffman	Emails to Mike Lesser re ; emails to Mike Lesser and research in to ; continue work on	4.7			
4/14/2010	Evan Hoffman	emails re: 93A claims; continue work on IM chart	3.7			
4/15/2010	Evan Hoffman	continue work on IM chart project	3.2			
4/18/2010	Evan Hoffman	review and sort pension fund FX trading data; continue work on IM Chart	7			
4/20/2010	Evan Hoffman	formatting and translating AR trade data to be sent to expert	7.2			
4/21/2010	Evan Hoffman	formatting and translating AR trade data to be sent to expert	6.6			
4/22/2010	Evan Hoffman	formatting and translating AR trade data to be sent to expert	5.9			
4/23/2010	Evan Hoffman	formatting and translating AR trade data to be sent to expert	3			
4/28/2010	Evan Hoffman	formatting and translating AR FX crossdeals trade data to be sent to expert	7.9			
4/29/2010	Evan Hoffman	formatting and translating AR FX crossdeals trade data to be sent to expert	7			
4/30/2010	Evan Hoffman	emails with MAL and consulting expert re Arkansas trade data	1			
5/4/2010	Evan Hoffman	research and compile	4			
5/11/2010	Evan Hoffman	compile, review, sort, and categorize pension fund FX trading data	7.7			
5/11/2010	Evan Hoffman	compile, review, sort, and categorize pension fund FX trading data	8			
5/13/2010	Evan Hoffman	compile, review, sort, and categorize pension fund FX trading data	8			

5/24/2010	Evan Hoffman	Compile [redacted]	6			
9/8/2010	Evan Hoffman	research and memo preparation for consultant on STT custodied funds	2			
9/17/2010	Evan Hoffman	research re drafting fact section of complaint	4			
9/20/2010	Evan Hoffman	revieew [redacted]	1			
9/20/2010	Evan Hoffman	draft complaint introduction	3.3			
9/21/2010	Evan Hoffman	Calls with LCHB and Labaton re class complaint drafting; emails re the same; review documents re the same	2			
9/27/2010	Evan Hoffman	draft complaint fact section	4.9			
9/28/2010	Evan Hoffman	Draft fact section of complaint	4.4			
10/26/2010	Evan Hoffman	review emails from co counsel re 93A cases	1			
10/27/2010	Evan Hoffman	emails and discussions with co counsel and clients re [redacted]; research related to	2.2			
11/11/2010	Evan Hoffman	research for MAL re possible witnesses	1			
11/16/2010	Evan Hoffman	emails and analysis of possible witnesses	0.4			
11/22/2010	Evan Hoffman	emails and conference call re complaint drafting	0.6			
11/23/2010	Evan Hoffman	assist MAL with researching draft questions for witnesses	3.9			
12/2/2010	Evan Hoffman	Draft responses to Bank's arguments	1.8			
12/3/2010	Evan Hoffman	draft response to Bank's positions; draft complaint	5.5			
12/6/2010	Evan Hoffman	draft complaint and edit fact section	2			
12/6/2010	Evan Hoffman	Call with Lexi Hazam re status of drafting complaint	0.5			
12/8/2010	Evan Hoffman	draft complaint fact section	3.3			
12/9/2010	Evan Hoffman	draft and edit complaint	5.9			
12/10/2010	Evan Hoffman	draft and edit complaint	3			
12/15/2010	Evan Hoffman	Draft 93A Demand Letter	6.9			
12/20/2010	Evan Hoffman	Research 93A issues re differences between sections 9 and 11 for damages and liability issues	4.6			
12/21/2010	Evan Hoffman	Continued research re 93A sections 9 and 11; begin draft of memo re the same	5.6			
12/22/2010	Evan Hoffman	Finish memo to MAL re 93A sections 9 vs 11	7.2			
12/23/2010	Evan Hoffman	research and memo to MPT and MAL re [redacted]	7			
1/5/2011	Evan Hoffman	Compile and organize and analyze IM guides from STT cd	6			

1/6/2011	Evan Hoffman	prepare summary of IM guides	3			
1/7/2011	Evan Hoffman	research [redacted] email to MAL re the same	2			
1/10/2011	Evan Hoffman	complaint drafting fact section	2			
1/13/2011	Evan Hoffman	edits to IM guide chart; addings additional changes and additional guides	4.4			
1/25/2011	Evan Hoffman	Track all IM guide changes from 1999 to present; create chart and list re the same	7.3			
1/26/2011	Evan Hoffman	annotate and edit draft complaint; edits to MAL and meetings re the same	4.9			
1/28/2011	Evan Hoffman	review of co counsel memo on 93A and other MA claims	1.1			
2/2/2011	Evan Hoffman	Research and draft 93a Demand Letter; emails with MAL re the same	7			
2/3/2011	Evan Hoffman	draft letter to client explaining procedures for filing 93A letter in advance of suit; sections 9 vs. 11; send to GJB for review	4.3			
2/4/2011	Evan Hoffman	Annotations to complaint; emails to co counsel re the same	1.8			
2/6/2011	Evan Hoffman	review and edit 93A demand letter draft	3			
2/7/2011	Evan Hoffman	Call with LCHB re Complaint	0.3			
2/7/2011	Evan Hoffman	Research and draft [redacted]	2.8			
2/8/2011	Evan Hoffman	Emails and call with co-counsel re draft complaint	2.5			
2/9/2011	Evan Hoffman	emails with co counsel re complaint filing and procedure	0.4			
2/10/2011	Evan Hoffman	Call with co-counsel re complaint filing; preparation of cover sheets for USDC filing	2.1			
2/17/2011	Evan Hoffman	Conference call with co-counsel re case status and strategy	1.1			
2/24/2011	Evan Hoffman	Review drafts of discovery from co-counsel	1.3			
2/28/2011	Evan Hoffman	Call with co-counsel re status and strategy	0.5			
3/7/2011	Evan Hoffman	Revise and edit [redacted]; memo to MPT re [redacted]	6.9			
3/8/2011	Evan Hoffman	conference with co counsel re regarding DOJ investigation; internal meetings re the same	2.4			
3/10/2011	Evan Hoffman	Further edits to IM Guide charts; emails re the same	2.3			
3/11/2011	Evan Hoffman	Call with Steve Fineman re FX Transparency meeting	0.5			
3/15/2011	Evan Hoffman	Emails with co-counsel re 93A issues	0.8			
3/16/2011	Evan Hoffman	Calls with co-counsel re case status	0.9			

3/17/2011	Evan Hoffman	emails with co counsel re FX transparency data and discovery issues	0.5			
3/24/2011	Evan Hoffman	emails with co counsel re ECF login information and pro hac issues	1			
3/28/2011	Evan Hoffman	memo to MAL and MPT re summarizing changes in STT IM guides and key language to focus on	3			
3/29/2011	Evan Hoffman	Prepare and file pro hac motion for co-counsel	2.3			
4/1/2011	Evan Hoffman	emails with co counsel re discovery schedule and motion to dismiss	1			
4/5/2011	Evan Hoffman	emails with co counsel re fx expert review of data	0.2			
4/6/2011	Evan Hoffman	Prepare and file motions for appointment of class counsel	1.3			
4/7/2011	Evan Hoffman	File motions with court re class counsel	0.4			
4/12/2011	Evan Hoffman	Research and draft memo re [redacted]	7.1			
4/13/2011	Evan Hoffman	Review emails from co-counsel re allegations and facts to be included in proposed complaint; research re the same; emails to co-counsel incorporating the same	8.1			
4/14/2011	Evan Hoffman	Conferences, telephone calls, emails to/from Labaton and Lieff counsel regarding amended complaint; draft, amend, and edit same	6.4			
4/14/2011	Evan Hoffman	Emails with Labaton co-counsel re STT assets under custody	0.6			
4/15/2011	Evan Hoffman	Review proposed Amended Complaint draft; edits and comments to MAL re the same; emails with co counsel re the same	3.8			
4/15/2011	Evan Hoffman	Prepare and file Amended Complaint	1.8			
5/6/2011	Evan Hoffman	Edits and updates to STT IM guide chart	2			
6/2/2011	Evan Hoffman	emails to co counsel re motion to dismiss briefing	0.3			
6/6/2011	Evan Hoffman	Arrange and file pro hac motion for Dan Chiplock; review STT IM Guide Update and email MAL re the same	2.6			
6/8/2011	Evan Hoffman	Meeting re assignments for motion to dismiss	1			
6/22/2011	Evan Hoffman	Research re Negligent Misrepresentation in MA case law for assigned briefing for Opp to MTD	6			
6/23/2011	Evan Hoffman	Research re Negligent Misrepresentation for Opp to MTD; draft memo to MAL re the same; emails with co counsel re the same	6.5			
6/24/2011	Evan Hoffman	Conference call with fx expert and co counsel re MTD issues	1.1			

6/27/2011	Evan Hoffman	Call with co-counsel re MTD assignments; internal meetings re the same	2.5			
7/6/2011	Evan Hoffman	Call with co-counsel re MTD assignment progress	0.7			
7/7/2011	Evan Hoffman	Draft Negligent Misrep. Section of Opp to MTD	5			
7/8/2011	Evan Hoffman	Further drafting of Negligent Misrep. Section of Opp to MTD; review co-counsel section drafts	4.4			
7/9/2011	Evan Hoffman	review co counsel section drafts; emails re the same	3.7			
7/11/2011	Evan Hoffman	Further drafting of Negligent Misrep. Section of Opp to MTD	4.2			
7/12/2011	Evan Hoffman	Call with co counsel re progress of MTD sections	0.8			
7/14/2011	Evan Hoffman	emails with co counsel re motion to dimsiss edits	0.4			
7/15/2011	Evan Hoffman	Edits and further drafting Negligent Misrep. Section of Opp to MTD; memo and research re fiduciary language in STT custodial contracts	6.9			
7/18/2011	Evan Hoffman	Finish draft of Negligent Misrep. Section of Opp to MTD; send to co counsel	5			
7/19/2011	Evan Hoffman	Incorporate edits and comments from co counsel in to draft of Negligent Misrep. Section of Opp to MTD; further research re the same	6.2			
7/20/2011	Evan Hoffman	Finish Negligent Misrep. Section of Opp to MTD; send to co counsel	2.9			
8/4/2011	Evan Hoffman	Memo to MAL and MPT re Hill securities case decision and impacts on class case.	6.4			
8/5/2011	Evan Hoffman	emails with co counsel re notice of supplemental authority after Gertner decision	0.3			
9/2/2011	Evan Hoffman	emails to co counsel re Judge Wolf and case status	0.4			
9/15/2011	Evan Hoffman	emails with co-counsel re status of case and strategy meeting	0.2			
9/15/2011	Evan Hoffman	research [redacted]	3			
9/16/2011	Evan Hoffman	emails with co-ounsel re case strategy meeting	0.4			
9/20/2011	Evan Hoffman	review and summarize [redacted] research in to [redacted]	1.9			
10/14/2011	Evan Hoffman	Conference call with LCHB re [redacted]	1			
10/17/2011	Evan Hoffman	Call with co-counsel re [redacted]	0.6			
1/12/2012	Evan Hoffman	emails and phone calls with co counsel re oral argument date and strategy	0.7			
2/16/2012	Evan Hoffman	emails with co counsel re cancelation of oral argument	0.4			
2/17/2012	Evan Hoffman	emails with co counsel re status of mtd hearing	0.2			
2/28/2012	Evan Hoffman	emails with co counsel re STT press	0.1			

4/13/2012	Evan Hoffman	emails with co counsel re new hearing date	0.1			
4/25/2012	Evan Hoffman	emails with co counsel re oral argument	0.2			
5/1/2012	Evan Hoffman	Conference call with co-counsel re 5/28 MTD hearing	0.5			
5/8/2012	Evan Hoffman	Prepare and attend Judge Wolf MTD Hearing	6			
5/10/2012	Evan Hoffman	Call with co-counsel re settlement and class issues	0.5			
5/15/2012	Evan Hoffman	emails with D. Chiplock re hearing transcript	0.2			
5/15/2012	Evan Hoffman	Call with co-counsel re strategy after Wolf denial of MTD and settlement discussion suggestion	0.4			
5/17/2012	Evan Hoffman	emails with co counsel re mediation issues	0.4			
5/24/2012	Evan Hoffman	emails and calls re mediation meeting	0.3			
5/29/2012	Evan Hoffman	emails and calls re mediation meeting	0.5			
6/20/2012	Evan Hoffman	Conferences and telephone calls with and emails to/from co counsel re draft settlement language, re mediators, re case strategy; analyze State Street Investment Manager Guide re same; draft and amend draft settlement agreement;	5			
6/21/2012	Evan Hoffman	Calls with co-counsel re mediation meeting with STT counsel	1.1			
6/22/2012	Evan Hoffman	meetings with STT counsel and co-counsel re settlement; conference and conference call with co counsel re settlement proposals, re mediation, re discussions with FX Transparency	6.1			
6/24/2012	Evan Hoffman	emails with co counsel re mediation; calls with co counsel re FX Transparency data	0.7			
6/25/2012	Evan Hoffman	emails and calls with co counsel re [redacted]	1.1			
7/2/2012	Evan Hoffman	emails with co counsel re mediation and hearing statement	0.8			
7/5/2012	Evan Hoffman	emails and calls with co counsel re damages chart for ARTRS	1			
7/10/2012	Evan Hoffman	E-mails to/from co counsel re: mediation dates re: submission to court re: artrs DATA analysis; analysis re: same	2.5			
7/11/2012	Evan Hoffman	emails and calls with co counsel re requests for more info from STT	1			
7/13/2012	Evan Hoffman	emails to co counsel re status report to court	0.1			
7/16/2012	Evan Hoffman	emails to co counsel re potential mediators	0.6			
7/27/2012	Evan Hoffman	emails to co counsel re mediation	0.3			
8/1/2012	Evan Hoffman	memo on Henriquez complaint; emails to co counsel re the same	3.9			

8/7/2012	Evan Hoffman	Conference call with co-counsel, mediator, and defense counsel re plans for mediation; emails re the same	1.4			
8/8/2012	Evan Hoffman	Emails and phone calls with co-counsel re data requests for mediation	1.8			
8/9/2012	Evan Hoffman	call with co counsel and defense counsel re data requests for mediation; emails re same	1.5			
8/15/2012	Evan Hoffman	E-mails to/from co counsel re: information request to State Street; telephone conference with co counsel re the same	2.3			
8/23/2012	Evan Hoffman	Call with LCHB re case status and mediation; emails re the same; emails re ERISA complaint	2.8			
8/24/2012	Evan Hoffman	emails to co counsel re CA documents	1			
8/27/2012	Evan Hoffman	emails to co counsel re mediation scheduling and logistics	0.5			
8/29/2012	Evan Hoffman	Emails with co-counsel re extensions for defendants; meditation dates	0.8			
8/30/2012	Evan Hoffman	E-mails internally and with co-counsel re: ERISA action, intervention, mediation strategy issues	0.8			
8/31/2012	Evan Hoffman	emails with co counsel re mediation logistics and ERISA plainiffs	0.1			
9/4/2012	Evan Hoffman	emails and calls re mediation logistics and strategy	1			
9/5/2012	Evan Hoffman	Telephone conference with co-counsel re: ERISA action, intervention, coordination, consolidation, mediation issues; post-call discussion re: same	1			
9/10/2012	Evan Hoffman	Conference call with co counsel re: ERISA claims; telephone conference with co counsel re damages estimates	2.5			
9/11/2012	Evan Hoffman	Travel to NYC	2			
9/11/2012	Evan Hoffman	Meeting with LCHB and Labaton re mediation goals, strategy.	4			
9/13/2012	Evan Hoffman	Ex-parte meeting with mediator; discussion with co counsel afterwards	5			
9/13/2012	Evan Hoffman	Travel back from NYC to BOS	2			
9/26/2012	Evan Hoffman	emails with co counsel re ADR bills	0.3			
9/28/2012	Evan Hoffman	emails and calls with co counsel re mediation and ERISA case	0.6			
10/2/2012	Evan Hoffman	emails and calls with co counsel re mediation	0.5			
10/9/2012	Evan Hoffman	emails and calls to co counsel re mediation and settlement issues	1.7			

10/10/2012	Evan Hoffman	Assist MAL with compilation of damages estimates based on STT data; emails to co counsel re the same	3.9			
10/11/2012	Evan Hoffman	Investigation and research in to [redacted] conference call with David Goldsmith,D. Chiplock and MAL re: [redacted]	1.9			
10/12/2012	Evan Hoffman	Research and assist MAL with [redacted]	2.2			
10/15/2012	Evan Hoffman	emails to co cousnel re STT data	0.6			
10/16/2012	Evan Hoffman	Call with STT counsel re STT data and production issues; assist MAL in creating spreadsheet for damages estimates	3.3			
10/17/2012	Evan Hoffman	Emails with co-counsel re mediation	0.2			
10/19/2012	Evan Hoffman	emails with co counsel re mediation; assist MAL with damages revision	1.3			
10/22/2012	Evan Hoffman	Prepare for mediation; review key documents re the same	3.1			
10/23/2012	Evan Hoffman	Meeting with co-counsel pre-mediation	1			
10/23/2012	Evan Hoffman	Mediation with STT counsel	6			
10/24/2012	Evan Hoffman	Continued mediation with STT	3			
10/25/2012	Evan Hoffman	Emails with co counsel re data to be requested from defendants	1			
10/26/2012	Evan Hoffman	Emails and calls with co-counsel re information exchange with STT; edits and drafts of the same	3.9			
10/30/2012	Evan Hoffman	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8			
11/1/2012	Evan Hoffman	Review Defendant's draft Joint Status report; emails to co-counsel re the same	1			
11/2/2012	Evan Hoffman	Review latest draft of joint status report and protective order; edits and emails to co counsel re the same	3			
11/8/2012	Evan Hoffman	Telephone conference with co counsel re: mediation discovery issues and strategy, protective order status, Nov. 15 status conference; address order setting Nov. 15 status conference	1			
11/12/2012	Evan Hoffman	Emails with co counsel re 11/14 hearing; call re the same	2			
11/13/2012	Evan Hoffman	Emails with co counsel re draft status report	1.2			
11/15/2012	Evan Hoffman	Pre meeting with co counsel for Judge Wolf meeting	1			
11/16/2012	Evan Hoffman	Emails with co counsel re order and stay; status and discovery	1.5			
11/19/2012	Evan Hoffman	emails with co counsel re meetings and logistics	0.5			

11/27/2012	Evan Hoffman	Review defendant's document request templates	0.8			
11/27/2012	Evan Hoffman	Review co-counsel emails re January mediation	0.2			
11/29/2012	Evan Hoffman	Email and call with co counsel re document review and mediation schedule	1.1			
12/5/2012	Evan Hoffman	Emails with co counsel re document review and mediation	0.8			
12/6/2012	Evan Hoffman	Emails and calls to co counsel re margin info and document review	1.5			
12/10/2012	Evan Hoffman	Emails and calls with co counsel re doc review status and procedure	2			
12/11/2012	Evan Hoffman	Call with co counsel re ERISA claims and doc review issues	1.9			
12/17/2012	Evan Hoffman	emails with co counsel re mediation stratgey and deadlines	1			
12/18/2012	Evan Hoffman	Emails with co counsel and defense counsel re document production	0.9			
12/26/2012	Evan Hoffman	emails to co counsel re CD document production from STT	1			
12/27/2012	Evan Hoffman	emails with co counsel re document production from State Street	0.2			
1/4/2013	Evan Hoffman	Calls and emails with co-counsel and defense re data requests and 3rd party discovery	1.3			
1/14/2013	Evan Hoffman	Emails and calls with co counsel and defendants re mediation and damages issues	1.5			
1/18/2013	Evan Hoffman	Draft supplemental margin requests; email to co counsel re the same; Telephone conference with co counsel re discovery issues, strategy for January 24 mediation meeting;	4.9			
1/21/2013	Evan Hoffman	prep for mediation and mediator call	3			
1/22/2013	Evan Hoffman	Conference call with mediator and co counsel; follow-up call with ERISA co counsel	3.7			
1/23/2013	Evan Hoffman	Edits and comments to MAL email re spread calculations; emails re mediation preparation; prepare for same	3.6			
1/24/2013	Evan Hoffman	Travel to DC	2			
1/24/2013	Evan Hoffman	Attend Mediation in DC	4			
1/24/2013	Evan Hoffman	Travel back from DC to BOS	2			
1/25/2013	Evan Hoffman	Assist MAL in compiling new damages model for STT data	3			

1/29/2013	Evan Hoffman	emails to co counsel and defense counsel re document review	0.5			
1/31/2013	Evan Hoffman	Participate in Catalyst doc review training	1			
1/31/2013	Evan Hoffman	Review emails and comments from MAL re damages methodology	0.5			
2/6/2013	Evan Hoffman	emails with co counsel re damages estimates	0.6			
2/7/2013	Evan Hoffman	Assist MAL in [redacted]	3.3			
2/11/2013	Evan Hoffman	emails and calls with co counsel re document issues	0.3			
2/12/2013	Evan Hoffman	Emails with co counsel re mediation issues	0.3			
2/13/2013	Evan Hoffman	Attend Catalyst doc review training	1			
2/14/2013	Evan Hoffman	Assist MAL with amended STT damages methodology spreadsheets	4.3			
2/19/2013	Evan Hoffman	Create terms for document review staff to search	0.5			-
2/21/2013	Evan Hoffman	emails to co counsel and defense counsel re video conference	0.5			
2/27/2013	Evan Hoffman	Contact STT defense counsel IT for videoconferencing support	0.3			
3/4/2013	Evan Hoffman	Call with co counsel re data analysis and document review	0.6			
3/5/2013	Evan Hoffman	Meeting with MAL, J. Kinder, A. Caruth re training for document review	1.5			
3/6/2013	Evan Hoffman	Emails to internal doc review team re batches and coding questions	0.8			
3/7/2013	Evan Hoffman	Email complaint and draft summary of the case for M. Bradley for his document review	1.3			
3/7/2013	Evan Hoffman	Call with LCHB re CA data; emails re the same	0.4			
3/8/2013	Evan Hoffman	Call and emails with co counsel and ERISA counsel re CA data and mediation	1.6			
3/11/2013	Evan Hoffman	Emails to co counsel and ERISA counsel re damages calculations	0.4			
3/12/2013	Evan Hoffman	Call with M. Bradley re STT case introduction and document platform training	2.2			
3/13/2013	Evan Hoffman	Travel to NYC	2			
3/13/2013	Evan Hoffman	Call with mediator on status of mediation	0.5			
3/13/2013	Evan Hoffman	Travel back from NYC to BOS	2			
3/13/2013	Evan Hoffman	Video conference with STT re spreadsheet data methodologies	1.5			
3/15/2013	Evan Hoffman	emails with co counsel re document production from STT	0.2			
3/15/2013	Evan Hoffman	Assist MAL with revised ERISA damages estimates	1			

3/19/2013	Evan Hoffman	Phone call with Mike Bradley re Catalyst document training issues	1			
3/20/2013	Evan Hoffman	Draft possible plan of allocation scenarios to send to team; emails re the same	1			
3/20/2013	Evan Hoffman	Document review	2			
3/21/2013	Evan Hoffman	Emails to co counsel re plans of allocation scenarios	0.5			
3/21/2013	Evan Hoffman	Document review	2			
3/22/2013	Evan Hoffman	emails with co counsel re plan of allocation; create POA models with MAL for review	4			
3/22/2013	Evan Hoffman	Document review	2			
3/22/2013	Evan Hoffman	Review co counsel emails re STT allocation ideas	0.3			
3/26/2013	Evan Hoffman	Document review	2			
3/26/2013	Evan Hoffman	Retrieve and analyze Arkansas fee agreement language for MAL	0.8			
3/26/2013	Evan Hoffman	Review emails from co counsel re Carver ERISA complaint	0.2			
3/27/2013	Evan Hoffman	Document review	1			
3/27/2013	Evan Hoffman	Create excel chart of all hot STT docs to date; assist MAL with compiling them into chart; review for relevancy and coding	4.4			
3/28/2013	Evan Hoffman	emails to co counsel re mediation statements and plan of allocation issues	0.4			
4/1/2013	Evan Hoffman	Research into STT Street FX product and language for MAL; email re the same	1			
4/1/2013	Evan Hoffman	Prepare and compile binder of all WSIB docs, RFPs, contracts for MAL	3.6			
4/1/2013	Evan Hoffman	Emails and calls with co counsel re 93A and plan of allocation ideas	1			
4/2/2013	Evan Hoffman	Calls with co-counsel re plan of allocation permutations; issues with mediation	2.6			
4/4/2013	Evan Hoffman	Meeting with doc review team to discuss progress and coding issues	1			
4/8/2013	Evan Hoffman	Document review	2			
4/8/2013	Evan Hoffman	Review draft bullet point memo to be sent to mediator re plan of allocation	0.3			
4/9/2013	Evan Hoffman	Document review	2			
4/10/2013	Evan Hoffman	emails with co counsel re bullet point list for mediator	0.6			
4/16/2013	Evan Hoffman	Emails with co counsel to coordinate time to review issues with document coders	0.4			

4/17/2013	Evan Hoffman	Meeting with document review team to discuss issues re coding	1			
4/18/2013	Evan Hoffman	Call and emails with co counsel re document review status and issues	1.8			
4/19/2013	Evan Hoffman	emails with co counsel re document review	0.2			
4/22/2013	Evan Hoffman	Review email from MAL re document review topic suggestions	0.2			
4/24/2013	Evan Hoffman	Emails to co counsel re DOJ opinion in BNYM case and mediation status	0.5			
4/25/2013	Evan Hoffman	Meeting with MPT, G. Bradley, M. Lesser re status of mediation and allocation issues	0.8			
5/8/2013	Evan Hoffman	Review email from D. Chiplock re [redacted]	0.3			
5/16/2013	Evan Hoffman	Review mediator's update re status of mediation	0.4			
5/21/2013	Evan Hoffman	Emails with co-counsel re [redacted]; research in to [redacted]; create chart re the same	5.8			
5/22/2013	Evan Hoffman	Emails with doc review team and co counsel re Catalyst issues	0.4			
5/22/2013	Evan Hoffman	Review State Street doc at request of co counsel for relevance	0.3			
5/29/2013	Evan Hoffman	Calls and emails with LCHB re mediation status	0.4			
5/31/2013	Evan Hoffman	Emails with LCHB re Jonathan Marks summary; internal meetings re the same	1			
6/3/2013	Evan Hoffman	Emails with M. Rogers re STT hot document and relevance	0.9			
6/4/2013	Evan Hoffman	emails and calls with co counsel re: meeting with co-counsel next week re: mediation re: parties' suggestions re: allocation, class definition	1.7			
6/6/2013	Evan Hoffman	Calls and emails with co counsel re mediation documents and counter proposals	2.2			
6/7/2013	Evan Hoffman	Assist MAL with updated ERISA damages chart; emails to co counsel re the same	1.1			
6/10/2013	Evan Hoffman	Emails with co counsel re ERISA mediation issues	1			
6/12/2013	Evan Hoffman	Edits to Summary of Issues document for discussion at mediation; emails re the same; prepare for mediation	3			
6/14/2013	Evan Hoffman	Analyze [redacted]; memo re the same; analyze and create [redacted]	6.9			

6/17/2013	Evan Hoffman	chart and review all public STT statements on FX	3.2			
6/18/2013	Evan Hoffman	Emails To LCHB re status and discovery	0.3			
6/20/2013	Evan Hoffman	Research for MAL re [redacted]	2.2			
6/21/2013	Evan Hoffman	E-mails to/from co counsel re: redactions in defendants' production re: strategy to address with defendants	2.9			
6/25/2013	Evan Hoffman	Emails to co counsel re mediation preparation	0.4			
6/25/2013	Evan Hoffman	Review email from MAL re hot docs	0.2			
6/26/2013	Evan Hoffman	Emails to co counsel re relevancy of STT document	0.7			
6/27/2013	Evan Hoffman	Email to MAL re mistakenly coded hot docs	0.6			
6/28/2013	Evan Hoffman	Analyze hot documents produced by SST; e-mails to/from co counsel re: same	1.4			
7/2/2013	Evan Hoffman	emails to co counsel re mediation logistics; review and edit MAL ppt for meditation	2.2			
7/5/2013	Evan Hoffman	Prepare STT PPT presentation for co counsel to use ahead of meditation	4.4			
7/8/2013	Evan Hoffman	Meeting and conference call with co counsel at Labaton for pre-mediation meeting	2.7			
7/9/2013	Evan Hoffman	Travel to NYC	2			
7/9/2013	Evan Hoffman	Attend mediation; follow up emails and calls re the same	4			
7/9/2013	Evan Hoffman	Travel back from NYC to BOS	2			
7/10/2013	Evan Hoffman	Emails to co counsel re requests for further information	0.9			
7/11/2013	Evan Hoffman	Compile for MAL folder of hot docs	4.4			
7/12/2013	Evan Hoffman	Emails and phone calls with co counsel re mediation and sample class notice and plans of allocations	1.2			
7/16/2013	Evan Hoffman	Review document production progress; report re the same	0.5			
7/23/2013	Evan Hoffman	emails to co counsel re notice and POA	0.6			
7/30/2013	Evan Hoffman	Review emails to co counsel re draft settlement agreement	0.1			
8/13/2013	Evan Hoffman	emails with co counsel re settlement stipulation	1			
8/15/2013	Evan Hoffman	Emails to co counsel re doc review progress	0.4			
8/20/2013	Evan Hoffman	Emails to co counsel re draft settlement papers	0.2			
8/23/2013	Evan Hoffman	Analyze draft pre-settlement papers; e-mails to/from co counsel re: same	1			
8/26/2013	Evan Hoffman	Emails to M. Rogers re progress of document review	0.2			
8/27/2013	Evan Hoffman	Emails and calls with co counsel re draft settlement papers	2.4			
8/29/2013	Evan Hoffman	Emails to co counsel re proposed settlement papers	0.8			

8/31/2013	Evan Hoffman	Emails to co counsel re draft settlement agreement and ERISA counsel comments	0.7			
9/3/2013	Evan Hoffman	Emails and phone calls with co counsel re draft settlement papers and mediation strategies	1.5			
9/4/2013	Evan Hoffman	Call with co counsel re mediation and settlement papers	0.8			
9/5/2013	Evan Hoffman	Internal doc review team meeting re progress and issues	1			
9/6/2013	Evan Hoffman	Incorporate new assumptions into allocation plans re STT damages for MAL	1.1			
9/6/2013	Evan Hoffman	Call with co counsel re mediation	1			
9/9/2013	Evan Hoffman	Emails with co counsel re [redacted]	0.3			
9/9/2013	Evan Hoffman	Compile for MAL [redacted]	5.5			
9/9/2013	Evan Hoffman	Emails with co counsel re draft settlement agreement; analyze same	2.9			
9/10/2013	Evan Hoffman	Emails and calls with ERISA counsel and co counsel re edits to draft settlement papers	1.8			
9/11/2013	Evan Hoffman	Review final draft of settlement agreement; emails to co counsel re the same	0.5			
9/12/2013	Evan Hoffman	Emails with team re ERISA counsel status and mediation	0.9			
9/13/2013	Evan Hoffman	Calls with co counsel re mediation status	1			
9/16/2013	Evan Hoffman	Draft further document requests to be sent to STT; emails to co counsel re the same	3.7			
9/17/2013	Evan Hoffman	Travel to NYC	2			
9/17/2013	Evan Hoffman	Attend mediation with mediator; pre and post sessions with co counsel	4.5			
9/17/2013	Evan Hoffman	Travel back from NYC to BOS	2			
9/20/2013	Evan Hoffman	Call with co counsel re mediation de briefing and Hill case updates	0.5			
9/24/2013	Evan Hoffman	Research into [redacted]; emails to co counsel re the same	1.6			
9/25/2013	Evan Hoffman	Research in to [redacted]; emails to co counsel re the same	2.2			
9/26/2013	Evan Hoffman	E mails to co counsel re CA AG discovery	0.3			
9/28/2013	Evan Hoffman	Review email from Jonathan Marks re future mediation plans	0.2			
9/30/2013	Evan Hoffman	Review co counsel letter re Hill case discovery; emails re the same	0.3			

10/1/2013	Evan Hoffman	Further edits and review of Hill letter to be sent to STT; emails re the same	0.2			
10/7/2013	Evan Hoffman	emails to co counsel re hot documents from production; analyze same	0.6			
10/15/2013	Evan Hoffman	Review email from STT counsel re continuation of stay and discovery issues	0.2			
10/16/2013	Evan Hoffman	Call with co counsel re mediation status and Hill status	0.9			
10/17/2013	Evan Hoffman	Call with D. Chiplock re [redacted]	1			
10/22/2013	Evan Hoffman	Call with co counsel re mediation status and documents; emails re the same	1			
10/28/2013	Evan Hoffman	analysis of RFP responses; e-mails to/from co counsel re the same	2			
11/4/2013	Evan Hoffman	Emails to co counsel re additional documents from Hill	0.2			
11/8/2013	Evan Hoffman	e-mails to/from co-counsel, ERISA counsel and defense counsel re: information exchange	1.5			
11/12/2013	Evan Hoffman	Assist MAL in creating new damages estimates from revised STT data	1			
11/13/2013	Evan Hoffman	Travel to NYC	2			
11/13/2013	Evan Hoffman	Attend meditation session; pre and post meetings with co counsel	4			
11/13/2013	Evan Hoffman	Travel back from NYC to BOS	2			
11/14/2013	Evan Hoffman	Emails to co counsel re December meeting; Conference and e-mails to/from co counsel re: analysis of losses and overcharges re: analysis of hot documents	1.8			
11/15/2013	Evan Hoffman	Review motion to stay; emails re the same; revise/edit damages and liability presentation	3.2			
11/19/2013	Evan Hoffman	Emails to co counsel re document review strategy; call re the same	0.9			
11/21/2013	Evan Hoffman	assist MAL with liability and damages presentation	3			
12/2/2013	Evan Hoffman	revise/edit liability and damages presentation	2.7			
12/5/2013	Evan Hoffman	Prepare internal damages and issues analysis for December meeting	3.5			
12/6/2013	Evan Hoffman	Prepare internal damages and issues analysis for December meeting; emails to co counsel re same	4			
12/9/2013	Evan Hoffman	Prepare internal damages and issues analysis for December meeting	2.3			
12/9/2013	Evan Hoffman	Emails with co counsel re damages presentation phone call	0.2			
12/11/2013	Evan Hoffman	create ppt re [redacted]	2			

12/13/2013	Evan Hoffman	Edits and annotations to damages issues and analysis presentation for strategy meeting; emails re the same	5.6			
1/8/2014	Evan Hoffman	e-mails to/from co-counsel and ERISA counsel re exchange of markup numbers for mediator	2			
1/16/2014	Evan Hoffman	e-mails to/from co counsel re: legal position and tactics re request for exchange of markup number and methodology	2			
1/23/2014	Evan Hoffman	Calls with LCHB re [redacted]	1			
2/3/2014	Evan Hoffman	Emails and calls with co counsel re [redacted]	1			
2/5/2014	Evan Hoffman	Call with co counsel re [redacted]	1			
2/6/2014	Evan Hoffman	emails to co counsel re overcharge estimates	0.6			
2/10/2014	Evan Hoffman	E-mails to/from co counsel re: exchange of data with State Street in advance of mediation	0.6			
2/11/2014	Evan Hoffman	emails to co counsel re STT data requests	0.2			
2/13/2014	Evan Hoffman	Transfer new STT data into spreadsheet	0.4			
2/20/2014	Evan Hoffman	Review and comments to Annual FX margin damages sheet	0.2			
2/20/2014	Evan Hoffman	Emails to co counsel re scheduling of next mediation	0.4			
2/21/2014	Evan Hoffman	Assist MAL in updating damages spreadsheet	1			
2/26/2014	Evan Hoffman	Emails to co counsel re mediation preparation and amended damages calculations	0.3			
2/27/2014	Evan Hoffman	Annotate and update Damages and Issues analysis presentation for co counsel and for use at STT mediation; emails re the same	6.7			
3/3/2014	Evan Hoffman	Review ch. 93A presentation from D. Chiplock in advance of mediation	0.5			
3/4/2014	Evan Hoffman	Travel to NYC	2			
3/4/2014	Evan Hoffman	Attend mediation session with mediator	4			
3/4/2014	Evan Hoffman	Travel back from NYC to BOS	2			
3/7/2014	Evan Hoffman	emails with co counsel re: mediation tasks and strategy	1.8			
4/2/2014	Evan Hoffman	Emails to co counsel re May 9th mediation	0.5			
4/3/2014	Evan Hoffman	Emails with co counsel re May9th session	0.2			
4/7/2014	Evan Hoffman	Call with Labaton re damages presentation; annotations to same	1.6			
4/8/2014	Evan Hoffman	Emails with D. Goldsmith and co counsel re preparation for May mediation session	0.3			
4/9/2014	Evan Hoffman	Annotate and edit damages and issues presentation for mediation; email to co counsel re the same	5.5			

4/16/2014	Evan Hoffman	Emails with M. Rogers and MAL re [redacted]	0.2			
4/17/2014	Evan Hoffman	Research and compile [redacted]; format and email to MAL for review	7.4			
4/19/2014	Evan Hoffman	compile all bates numbers from documents in damages presentation	1			
4/24/2014	Evan Hoffman	Emails with co counsel re mediation dates and expenses; review of Hill documents	1			
4/25/2014	Evan Hoffman	Review D. Chiplock memo on ch. 93A analysis; report to MAL re the same	0.4			
4/30/2014	Evan Hoffman	Edits and revisions to Damages presentation for May 9th mediation	2.1			
4/30/2014	Evan Hoffman	Midpoint analysis research for STT data and damages for MAL	1.2			
4/30/2014	Evan Hoffman	Review Jeremiah report on 93A damages; report to MAL re the same	0.3			
5/1/2014	Evan Hoffman	Emails, edits, revisions, and comments with co counsel re liability/damages/93A slides for mediation	4.4			
5/2/2014	Evan Hoffman	Revise damages presentation for mediation; emails with co counsel re the same	2.4			
5/5/2014	Evan Hoffman	Collect and organize items for mediation for MAL	1.3			
5/6/2014	Evan Hoffman	Prepare for mediation; edit slides; emails with co counsel	3.9			
5/7/2014	Evan Hoffman	Review Jonathan Marks email re mediation schedule and agenda	0.1			
5/8/2014	Evan Hoffman	Travel to NYC	2			
5/9/2014	Evan Hoffman	Pre-mediation meeting with co counsel; Attend mediation	8			
5/9/2014	Evan Hoffman	Travel back to BOS	2			
5/23/2014	Evan Hoffman	Review motion to stay; review emails from co counsel re mediation status	0.6			
6/23/2014	Evan Hoffman	Analyze court orders; emails with co counsel re the same	1			
9/22/2014	Evan Hoffman	Analyze letter from defendants re document production; emails with co counsel re the same	0.6			
12/13/2014	Evan Hoffman	call with co counsel re conference call mediator and defendant's counsel re settlement negotiations	0.7			
12/14/2014	Evan Hoffman	Review email from L. Sucharow re conversation with defendants and mediator	0.2			

12/15/2014	Evan Hoffman	Call with co counsel and defendants and mediator re mediation and follow up meetings; emails re the same	2			
1/5/2015	Evan Hoffman	Travel to NYC	2			
1/5/2015	Evan Hoffman	Attend mediation; conferences with co counsel re the same	4			
1/5/2015	Evan Hoffman	Fly back from NYC to BOS	2			
1/8/2015	Evan Hoffman	Calls and emails with co counsel re case strategy	0.6			
1/9/2015	Evan Hoffman	Research on Judge Wolf fee application cases; emails to M. Rogers re the same	2.4			
1/13/2015	Evan Hoffman	Emails with co counsel re case strategy	1			
1/25/2015	Evan Hoffman	Emails with K. Dugar re document review allocations	0.2			
1/29/2015	Evan Hoffman	Calls and emails with co counsel re document review projects and status	2			
1/29/2015	Evan Hoffman	Review STT earnings call; emails with co counsel re the same	1.8			
2/3/2015	Evan Hoffman	Create and edit charts and slides for STT FX revenue for mediation	2			
2/3/2015	Evan Hoffman	Conferences with co counsel re mediation strategy; damages and volume analyses	5			
2/4/2015	Evan Hoffman	Attend mediation session re damages and settlement issues	6			
2/9/2015	Evan Hoffman	Emails with K. Dugar re document reviewers' logistics	0.6			
2/18/2015	Evan Hoffman	Compile for MAL [redacted] ; emails re the same	1.4			
2/19/2015	Evan Hoffman	Emails to co counsel re scheduling of mediation session	0.6			
2/19/2015	Evan Hoffman	Call with mediator, co counsel, and defendants re: margin numbers	0.7			
2/20/2015	Evan Hoffman	Emails and calls with K. Dugar re hot document coding and coordination	0.8			
2/24/2015	Evan Hoffman	Pull and categorize list of hot docs from document review for use in mediation; emails and calls to M. Rogers re the same	3.1			
2/25/2015	Evan Hoffman	Email hot docs to M. Rogers	0.2			
2/25/2015	Evan Hoffman	Travel to NYC	2			
2/25/2015	Evan Hoffman	Conferences with co counsel re: mediation session; emails re: hot documents	6.1			
2/26/2015	Evan Hoffman	Attend mediation session; conferences with co counsel re the same	8			

2/26/2015	Evan Hoffman	Travel back from NYC to BOS	2			
3/4/2015	Evan Hoffman	Review email from J. Marks re mediation update; emails to co counsel re the same	0.5			
3/6/2015	Evan Hoffman	Emails to MAL re document review updates and progress and payment	0.6			
3/6/2015	Evan Hoffman	Emails to co counsel re secondary hot doc review	0.2			
3/9/2015	Evan Hoffman	Emails to co counsel re DOL letter; calls re the same	1.3			
3/10/2015	Evan Hoffman	Call with K Dugar and M. Rogers re secondary coding of hot documents and issue-specific searches	1			
3/11/2015	Evan Hoffman	Call with ERISA co counsel re damages	1			
3/12/2015	Evan Hoffman	Review email from L. Sucharow re updates on STT and SEC and DOJ;	0.1			
3/13/2015	Evan Hoffman	Emails with M. Rogers and K. Dugar re senior review of coded hot documents	0.2			
3/17/2015	Evan Hoffman	Emails with MAL re document review status	0.2			
3/27/2015	Evan Hoffman	Review J. Marks email re status report for next mediation; emails re the same	0.2			
3/28/2015	Evan Hoffman	Review email from D. Chiplock re [redacted]; emails re the same	0.2			
3/31/2015	Evan Hoffman	Emails and calls with co counsel re class certification and April 9th mediation	1			
4/1/2015	Evan Hoffman	Compile and analyze hot docs for STT mediation and MAL review	6			
4/2/2015	Evan Hoffman	Compile and analyze hot docs for STT mediation and MAL review	5.5			
4/3/2015	Evan Hoffman	Review email from L. Sucharow re update from mediator on STT position with government entities	0.2			
4/6/2015	Evan Hoffman	Call with co counsel re mediation meeting and calls with J. Marks and B. Paine	1.3			
4/7/2015	Evan Hoffman	Emails with co counsel re remaining document review issues	0.2			
4/7/2015	Evan Hoffman	Calls and e-mails to co counsel re: communications with governmental agencies; conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel re the same; e-mails to/from Eric Belfi, Garrett Bradley, Mike Lesser, Dan Chiplock re: staffing	3			
4/8/2015	Evan Hoffman	Telephone conference with co-counsel re: SEC call, mediation issues and strategy, prepare for same;	1.3			
4/8/2015	Evan Hoffman	Call with M. Rogers, K. Dugar, D. Chiplock re document review issues	1.8			

4/8/2015	Evan Hoffman	Review topics sent by MAL; conference re the same	2			
4/9/2015	Evan Hoffman	Conference calls with and e-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: mediation and progress in governmental actions, e-mails to/from co counsel re: document review	2.8			
4/10/2015	Evan Hoffman	Assist MAL with topics for targeted search review; emails and calls with co counsel re the same	6.7			
4/10/2015	Evan Hoffman	Review proposed revised document requests from D. Chiplock; emails and comments re the same	0.3			
4/13/2015	Evan Hoffman	Compile for MAL list of prior STT settlements with DOJ, SEC, MASEC	4.2			
4/13/2015	Evan Hoffman	Assist MAL with topics for targeted search review	2.9			
4/14/2015	Evan Hoffman	Calls and emails with N. Diamand re reviewer invoices	0.3			
4/14/2015	Evan Hoffman	Emails with co counsel re document review and related projects	0.8			
4/15/2015	Evan Hoffman	Emails to co counsel re DOJ status	0.2			
4/15/2015	Evan Hoffman	Emails with co counsel re document review and case strategy	0.7			
4/21/2015	Evan Hoffman	Emails with co counsel re targeted search reviewer progress	0.4			
4/23/2015	Evan Hoffman	Review email from D. Chiplock re DOJ communications re status of negotiations; emails to co counsel re the same	0.2			
4/24/2015	Evan Hoffman	Review email from L. Sucharow re call from defendants and scheduling of next mediation session; internal meetings re the same; emails with co counsel re the same	0.8			
4/27/2015	Evan Hoffman	Emails to co counsel re latest STT earnings call report and reserves	0.3			
4/28/2015	Evan Hoffman	Emails to L. Sucharow and D. Chiplock re [redacted]	1			
4/28/2015	Evan Hoffman	Review proposed term sheet	0.4			
4/29/2015	Evan Hoffman	Research into [redacted]; emails to MAL re the same	0.5			
4/29/2015	Evan Hoffman	Mediation preparation session with co counsel	3			
4/30/2015	Evan Hoffman	Attend mediation session	4			
5/7/2015	Evan Hoffman	Emails with co counsel re status of reviewer projects	0.2			
5/12/2015	Evan Hoffman	Emails with co counsel re status of reviewer projects	0.2			
5/13/2015	Evan Hoffman	Call with co counsel re talks with STT	1.2			
5/14/2015	Evan Hoffman	Emails to co counsel re document review	0.4			

5/15/2015	Evan Hoffman	Emails to co counsel re mediation strategy	1			
5/20/2015	Evan Hoffman	Emails with co counsel re document review projects	0.5			
5/21/2015	Evan Hoffman	Emails with co counsel re document review	0.7			
5/26/2015	Evan Hoffman	Conference call with e-mails to/from co-counsel and ERISA counsel re: mediation meeting, meeting with DOJ and strategies re: same	1.2			
5/27/2015	Evan Hoffman	E-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: scheduling mediation session; e-mails co counsel re: document review	1.8			
5/28/2015	Evan Hoffman	Emails to co counsel re document reviewer project assignments	1			
5/28/2015	Evan Hoffman	Emails to co counsel re upcoming mediation strategy	0.2			
6/1/2015	Evan Hoffman	Assist MAL to compile settlement scenarios; email to co counsel re the same	1.6			
6/1/2015	Evan Hoffman	Compile completed targeted research document review memos for MAL; review the same	1.2			
6/2/2015	Evan Hoffman	Pre DOJ meeting to discuss strategy	3.5			
6/2/2015	Evan Hoffman	Attend meeting at DOJ re [redacted]	1.5			
6/2/2015	Evan Hoffman	Attend mediation session with defendants at Wilmer Hale re [redacted] meeting with co counsel afterwards	5.5			
6/3/2015	Evan Hoffman	Edits to settlement matrix; emails to co counsel re the same	0.3			
6/3/2015	Evan Hoffman	Emails to co counsel re settlement numbers and ranges	0.2			
6/5/2015	Evan Hoffman	emails with co counsel re DOJ	0.1			
6/8/2015	Evan Hoffman	Conference call in to meeting at Labaton to discuss 6/9 mediation	2			
6/12/2015	Evan Hoffman	Calls and emails with ERISA co counsel and STT counsel re [redacted]	0.8			
6/16/2015	Evan Hoffman	Emails with co counsel re changing meditation to phone call and strategy	0.4			
6/17/2015	Evan Hoffman	Call with mediator, defendants, and co counsel re mediation next steps; follow up call with co counsel re mediation strategy	1			
6/17/2015	Evan Hoffman	Research in to midpoint analyses for MAL	2			
6/23/2015	Evan Hoffman	Emails with T. Kussin re document review targeted search projects	0.2			
6/24/2015	Evan Hoffman	Review email from L. Sucharow re mediation update from STT and mediator;	0.1			

6/26/2015	Evan Hoffman	Phone call with MAL re mediation progress and status	0.3			
6/28/2015	Evan Hoffman	Review email from L. Sucharow re conversation with mediator and defendants re next mediation session	0.1			
6/29/2015	Evan Hoffman	Retrieve data analyses and other materials for use in mediation session for MAL; emails and calls with MAL re progress and updates of the same	1			
7/1/2015	Evan Hoffman	Emails with co counsel re termination of reviewers	0.2			
7/21/2015	Evan Hoffman	conference call with ERISA co counsel re DOL [redacted] conference call with STT counsel re [redacted]	1.5			
7/29/2015	Evan Hoffman	Conference call with all co counsel re STT term sheet proposals; DOL allocation issues; timing issue	1.3			
7/30/2015	Evan Hoffman	conference call with co counsel and DOL re allocation issues	0.5			
8/18/2015	Evan Hoffman	Work on draft of Plan of Allocation	1.1			
8/19/2015	Evan Hoffman	Call with DOL and co counsel re: allocation and group trust issues	0.9			
8/21/2015	Evan Hoffman	Draft plan of allocation; email to co-counsel for review	2			
8/26/2015	Evan Hoffman	Call with DOL re plan of allocation and group trust issues; call with co-counsel re the same; edits to POA	1.3			
9/2/2015	Evan Hoffman	Call with DOL re plan of allocation and group trust issues; conference with MAL re same	0.3			
9/11/2015	Evan Hoffman	call with MAL re DOL call and next steps	0.2			
9/12/2015	Evan Hoffman	review email from N. Zeiss re DOL call and status of term sheet	0.2			
9/22/2015	Evan Hoffman	call with DOL, STT, and co counsel re allocation issues, term sheets, group trust	1			
9/25/2015	Evan Hoffman	call with co-counsel and STT counsel re plan of allocation language	0.5			
4/15/2016	Evan Hoffman	call with co-counsel re SEC status and term sheet, POA, and notice issues	0.7			
4/16/2016	Evan Hoffman	review POA and settlement papers	0.9			
6/2/2016	Evan Hoffman	review of long form notice, stipulation, and POA	1			
6/3/2016	Evan Hoffman	research and retrieve [redacted]	1			
6/23/2016	Evan Hoffman	meeting with co-counsel re: stratgey for joint status report hearing; attend Status Report Hearing with Judge Wolf	1.7			

8/1/2016	Evan Hoffman	emails with D. Goldsmith and MAL re: powerpoint damages presentation for use in preliminary approval hearing	0.2			
8/11/2016	Evan Hoffman	emails with co counsel re: delivery of CD containing proposed edits to settlement docs; emails with court clerk re the same; prepare CD and arrange delivery to Court	0.7			Hoffman Total: 1110.2
12/15/2014	Garret Bradley	Call with co counsel and defendants and mediator re mediation and follow up meetings; emails re the same	2			
12/22/2014	Garret Bradley	Meetings with M. Rogers re mediation scheduling; emails with co counsel re the same	0.6			
1/14/2015	Garret Bradley	Conferences and emails with co counsel re case strategy and analysis of STT documents	1.4			
6/2/2016	Garret Bradley	With defense counsel, meeting with Judge Wolf Clerk re: scheduling of upcoming hearings; emails to co counsel re the same	1.6			
11/5/2009	Garrett Bradley	Review case and research same	3			
11/9/2009	Garrett Bradley	Telephone call with co counsel and communicate with potential clients	2			
11/23/2009	Garrett Bradley	Research case; data review; telephone call with co counsel re communication with client	2.5			
11/24/2009	Garrett Bradley	call with co-counsel re client communication; review case	2			
1/11/2010	Garrett Bradley	Research case	5			
1/12/2010	Garrett Bradley	Review data, call with co-cousnel re prosepctive clients	3			
1/20/2010	Garrett Bradley	Review case status and emails	2.5			
1/28/2010	Garrett Bradley	Call with co-counsel re: status of case and draft complaint	0.8			
2/4/2010	Garrett Bradley	Research case and complaint issues and 93A issues	3.5			
4/8/2010	Garrett Bradley	Review emails re [redacted]	0.5			
4/20/2010	Garrett Bradley	Research data and review trade data to be sent to expert	1			
5/24/2010	Garrett Bradley	Call to co-counsel re research; review emails and data compiled	2			
6/21/2010	Garrett Bradley	Review case and outstanding issues; call with co-counsel re preparing update for client	2			
6/24/2010	Garrett Bradley	Call with LCHB re status and strategy	0.6			
7/9/2010	Garrett Bradley	Review emails with counsel; research [redacted]	1.5			

7/15/2010	Garrett Bradley	Call with LCHB re [redacted] and analysis of same	0.8			
8/30/2010	Garrett Bradley	Call with co counsel re communication with client and research outstanding issues re same	1.5			
9/10/2010	Garrett Bradley	Conference call with co-counsel to discuss status and strategy issues	2			
9/14/2010	Garrett Bradley	Prepare for and meeting with co counsel re potential class litigation	8.2			
9/16/2010	Garrett Bradley	Review emails; call with co-counsel re data compiled on loss charts for ATRS	2.5			
9/17/2010	Garrett Bradley	Draft client memorandum; review draft complaint and research potential calls representtive	3			
9/21/2010	Garrett Bradley	Calls with LCHB and Labaton re class complaint drafting	1.4			
9/24/2010	Garrett Bradley	Review retainer and contracts; call with co-counsel re same; research same	4.5			
9/30/2010	Garrett Bradley	Review emails and case memos	1.5			
10/5/2010	Garrett Bradley	Revise draft complaint and research	2			
10/18/2010	Garrett Bradley	emails and conference call with expert and client and co counsel re data review	1			
11/2/2010	Garrett Bradley	Continue revision of draft complaint and case research	2.5			
11/3/2010	Garrett Bradley	Call with co counsel re communication with clients; review emails and draft complaint	2.5			
11/4/2010	Garrett Bradley	Meetings with client and co-cousnel to provide update on case and discuss outstanding issues and case research	7			
11/5/2010	Garrett Bradley	Review communication from State Street and in-house meeting to discuss status update re client meeting	1.5			
11/8/2010	Garrett Bradley	Telephone conference with co-counsel in preparation for 11/9/2010 meeting; call with co-counsel re communication with client; prepare materials	3.5			
11/12/2010	Garrett Bradley	Prepare communication for client	1.5			
11/17/2010	Garrett Bradley	Review and revise complaint; research same and telephone conference with client	3			
11/18/2010	Garrett Bradley	telephone call with co-counsel re communication with client	1			
11/23/2010	Garrett Bradley	Communicate with client	1			
11/24/2010	Garrett Bradley	Review emails; case status and research; telephone call with co-counsel re communication with client	4			

11/29/2010	Garrett Bradley	Review, revise draft communication to client; telephone call with co-counsel re same	2			
12/1/2010	Garrett Bradley	Review documents and emails	1.5			
12/2/2010	Garrett Bradley	meeting with Labaton attorneys to discuss case	2.5			
12/3/2010	Garrett Bradley	Review emails and research	2			
12/6/2010	Garrett Bradley	Review status of case, draft of complaint	2			
12/7/2010	Garrett Bradley	Document review; telephone call with co-counsel	3			
12/8/2010	Garrett Bradley	Review emails; review data re 93A issues and outstanding issues	2			
12/9/2010	Garrett Bradley	Document review	3			
12/10/2010	Garrett Bradley	Review draft complaint & 93A research; discuss with in-house counsel	3			
12/13/2010	Garrett Bradley	Review emails, complaint and 93A draft memorandum	3			
12/14/2010	Garrett Bradley	Review research re 93A issues; review and revise memorandum	4			
12/15/2010	Garrett Bradley	Research 93A; review complaint	3			
12/16/2010	Garrett Bradley	Review emails on draft complaint and 93A issues	2			
12/17/2010	Garrett Bradley	Document review	3			
12/20/2010	Garrett Bradley	Meeting in Boston with co-counsel to discuss case and outstanding issues	6			
12/21/2010	Garrett Bradley	Review case; inhoues meeting re assignments and research	3.5			
12/22/2010	Garrett Bradley	Review 93A memo	3			
12/23/2010	Garrett Bradley	Discuss research, memo and related issues with co-counsel	2			
1/3/2011	Garrett Bradley	Review and research 93A issues and emails	2.5			
1/4/2011	Garrett Bradley	Telephone call to co-counsel re communication with client; discuss strategy; review emails and memos re potential class reps	2.5			
1/5/2011	Garrett Bradley	meeting with MAL; MPT and FX Transaparency re STT	1			
1/5/2011	Garrett Bradley	Calls and emails with inhouse counsel re co counsel and complaint draft	1			
1/6/2011	Garrett Bradley	Review, revise draft complaint & 93A memo	2			
1/7/2011	Garrett Bradley	Continue review of complaint	1.5			
1/10/2011	Garrett Bradley	Review emails and research	3			
1/11/2011	Garrett Bradley	Review revised documents and research	3.5			
1/12/2011	Garrett Bradley	Continue drafting complaint, memo and research issues	4			
1/18/2011	Garrett Bradley	Review emails and case strategy	3			
1/19/2011	Garrett Bradley	Review and revise guide chart	3			
1/20/2011	Garrett Bradley	Review complaint drafts	2			
1/21/2011	Garrett Bradley	Review research from clerks; document review	3.5			

1/25/2011	Garrett Bradley	Continue drafting complaint, memo and research issues	3			
1/26/2011	Garrett Bradley	Review complaint; discussions with co-counsel re same	4			
1/27/2011	Garrett Bradley	Telephone call with co-counsel re communication with client; discuss complaint, memorandum and strategy	5			
1/28/2011	Garrett Bradley	Review, revise complaint; telephone call with co-counsel regarding same	2.5			
2/1/2011	Garrett Bradley	Review 93A memo; complaint	4			
2/2/2011	Garrett Bradley	emails with ERH and MAL re summaries for 93A to be sent to client	0.3			
2/3/2011	Garrett Bradley	Review memorandum and research; review ERH letter to client re 93A steps	2.5			
2/4/2011	Garrett Bradley	Telephone discussion with co-counsel regarding client telephone call; discussed continued strategy issues; research	4			
2/7/2011	Garrett Bradley	Reviewed emails;telephone calls with co-counsel regarding complaint and ongoing strategy; continue working on complaint	5			
2/8/2011	Garrett Bradley	Review emails; review and revise complaint; telphone call with co-counsel	5			
2/9/2011	Garrett Bradley	Review updated complaint; research	5			
2/10/2011	Garrett Bradley	Review co-counsel emails and discussion regarding complaint filing	4			
2/11/2011	Garrett Bradley	Document review and research	5			
2/14/2011	Garrett Bradley	Document review; telephone call with co-counsel	2			
2/15/2011	Garrett Bradley	Research and review case; call with co-counsel	3.5			
2/17/2011	Garrett Bradley	Continue research and review of case	5			
2/21/2011	Garrett Bradley	Review of emails and memos re case	3			
2/22/2011	Garrett Bradley	Continue research of 93A issues	3.5			
2/23/2011	Garrett Bradley	Document review	5			
2/24/2011	Garrett Bradley	Review discovery drafts from co-counsel;continue document review and research	6			
2/25/2011	Garrett Bradley	Document review; discussion with co-counsel re client communication	5			
3/1/2011	Garrett Bradley	Document review	8			
3/2/2011	Garrett Bradley	Review case; call with co-counsel re client communication	2			
3/3/2011	Garrett Bradley	Meeting in Rhode Island to discuss case	4			
3/4/2011	Garrett Bradley	call with co-counsel re client communicaiton; document review	4			

3/7/2011	Garrett Bradley	Research case; call with co-counsel re client communication	5			
3/8/2011	Garrett Bradley	conference with co counsel re regarding DOJ investigation; internal meetings re the same	2.4			
3/8/2011	Garrett Bradley	Review emails; continue review of status	3			
3/10/2011	Garrett Bradley	call with co-counsel re client communication; document review	3			
3/11/2011	Garrett Bradley	Traveled to NY to meet with expert	12			
3/14/2011	Garrett Bradley	Research expert issues	2.5			
3/15/2011	Garrett Bradley	Continue research; review emails with co-counsel re 93A issues	2			
3/16/2011	Garrett Bradley	Calls with co-counsel re case status	0.9			
3/17/2011	Garrett Bradley	Review case status, emails	3			
3/21/2011	Garrett Bradley	Review motion and all correspondence to and from all parties	3			
3/22/2011	Garrett Bradley	Review motion and research issues	1.5			
3/23/2011	Garrett Bradley	Continue to review issues re motion	3			
3/24/2011	Garrett Bradley	emails with Labaton attorneys re federal court login issues	0.8			
3/25/2011	Garrett Bradley	e-mail soliciting thoughts on [redacted] to W. Paine letter responding to [redacted]	4			
3/28/2011	Garrett Bradley	Document review	4			
3/29/2011	Garrett Bradley	Conference with co counsel regarding claims, regarding complaint, regarding clients, regarding investigation and consultant	4			
3/30/2011	Garrett Bradley	Review revised documents and research	3			
4/1/2011	Garrett Bradley	Call to co-counsel re communication with client	1.5			
4/4/2011	Garrett Bradley	Review amended complaint	1			
4/8/2011	Garrett Bradley	Review file; call to co-counsel to discuss communication with client	3			
4/11/2011	Garrett Bradley	emails with co-counsel regarding status of case	1			
4/12/2011	Garrett Bradley	Emails with co-counsel re class time period issues	0.3			
4/13/2011	Garrett Bradley	Emails with co-counsel re factual allegations in proposed amended complaint	0.3			
4/14/2011	Garrett Bradley	Conferences, telephone calls, emails to/from Labaton and Lieff counsel regarding amended complaint	2			
4/15/2011	Garrett Bradley	Review file; call to co-counsel to discuss communication with client	2.5			
4/20/2011	Garrett Bradley	Review documentation received from client	2			

4/21/2011	Garrett Bradley	Review SEC inquiry; call to co-counsel to discuss same	2			
4/22/2011	Garrett Bradley	Call with J. Bernstein re SEC	0.4			
4/25/2011	Garrett Bradley	Research outstanding issues regarding recent inquiry	2			
5/27/2011	Garrett Bradley	calls with C. Keller re case strategy	2			
5/31/2011	Garrett Bradley	Call to co-counsel re communication with client	0.5			
6/1/2011	Garrett Bradley	Call to co-counsel re communication with client and discuss strategy	1.5			
6/3/2011	Garrett Bradley	Review motions filed; research same; call to co-counsel re client communication	4			
6/6/2011	Garrett Bradley	Emails to Dan Chiplock re pro hac	0.2			
6/8/2011	Garrett Bradley	Call with co-counsel re motion to dismiss assignments; internal meeting re the same	1			
6/10/2011	Garrett Bradley	Review emails; motion; memo; research issues in response to same	4			
6/17/2011	Garrett Bradley	Document review and research	2			
8/17/2011	Garrett Bradley	Meeting in NYC with J. Bernstein re strategy and progress; travel to and from	6			
8/19/2011	Garrett Bradley	Review draft briefs, motions	1			
8/22/2011	Garrett Bradley	Review reply memorandum, inhouse research and emails	3			
9/15/2011	Garrett Bradley	emails with co-counsel re status of case and strategy meeting	0.2			
9/27/2011	Garrett Bradley	emails with D. Chiplock re pro hac	0.1			
10/5/2011	Garrett Bradley	Review emails and discuss case with inhouse counsel	1			
10/21/2011	Garrett Bradley	Travel to Rhode Island for meeting	2.5			
10/21/2011	Garrett Bradley	Meeting in Rhode Island to discuss case	2.5			
12/12/2011	Garrett Bradley	Review file; call to co-counsel re stratgy and analysis and status meeting	2			
1/10/2012	Garrett Bradley	Call to co-counsel regarding communication with potential client	1			
1/12/2012	Garrett Bradley	Review order, call to co-counsel for status on conference and client communication	1			
1/17/2012	Garrett Bradley	travel to and from NYC for meeting with Labaton co counsel re case status and strategy	8			
1/24/2012	Garrett Bradley	emails with D. Chiplock re oral argument	0.1			
2/16/2012	Garrett Bradley	emails with co counsel re cancelation of oral argument; calls re the same	0.6			
3/22/2012	Garrett Bradley	Review file; call to co-counsel re communication with client	1.5			
5/1/2012	Garrett Bradley	Conference call with co-counsel re 5/28 MTD hearing	0.5			

5/2/2012	Garrett Bradley	call with D. Goldsmith re hearing	0.3			
5/8/2012	Garrett Bradley	Prepare and attend Judge Wolf MTD Hearing	6			
5/9/2012	Garrett Bradley	Call with co-counsel re client communication;	1.5			
5/12/2012	Garrett Bradley	Prepare and attend Judge Wolf MTD Hearing	6			
5/15/2012	Garrett Bradley	Call with co-counsel re recent court decision and inhouse discussion on stratgey; research re same	2.5			
5/18/2012	Garrett Bradley	Reviewed and discuss with co-counsel materials to be sent to client from co-counsel	2.5			
5/24/2012	Garrett Bradley	Continue review of materials to be sent to client; research same	3.5			
6/13/2012	Garrett Bradley	Call with co-counsel regarding mediation and communication with client	1			
6/14/2012	Garrett Bradley	Review case status and discussion with co-counsel regarding client meeting	2.5			
6/20/2012	Garrett Bradley	Conferences and telephone calls with and emails to/from co counsel re draft settlement language, re mediators, re case strategy; analyze State Street Investment Manager Guide re same; draft and amend draft settlement agreement;	5			
6/21/2012	Garrett Bradley	Continue case review; call with co-counsel re meeting with defense counsel	4			
6/22/2012	Garrett Bradley	meetings with STT counsel and co-counsel re settlement; conference and conference call with co counsel re settlement proposals, re mediation, re discussions with FX Transparency	6.1			
7/2/2012	Garrett Bradley	Call with co-counsel; discuss research	0.5			
7/16/2012	Garrett Bradley	Review research and discuss case with co-counsel	2			
8/1/2012	Garrett Bradley	Review emails and call with co-counsel	1			
8/7/2012	Garrett Bradley	Conference call with co-counsel, mediator, and defense counsel re plans for mediation; emails re the same	1.4			
8/9/2012	Garrett Bradley	Review case and participated in conference call	2.5			
9/4/2012	Garrett Bradley	Call with co-counsel for status on client meeting	1			
9/5/2012	Garrett Bradley	Telephone call with co-counsel	0.5			
9/6/2012	Garrett Bradley	Review file, emails, research and discussions re mediation	4			
9/7/2012	Garrett Bradley	Prepare for mediation; call with co-counsel re status of meeting	3			
9/11/2012	Garrett Bradley	travel to nyc	2			
9/11/2012	Garrett Bradley	Meeting with LCHB and Labaton re mediation goals, strategy.	4			

9/13/2012	Garrett Bradley	Ex-parte meeting with mediator; discussion with co counsel afterwards	5			
9/13/2012	Garrett Bradley	Ex-parte meeting with mediator	3			
9/13/2012	Garrett Bradley	Travel back from NYC to BOS	2			
10/22/2012	Garrett Bradley	Prepare for mediation; research; review file	4			
10/23/2012	Garrett Bradley	Meeting with co-counsel pre-mediation	1			
10/23/2012	Garrett Bradley	Mediation with STT counsel	6			
10/24/2012	Garrett Bradley	Continued mediation with STT	3			
10/30/2012	Garrett Bradley	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8			
11/15/2012	Garrett Bradley	Pre meeting with co counsel for Judge Wolf meeting	1			
1/7/2013	Garrett Bradley	Review file, emails and call with co-counsel regarding communication with client	2.5			
1/24/2013	Garrett Bradley	Call with co-counsel regarding communication with client	0.5			
4/11/2013	Garrett Bradley	Review research and emails	1.5			
4/25/2013	Garrett Bradley	Meeting with E. Hoffman, M. Thornton, M. Lesser re status of mediation and allocation issues	0.8			
5/3/2013	Garrett Bradley	Review research and emails; call to counsel on client communication	2			
6/11/2013	Garrett Bradley	Review research and mediation issues	2.5			
7/9/2013	Garrett Bradley	Call with inhouse counsel re medition and review of emails	1			
8/14/2013	Garrett Bradley	Call with co-counsel to discuss ongoing research and issues, strategy and analysis of research	2			
8/19/2013	Garrett Bradley	Review research	1.5			
8/26/2013	Garrett Bradley	Review of emails re progress of document review and draft settlement papers	1			
9/13/2013	Garrett Bradley	Prepare for mediation; review files, emails	3			
9/16/2013	Garrett Bradley	Review draft document requests, emails and file in preparation for mediation	3			
9/17/2013	Garrett Bradley	Travel to NYC	4			
9/17/2013	Garrett Bradley	Attend Mediation with mediator	2			
9/17/2013	Garrett Bradley	Travel back from NYC to Boston	4			
9/30/2013	Garrett Bradley	Review co counsel letter re Hill case discovery; emails re the same	0.1			
10/1/2013	Garrett Bradley	Review Hill letter, emails and work on discovery issues	2			
10/11/2013	Garrett Bradley	Review document research; call with co-counsel re client communication	1.5			
10/15/2013	Garrett Bradley	Review letter from SEC; emails re the same	1			

10/16/2013	Garrett Bradley	Call with co counsel re mediation status and Hill status	0.9			
10/21/2013	Garrett Bradley	Review research and SEC issues	2			
10/22/2013	Garrett Bradley	Review emails and call with inhouse counsel regarding conference call	0.5			
10/23/2013	Garrett Bradley	Call with co-counsel re client communication and outstanding issues	1			
10/28/2013	Garrett Bradley	Discussion with co-counsel re SEC issues; emails and call re same	1			
10/31/2013	Garrett Bradley	Review research re discovery issues; call with co-counsel re same	2.5			
11/7/2013	Garrett Bradley	Review emails re discovery responses and discussion of same	1.5			
11/8/2013	Garrett Bradley	Review of research on discovery issues	2			
11/13/2013	Garrett Bradley	Travel to NYC	3			
11/13/2013	Garrett Bradley	Attend mediaiton session	3			
11/13/2013	Garrett Bradley	Travel back from NYC to Boston	3			
11/13/2013	Garrett Bradley	Emails with co counsel re December meeting	0.3			
12/3/2013	Garrett Bradley	Review document research; call with co-counsel re client communication	1.5			
12/4/2013	Garrett Bradley	Review research, emails and file	2			
12/5/2013	Garrett Bradley	Review damages and issues analysis; call with co-counsel re client meeting	2			
12/6/2013	Garrett Bradley	Review reseach documentation re internal damages and issues analysis	0.5			
12/19/2013	Garrett Bradley	Review emails; call with inhouse counsel re strategy session in CA; call with co-counsel re client communication update	1.4			
2/27/2014	Garrett Bradley	Review emails re mediation, spreadsheet, damages sheet	1.5			
3/4/2014	Garrett Bradley	Travel to NYC	3			
3/4/2014	Garrett Bradley	Attend mediaiton session	3			
3/4/2014	Garrett Bradley	Travel back from NYC to Boston	3			
3/4/2014	Garrett Bradley	Review emails; call with inhouse counsel re mediation seesion with mediator; call with co-counsel re client communication update	1			
3/5/2014	Garrett Bradley	Call with co-counsel re communication with client	0.5			
3/7/2014	Garrett Bradley	Review emails; call co-counsel regarding client communication; call with inhouse counsel re status update	0.5			

3/25/2014	Garrett Bradley	Research outstanding issues; call with co-counsel re meeting with Mike Rogers	0.5			
4/10/2014	Garrett Bradley	Review presentation and research completed by co-counsel	2			
4/16/2014	Garrett Bradley	Review emails of E. co counsel and M. Rogers [redacted]	1			
5/6/2014	Garrett Bradley	Prepare for mediation	2			
5/8/2014	Garrett Bradley	Travel to NYC	2			
5/9/2014	Garrett Bradley	Pre-mediation meeting with co counsel; Attend mediation	8			
5/9/2014	Garrett Bradley	Travel back to BOS	2			
5/22/2014	Garrett Bradley	Review emails to/from co-counsel and ERISA counsel re communications with mediator and M. Rogers; call to co-counsel re client communication	1.5			
5/28/2014	Garrett Bradley	Review emails with co-counsel re trade data and ARTRS fx; call to co-counsel re client communication	1			
6/2/2014	Garrett Bradley	Emails and calls with co counsel re ARTRS FX trade data and analysis	1			
6/5/2014	Garrett Bradley	Review document research and draft discovery	0.5			
6/23/2014	Garrett Bradley	Discussion with co-counsel re client communication; review emails	0.5			
9/23/2014	Garrett Bradley	Review emails regading discovery issues	0.5			
10/1/2014	Garrett Bradley	Emails with co counsel re communications with Bill Paine	0.5			
10/24/2014	Garrett Bradley	Review emails re conf call and to/from co-counsel	0.5			
10/27/2014	Garrett Bradley	Conference call with co counsel re: mediation scheduling and message for Marks and SST; emails to/from co counsel re: same	1			
12/31/2014	Garrett Bradley	Call with co counsel re mediation	1.4			
1/6/2015	Garrett Bradley	Meetings with co counsel re mediation	0.3			
1/9/2015	Garrett Bradley	Call with co-counsel re discovery issues	0.5			
1/13/2015	Garrett Bradley	Review emails re case stategy	0.5			
2/3/2015	Garrett Bradley	Conferences with co counsel re mediation strategy; damages and volume analyses	5			
2/4/2015	Garrett Bradley	Attend mediation session re damages and settlement issues	6			
2/25/2015	Garrett Bradley	Review outstanding issues re mediation; review emails re same	0.5			
3/2/2015	Garrett Bradley	Review research; call with co-counsel re client communication	0.5			

3/4/2015	Garrett Bradley	Review emails; call with inhouse counsel re emails to co-counsel and mediation update	0.5			
3/6/2015	Garrett Bradley	Review emails and draft discovery	1			
3/9/2015	Garrett Bradley	Review research documents; call to co-counsel re discovery issues	1			
3/12/2015	Garrett Bradley	Review emails from co-counsel; call with co-counsel re client communciation	1			
4/1/2015	Garrett Bradley	Review hot docs for STT mediation	1			
4/6/2015	Garrett Bradley	Review emails and discussion inhouse counsel re mediation meeting	1			
4/7/2015	Garrett Bradley	Conference call with SEC and D. Goldsmith; calls with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith re: communications with governmental agencies; conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel re the same	3.5			
4/8/2015	Garrett Bradley	Telephone conference with co-counsel re: SEC call, mediation issues and strategy, prepare for same;	1.3			
4/9/2015	Garrett Bradley	Telephone conference with Larry Sucharow, Eric Belfi, Mike Rogers, co-counsel, defendants, J. Marks re: mediation issues and status; telephone conference with S. curtin, A. Palid re: SEC involvement in settlement negotiations, report to co-counsel; e-mails with co-counsel re: overall government agency issues and strategy; separate telephone conferences with D. Goldsmith	3			
4/14/2015	Garrett Bradley	Telephone conference with C. Moore, A. Palid (SEC, re: potential joint mediation and related issues; set up call; telephone conference with Larry Sucharow re: same; post-call discussion with D. Goldsmith	0.7			
4/15/2015	Garrett Bradley	Emails to co counsel re DOJ status	0.2			
4/16/2015	Garrett Bradley	Emails to co counsel re mediation session	1			
4/22/2015	Garrett Bradley	Conference with co counsel re mediation strategy	1			
4/23/2015	Garrett Bradley	Review email from D. Chiplock re DOJ communications re status of negotiations; emails to co counsel re the same	0.2			
4/24/2015	Garrett Bradley	Review email from L. Sucharow re call from defendants and scheduling of next mediation session; emails with co counsel re the same	0.3			
4/27/2015	Garrett Bradley	Calls, emails and conference call with co-counsel re ERISA	2			

4/29/2015	Garrett Bradley	Mediation preparation session with co counsel	3			
4/30/2015	Garrett Bradley	Attend mediation session	4			
5/1/2015	Garrett Bradley	Review discovery issues; call with co-counsel resame	3			
5/12/2015	Garrett Bradley	Review emails and research compiled	1.5			
5/13/2015	Garrett Bradley	Call with co counsel re talks with STT; calls and emails with co counsel re the same	1.9			
5/15/2015	Garrett Bradley	Emails to co counsel re mediation strategy	1			
5/18/2015	Garrett Bradley	Emails to co counsel re scheduling of call with mediator	0.5			
5/19/2015	Garrett Bradley	Emails to co counsel re scheduling of call with mediator	0.5			
5/21/2015	Garrett Bradley	prepare for 5/22 mediation	2.5			
5/22/2015	Garrett Bradley	Telephone conference with J. Marks and all parties re: settlement and BNY issues; potential next steps	1			
5/22/2015	Garrett Bradley	Call to G. Shapiro at SEC re scheduling meeting; emails to team re the same; strategy review for mediation	1.8			
5/26/2015	Garrett Bradley	Conference call with e-mails to/from co-counsel and ERISA counsel re: mediation meeting, meeting with DOJ and strategies re: same; emails with local counsel and client	3			
5/27/2015	Garrett Bradley	E-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: scheduling mediation session	1.3			
5/28/2015	Garrett Bradley	Emails to co counsel re upcoming mediation strategy	2.5			
5/29/2015	Garrett Bradley	Emails to J. O'Connell at DOJ re meeting coordination	0.2			
6/2/2015	Garrett Bradley	Pre DOJ meeting to discuss strategy	3.5			
6/2/2015	Garrett Bradley	Attend meeting at DOJ re class settlement issues and concerns	1.5			
6/2/2015	Garrett Bradley	Attend mediation session with defendants at Wilmer Hale re DOJ meeting and updates; meeting with co counsel afterwards	5.5			
6/3/2015	Garrett Bradley	emails to co counsel re settlement matrix	0.2			
6/5/2015	Garrett Bradley	Emails to R. Connolly at DOJ re scheduling of mediation session; emails with co counsel re the same	0.4			
6/8/2015	Garrett Bradley	Travel to NYC	2			
6/8/2015	Garrett Bradley	Meeting at Labaton to discuss 6/9 mediation; emails with DOJ	2.2			
6/9/2015	Garrett Bradley	Attend mediation session	2			
6/9/2015	Garrett Bradley	Travel back from NYC to BOS	2			
6/16/2015	Garrett Bradley	Emails with co counsel re changing meditation to phone call and strategy	0.4			

6/17/2015	Garrett Bradley	Call with mediator, defendants, and co counsel re mediation next steps; follow up call with co counsel re mediation strategy	1			
6/24/2015	Garrett Bradley	Review email from L. Sucharow re mediation update from STT and mediator;	0.1			
6/25/2015	Garrett Bradley	Prepare for mediation; document review	5			
6/26/2015	Garrett Bradley	Travel to NYC	2			
6/26/2015	Garrett Bradley	Attend mediation session	8.3			
6/26/2015	Garrett Bradley	Travel back from NYC to BOS	2			
6/28/2015	Garrett Bradley	Review email from L. Sucharow re conversation with mediator and defendants re next mediation session	0.1			
6/29/2015	Garrett Bradley	Attend mediation session	9			
7/6/2015	Garrett Bradley	TC with co-counsel regarding outstanding issues	1.5			
7/16/2015	Garrett Bradley	Conference call with co-counsel re settlement issues; review ERISA and settlement drafts	3			
7/21/2015	Garrett Bradley	Conference call with ERISA co counsel re [redacted] conference call with STT counse re [redacted]	1.5			
7/24/2015	Garrett Bradley	Review outstanding settlement issues;telephone call with co-counsel; prepare for conference call	3			
7/27/2015	Garrett Bradley	Review of settlement sheet and emails	1.5			
7/29/2015	Garrett Bradley	Conference call with all co counsel re STT term sheet proposals; DOL allocation issues; timing issue	1.3			
8/6/2015	Garrett Bradley	Telephone conference with co-counsel regarding outstanding issues and stratgey; review draft settlement	1.5			
8/7/2015	Garrett Bradley	Telephone conference with co-counsel regarding status and update of case	0.5			
8/11/2015	Garrett Bradley	Telephone conference with co-counsel regarding case	0.5			
8/12/2015	Garrett Bradley	conference call with co counsel; call with DOL; meeting with B. Lieff and MPT in NYC	8.5			
8/18/2015	Garrett Bradley	Review internal memos, allocation plan and documents; prepare for telephone conference	3.5			
8/27/2015	Garrett Bradley	Discuss ongong strategy with co-counsel	2			
9/2/2015	Garrett Bradley	Review emails; In-house discussion on outstanding issues and stragey	1.5			
9/12/2015	Garrett Bradley	review email from N. Zeiss re DOL call and status of term sheet	0.2			
4/14/2016	Garrett Bradley	review of settlement docs and conference call with co counsel re the same	1			

5/31/2016	Garrett Bradley	emails and calls with co counsel re scheduling of preliminary hearing issues; meeting with clerk; calls to defense counsel re the same	2			
6/23/2016	Garrett Bradley	meeting with co-counsel re: stratgey for joint status report hearing; draft motion request re the same; attend Status Report Hearing with Judge Wolf; emails to co counsel re the same	3			
8/8/2016	Garrett Bradley	attend preliminary approval hearing in front of Judge Wolf; meetings with co counsel before and after to discuss strategy, crafting language responsive to Judge Wolf's suggestions	3			Bradley Total: 734.9
4/30/2014	Jeremiah Meyer-O'Day	Memo to MAL and ERH on ch93A proof of damages analysis	2			
2/9/2015	Jonathan Zaul	Document review	8			
2/10/2015	Jonathan Zaul	Document review	8			
2/11/2015	Jonathan Zaul	Document review	8			
2/12/2015	Jonathan Zaul	Document review	8			
2/13/2015	Jonathan Zaul	Document review	8			
2/17/2015	Jonathan Zaul	Document review	8			
2/18/2015	Jonathan Zaul	Document review	8			
2/18/2015	Jonathan Zaul	Document review	8			
2/19/2015	Jonathan Zaul	Document review	8			
2/20/2015	Jonathan Zaul	Document review	8			
2/25/2015	Jonathan Zaul	Document review	8			
2/26/2015	Jonathan Zaul	Document review	8			
2/27/2015	Jonathan Zaul	Document review	8			
3/2/2015	Jonathan Zaul	Document review	8			
3/3/2015	Jonathan Zaul	Document review	2			
3/4/2015	Jonathan Zaul	Document review	5			
3/5/2015	Jonathan Zaul	Document review	4			
3/6/2015	Jonathan Zaul	Document review	4			
3/9/2015	Jonathan Zaul	Document review	8			
3/10/2015	Jonathan Zaul	Document review	8			
3/11/2015	Jonathan Zaul	Document review	8			
3/12/2015	Jonathan Zaul	Document review	8			
3/13/2015	Jonathan Zaul	Document review	8			
3/16/2015	Jonathan Zaul	Document review	8			
3/17/2015	Jonathan Zaul	Document review	8			
3/18/2015	Jonathan Zaul	Document review	8			
3/19/2015	Jonathan Zaul	Document review	8			
3/20/2015	Jonathan Zaul	Document review	8			

3/23/2015	Jonathan Zaul	Document review	8			
3/24/2015	Jonathan Zaul	Document review	8			
3/25/2015	Jonathan Zaul	Document review	8			
3/25/2015	Jonathan Zaul	Document review	8			
3/27/2015	Jonathan Zaul	Document review	8			
3/30/2015	Jonathan Zaul	Document review	8			
3/31/2015	Jonathan Zaul	Document review	8			
4/1/2015	Jonathan Zaul	Document review	8			
4/2/2015	Jonathan Zaul	Document review	8			
4/3/2015	Jonathan Zaul	Document review	8			
4/6/2015	Jonathan Zaul	Document review	8			
4/7/2015	Jonathan Zaul	Document review	8			
4/8/2015	Jonathan Zaul	Document review	8			
4/9/2015	Jonathan Zaul	Document review	8			
4/10/2015	Jonathan Zaul	Document review	8			Zaul Total: 327
2/13/2013	Jotham Kinder	Attend Catalyst doc review training	1			
3/5/2013	Jotham Kinder	Document review tutorial	1.5			
3/5/2013	Jotham Kinder	Document review	2.5			
3/6/2013	Jotham Kinder	Document review	6			
3/7/2013	Jotham Kinder	Document review	3			
3/8/2013	Jotham Kinder	Document review	6			
3/10/2013	Jotham Kinder	Document review	2.5			
3/11/2013	Jotham Kinder	Document review	4			
3/12/2013	Jotham Kinder	Document review	5.5			
3/13/2013	Jotham Kinder	Document review	5.5			
3/14/2013	Jotham Kinder	Document review	4			
3/15/2013	Jotham Kinder	Document Review	4.5			
3/18/2013	Jotham Kinder	Document review	4			
3/19/2013	Jotham Kinder	Document review	3			
3/20/2013	Jotham Kinder	Document review	6.5			
3/21/2013	Jotham Kinder	Document review	7			
3/22/2013	Jotham Kinder	Document review	1.5			
3/23/2013	Jotham Kinder	Document review	1			
3/25/2013	Jotham Kinder	document review	6.5			
3/26/2013	Jotham Kinder	Document review	4.5			
3/27/2013	Jotham Kinder	document review	6			
3/28/2013	Jotham Kinder	Document review	5			
3/29/2013	Jotham Kinder	Document review	6			
4/1/2013	Jotham Kinder	Document review	5			
4/2/2013	Jotham Kinder	Document review	3.5			
4/3/2013	Jotham Kinder	Document review	4.5			

4/4/2013	Jotham Kinder	Meeting with doc review team to discuss progress and coding issues	1			
4/8/2013	Jotham Kinder	Document review	4			
4/9/2013	Jotham Kinder	Document review	5.5			
4/10/2013	Jotham Kinder	Document review	6.5			
4/11/2013	Jotham Kinder	Document review	2			
4/12/2013	Jotham Kinder	Document review	4.5			
4/15/2013	Jotham Kinder	Document review	2			
4/16/2013	Jotham Kinder	Document review	4			
4/17/2013	Jotham Kinder	Meeting with document review team to discuss issues re coding	1			
4/18/2013	Jotham Kinder	Document review	2			
4/26/2013	Jotham Kinder	Document review	5.5			
5/1/2013	Jotham Kinder	document review	5.5			
5/2/2013	Jotham Kinder	Document review	6			
5/3/2013	Jotham Kinder	Document review	5.5			
5/6/2013	Jotham Kinder	Document review	6			
5/7/2013	Jotham Kinder	Document review	3.5			
5/8/2013	Jotham Kinder	Document review	6			
5/9/2013	Jotham Kinder	Document review	6.2			
6/4/2013	Jotham Kinder	Document review	3			
9/5/2013	Jotham Kinder	Internal doc review team meeting re progress and issues	1			
9/6/2013	Jotham Kinder	document review	5.5			
9/9/2013	Jotham Kinder	document review	5.5			
9/10/2013	Jotham Kinder	document review	6			
9/11/2013	Jotham Kinder	document review	5.5			
9/12/2013	Jotham Kinder	document review	5.5			
9/13/2013	Jotham Kinder	document review	4.5			
9/18/2013	Jotham Kinder	document review	6.1			
9/19/2013	Jotham Kinder	document review	6.1			
9/20/2013	Jotham Kinder	document review	2.5			
9/23/2013	Jotham Kinder	Document review	7			
9/24/2013	Jotham Kinder	Document review	6.5			
9/25/2013	Jotham Kinder	Document review	6.5			
9/30/2013	Jotham Kinder	document review	7			
10/1/2013	Jotham Kinder	Document review	6.5			
10/2/2013	Jotham Kinder	document review	4.5			
10/3/2013	Jotham Kinder	document review	6.4			
10/4/2013	Jotham Kinder	Document review	4.5			
10/8/2013	Jotham Kinder	document review	6.2			

10/10/2013	Jotham Kinder	Document review	5.5			
10/15/2013	Jotham Kinder	Document review	3.5			
10/16/2013	Jotham Kinder	document review	5.5			
10/22/2013	Jotham Kinder	Document review	6			
10/25/2013	Jotham Kinder	document review	3.5			
10/31/2013	Jotham Kinder	Document review	4.3			
11/6/2013	Jotham Kinder	Document review	7			Kinder Total: 328.3
7/23/2011	Mike Bradley	Document review	1			
3/12/2013	Mike Bradley	Call with E. Hoffman re state street case information for my review	2.2			
3/19/2013	Mike Bradley	Phone call with E. Hoffman re document review platform	1			
3/22/2013	Mike Bradley	Document review	0.8			
3/25/2013	Mike Bradley	Document review	2			
3/26/2013	Mike Bradley	Document review	1.5			
3/27/2013	Mike Bradley	Document review	2			
3/29/2013	Mike Bradley	Document review	2			
4/2/2013	Mike Bradley	Document review	2			
4/3/2013	Mike Bradley	Document review	2.6			
4/4/2013	Mike Bradley	Document review	2.2			
4/5/2013	Mike Bradley	Document review	2.8			
4/8/2013	Mike Bradley	Document review	2			
4/9/2013	Mike Bradley	Document review	1.5			
4/11/2013	Mike Bradley	Document review	2			
4/12/2013	Mike Bradley	Document review	2			
4/16/2013	Mike Bradley	Document review	1.8			
4/18/2013	Mike Bradley	Document review	1.4			
4/25/2013	Mike Bradley	Document review	2.4			
4/26/2013	Mike Bradley	Document review	2.2			
4/30/2013	Mike Bradley	Document review	1.5			
5/1/2013	Mike Bradley	Document review	2			
5/2/2013	Mike Bradley	Document review	1			
5/14/2013	Mike Bradley	Document review	2			
5/16/2013	Mike Bradley	Document review	2.4			
5/20/2013	Mike Bradley	Document review	3			
5/21/2013	Mike Bradley	Document review	1.5			
5/23/2013	Mike Bradley	Document review	1.5			
5/24/2013	Mike Bradley	Document review	1			
5/29/2013	Mike Bradley	Document review	1.8			
6/4/2013	Mike Bradley	Document review	3			
6/6/2013	Mike Bradley	Document review	2			
6/7/2013	Mike Bradley	Document review	2.5			

6/10/2013	Mike Bradley	Document review	1			
6/11/2013	Mike Bradley	Document review	2			
6/18/2013	Mike Bradley	Document review	2			
6/21/2013	Mike Bradley	Document review	1.4			
6/25/2013	Mike Bradley	Document review	1.4			
6/27/2013	Mike Bradley	Document review	2.5			
7/1/2013	Mike Bradley	Document review	1			
7/11/2013	Mike Bradley	Document review	1.5			
7/12/2013	Mike Bradley	Document review	2.5			
7/15/2013	Mike Bradley	Document review	1.4			
7/16/2013	Mike Bradley	Document review	1.5			
7/18/2013	Mike Bradley	Document review	2.4			
7/22/2013	Mike Bradley	Document review	1.4			
7/29/2013	Mike Bradley	Document review	2.5			
7/30/2013	Mike Bradley	Document review	1.5			
7/31/2013	Mike Bradley	Document review	1.8			
8/6/2013	Mike Bradley	Document review	2			
8/8/2013	Mike Bradley	Document review	1.5			
8/14/2013	Mike Bradley	Document review	1			
8/15/2013	Mike Bradley	Document review	2.4			
8/20/2013	Mike Bradley	Document review	2			
8/26/2013	Mike Bradley	Document review	1.5			
8/27/2013	Mike Bradley	Document review	2			
9/3/2013	Mike Bradley	Document review	2			
9/9/2013	Mike Bradley	Document review	1			
9/11/2013	Mike Bradley	Document review	1			
9/12/2013	Mike Bradley	Document review	3			
9/17/2013	Mike Bradley	Document review	2			
9/23/2013	Mike Bradley	Document review	1.5			
9/25/2013	Mike Bradley	Document review	1.5			
10/2/2013	Mike Bradley	Document review	1.5			
10/3/2013	Mike Bradley	Document review	1.4			
10/7/2013	Mike Bradley	Document review	2			
10/9/2013	Mike Bradley	Document review	2			
10/10/2013	Mike Bradley	Document review	2			
10/31/2013	Mike Bradley	Document review	2			
11/4/2013	Mike Bradley	Document review	1.5			
11/5/2013	Mike Bradley	Document review	2			
11/8/2013	Mike Bradley	Document review	1.5			
11/13/2013	Mike Bradley	Document review	1.5			
11/14/2013	Mike Bradley	Document review	1.5			

11/19/2013	Mike Bradley	Document review	2.4			
11/21/2013	Mike Bradley	Document review	1.8			
11/26/2013	Mike Bradley	Document review	2			
12/2/2013	Mike Bradley	Document review	1.5			
12/3/2013	Mike Bradley	Document review	2.4			
12/4/2013	Mike Bradley	Document review	1			
12/11/2013	Mike Bradley	Document review	2			
12/12/2013	Mike Bradley	Document review	2			
12/17/2013	Mike Bradley	Document review	1.5			
12/18/2013	Mike Bradley	Document review	1.5			
12/20/2013	Mike Bradley	Document review	2			
12/27/2013	Mike Bradley	Document review	1.5			
12/30/2013	Mike Bradley	Document review	1.8			
12/31/2013	Mike Bradley	Document review	1.5			
1/6/2014	Mike Bradley	Document review	1.4			
1/7/2014	Mike Bradley	Document review	1.5			
1/8/2014	Mike Bradley	Document review	2.5			
1/10/2014	Mike Bradley	Document review	2			
1/15/2014	Mike Bradley	Document review	1.5			
1/17/2014	Mike Bradley	Document review	2.4			
1/23/2014	Mike Bradley	Document review	1.8			
1/24/2014	Mike Bradley	Document review	1.8			
1/27/2014	Mike Bradley	Document review	2.4			
1/28/2014	Mike Bradley	Document review	2.4			
1/30/2014	Mike Bradley	Document review	1.8			
2/6/2014	Mike Bradley	Document review	2			
2/10/2014	Mike Bradley	Document review	1.5			
2/20/2014	Mike Bradley	Document review	2			
2/24/2014	Mike Bradley	Document review	2			
2/26/2014	Mike Bradley	Document review	2			
2/28/2014	Mike Bradley	Document review	1			
3/11/2014	Mike Bradley	Document review	1.5			
3/12/2014	Mike Bradley	Document review	2			
3/17/2014	Mike Bradley	Document review	1.5			
3/18/2014	Mike Bradley	Document review	1.5			
3/20/2014	Mike Bradley	Document review	1.5			
3/21/2014	Mike Bradley	Document review	1.5			
3/25/2014	Mike Bradley	Document review	1			
3/27/2014	Mike Bradley	Document review	1.5			
3/28/2014	Mike Bradley	Document review	1.4			
4/3/2014	Mike Bradley	Document review	1.4			

4/8/2014	Mike Bradley	Document review	1			
4/15/2014	Mike Bradley	Document review	1.7			
4/17/2014	Mike Bradley	Document review	2			
4/23/2014	Mike Bradley	Document review	1.4			
4/29/2014	Mike Bradley	Document review	1.2			
4/30/2014	Mike Bradley	Document review	1.5			
5/5/2014	Mike Bradley	Document review	1.5			
5/20/2014	Mike Bradley	Document review	1.4			
6/2/2014	Mike Bradley	Document review	1.6			
6/4/2014	Mike Bradley	Document review	1.2			
6/6/2014	Mike Bradley	Document review	2			
6/10/2014	Mike Bradley	Document review	1.4			
6/11/2014	Mike Bradley	Document review	1.3			
6/19/2014	Mike Bradley	Document review	2.5			
6/23/2014	Mike Bradley	Document review	1			
6/25/2014	Mike Bradley	Document review	1.8			
6/30/2014	Mike Bradley	Document review	1.5			
7/8/2014	Mike Bradley	Document review	1.8			
7/9/2014	Mike Bradley	Document review	1.1			
7/14/2014	Mike Bradley	Document review	1.6			
7/15/2014	Mike Bradley	Document review	1.5			
7/16/2014	Mike Bradley	Document review	2			
7/21/2014	Mike Bradley	Document review	1.4			
7/23/2014	Mike Bradley	Document review	1.4			
7/26/2014	Mike Bradley	Document review	1.4			
7/30/2014	Mike Bradley	Document review	1.8			
7/31/2014	Mike Bradley	Document review	1.5			
8/1/2014	Mike Bradley	Document review	2			
8/4/2014	Mike Bradley	Document review	1.2			
8/7/2014	Mike Bradley	Document review	1.5			
8/14/2014	Mike Bradley	Document review	1.7			
8/18/2014	Mike Bradley	Document review	2			
8/19/2014	Mike Bradley	Document review	1.9			
8/25/2014	Mike Bradley	Document review	2			
8/26/2014	Mike Bradley	Document review	1.5			
8/27/2014	Mike Bradley	Document review	1.4			
9/4/2014	Mike Bradley	Document review	1.5			
9/11/2014	Mike Bradley	Document review	2.4			
9/15/2014	Mike Bradley	Document review	1.2			
9/16/2014	Mike Bradley	Document review	1.9			
9/19/2014	Mike Bradley	Document review	2			

9/24/2014	Mike Bradley	Document review	1.8			
9/25/2014	Mike Bradley	Document production	1.4			
9/29/2014	Mike Bradley	Document review	1.2			
9/30/2014	Mike Bradley	Document review	1.4			
10/1/2014	Mike Bradley	Document review	1.2			
10/13/2014	Mike Bradley	Document review	1.8			
10/14/2014	Mike Bradley	Document review	1.9			
10/15/2014	Mike Bradley	Document review	1.4			
10/16/2014	Mike Bradley	Document review	2			
10/20/2014	Mike Bradley	Document review	1.1			
10/21/2014	Mike Bradley	Document review	1.8			
10/27/2014	Mike Bradley	Document review	1.5			
10/31/2014	Mike Bradley	Document review	2.4			
11/5/2014	Mike Bradley	Document review	1.8			
11/6/2014	Mike Bradley	Document review	2			
11/11/2014	Mike Bradley	Document review	1.5			
11/12/2014	Mike Bradley	Document review	1.3			
11/14/2014	Mike Bradley	Document review	1.3			
11/17/2014	Mike Bradley	Document review	1.8			
11/19/2014	Mike Bradley	Document review	1.5			
11/21/2014	Mike Bradley	Document review	1.6			
11/24/2014	Mike Bradley	Document review	1.6			
11/25/2014	Mike Bradley	Document review	1.9			
12/1/2014	Mike Bradley	Document review	1.3			
12/2/2014	Mike Bradley	Document review	1.3			
12/3/2014	Mike Bradley	Document review	1.8			
12/4/2014	Mike Bradley	Document review	1.2			
12/8/2014	Mike Bradley	Document review	1.7			
12/12/2014	Mike Bradley	Document review	1.5			
12/15/2014	Mike Bradley	Document review	1.9			
12/16/2014	Mike Bradley	Document review	2			
12/22/2014	Mike Bradley	Document review	1.3			
12/23/2014	Mike Bradley	Document review	1.3			
12/29/2014	Mike Bradley	Document review	1.6			
1/5/2015	Mike Bradley	Document review	1.7			
1/9/2015	Mike Bradley	Document review	1.3			
1/12/2015	Mike Bradley	Document review	2.2			
1/13/2015	Mike Bradley	Document review	2.2			
1/14/2015	Mike Bradley	Document review	2.2			
1/15/2015	Mike Bradley	Document review	1.9			
1/20/2015	Mike Bradley	Document review	2.3			

1/23/2015	Mike Bradley	Document review	2.2			
1/26/2015	Mike Bradley	Document review	2.1			
1/29/2015	Mike Bradley	Document review	2.6			
1/30/2015	Mike Bradley	Document review	1.6			
2/4/2015	Mike Bradley	Document review	2.1			
2/10/2015	Mike Bradley	Document review	2.3			
2/12/2015	Mike Bradley	Document review	2.4			
2/16/2015	Mike Bradley	Document review	2.2			
2/18/2015	Mike Bradley	Document review	1.7			
2/24/2015	Mike Bradley	Document review	1.9			
2/25/2015	Mike Bradley	Document review	1.3			
3/2/2015	Mike Bradley	Document review	2.2			
3/3/2015	Mike Bradley	Document review	1.9			
3/4/2015	Mike Bradley	Document review	1.1			
3/9/2015	Mike Bradley	Document review	1.4			
3/10/2015	Mike Bradley	Document review	2.3			
3/11/2015	Mike Bradley	Document review	2.2			
3/12/2015	Mike Bradley	Document review	2.2			
3/16/2015	Mike Bradley	Document review	2.4			
3/17/2015	Mike Bradley	Document review	1.9			
3/18/2015	Mike Bradley	Document review	1.5			
3/23/2015	Mike Bradley	Document review	1.8			
3/25/2015	Mike Bradley	Document review	1.2			
3/27/2015	Mike Bradley	Document review	2.3			
3/31/2015	Mike Bradley	Document review	2.2			
4/6/2015	Mike Bradley	Document review	1.9			
4/8/2015	Mike Bradley	Document review	2.1			
4/9/2015	Mike Bradley	Document review	1.4			
4/13/2015	Mike Bradley	Document review	2.1			
4/16/2015	Mike Bradley	Document review	2.2			
4/17/2015	Mike Bradley	Document review	1.9			
4/20/2015	Mike Bradley	Document review	2.2			
4/23/2015	Mike Bradley	Document review	2.5			
4/29/2015	Mike Bradley	Document review	1.6			
4/30/2015	Mike Bradley	Document review	1.5			
8/11/2008	Mike Lesser	Call with Steve Fineman re: potential litigation	1.5			
10/7/2008	Mike Lesser	Call with LCHB re: potential STT case	2			
10/8/2008	Mike Lesser	Call with LCHB re: potential STT case	1.4			
11/24/2008	Mike Lesser	Call with Lexi Hazam re: obtaining FX data	0.3			
10/2/2009	Mike Lesser	Emails to Steve Fineman re: class filing strategy	0.3			

10/6/2009	Mike Lesser	Conference call with LCHB re: strategy for filing and communication with clients	1			
10/23/2009	Mike Lesser	Call with Phil Michael and LCHB re: possible class representative candidates	1.2			
10/27/2009	Mike Lesser	Emails to co-counsel re: client retention and strategy for same	1.5			
12/2/2009	Mike Lesser	Emails to co-counsel re: review of fx trading data for potential clients	0.4			
12/11/2009	Mike Lesser	Call with co-counsel re: status of litigation and data review	0.7			
1/28/2010	Mike Lesser	Call with co-counsel re: status of case and draft complaint	0.8			
2/25/2010	Mike Lesser	Call with co-counsel re status of non-qui tam ligitation	0.5			
3/24/2010	Mike Lesser	Emails to co-counsel re [redacted]	0.3			
4/8/2010	Mike Lesser	Emails to Dan Chiplock re 93A research	0.2			
4/8/2010	Mike Lesser	Emails to Dan Chiplock re [redacted]	0.8			
4/13/2010	Mike Lesser	Emails to Dan Chiplock re 93A research	0.1			
4/14/2010	Mike Lesser	emails re: 93A claims	0.7			
4/15/2010	Mike Lesser	Emails to co-counsel re status of 93A claim	0.8			
4/26/2010	Mike Lesser	emails and coordination of uploading ARTRS FX trade data for expert analysis	0.2			
4/27/2010	Mike Lesser	emails with expert and co counsel re analysis of ARTRS data	0.3			
4/30/2010	Mike Lesser	emails with expert re trade data issues	1			
5/5/2010	Mike Lesser	emails and discussion with expert re analysis of FX data	0.3			
5/6/2010	Mike Lesser	review of expert analysis of FX trading data for ARTRS	1.2			
5/10/2010	Mike Lesser	prep and call with Labaton co cpinsel re ARTRS data and analysis; emails re the same	1			
5/11/2010	Mike Lesser	review of revised expert analysis of ARTRS FX data and emails re the same	1.5			
5/12/2010	Mike Lesser	emails with co counsel re ARTRS contracts and RFP docs; review contracts	2.7			
5/13/2010	Mike Lesser	development of class case	0.8			
5/14/2010	Mike Lesser	emails with co counsel re class development	0.5			
5/17/2010	Mike Lesser	emails with co counsel re client and case development; emails re ARTRS contracts	1.6			
5/18/2010	Mike Lesser	emails re case development	0.1			

5/19/2010	Mike Lesser	emaols with clients and co counsel re case development	0.5			
5/19/2010	Mike Lesser	review of custodian list from S&P publications	2			
5/20/2010	Mike Lesser	case development and research	1.5			
5/21/2010	Mike Lesser	case development and research	2			
5/24/2010	Mike Lesser	compile for R. Heimann [redacted]	2.5			
5/25/2010	Mike Lesser	case development and research; emails with consultant	0.3			
5/27/2010	Mike Lesser	emails with co counsel re development scheduling	0.1			
5/29/2010	Mike Lesser	emails with expert re trading data	0.1			
6/1/2010	Mike Lesser	emails with co counsel and consultant re case development	0.3			
6/2/2010	Mike Lesser	emails with co counsel and consultant re case development	0.2			
6/3/2010	Mike Lesser	emails with co counsel and consultant re case development	0.3			
6/4/2010	Mike Lesser	emails with co counsel and consultant re case development	0.5			
6/7/2010	Mike Lesser	emails with co counsel and consultant re case development	0.2			
6/8/2010	Mike Lesser	call with S. Fineman and P. Michael re [redacted]	1.2			
6/9/2010	Mike Lesser	Emails to Lexi Hazam re netting issues in FX data analysis	0.4			
6/9/2010	Mike Lesser	research and compile list of STT custodial Taft Hartley clients in MA; case research and development	2.6			
6/10/2010	Mike Lesser	case research and development	5.2			
6/11/2010	Mike Lesser	draft liability presenation and overview/research development	8			
6/12/2010	Mike Lesser	draft liability presenation and overview/research development	1			
6/13/2010	Mike Lesser	draft liability presenation and overview/research development	2.5			
6/14/2010	Mike Lesser	draft liability presenation and overview/research development; emails with co counsel re case development	5.5			
6/15/2010	Mike Lesser	meeting with consultant and emails with co counsel re case development	2.5			
6/16/2010	Mike Lesser	development and research of case; emails with co counsel re the same	5			

6/17/2010	Mike Lesser	development and research of case; emails with co counsel re the same	1			
6/18/2010	Mike Lesser	development and research of case; emails with co counsel re the same	2.2			
6/21/2010	Mike Lesser	development and research of case; emails with co counsel re the same	2			
6/22/2010	Mike Lesser	development and research of case; emails with co counsel re the same	2.1			
6/23/2010	Mike Lesser	development and research of case; emails with co counsel re the same	1.3			
6/24/2010	Mike Lesser	Call with LCHB re status and strategy; review memo re WSIB meeting minutes; custody search and emails re the same	2.9			
6/25/2010	Mike Lesser	emails with co counsel re case development	1.8			
6/26/2010	Mike Lesser	emails with co counsel re case development	0.5			
6/30/2010	Mike Lesser	Emails to Dan Chiplock re Berntein Litowitz involvement and presentation	0.4			
7/2/2010	Mike Lesser	development and emails with expert re FX analysis and data	0.9			
7/7/2010	Mike Lesser	emails with expert re FX analysis	0.3			
7/9/2010	Mike Lesser	Emails with co-counsel re client outreach and other class issues; prepare for and call with co counsel and client	1.7			
7/12/2010	Mike Lesser	emails with co counsel re case development	0.2			
7/13/2010	Mike Lesser	Call with co-counsel re [redacted]; emails with expert re [redacted]	0.8			
7/14/2010	Mike Lesser	review [redacted] emails re same	0.4			
7/15/2010	Mike Lesser	Call with LCHB re [redacted] and analysis of same	1.5			
7/16/2010	Mike Lesser	discussion and emails w expert re client data and data review	1.7			
7/19/2010	Mike Lesser	emails with expert re client data review	0.3			
7/20/2010	Mike Lesser	emails to client and co counsel re data review	1.1			
7/27/2010	Mike Lesser	emails to client re data review	0.1			
7/28/2010	Mike Lesser	emails to expert and co counsel re ongoing data review	1.1			
7/29/2010	Mike Lesser	emails to co counsel re data review	0.3			
8/2/2010	Mike Lesser	case development and meeting with potential client; call with client re data review questions	2.3			
8/3/2010	Mike Lesser	emails to expert and client re client inquiry	0.3			

8/11/2010	Mike Lesser	Emails with LCHB re class client outreach	0.4			
8/30/2010	Mike Lesser	emails and call with [redacted]	1.2			
8/31/2010	Mike Lesser	emails with co counsel and exprt re FX analysis and consultant meeting	1			
9/1/2010	Mike Lesser	emails with expert and co counsel re data analysis presentation	1.4			
9/2/2010	Mike Lesser	emails with expert and co counsel re FX data presentation to client	1.5			
9/3/2010	Mike Lesser	emails with expert re data analysis and consulting agreement; review of documents re the same	2.5			
9/6/2010	Mike Lesser	emails with consultant re ARTRS data review	0.2			
9/7/2010	Mike Lesser	emails with expert and co counsel re FX data presentation to client and consultant; doc review re the same; preparation for meeiting	6			
9/8/2010	Mike Lesser	preparation for Chicago presenation to client and consultnt	4			
9/9/2010	Mike Lesser	travel to Chicago for meeting with expert client and consultant; meeting with client and consultant and expert and co counsel; travel back from Chicago	10.5			
9/9/2010	Mike Lesser	emails re [redacted]; emails with [redacted]	0.4			
9/10/2010	Mike Lesser	emails with co counsel re client data review and dcouments; emails with co counsel re STT public pension clients	0.5			
9/13/2010	Mike Lesser	emails with co counsel and counsel for [redacted]; conference call re the same	1.3			
9/14/2010	Mike Lesser	Prepare for and meeting with co-counsel re potential class litigation against STT	8.2			
9/15/2010	Mike Lesser	emails with co counsel re damages; draft summary of client damages for co counsel	3.7			
9/16/2010	Mike Lesser	draft summary presentation re client damages for co counsel; emails with expert and co counsel re damages	4.7			
9/17/2010	Mike Lesser	emails with co counsel and expert re damages analysis and presentation; emails and research re drafting of complaint fact section	4.5			
9/20/2010	Mike Lesser	Emails to LCHB re drafting class complaint; draft introduction to complaint	4.3			
9/20/2010	Mike Lesser	revieew [redacted]	1.5			

9/21/2010	Mike Lesser	Calls with LCHB and Labaton re class complaint drafting; emails re the same; review documents re the same	2.1			
9/22/2010	Mike Lesser	Emails with [redacted]	0.5			
9/23/2010	Mike Lesser	emails with co counsel re [redacted]	0.2			
9/24/2010	Mike Lesser	email with co counsel re contracts	0.1			
9/27/2010	Mike Lesser	draft complaint fact section for co counsel review	5			
9/28/2010	Mike Lesser	draft fact section of complaint for co counsel review	6.5			
9/29/2010	Mike Lesser	emails with co counsel re custodial contracts; develop damages model for client	2.2			
10/5/2010	Mike Lesser	emails with co counsel re breach of fiduciary duty claims	0.2			
10/6/2010	Mike Lesser	edit review excel file sorting client FX trades and email expert	0.9			
10/7/2010	Mike Lesser	edit review excel file sorting client FX trades and email expert; edit spreadsheet with client data analysis	1.3			
10/8/2010	Mike Lesser	emails and review of [redacted] emails to co counsel re [redacted]	1.8			
10/13/2010	Mike Lesser	emails and excel file review with expert and co consel re client data review	1.5			
10/14/2010	Mike Lesser	emails and excel file review with expert and co consel re client data review	1			
10/15/2010	Mike Lesser	emails with co counsel and client re data review	1.2			
10/18/2010	Mike Lesser	emails and conference call with expert and client and co counsel re data review	1.1			
10/18/2010	Mike Lesser	emails and conference call with expert and client and co counsel re data review	1			
10/20/2010	Mike Lesser	emails with expert and co couinsel re data review and requests	0.8			
10/21/2010	Mike Lesser	Emails to co-counsel re potential class representative	0.2			
10/26/2010	Mike Lesser	review emails from co counsel re 93A cases	1			
10/27/2010	Mike Lesser	emails and discussions with co counsel and clients re [redacted] research related to [redacted]	2.5			
10/28/2010	Mike Lesser	excel analysis and pivot tables re [redacted]; emails with co counsel re [redacted]	1.8			
10/30/2010	Mike Lesser	emails with co counsel re [redacted]	0.2			

11/1/2010	Mike Lesser	emails with expert re [redacted]	1.4			
11/2/2010	Mike Lesser	emails to co counsel re client contract and litigation theory	0.3			
11/3/2010	Mike Lesser	emails to co counsel re client questions; drafting of client damages analysis and eails to co counsel re same	3.8			
11/5/2010	Mike Lesser	emails with co counsel and expert re STT response to data request	1.1			
11/8/2010	Mike Lesser	emails with co counsel re client inquiries	0.2			
11/10/2010	Mike Lesser	emails with co counsel re emails from custodian	0.1			
11/11/2010	Mike Lesser	emails and analysis for co counsel re possible witnesses	0.3			
11/12/2010	Mike Lesser	emails and analysis for co counsel re possible witnesses; review of client emails to bank re FX pricing	0.7			
11/15/2010	Mike Lesser	review of client email to bank re FX pricing	0.2			
11/16/2010	Mike Lesser	emails and analysis of possible witnesses	0.4			
11/17/2010	Mike Lesser	emails with expert re trade terminology; emails and analysis re trading information from bank; emails with experts and co counsel re the same	1.9			
11/18/2010	Mike Lesser	emails with co counsel re litigation course and next steps	0.3			
11/19/2010	Mike Lesser	emails with co counsel re potential witnesses	0.1			
11/22/2010	Mike Lesser	emails and conference call re complaint drafting	0.6			
11/23/2010	Mike Lesser	preparation of draft questions/topics for witness interviews; emails to co counsel re the same	5.6			
11/24/2010	Mike Lesser	review of witness information	0.2			
11/25/2010	Mike Lesser	emails with co counsel re witness questions	0.4			
11/29/2010	Mike Lesser	emails and review of excel data with expert	2.5			
12/1/2010	Mike Lesser	emails to co counsel re FX data analysis of three trades; emails to co counsel re data analysis	1.4			
12/2/2010	Mike Lesser	emails to co counsel re possible bank witnesses; draft reponses to Bank's defensive positions; review Bank's claim of currency inventory	3.2			
12/3/2010	Mike Lesser	Emails to Lexi Hazam re STT explanation of its FX procedures; draft responses to STT's defensive positions and send to co counsel; draft and edit complaint fact section; email and description of response to Bank's position to client/ co counsel	8.4			
12/6/2010	Mike Lesser	Call with Lexi Hazam re status of drafting complaint	0.5			

12/6/2010	Mike Lesser	Draft complaint fact section; review witness notes from investigator	3.5			
12/7/2010	Mike Lesser	review witness notes and info and redrafting of summary for client	1.5			
12/8/2010	Mike Lesser	draft/edit complaint fact section	4			
12/9/2010	Mike Lesser	draft/edit complaint fact section	6.5			
12/10/2010	Mike Lesser	draft and edit complaint; emails to co counsel re complaint; review of investigator memo re bank witnesses and emails to co counsel re the same	3.7			
12/13/2010	Mike Lesser	emails and call with expert and client re data; review investigator witness list	0.8			
12/14/2010	Mike Lesser	emails with expert re data discussed during call; emails with expert and client re Bank meeting	0.5			
12/15/2010	Mike Lesser	emails with experts and co counsel and review file re additional FX analysis by expert; emails and calls with client re documents to review	2			
12/16/2010	Mike Lesser	review of expert analysis re certain FX trades; emails to co counsel re the same	0.7			
12/17/2010	Mike Lesser	emails to expert and co counsel re client's consultant's understanding of FX pricing	0.5			
12/18/2010	Mike Lesser	emails with co counsel re status of amended complaint	0.1			
12/20/2010	Mike Lesser	prepare for meeting with bank, expert, and client; review of investment manager guides from client	2.1			
12/20/2010	Mike Lesser	meeting with State Street	6			
12/21/2010	Mike Lesser	emails with expert and co counsel re data reporting format for report; emails with co counsel re client and bank responses	0.5			
12/22/2010	Mike Lesser	Emails to Lexi Hazam re thoughts on draft complaint; review of memo on 93A; emails with expert and cient re conversations with lms	1.1			
12/23/2010	Mike Lesser	Review ERH memo on 93A; review of Bank's letter of direction from lms and disussions with experts re the same; requests to client re IM guides back to 2000; emails with expert and client re custodial contract language	4.7			
12/26/2010	Mike Lesser	emails with co counsel re Bank's FX pricing regime	1.1			
12/27/2010	Mike Lesser	emails with co counsel and expert re FX trading logistics and procedure	0.7			
12/28/2010	Mike Lesser	emails with expert re data and client questions	1.5			
12/29/2010	Mike Lesser	emails with expert and co counsel re meeting	0.3			

12/31/2010	Mike Lesser	emails with expert re client IM's	0.1			
1/3/2011	Mike Lesser	emails with expert re client Ims and FX trading; review of report and info	1.6			
1/4/2011	Mike Lesser	Emails to Lexi Hazam re status of potential class reps	0.3			
1/5/2011	Mike Lesser	calls and emails with G. Bradley and Labaton lawyers re drafting of complaint; meeting with MPT and GJB and FX Transparency; review of IM guides produced on disk by STT	2.5			
1/6/2011	Mike Lesser	emails with co counsel re client and client FX data; review of IM guides and preparation of short summary for co counsel	3.4			
1/7/2011	Mike Lesser	research of [redacted] email to co counsel	1.2			
1/10/2011	Mike Lesser	Complaint fact drafting	6			
1/11/2011	Mike Lesser	emails with co counsel re meetiong with client and expert; emails with expert re outstanding questions about FX process; emails and review of draft 93a claim for complaint	1.4			
1/12/2011	Mike Lesser	emails with expert re draft responses related to discovery requests	0.2			
1/13/2011	Mike Lesser	review and chart creation related to IM guide language	1.3			
1/18/2011	Mike Lesser	emails with expert, co counsel, and client re review of IM guides, IM procedures and drafting explanation for client	2			
1/19/2011	Mike Lesser	review of draft complaint and fact section redlines	2			
1/21/2011	Mike Lesser	emails with co counsel re client and presentation to board	0.2			
1/24/2011	Mike Lesser	Emails to Lexi Hazam re IM guide changes; edit/draft revised STT IM guide co	1.5			
1/26/2011	Mike Lesser	Review IM guide chart; comments and edits re the same	1.2			
1/28/2011	Mike Lesser	review of co counsel memo on 93A and other MA claims	1.1			
1/29/2011	Mike Lesser	emails with co counsel re clients	0.1			
2/1/2011	Mike Lesser	review of draft JV agreement; emails with co counsel re client questions	1			
2/2/2011	Mike Lesser	emails with ERH and GJB re section 9 and 11 summary; review edit 93A memo	1.3			
2/3/2011	Mike Lesser	Review ERH draft analysis of ch. 93A Demand Letter	1.5			

2/4/2011	Mike Lesser	emails to co counsel re annotations to complaint; edits re the same	1.4			
2/6/2011	Mike Lesser	emails with co counsel re review of draft complaint; review and edit complaint clean version; review/edit 93A demand letter	5.7			
2/7/2011	Mike Lesser	Call with LCHB re Complaint	0.3			
2/7/2011	Mike Lesser	Emails with LCHB re [redacted]; review and edit [redacted]	3.6			
2/8/2011	Mike Lesser	Emails and call with co-counsel re draft complaint	2.5			
2/9/2011	Mike Lesser	emails with co counsel re complaint filing and procedure	0.4			
2/10/2011	Mike Lesser	Emails to Lexi Hazam re ethics opinion of representing qui tam relators and pursuing class action cases	0.2			
2/10/2011	Mike Lesser	Call with co-counsel re complaint filing; preparation of cover sheets for USDC filing	2			
2/11/2011	Mike Lesser	review of emails re custodial contract	0.8			
2/15/2011	Mike Lesser	Emails to Lexi Hazam re discovery issues; review of 93A demand letter	1.3			
2/16/2011	Mike Lesser	emails and calls with co counsel re client class action question; emails with co counsel re possible new client and case status	1.4			
2/17/2011	Mike Lesser	Conference call with co-counsel re case status and strategy	1.1			
2/22/2011	Mike Lesser	draft/edit letter to expert	1.3			
2/24/2011	Mike Lesser	Review drafts of discovery from co-counsel	1.3			
2/25/2011	Mike Lesser	emails with expert about specific client trades	0.6			
2/28/2011	Mike Lesser	Call with co-counsel re status and strategy	0.5			
3/1/2011	Mike Lesser	emails with expert re new client data reviews	0.4			
3/2/2011	Mike Lesser	meeting with MPT and FX Transparency re STT class issues	1			
3/3/2011	Mike Lesser	conference call with D. Goldsmith re case and damages analyses; emails re additional expert analysis of client FX data; review emails from co counsel re disclosure of bank FX practices; emails with co counsel re media questions about filed cases	2.5			
3/4/2011	Mike Lesser	call with M. Rogers and co counsel re stratgey and issues; ERISA issues; mystatetsreet.com issues	2.8			
3/7/2011	Mike Lesser	Email with Dan Chiplock re class rep issues; emails with D. Goldsmith re FX Transparency meetings	0.4			
3/8/2011	Mike Lesser	conference with co counsel re regarding DOJ investigation; internal meetings re the same	2.4			

3/11/2011	Mike Lesser	Call with Steve Fineman re FX Transparency meeting; emails with co counsel re possible witness interviews	1.4			
3/14/2011	Mike Lesser	Emails with Dan Chiplock re employee interview memos	0.8			
3/15/2011	Mike Lesser	Emails with co-counsel re 93A issues; draft Firm description for complaint	1			
3/16/2011	Mike Lesser	Calls with co-counsel re case status; review of draft motion for class certification	2			
3/17/2011	Mike Lesser	emails with co counsel re FX transparency data and discovery issues	0.7			
3/23/2011	Mike Lesser	Call with Dan Chiplock re lead counsel papers	1			
3/24/2011	Mike Lesser	emails with co counsel re press inquiries; emails and review of draft lead counsel motion; review Barroway complaint	3.2			
3/25/2011	Mike Lesser	emails with co counsel re MTD decisions	0.2			
3/28/2011	Mike Lesser	emails with co counsel re expert damages analysis and costs	0.2			
4/1/2011	Mike Lesser	emails with co counsel re discovery schedule and motion to dismiss	1			
4/5/2011	Mike Lesser	emails with co counsel re fx expert review of data	0.2			
4/7/2011	Mike Lesser	emails with co counsel re interested possible class rep	0.4			
4/8/2011	Mike Lesser	emails with co counsel re IM guides	0.3			
4/14/2011	Mike Lesser	Conferences, telephone calls, emails to/from Labaton and Lieff counsel regarding amended complaint; draft, amend, and edit same	3			
4/15/2011	Mike Lesser	Emails to co-counsel re IM guide language	0.4			
4/15/2011	Mike Lesser	Review proposed Amended Complaint draft; edits and comments to co counsel re the same	4.1			
4/21/2011	Mike Lesser	emails with co counsel re [redacted]	0.2			
5/5/2011	Mike Lesser	review of Barroway SEPTA Complaint	1.5			
5/6/2011	Mike Lesser	Review updated IM Guide project	0.5			
5/19/2011	Mike Lesser	review of draft expert opinion re class action	3			
5/26/2011	Mike Lesser	Review emails from co counsel re briefing issues	0.1			
6/2/2011	Mike Lesser	emails to co counsel re motion to dismiss briefing	0.3			
6/7/2011	Mike Lesser	emails with co counsel re ethics opinions	0.2			
6/8/2011	Mike Lesser	Meeting re assignments for motion to dismiss	1			
6/21/2011	Mike Lesser	Emails with co counsel re fx expert issues	0.5			
6/22/2011	Mike Lesser	draft client letter and emails re maintenance of class action case	2.2			

6/23/2011	Mike Lesser	Review and edit memo re Negligent Misrep.; emails with co counsel re the same	2.7			
6/24/2011	Mike Lesser	Conference call with fx expert and co counsel re MTD issues	1.1			
6/27/2011	Mike Lesser	Call with co-counsel re MTD assignments; internal meetings re the same	2.5			
7/6/2011	Mike Lesser	Call with co-counsel re MTD assignment progress	0.7			
7/7/2011	Mike Lesser	edits/draft negligent misrepresentation section of MTD	2			
7/8/2011	Mike Lesser	review co counsel section drafts; emails re the same	2.7			
7/9/2011	Mike Lesser	review co counsel section drafts; emails re the same	4			
7/11/2011	Mike Lesser	draft and edits to neg. misrep. Section of MTD	3			
7/14/2011	Mike Lesser	emails with co counsel re motion to dimsiss edits	0.5			
7/15/2011	Mike Lesser	review/edit entire MTD draft	2			
7/18/2011	Mike Lesser	Review draft of Negligent Misrep. Section of Opp to MTD	1.5			
7/19/2011	Mike Lesser	emails with co counsel re drafts and edits of MTD	0.6			
8/5/2011	Mike Lesser	emails with co counsel re notice of supplemental authority after Gertner decision	0.3			
8/27/2011	Mike Lesser	emails w D. Chiplock re status meeting at Labaton	0.1			
8/30/2011	Mike Lesser	emails with expert re additional FX data reviews	0.2			
9/1/2011	Mike Lesser	review and summarize [redacted]	0.5			
9/2/2011	Mike Lesser	emails to co counsel re Judge Wolf and case status	0.4			
9/6/2011	Mike Lesser	review and summarize [redacted]	0.6			
9/15/2011	Mike Lesser	research re [redacted]	0.2			
9/15/2011	Mike Lesser	emails with co-counsel re status of case and strategy meeting	0.2			
9/16/2011	Mike Lesser	emails with co-ounsel re case strategy meeting	0.4			
9/19/2011	Mike Lesser	Meeting with co-counsel re strategy; travel to and from MYC	6.5			
9/20/2011	Mike Lesser	review of [redacted]; research re [redacted]; emails with co counsel re [redacted]	1.6			
9/21/2011	Mike Lesser	emails and review of [redacted]; preparation of [redacted]	2.5			
10/14/2011	Mike Lesser	Conference call with LCHB re [redacted]	1			
10/17/2011	Mike Lesser	Call with co-counsel re [redacted]	0.6			
10/18/2011	Mike Lesser	emails with D. Chiplock re client info in ERISA case	0.5			
1/12/2012	Mike Lesser	emails and phone calls with co counsel re oral argument date and strategy	0.7			

2/16/2012	Mike Lesser	emails with co counsel re cancelation of oral argument	0.4			
2/17/2012	Mike Lesser	emails with co counsel re status of mtd hearing	0.2			
2/28/2012	Mike Lesser	emails with co counsel re STT press	0.1			
4/13/2012	Mike Lesser	emails with co counsel re new hearing date	0.1			
4/25/2012	Mike Lesser	emails with co counsel re oral argument	0.2			
5/1/2012	Mike Lesser	Conference call with co-counsel re 5/28 MTD hearing	0.5			
5/8/2012	Mike Lesser	Prepare and attend Judge Wolf MTD Hearing	6			
5/10/2012	Mike Lesser	Call with co-counsel re settlement and class issues	0.5			
5/11/2012	Mike Lesser	emails with co counsel re scheduling call to discuss mediation	0.2			
5/15/2012	Mike Lesser	Call with co-counsel re strategy after Wolf denial of MTD and settlement discussion suggestion	0.4			
5/17/2012	Mike Lesser	emails with co counsel re mediation issues	0.4			
5/18/2012	Mike Lesser	emails with co counsel re SEC at hearing	0.1			
5/24/2012	Mike Lesser	emails and calls re mediation meeting	0.3			
5/29/2012	Mike Lesser	emails and calls re mediation meeting	0.5			
6/6/2012	Mike Lesser	review emails from co counsel re mediation	0.2			
6/8/2012	Mike Lesser	emails with co counsel re mediation dates and pension fund data and damanes	0.4			
6/13/2012	Mike Lesser	travel to and from NYC for stratgey meeting and mediation	7			
6/20/2012	Mike Lesser	Conferences and telephone calls with and emails to/from co counsel re draft settlement language, re mediators, re case strategy; analyze State Street Investment Manager Guide re same; draft and amend draft settlement agreement;	5			
6/21/2012	Mike Lesser	Calls with co-counsel re mediation meeting with STT counsel	1.1			
6/22/2012	Mike Lesser	meetings with STT counsel and co-counsel re settlement; conference and conference call with co counsel re settlement proposals, re mediation, re discussions with FX Transparency	6.1			
6/23/2012	Mike Lesser	emails with co counsel re FX Transparency data and questions	1.2			
6/24/2012	Mike Lesser	emails with co counsel re mediation; calls with co counsel re FX Transparency data	0.7			
6/25/2012	Mike Lesser	emails and calls with co counsel re [redacted]	1.1			
7/2/2012	Mike Lesser	emails with co counsel re mediation and hearing statement	0.8			

7/5/2012	Mike Lesser	emails and calls with co counsel re damages chart for ARTRS	1			
7/10/2012	Mike Lesser	E-mails to/from co counsel re: mediation dates re: submission to court re: artrs DATA analysis; analysis re: same	2.5			
7/11/2012	Mike Lesser	emails and calls with co counsel re requests for more info from STT	1			
7/13/2012	Mike Lesser	emails to co counsel re status report to court	0.1			
7/16/2012	Mike Lesser	emails to co counsel re potential mediators	0.6			
7/18/2012	Mike Lesser	emails to co counsel re ARTRS data requests	0.8			
7/20/2012	Mike Lesser	emails to co counsel re ARTRS data requests	0.6			
7/23/2012	Mike Lesser	Emails to co-counsel re mediation dates	0.4			
7/24/2012	Mike Lesser	emails to co counsel re mediators	0.2			
7/27/2012	Mike Lesser	emails to co counsel re mediation	0.3			
8/1/2012	Mike Lesser	analyze Henriquez complaint; emails to co counsel re the same	1.3			
8/7/2012	Mike Lesser	Conference call with co-counsel, mediator, and defense counsel re plans for mediation; emails re the same	1.4			
8/8/2012	Mike Lesser	Emails and phone calls with co-counsel re data requests for mediation	1.8			
8/9/2012	Mike Lesser	call with co counsel and defense counsel re data requests for mediation; emails re same	1.5			
8/13/2012	Mike Lesser	Compile and send documents to LCHB	2			
8/14/2012	Mike Lesser	emails with co counsel re scope of information and data request to State Street in mediatio	1.5			
8/15/2012	Mike Lesser	E-mails to/from co counsel re: information request to State Street; telephone conference with co counsel re the same	2.3			
8/21/2012	Mike Lesser	Telephone conference with Mike Rogers re: request for information	0.2			
8/23/2012	Mike Lesser	Call with LCHB re case status and mediation; emails re the same; emails re ERISA complaint	2.8			
8/24/2012	Mike Lesser	emails to co counsel re CA documents	1			
8/27/2012	Mike Lesser	emails to co counsel re mediation scheduling and logistics	0.5			
8/29/2012	Mike Lesser	Emails with co-counsel re extensions for defendants; meditation dates	0.8			
8/30/2012	Mike Lesser	E-mails internally and with co-counsel re: ERISA action, intervention, mediation strategy issues	0.8			

8/31/2012	Mike Lesser	emails with co counsel re mediation logistics and ERISA plainiffs	0.1			
9/4/2012	Mike Lesser	emails and calls re mediation logistics and strategy	1			
9/5/2012	Mike Lesser	Telephone conference with co-counsel re: ERISA action, intervention, coordination, consolidation, mediation issues; post-call discussion re: same	1			
9/10/2012	Mike Lesser	Conference call with co counsel re: ERISA claims; telephone conference with co counsel re damages estimates	2.5			
9/11/2012	Mike Lesser	Travel to NYC	2			
9/11/2012	Mike Lesser	Meeting with LCHB and Labaton re mediation goals, strategy.	4			
9/13/2012	Mike Lesser	Ex-parte meeting with mediator; discussion with co counsel afterwards; review of ERISA complaint	6.2			
9/13/2012	Mike Lesser	Travel back from NYC to BOS	2			
9/17/2012	Mike Lesser	emails to co counsel re damages estimates and liability	0.4			
9/18/2012	Mike Lesser	emails with co counsel re ERISA complaint	0.1			
9/26/2012	Mike Lesser	emails with co counsel re ADR bills	0.3			
9/28/2012	Mike Lesser	emails and calls with co counsel re mediation and ERISA case	0.6			
10/1/2012	Mike Lesser	emails with co counsel re mediation and data productions	0.5			
10/2/2012	Mike Lesser	emails and calls with co counsel re mediation	0.5			
10/9/2012	Mike Lesser	meeting with defense counsel and co counsel re settlement and mediation issues; emails and calls to co counsel re the same	4.7			
10/10/2012	Mike Lesser	Compile damages estimates based on STT data; emails to co counsel re the same	6.1			
10/11/2012	Mike Lesser	Emails with D. Chiplock re [redacted]; conference call with David Goldsmith,D. Chiplock and E. Hoffman re: [redacted]; revise and edit [redacted]	3.3			
10/12/2012	Mike Lesser	Create [redacted]; emails to co-counsel re the same	3.1			
10/15/2012	Mike Lesser	emails to co cousnel re STT data	0.6			
10/16/2012	Mike Lesser	Call with STT counsel re STT data and production issues; create spreadsheet showing damages estimates and permutations; emails to co counsel re the same	5.5			

10/17/2012	Mike Lesser	Emails with co-counsel re mediation; revise and edit damages spreadsheet; emails to co counsel re the same	2.2			
10/18/2012	Mike Lesser	produce [redacted]	4			
10/19/2012	Mike Lesser	emails with co counsel re [redacted] revise [redacted] ; emails with co counsel re [redacted]	4.8			
10/22/2012	Mike Lesser	Prepare for mediation; review key documents re the same	2			
10/23/2012	Mike Lesser	Meeting with co-counsel pre-mediation	1			
10/23/2012	Mike Lesser	Mediation with STT counsel	6			
10/24/2012	Mike Lesser	Continued mediation with STT	3			
10/25/2012	Mike Lesser	Emails with co counsel re data to be requested from defendants	1.2			
10/26/2012	Mike Lesser	Emails and calls with co-counsel re information exchange with STT; edits and drafts of the same	4.2			
10/30/2012	Mike Lesser	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8			
11/1/2012	Mike Lesser	Review Defendant's draft Joint Status report; emails to co-counsel re the same	1			
11/2/2012	Mike Lesser	Review latest draft of joint status report and protective order; edits and emails to co counsel re the same	3.1			
11/6/2012	Mike Lesser	Review emails from co counsel re protective order; comments re the same	0.5			
11/8/2012	Mike Lesser	Telephone conference with co counsel re: mediation discovery issues and strategy, protective order status, Nov. 15 status conference; address order setting Nov. 15 status conference	1			
11/12/2012	Mike Lesser	Emails with co counsel re 11/14 hearing; call re the same	2			
11/13/2012	Mike Lesser	Emails with co counsel re draft status report	1.2			
11/15/2012	Mike Lesser	Pre meeting with co counsel for Judge Wolf meeting	1			
11/16/2012	Mike Lesser	Emails with co counsel re order and stay; status and discovery	1.5			
11/19/2012	Mike Lesser	emails with co counsel re meetings and logistics	0.5			
11/20/2012	Mike Lesser	Meeting with co counsel re strategy, meditation sessions, discovery issues; travel to and from NYC	7			
11/26/2012	Mike Lesser	Emails with co counsel re mediation dates and topics for January 2013	0.6			
11/27/2012	Mike Lesser	Review defendant's document request templates	0.8			

11/27/2012	Mike Lesser	Review co-counsel emails re January mediation	0.2			
11/29/2012	Mike Lesser	Email and call with co counsel re document review and mediation schedule	1.1			
11/30/2012	Mike Lesser	Emails with co counsel re discovery and strategy	1.1			
12/5/2012	Mike Lesser	Emails with co counsel re document review and mediation	0.8			
12/6/2012	Mike Lesser	Emails and calls to co counsel re margin info and document review	1.5			
12/7/2012	Mike Lesser	review of STT proposal re data production	0.3			
12/10/2012	Mike Lesser	Emails and calls with co counsel re doc review status and procedure	2			
12/11/2012	Mike Lesser	Call with co counsel re ERISA claims and doc review issues	1.9			
12/17/2012	Mike Lesser	emails with co counsel re mediation stratgey and deadlines	1			
12/18/2012	Mike Lesser	Emails with co counsel and defense counsel re document production	0.9			
12/23/2012	Mike Lesser	Emails with co counsel re doc production	0.2			
12/26/2012	Mike Lesser	emails to co counsel re CD document production from STT	1			
12/27/2012	Mike Lesser	emails with co counsel re document production from State Street	0.2			
1/4/2013	Mike Lesser	Calls and emails with co-counsel and defense re data requests and 3rd party discovery	1.3			
1/8/2013	Mike Lesser	E-mails to/from co counsel and STT counsel re: ARTRS investment managers	0.8			
1/9/2013	Mike Lesser	Emails with co counsel re mediation prep	0.4			
1/11/2013	Mike Lesser	Emails with co counsel and defense re mediation	0.9			
1/14/2013	Mike Lesser	Emails and calls with co counsel and defendants re mediation and damages issues	1.5			
1/16/2013	Mike Lesser	Email to co counsel re margin and spread issues	1			
1/17/2013	Mike Lesser	emails to co counsel re call with ERISA counsel re: documents and mediator meeting	0.5			
1/18/2013	Mike Lesser	Draft supplemental margin requests; email to co counsel re the same; Telephone conference with co counsel re discovery issues, strategy for January 24 mediation meeting;	5.5			
1/21/2013	Mike Lesser	prep for mediation and mediator call	1			
1/22/2013	Mike Lesser	Conference call with mediator and co counsel	2			

1/23/2013	Mike Lesser	Email to co counsel re spread calculations; emails re mediation preparation; prepare for same	5			
1/24/2013	Mike Lesser	Travel to DC	2			
1/24/2013	Mike Lesser	Attend Mediation in DC	4			
1/24/2013	Mike Lesser	Travel back from DC to BOS	2			
1/25/2013	Mike Lesser	Create new version of damages estimation and model based on STT data production; emails to co counsel re the same	7			
1/28/2013	Mike Lesser	Supplement damages estimation with ERISA info; emails to co counsel re the same	0.8			
1/29/2013	Mike Lesser	emails to co counsel and defense counsel re document review	0.6			
1/31/2013	Mike Lesser	Speak to FX consultant re appropriate methodology for determining spreads and damages; emails to co counsel re the same	2.8			
2/1/2013	Mike Lesser	Draft document re plaintiff's methodology in determining spreads for damages calculation; Emails to defense counsel and co-counsel re the same	2.2			
2/6/2013	Mike Lesser	emails with co counsel re damages estimates	0.6			
2/7/2013	Mike Lesser	Emails to co counsel re damages calculations	0.3			
2/7/2013	Mike Lesser	Create [redacted]	5.1			
2/8/2013	Mike Lesser	Finish [redacted]; emails to co counsel re the same	2.1			
2/11/2013	Mike Lesser	emails and calls with co counsel re document issues	0.3			
2/12/2013	Mike Lesser	Emails with co counsel re mediation issues	0.3			
2/13/2013	Mike Lesser	Attend Catalyst doc review training	1			
2/14/2013	Mike Lesser	Draft 3 more versions of STT damages methodology with varying assumptions; email to co counsel re the same	6.3			
2/15/2013	Mike Lesser	Edits to revised damages methodologies; emails to co counsel re the same	1.2			
2/19/2013	Mike Lesser	Email co-counsel suggested search terms, people, and topics for document review team	1			
2/20/2013	Mike Lesser	emails with co counsel and defense re video conferencing; calls with ERISA counsel and co counsel re CA data	0.6			
3/1/2013	Mike Lesser	emails with co counsel re document review process and notes	0.5			

3/4/2013	Mike Lesser	Call with co counsel re data analysis and document review	0.6			
3/5/2013	Mike Lesser	Train staff for document review	1.5			
3/7/2013	Mike Lesser	Call with LCHB re CA data; emails re the same	0.4			
3/8/2013	Mike Lesser	Call and emails with co counsel and ERISA counsel re CA data and mediation	1.6			
3/11/2013	Mike Lesser	Emails to co counsel and ERISA counsel re [redacted]	0.4			
3/13/2013	Mike Lesser	Travel to NYC	2			
3/13/2013	Mike Lesser	Call with mediator on status of mediation	0.5			
3/13/2013	Mike Lesser	Travel back from NYC to BOS	2			
3/13/2013	Mike Lesser	Video conference with STT re spreadsheet data methodologies	1.5			
3/14/2013	Mike Lesser	revise edit damages model v.6	3.5			
3/15/2013	Mike Lesser	emails with co counsel re document production from STT	0.2			
3/15/2013	Mike Lesser	Adjust damages calculation models based on revised ERISA numbers; emails to co counsel re the same	1.4			
3/18/2013	Mike Lesser	revise/edit damages model v. 6	1.5			
3/19/2013	Mike Lesser	Emails to D. Chiplock re meeting at Labaton	0.2			
3/20/2013	Mike Lesser	Emails to co counsel re plan of allocation factors; follow-up emails re the same	1.6			
3/21/2013	Mike Lesser	Emails to co counsel re plans of allocation scenarios	0.7			
3/22/2013	Mike Lesser	draft POA ideas; emails with co counsel re the same	3.3			
3/22/2013	Mike Lesser	Emails to co counsel re STT allocation baskets and types of plans in each	0.5			
3/26/2013	Mike Lesser	Emails with D. Chiplock re fee agreement	0.2			
3/26/2013	Mike Lesser	Review emails from co counsel re Carver ERISA complaint	0.2			
3/27/2013	Mike Lesser	Create index of substantive STT hot docs with bates numbers, authors, description and relevance; email to E. Hoffman for review	5.9			
3/27/2013	Mike Lesser	Review email from defendants re public fund data by year; emails to co-counsel re the same	1			
3/28/2013	Mike Lesser	emails to co counsel re mediation statements and plan of allocation issues	0.5			
3/28/2013	Mike Lesser	Review email from L. Sucharow re next steps	0.3			
4/1/2013	Mike Lesser	Emails to co counsel re [redacted]	0.8			

4/1/2013	Mike Lesser	Emails and calls with co counsel re 93A and plan of allocation ideas	1			
4/2/2013	Mike Lesser	Calls with co-counsel re plan of allocation permutations; issues with mediation	2.6			
4/4/2013	Mike Lesser	Meeting with doc review team to discuss progress and coding issues	1			
4/4/2013	Mike Lesser	Edits to settlement ideas document to be sent to defendants; emails re the same	1			
4/4/2013	Mike Lesser	Edits to settlement ideas document to be sent to defendants	0.5			
4/8/2013	Mike Lesser	Review draft bullet point memo to be sent to mediator re plan of allocation	0.3			
4/9/2013	Mike Lesser	Comments on [redacted] emails to co counsel re the same	1			
4/10/2013	Mike Lesser	emails with co counsel re bullet point list for mediator	0.6			
4/11/2013	Mike Lesser	Emails with co counsel re ERISA issues with mediation statement	0.6			
4/15/2013	Mike Lesser	Emails with co counsel re mediation and ERISA issues	0.2			
4/16/2013	Mike Lesser	Emails with co counsel to coordinate time to review issues with document coders	0.4			
4/17/2013	Mike Lesser	Meeting with document review team to discuss issues re coding	1			
4/17/2013	Mike Lesser	Emails to D. Chiplock re mediation issues	0.1			
4/18/2013	Mike Lesser	Call and emails with co counsel re document review status and issues	1.8			
4/19/2013	Mike Lesser	emails with co counsel re document review	0.2			
4/22/2013	Mike Lesser	Emails to co counsel re suggested search terms and topics for doc review	1.4			
4/23/2013	Mike Lesser	Emails with co counsel re mediation updates	0.5			
4/24/2013	Mike Lesser	Emails to co counsel re DOJ opinion in BNYM case and mediation status	0.5			
4/25/2013	Mike Lesser	Meeting with E. Hoffman, G. Bradley, M. Thornton re status of mediation and allocation issues	0.8			
5/8/2013	Mike Lesser	Review email from D. Chiplock re [redacted]	0.3			
5/16/2013	Mike Lesser	Review mediator's update re status of mediation; emails to co counsel re the same	0.5			
5/22/2013	Mike Lesser	Review State Street doc at request of co counsel for relevance	0.3			

5/29/2013	Mike Lesser	Calls and emails with LCHB re mediation status	0.4			
5/31/2013	Mike Lesser	Emails with LCHB re Jonathan Marks summary; internal meetings re the same	1			
6/3/2013	Mike Lesser	Emails with co counsel re mediation	1.5			
6/4/2013	Mike Lesser	emails and calls with co counsel re: meeting with co-counsel next week re: mediation re: parties' suggestions re: allocation, class definition	1.7			
6/6/2013	Mike Lesser	Calls and emails with co counsel re mediation documents and counter proposals; draft proposed calss exclusion and response for co counsel review	4.6			
6/7/2013	Mike Lesser	Draft updated damages summaries with ERISA numbers; emails to co counsel re the same; revise and edit class exclusion proposal re mediation	4.8			
6/10/2013	Mike Lesser	Emails with co counsel re ERISA mediation issues	1			
6/11/2013	Mike Lesser	Emails to co counsel re damages allocations; emails re mediation submissions	0.6			
6/12/2013	Mike Lesser	Edits to co-counsel ERISA document; emails re the same; revise meidation memo; prepare for mediation	5.8			
6/13/2013	Mike Lesser	Travel to NYC	2			
6/13/2013	Mike Lesser	Attend mediation at Labaton re mediation proposals and next steps; emails and calls with mediator and team re the same	3.1			
6/13/2013	Mike Lesser	Travel back from NYC to BOS	2			
6/14/2013	Mike Lesser	review and summarzie public STT documents on custody FX	8			
6/17/2013	Mike Lesser	review and summarize public STT documents on custody FX	6			
6/18/2013	Mike Lesser	Emails To LCHB re status and discovery; document review and coding	6.8			
6/19/2013	Mike Lesser	E-mails to/from M. Rogers e: communications with J. Marks re: mediation session on July 9; document review and coding	7.8			
6/20/2013	Mike Lesser	Review and edits to [redacted] review and summarize [redacted]	6.2			
6/21/2013	Mike Lesser	E-mails to/from co counsel re: redactions in defendants' production re: strategy to address with defendants	2.9			
6/24/2013	Mike Lesser	research, review, and evaluate [redacted]	2.5			
6/25/2013	Mike Lesser	Emails to co counsel re mediation preparation; documet review and coding	7.4			

6/25/2013	Mike Lesser	Email to ERH re relevance of selected STT hot documents from production	0.7			
6/25/2013	Mike Lesser	Emails with co counsel re relevant STT docs	0.2			
6/26/2013	Mike Lesser	Emails to co counsel re hot STT document; document review and coding	4.1			
6/27/2013	Mike Lesser	document review and coding	6.5			
6/28/2013	Mike Lesser	Analyze hot documents produced by SST; e-mails to/from co counsel re: same; document review and coding	3.4			
7/2/2013	Mike Lesser	emails to co counsel re mediation logistics; preapre PPT for internal review of mediation issues; document review and coding	5.3			
7/3/2013	Mike Lesser	document review and coding	1.5			
7/5/2013	Mike Lesser	Prepare PPT for internal review of all issues in advance of mediation; emails to co counsel re the same	7.1			
7/8/2013	Mike Lesser	Meeting and conference call with co counsel at Labaton for pre-mediation meeting	2.7			
7/9/2013	Mike Lesser	Travel to NYC	2			
7/9/2013	Mike Lesser	Attend mediation; follow up emails and calls re the same	4			
7/9/2013	Mike Lesser	Travel back from NYC to BOS	2			
7/10/2013	Mike Lesser	Emails to co counsel re requests for further information	0.9			
7/11/2013	Mike Lesser	Emails to co counsel re mediation logistics and invoices	0.3			
7/12/2013	Mike Lesser	Emails and phone calls with co counsel re mediation and sample class notice and plans of allocations	1.2			
7/23/2013	Mike Lesser	emails to co counsel re notice and POA; draft versions re the same	0.9			
7/29/2013	Mike Lesser	Emails to co counsel re plans of allocations ideas	0.2			
7/30/2013	Mike Lesser	Emails to co counsel re draft settlement agreement	0.2			
8/12/2013	Mike Lesser	emails to co counsel re draft settlement papers; edits re the same	1.8			
8/13/2013	Mike Lesser	emails with co counsel re settlement stipulation	1			
8/15/2013	Mike Lesser	Emails to co counsel re doc review progress	0.2			
8/16/2013	Mike Lesser	Emails to co counsel re revised draft settlement agreement	0.6			
8/17/2013	Mike Lesser	Review draft settlement agreement	0.2			
8/20/2013	Mike Lesser	Emails to co counsel re draft settlement papers	0.2			
8/21/2013	Mike Lesser	e-mails to/from M. Rogers re: pre-settlement papers	1.1			
8/22/2013	Mike Lesser	Edit and amend draft notice and plan of allocation; e-mails to/from co counsel re the same	2			

8/23/2013	Mike Lesser	Analyze draft pre-settlement papers; e-mails to/from co counsel re: same	1.8			
8/26/2013	Mike Lesser	Emails with co counsel re draft settlement papers	0.3			
8/27/2013	Mike Lesser	Draft settlement papers; emails and calls with co counsel re the same	4.2			
8/28/2013	Mike Lesser	Emails with co counsel re ERISA counsel agreement	0.3			
8/29/2013	Mike Lesser	Emails to co counsel re proposed settlement papers	0.8			
8/30/2013	Mike Lesser	Emails and phone call with co counsel re settlement papers and ERISA	1			
8/31/2013	Mike Lesser	Emails to co counsel re draft settlement agreement and ERISA counsel comments	0.9			
9/2/2013	Mike Lesser	document review and coding	4			
9/3/2013	Mike Lesser	Emails and phone calls with co counsel re draft settlement papers and mediation strategies; document review and coding	4.9			
9/4/2013	Mike Lesser	Call with co counsel re mediation and settlement papers; document review and coding	3.8			
9/5/2013	Mike Lesser	Internal doc review team meeting re progress and issues	1			
9/6/2013	Mike Lesser	Draft revised allocation plans document with varying assumptions; Emails to co counsel re the same	2.6			
9/6/2013	Mike Lesser	Call with co counsel re mediation	1			
9/9/2013	Mike Lesser	Emails with co counsel re [redacted]	0.3			
9/9/2013	Mike Lesser	Emails with co counsel re draft settlement agreement; analyze same	2.5			
9/10/2013	Mike Lesser	Emails and calls with ERISA counsel and co counsel re edits to draft settlement papers	1.8			
9/11/2013	Mike Lesser	Review final draft of settlement agreement; emails to co counsel re the same	0.7			
9/12/2013	Mike Lesser	Emails with team re ERISA counsel status and mediation	0.9			
9/13/2013	Mike Lesser	Calls with co counsel re mediation status	1			
9/16/2013	Mike Lesser	Draft further document requests to be sent to STT; emails to co counsel re the same	4.6			
9/17/2013	Mike Lesser	Travel to NYC	2			
9/17/2013	Mike Lesser	Attend mediation with mediator; pre and post sessions with co counsel	4.5			
9/17/2013	Mike Lesser	Travel back from NYC to BOS	2			
9/20/2013	Mike Lesser	Call with co counsel re mediation de briefing and Hill case updates	0.5			

9/24/2013	Mike Lesser	Emails with co counsel re [redacted]	0.7			
9/25/2013	Mike Lesser	Research in to [redacted] emails to co counsel re the same	3.1			
9/26/2013	Mike Lesser	E mails to co counsel re CA AG discovery	0.4			
9/28/2013	Mike Lesser	Review email from Jonathan Marks re future mediation plans	0.2			
9/30/2013	Mike Lesser	Review co counsel letter re Hill case discovery; emails re the same; document review and coding	3.8			
10/1/2013	Mike Lesser	Further edits and review of Hill letter to be sent to STT; emails re the same; document review and coding	3.9			
10/2/2013	Mike Lesser	document review and coding	5.5			
10/3/2013	Mike Lesser	document review and coding	2			
10/4/2013	Mike Lesser	document review and coding	5			
10/7/2013	Mike Lesser	Email co counsel hot doc from STT production; analyze same; document review and coding	7.6			
10/8/2013	Mike Lesser	document review and coding	6.7			
10/9/2013	Mike Lesser	Emails to co counsel re relevance of STT hot docs	0.3			
10/9/2013	Mike Lesser	document review and coding	6			
10/10/2013	Mike Lesser	document review and coding	2			
10/11/2013	Mike Lesser	document review and coding	2.6			
10/15/2013	Mike Lesser	Review email from STT counsel re continuation of stay and discovery issues; document review and coding	2.2			
10/16/2013	Mike Lesser	Call with co counsel re mediation status and Hill status; emails re follow up letter to be sent to STT; document review and coding	3.7			
10/17/2013	Mike Lesser	Call with D. Chiplock re [redacted]; document review and coding	3			
10/18/2013	Mike Lesser	document review and coding	4			
10/21/2013	Mike Lesser	document review and coding	3			
10/22/2013	Mike Lesser	Call with co counsel re mediation status and documents; emails re the same; document review and coding	5.5			
10/23/2013	Mike Lesser	document review and coding	3			
10/24/2013	Mike Lesser	Emails to co counsel re document production issues with STT; document review and coding	1.3			
10/25/2013	Mike Lesser	document review and coding	1.2			
10/28/2013	Mike Lesser	analysis of RFP responses; e-mails to/from co counsel re the same; document review and coding	3.1			

10/29/2013	Mike Lesser	E-mails to/from co counsel re: production of ARTRS documents to SST; document review and coding	2.5			
10/30/2013	Mike Lesser	document review and coding	1.4			
11/4/2013	Mike Lesser	Emails to co counsel re additional documents from Hill; document review and coding	1.4			
11/5/2013	Mike Lesser	emails to co counsel re document production; document review and coding	3.4			
11/7/2013	Mike Lesser	Review email from co counsel re Hill motion to compel; E-mails co counsel re: ARTRS production	1.1			
11/8/2013	Mike Lesser	e-mails to/from co-counsel, ERISA counsel and defense counsel re: information exchange	1.5			
11/12/2013	Mike Lesser	Analyze latest STT data from defense counsel; email synopsis to co counsel re the same	2			
11/13/2013	Mike Lesser	Travel to NYC	2			
11/13/2013	Mike Lesser	Attend meditation session; pre and post meetings with co counsel	4			
11/13/2013	Mike Lesser	Travel back from NYC to BOS	2			
11/14/2013	Mike Lesser	Emails to co counsel re December meeting; Conference and e-mails to/from co counsel re: analysis of losses and overcharges re: analysis of hot documents; revise/edit damages and liability presentation	7.9			
11/15/2013	Mike Lesser	Review motion to stay; emails re the same; revise/edit damages and liability presentation	7.2			
11/18/2013	Mike Lesser	revise/edit liability and damages presentation	3.5			
11/19/2013	Mike Lesser	Emails to co counsel re document review strategy; call re the same; revise/edit liability and damages presentation	3.6			
11/20/2013	Mike Lesser	Emails with co counsel re December meeting; revise/edit liability and damages presentation	2.4			
11/21/2013	Mike Lesser	revise/edit liability and damages presentation	8			
11/22/2013	Mike Lesser	revise/edit liability and damages presentation	6.8			
11/25/2013	Mike Lesser	revise/edit liability and damages presentation	7.5			
11/26/2013	Mike Lesser	revise/edit liability and damages presentation	0.5			
12/2/2013	Mike Lesser	revise/edit liability and damages presentation	6.7			
12/3/2013	Mike Lesser	revise/edit liability and damages presentation	7.2			
12/4/2013	Mike Lesser	revise/edit liability and damages presentation	6.8			
12/5/2013	Mike Lesser	Prepare internal damages and issues analysis for December meeting	5.5			
12/6/2013	Mike Lesser	Prepare internal damages and issues analysis for December meeting; emails to co counsel re same	6			

12/9/2013	Mike Lesser	Emails with co counsel re damages presentation phone call; fee split arrangement	0.7			
12/9/2013	Mike Lesser	Prepare internal damages and issues analysis for December meeting	5.1			
12/10/2013	Mike Lesser	revise/edit liability and damages presentation	6			
12/11/2013	Mike Lesser	revise/edit liability and damages presentation	5.6			
12/12/2013	Mike Lesser	Prepare internal damages and issues analysis for December meeting	3			
12/13/2013	Mike Lesser	Edits and annotations to damages issues and analysis presentation for strategy meeting; emails re the same	7.2			
12/15/2013	Mike Lesser	revise/edit liability and damages presentation	2			
12/16/2013	Mike Lesser	Additions and edits to damages presentation; emails re the same	4.3			
12/17/2013	Mike Lesser	Travel to California for strategy session; dinner meeting with co counsel re the same	13			
12/18/2013	Mike Lesser	Litigation/mediation strategy session with co counsel and ERISA counsel; emails and conferences re the same	7			
12/19/2013	Mike Lesser	Travel from CA to BOS; revise and edit damages and liability presentation	10			
12/20/2013	Mike Lesser	revise/edit liability and damages presentation	2			
12/31/2013	Mike Lesser	Emails with D. Chiplock re attorney client privilege issues	0.1			
1/2/2014	Mike Lesser	Emails to co counsel re information exchange letter to be sent to mediator	0.4			
1/7/2014	Mike Lesser	Email to co counsel [redacted]	0.2			
1/8/2014	Mike Lesser	e-mails to/from co-counsel and ERISA counsel re exchange of markup numbers for mediator	2			
1/16/2014	Mike Lesser	e-mails to/from co counsel re: legal position and tactics re request for exchange of markup number and methodology	2			
1/23/2014	Mike Lesser	Calls with LCHB re [redacted]	1			
2/3/2014	Mike Lesser	Emails and calls with co counsel re [redacted]	1			
2/5/2014	Mike Lesser	Call with co counsel re [redacted]	1			
2/6/2014	Mike Lesser	Annotate and edit master damages excel list to send around to co-counsel	3			

2/10/2014	Mike Lesser	E-mails to/from co counsel re: exchange of data with State Street in advance of mediation	0.6			
2/11/2014	Mike Lesser	Emails to co counsel re STT response on data requests; E-mails re: State Street data submission re: March 4 mediation; telephone conference with Mike co counsel and Bill Paine re: same	2.3			
2/13/2014	Mike Lesser	emails to co counsel re updated STT data and permutations; put data into revised spreadsheet to send to defendants	1.5			
2/14/2014	Mike Lesser	Emails to co counsel re updated data from STT	0.2			
2/20/2014	Mike Lesser	Draft new Annual FX Margin spreadsheet to estimate damages using new STT spreads; emails to co counsel re the same	2.5			
2/20/2014	Mike Lesser	Emails to co counsel re scheduling of next mediation	0.4			
2/21/2014	Mike Lesser	Updated version of Annual FX margins for damages calculation spreadsheet; emails to co counsel re the same; emails to co counsel re former STT officer	2.3			
2/26/2014	Mike Lesser	Edits to damages calculations to be sent to ERISA counsel; emails to co counsel re the same	1.2			
2/27/2014	Mike Lesser	Update Damages and issues analysis for mediation; send to co counsel	5.2			
3/3/2014	Mike Lesser	Review ch. 93A presentation from D. Chiplock in advance of mediation	0.3			
3/3/2014	Mike Lesser	Further edits to Damages and Issues Analysis for use at mediation	2.2			
3/4/2014	Mike Lesser	Travel to NYC	2			
3/4/2014	Mike Lesser	Attend mediation session with mediator	4			
3/4/2014	Mike Lesser	Travel back from NYC to BOS	2			
3/7/2014	Mike Lesser	emails with co counsel re: mediation tasks and strategy	1.8			
4/2/2014	Mike Lesser	Emails to co counsel re May 9th mediation	0.5			
4/3/2014	Mike Lesser	Emails with co counsel re mediation session preparation	0.3			
4/7/2014	Mike Lesser	Conference call with David Goldsmith, Dan Chiplock re: prepare for May mediation session; e-mails to/from Labaton re documents re: same	2.4			
4/8/2014	Mike Lesser	Emails with D. Goldsmith and co counsel re preparation for May mediation session	0.3			
4/9/2014	Mike Lesser	Review ERH edits to presentation for mediation	1			
4/16/2014	Mike Lesser	Emails with M. Rogers and ERH re [redacted]	0.2			

4/17/2014	Mike Lesser	Review ERH project re STT settlements; comments re the same	0.4			
4/21/2014	Mike Lesser	Emails to co counsel re STT damages	0.2			
4/23/2014	Mike Lesser	Emails with co counsel re review of Hill documents	0.5			
4/24/2014	Mike Lesser	Emails with co counsel re mediation dates and expenses; review of Hill documents	1.1			
4/28/2014	Mike Lesser	Edit and review FX margin spreadsheets; email to co counsel re the same	2.5			
4/30/2014	Mike Lesser	Edits and revisions to Damages presentation for May 9th mediation	3.5			
5/1/2014	Mike Lesser	Emails, edits, revisions, and comments with co counsel re liability/damages/93A slides for mediation	6.7			
5/2/2014	Mike Lesser	Revise damages presentation; emails to co counsel explaining changes; comments re the same	3.1			
5/5/2014	Mike Lesser	Email ERH list of items to prepare for mediation	0.1			
5/5/2014	Mike Lesser	Incorporate co counsel comments to damages presentation; emails re the same	2			
5/6/2014	Mike Lesser	Prepare for May 9 mediation presentation; mark-up Powerpoint slides; review latest class certification and damages slides; e-mails with co-counsel; send draft slides to ERISA counsel;	4.1			
5/7/2014	Mike Lesser	Review Jonathan Marks email re mediation schedule and agenda	0.1			
5/8/2014	Mike Lesser	Travel to NYC	2			
5/9/2014	Mike Lesser	Pre-mediation meeting with co counsel; Attend mediation	8			
5/9/2014	Mike Lesser	Travel back to BOS	2			
5/13/2014	Mike Lesser	Calls and emails with co counsel re ARTRS FX trading	0.9			
5/16/2014	Mike Lesser	Call with M. Rogers re ARTRS post-2009 trading	0.4			
5/19/2014	Mike Lesser	Emails with co counsel re updates from mediation	0.3			
5/22/2014	Mike Lesser	conference call with and e-mails to/from co-counsel and ERISA counsel re: communications with mediator; e-mails to/from and telephone conference with M. Rogers re: ARTRS FX trading records;	1.5			
5/23/2014	Mike Lesser	Review draft motion to continue stay; emails with co counsel re updates on mediation posture	1			
5/27/2014	Mike Lesser	Emails with co counsel re ARTRS fx trade data	0.7			
5/28/2014	Mike Lesser	Emails to co counsel re ARTRS trade data; calls re the same	2.3			

5/29/2014	Mike Lesser	Review and comments to joint motion to continue stay; emails re the same; emails re ARTRS fx trade data	2			
6/2/2014	Mike Lesser	Emails and calls with co counsel re ARTRS FX trade data and analysis	2.6			
6/4/2014	Mike Lesser	Calls and emails with co counsel re ARTRS fx data	0.8			
6/23/2014	Mike Lesser	Analyze court orders; emails with co counsel re the same	1			
7/8/2014	Mike Lesser	Emails with co counsel re remittance of fees to mediator	0.6			
7/10/2014	Mike Lesser	Emails with co counsel re budgetary items	1			
9/22/2014	Mike Lesser	Analyze letter from defendants re document production; emails with co counsel re the same	0.9			
9/23/2014	Mike Lesser	Emails with co counsel re document production issues	0.7			
9/24/2014	Mike Lesser	Call with co counsel re STT requests for further ARTRS doc production;	1.7			
10/1/2014	Mike Lesser	Emails with co counsel re communications with Bill Paine	0.5			
10/24/2014	Mike Lesser	Listen to STT earnings call; report to co counsel on FX-related matters	1			
10/27/2014	Mike Lesser	Conference call with co counsel re: mediation scheduling and message for Marks and SST; e-mails to/from co counsel re: same	1			
11/10/2014	Mike Lesser	Emails with co counsel re STT SEC disclosures	1			
11/18/2014	Mike Lesser	Emails with co counsel re mediation phone call	0.3			
12/12/2014	Mike Lesser	Call with co counsel re mediation next steps	0.6			
12/13/2014	Mike Lesser	call with co counsel re conference call mediator and defendant's counsel re settlement negotiations	0.7			
12/14/2014	Mike Lesser	Review email from L. Sucharow re conversation with defendants and mediator	0.2			
12/15/2014	Mike Lesser	Call with co counsel and defendants and mediator re mediation and follow up meetings; emails re the same	2			
12/15/2014	Mike Lesser	Draft requests for additional damages requests to be sent to STT; emails with co counsel re same	1			
12/22/2014	Mike Lesser	Emails with co counsel re mediation scheduling	0.3			
12/23/2014	Mike Lesser	Emails with co counsel re January 5th mediation	0.5			
12/23/2014	Mike Lesser	Review international FX data produced by STT; emails to co counsel re the same	2			
12/31/2014	Mike Lesser	Call with co counsel re mediation	1.4			
1/2/2015	Mike Lesser	Revise [redacted]; emails to co counsel re the same	3.2			

1/5/2015	Mike Lesser	Travel to NYC	2			
1/5/2015	Mike Lesser	Attend mediation; conferences with co counsel re the same	4			
1/5/2015	Mike Lesser	Fly back from NYC to BOS	2			
1/6/2015	Mike Lesser	Emails with co counsel re damages	0.2			
1/8/2015	Mike Lesser	Calls and emails with co counsel re case strategy	0.6			
1/9/2015	Mike Lesser	Emails to ERH and M. Rogers re fee application cases in D. Mass	0.2			
1/13/2015	Mike Lesser	Emails with co counsel re case strategy	1			
1/21/2015	Mike Lesser	Analyze and comments to proposed motion to continue stay	1.3			
1/25/2015	Mike Lesser	Emails with K. Dugar re document review allocations	0.2			
1/26/2015	Mike Lesser	Emails to MPT re STT mediation	0.2			
1/29/2015	Mike Lesser	Calls and emails with co counsel re document review projects and status	2			
1/29/2015	Mike Lesser	Review STT earnings call; emails with co counsel re the same	1.8			
2/3/2015	Mike Lesser	Create and edit charts and slides for STT FX revenue for mediation	3.5			
2/3/2015	Mike Lesser	Conferences with co counsel re mediation strategy; damages and volume analyses	5			
2/4/2015	Mike Lesser	Attend mediation session re damages and settlement issues	6			
2/5/2015	Mike Lesser	Emails to co counsel re STT costs of FX service	0.2			
2/18/2015	Mike Lesser	Emails to co counsel re margin data from BNYM; scheduling of next mediation session	1.4			
2/18/2015	Mike Lesser	Compile analysis of [redacted]; email to co counsel re the same	2.8			
2/19/2015	Mike Lesser	Emails to co counsel re scheduling of mediation session	0.6			
2/19/2015	Mike Lesser	Call with mediator, co counsel, and defendants re: margin numbers	0.7			
2/20/2015	Mike Lesser	Email to B. Lieff re [redacted]	0.3			
2/20/2015	Mike Lesser	Emails to ERISA co counsel re volume and damages analysis; calls and emails with co counsel re the same	1.6			
2/24/2015	Mike Lesser	Review of hot docs and emails and calls to M. Rogers re the same	1.1			
2/25/2015	Mike Lesser	Travel to NYC	2			

2/25/2015	Mike Lesser	Conferences with co counsel re: mediation session; emails re: hot documents	6.1			
2/26/2015	Mike Lesser	Attend mediation session; conferences with co counsel re the same	8			
2/26/2015	Mike Lesser	Travel back from NYC to BOS	2			
3/4/2015	Mike Lesser	Review email from J. Marks re mediation update; emails to co counsel re the same	0.5			
3/6/2015	Mike Lesser	Emails with ERH re status of document review	0.4			
3/6/2015	Mike Lesser	Emails to co counsel re secondary hot doc review	0.2			
3/9/2015	Mike Lesser	Emails to co counsel re DOL letter; calls re the same	1.3			
3/10/2015	Mike Lesser	Update damages analysis spreadsheet to send to ERISA counsel; call re the same	1			
3/10/2015	Mike Lesser	Call with K Dugar and M. Rogers re secondary coding of hot documents and issue-specific searches	1			
3/11/2015	Mike Lesser	Call with ERISA co counsel re damages; emails with co counsel re the same	1.2			
3/12/2015	Mike Lesser	Review email from L. Sucharow re updates on STT and SEC and DOJ; emails with co counsel re the same	0.2			
3/13/2015	Mike Lesser	Emails with M. Rogers and K. Dugar re senior review of coded hot documents	0.2			
3/17/2015	Mike Lesser	Emails with ERH re document review status	0.2			
3/27/2015	Mike Lesser	Review J. Marks email re status report for next mediation; emails re the same	0.2			
3/28/2015	Mike Lesser	Review email from D. Chiplock re [redacted]; emails re the same	0.2			
3/31/2015	Mike Lesser	Emails and calls with co counsel re class certification and April 9th mediation	1			
4/1/2015	Mike Lesser	Calls with co counsel and ERISA counsel re mediation meeting	0.9			
4/1/2015	Mike Lesser	Compile and organize hot docs for STT mediation	3.3			
4/3/2015	Mike Lesser	Review email from L. Sucharow re update from mediator on STT position with government entities	0.2			
4/6/2015	Mike Lesser	Emails to co counsel re DOJ personnel	0.2			
4/6/2015	Mike Lesser	Call with co counsel re mediation meeting and calls with J. Marks and B. Paine	1.3			
4/7/2015	Mike Lesser	Emails with co counsel re remaining document review issues	0.2			

4/7/2015	Mike Lesser	Calls and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith re: communications with governmental agencies; conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel re the same; e-mails to/from Eric Belfi, Garrett Bradley, Evan Hoffman, Dan Chiplock re: staffing	3			
4/8/2015	Mike Lesser	Telephone conference with co-counsel re: SEC call, mediation issues and strategy, prepare for same;	1.3			
4/8/2015	Mike Lesser	Call with M. Rogers, K. Dugar, D. Chiplock re document review issues	1.8			
4/8/2015	Mike Lesser	Emails to ERH re topics for targeted search review; conference re the same	2.4			
4/8/2015	Mike Lesser	Compile list of topics and explanations for targeted search review	3.3			
4/9/2015	Mike Lesser	Conference calls with and e-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: mediation and progress in governmental actions, e-mails to/from co counsel re: document review	2.8			
4/10/2015	Mike Lesser	Compile list of topics and explanations for targeted search review; emails and calls with co counsel re the same	7.9			
4/10/2015	Mike Lesser	Review proposed revised document requests from D. Chiplock; emails and comments re the same	0.3			
4/13/2015	Mike Lesser	Compile additional list of topics and explanations for targeted search review; emails and calls with co counsel re the same	5.8			
4/14/2015	Mike Lesser	Emails with co counsel re document review and related projects	0.8			
4/15/2015	Mike Lesser	Emails to co counsel re DOJ status	0.2			
4/15/2015	Mike Lesser	Emails with co counsel re document review and case strategy	0.7			
4/16/2015	Mike Lesser	Create [redacted] emails re the same	1			
4/21/2015	Mike Lesser	Emails with co counsel re targeted search reviewer progress; compile new list of topics	2			
4/23/2015	Mike Lesser	Review email from D. Chiplock re DOJ communications re status of negotiations; emails to co counsel re the same	0.2			

4/24/2015	Mike Lesser	Review email from L. Sucharow re call from defendants and scheduling of next mediation session; internal meetings re the same; emails with co counsel re the same	0.8			
4/24/2015	Mike Lesser	Compile additional research topics for targeted search review; email to co counsel re the same	0.3			
4/27/2015	Mike Lesser	Emails to co counsel re latest STT earnings call report and reserves	0.6			
4/28/2015	Mike Lesser	Emails to co counsel re [redacted]	0.1			
4/28/2015	Mike Lesser	Review proposed term sheet	0.4			
4/29/2015	Mike Lesser	Mediation preparation session with co counsel	3			
4/30/2015	Mike Lesser	Attend mediation session	4			
5/7/2015	Mike Lesser	Emails with co counsel re status of reviewer projects	0.2			
5/12/2015	Mike Lesser	Emails with co counsel re status of reviewer projects; compile additional topics for reviewers	1.5			
5/13/2015	Mike Lesser	Call with co counsel re talks with STT; calls and emails with co counsel re the same	1.9			
5/14/2015	Mike Lesser	Emails to co counsel re document review	0.4			
5/14/2015	Mike Lesser	Email to co counsel re [redacted]	0.9			
5/15/2015	Mike Lesser	Compile [redacted]; emails to co counsel re the same	1.8			
5/15/2015	Mike Lesser	Emails to co counsel re mediation strategy	1			
5/18/2015	Mike Lesser	Emails to co counsel re scheduling of call with mediator	0.5			
5/19/2015	Mike Lesser	Emails to co counsel re scheduling of call with mediator	0.5			
5/19/2015	Mike Lesser	Call with B. Paine re STT SEC issues	1			
5/20/2015	Mike Lesser	Compile additional topics for targeted review search; emails to co counsel re the same	4.5			
5/21/2015	Mike Lesser	Emails with co counsel re document review	0.7			
5/22/2015	Mike Lesser	Telephone conference with J. Marks and all parties re: settlement and BNY issues; potential next steps	1			
5/26/2015	Mike Lesser	Conference call with e-mails to/from co-counsel and ERISA counsel re: mediation meeting, [redacted]	1.2			
5/27/2015	Mike Lesser	E-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: scheduling mediation session	1.6			
5/27/2015	Mike Lesser	Emails to D. Chiplock re settlement scenarios	0.7			
5/28/2015	Mike Lesser	Emails to co counsel re upcoming mediation strategy	0.2			

6/1/2015	Mike Lesser	Compile settlement scenarios; email to co counsel re the same	3.3			
6/2/2015	Mike Lesser	Pre DOJ meeting to discuss strategy	3.5			
6/2/2015	Mike Lesser	Attend meeting at DOJ re class settlement issues and concerns	1.5			
6/2/2015	Mike Lesser	Attend mediation session with defendants at Wilmer Hale re DOJ meeting and updates	1.3			
6/3/2015	Mike Lesser	emails to co counsel re settlement matrix	0.2			
6/3/2015	Mike Lesser	Emails to co counsel re settlement numbers and ranges	0.2			
6/5/2015	Mike Lesser	emails with co counsel re DOJ	0.1			
6/6/2015	Mike Lesser	Revise settlement matrix scenarios for L. Sucharow; emails to co counsel re the same	3.8			
6/8/2015	Mike Lesser	Travel to NYC	2			
6/8/2015	Mike Lesser	Meeting at Labaton to discuss 6/9 mediation	2			
6/9/2015	Mike Lesser	Attend mediation session	2			
6/9/2015	Mike Lesser	Travel back from NYC to BOS	2			
6/12/2015	Mike Lesser	Calls and emails with ERISA co counsel and STT counsel re [redacted] emails to co counsel re the same	4.3	`		
6/15/2015	Mike Lesser	Emails to L. Sucharow re ERISA allocation issues	0.2			
6/16/2015	Mike Lesser	Emails with co counsel re changing meditation to phone call and strategy	0.3			
6/17/2015	Mike Lesser	Call with mediator, defendants, and co counsel re mediation next steps; follow up call with co counsel re mediation strategy	1			
6/17/2015	Mike Lesser	Midpoint analysis research for MPT for use in damages calculations estimates	2.5			
6/18/2015	Mike Lesser	Emails to MPT re midpoint damages analysis	0.4			
6/23/2015	Mike Lesser	Compile additional topics for targeted research project; emails re the same	1.9			
6/24/2015	Mike Lesser	Review email from L. Sucharow re mediation update from STT and mediator;	0.1			
6/26/2015	Mike Lesser	Travel to NYC	2			
6/26/2015	Mike Lesser	Attend mediation session; calls to ERH re the same	8.6			
6/26/2015	Mike Lesser	Travel back from NYC to BOS	2			
6/28/2015	Mike Lesser	Review email from L. Sucharow re conversation with mediator and defendants re next mediation session	0.1			
6/29/2015	Mike Lesser	Call with L. Sarko re mediation strategy	0.2			
6/29/2015	Mike Lesser	Attend mediation session	9			
7/1/2015	Mike Lesser	Emails with co counsel re termination of reviewers	0.2			

7/6/2015	Mike Lesser	Emails to co counsel re allocation issues	1			
7/21/2015	Mike Lesser	conference call with ERISA co counsel re DOL [redacted] conference call with STT counsel re the [redacted]	1.5			
7/29/2015	Mike Lesser	Conference call with all co counsel re STT term sheet proposals; DOL allocation issues; timing issue	1.3			
8/19/2015	Mike Lesser	Call with DOL and co counsel re: [redacted]	0.9			
8/21/2015	Mike Lesser	Draft plan of allocation; email to co-counsel for review	2			
8/26/2015	Mike Lesser	Call with DOL [redacted] call with co-counsel re the same; edits to POA	1.3			
9/2/2015	Mike Lesser	Call with DOL re [redacted] conference with ERH re same	0.3			
9/11/2015	Mike Lesser	conference call with DOL re [redacted] call with ERH re the same	1.3			
9/12/2015	Mike Lesser	review email from N. Zeiss re DOL call and status of term sheet	0.2			
9/13/2015	Mike Lesser	emails with co counsel re fee issues and POA in term sheet	0.8			
9/22/2015	Mike Lesser	call with DOL, STT, and co counsel re [redacted]	1			
9/25/2015	Mike Lesser	call with co-counsel and STT counsel re [redacted]	0.5			
10/6/2015	Mike Lesser	review of amended POA; comments and emails with co counsel re the same	1.2			
10/15/2015	Mike Lesser	review of POA and emails and calls to co counsel re the same	0.5			
11/4/2015	Mike Lesser	review of POA and emails and calls to co counsel re the same	0.5			
12/21/2015	Mike Lesser	review of amended POA and associated drafts; emails and calls to co counsel re the same	0.4			
12/22/2015	Mike Lesser	review of amended POA and associated drafts; emails and calls to co counsel re the same	0.7			
1/27/2016	Mike Lesser	review of [redacted] review of [redacted] emails to co counsel re the same	0.8			
1/29/2016	Mike Lesser	review and edit POA with comments and edits to co counsel	1.5			
2/3/2016	Mike Lesser	call with claims administrator and email with co counsel re the same	0.8			

4/12/2016	Mike Lesser	conference call with administrator and stt counsel re data	0.4			
4/14/2016	Mike Lesser	review of settlement docs and conference call with co counsel re the same	2.5			
4/15/2016	Mike Lesser	call with co-counsel re SEC status and term sheet, POA, and notice issues	0.7			
4/16/2016	Mike Lesser	review POA and settlement papers	0.9			
4/19/2016	Mike Lesser	review settlement docs and email co counsel re the same	1.1			
5/2/2016	Mike Lesser	review stipulation and agreement of settlement and emails with co counsel re the same	1.5			
5/3/2016	Mike Lesser	calculations of non-us volume in settlement; emails to co counsel re the same	0.8			
5/25/2016	Mike Lesser	review of long form notice, emails with co counsel re the same	0.3			
5/26/2016	Mike Lesser	review of long form notice, emails with co counsel re the same	1.4			
5/27/2016	Mike Lesser	emails with co counsel re various provisions in the long form notice and edits thereto	0.4			
5/31/2016	Mike Lesser	review of settlement data re aspect of long form notice and emails with co counsel re the same	0.3			
5/31/2016	Mike Lesser	review of McTigue edits to settlement docs and email to co counsel re the same	0.2			
6/2/2016	Mike Lesser	re-review of long form notice, stipulation, and POA with comments to co counsel	2.5			
6/3/2016	Mike Lesser	review and redraft portions of notice/approval papers; discussions with co counsel re the same	3.5			
6/5/2016	Mike Lesser	emails with co counsel re notice/approval papers	0.2			
6/7/2016	Mike Lesser	review of summary notice, long form notice, and emails with co counsel re the same	0.8			
6/23/2016	Mike Lesser	meeting with co-counsel re: stratgey for joint status report hearing; attend Status Report Hearing with Judge Wolf	1.7			
8/8/2016	Mike Lesser	attend preliminary approval hearing in front of Judge Wolf; meetings with co counsel before and after to discuss strategy, crafting language responsive to Judge Wolf's suggestions	3			Lesser Total: 1433.8
7/10/2008	Mike Thornton	Call with Richard Heinmann re potential litigation	0.3			
8/11/2008	Mike Thornton	Call with Steve Fineman re: potential litigation	1.5			
10/7/2008	Mike Thornton	Call with LCHB re: potential STT case	2			

10/8/2008	Mike Thornton	Call with LCHB re: potential STT case	1.4			
7/16/2009	Mike Thornton	Email to Steve Fineman re: [redacted]	0.4			
10/6/2009	Mike Thornton	Conference call with LCHB re: strategy for filing and communication with clients	1			
10/27/2009	Mike Thornton	Emails to co-counsel re: client retention and strategy for same	1.5			
12/2/2009	Mike Thornton	Emails to co-counsel re: review of fx trading data for potential clients	0.4			
12/11/2009	Mike Thornton	Call with co-counsel re: status of litigation and data review	0.7			
1/4/2010	Mike Thornton	Call with R. Heinmann re case	0.3			
1/28/2010	Mike Thornton	Call with co-counsel re: status of case and draft complaint	0.8			
2/25/2010	Mike Thornton	Call with co-counsel re status of non-qui tam ligitation	0.5			
3/24/2010	Mike Thornton	Emails to co-counsel re [redacted]	0.2			
3/27/2010	Mike Thornton	Emails to Steve Fineman re [redacted]	0.3			
4/15/2010	Mike Thornton	Emails to co-counsel re status of 93A claim	0.5			
6/2/2010	Mike Thornton	Emails to Steve Fineman re finding new potential clients	0.3			
6/3/2010	Mike Thornton	call with S. Fineman re status of efforts to obtain clients	0.3			
6/11/2010	Mike Thornton	Call with Steve Fineman re status of various pension funds	0.4			
6/23/2010	Mike Thornton	Emails with Steve Fineman re Bernstein Litowitz potential involvement in case	0.3			
6/24/2010	Mike Thornton	Call with LCHB re status and strategy	0.6			
7/7/2010	Mike Thornton	Call with Steve Fineman re status of client outreach	0.8			
7/9/2010	Mike Thornton	Emails with co-counsel re client outreach and other class issues; prepare for and call with co counsel and client	1.7			
7/13/2010	Mike Thornton	Call with co-counsel re [redacted]	0.4			
7/15/2010	Mike Thornton	Call with LCHB re [redacted] and analysis of same	0.8			
7/30/2010	Mike Thornton	Call with Steve Fineman re status of client outreach	0.4			
8/11/2010	Mike Thornton	Call with Steve Fineman re class client outreach	0.5			
9/9/2010	Mike Thornton	travel to Chicago for meeting with expert client and consultant; meeting with client and consultant and expert and co counsel; travel back from Chicago	10.5			

9/13/2010	Mike Thornton	emails with co counsel and counsel for [redacted] re [redacted]; conference call re the same	1.3			
9/14/2010	Mike Thornton	Prepare for and meeting with co-counsel re potential class litigation against STT	8.2			
9/21/2010	Mike Thornton	Calls with LCHB and Labaton re class complaint drafting	1.4			
10/21/2010	Mike Thornton	Emails to co-counsel re potential class representative	0.2			
11/9/2010	Mike Thornton	Meetings with Bob Lieff and Larry Sucharow to discuss case; travel to and from NYC	7			
12/2/2010	Mike Thornton	meeting with Labaton attorneys to discuss case	2.5			
12/14/2010	Mike Thornton	call with co counsel re preparation for bank meeting	1			
12/15/2010	Mike Thornton	Meeting with FX Transparency re STT	1			
12/20/2010	Mike Thornton	meeting with State Street	6			
12/22/2010	Mike Thornton	meeting with J. Gardner re case	1			
1/5/2011	Mike Thornton	meeting with MAL; GJB and FX Transaparency re STT	1			
2/1/2011	Mike Thornton	travel to San Francisco for meeting with B. Lieff and L. Hazam re STT case and strategy	11.5			
2/7/2011	Mike Thornton	Call with LCHB re Complaint	0.3			
2/7/2011	Mike Thornton	Call with Bob Lieff re [redacted]	0.3			
2/8/2011	Mike Thornton	Emails and call with co-counsel re draft complaint	2.5			
2/10/2011	Mike Thornton	Call with co-counsel re complaint filing	1			
2/17/2011	Mike Thornton	Conference call with co-counsel re case status and strategy	1.1			
2/28/2011	Mike Thornton	Call with co-counsel re status and strategy	0.5			
3/2/2011	Mike Thornton	meeting with MAL and FX Transparency re STT class issues	1			
3/3/2011	Mike Thornton	meeting with Prof. Rubenstein at Harvard Law re ethics opinion for STT class case	3			
3/7/2011	Mike Thornton	review ERH memo re client representation issues	1			
3/8/2011	Mike Thornton	conference with co counsel re regarding DOJ investigation; internal meetings re the same	2.4			
3/11/2011	Mike Thornton	Call with Steve Fineman re FX Transparency meeting	0.5			
3/23/2011	Mike Thornton	Call with Dan Chiplock re lead counsel papers	1			
3/29/2011	Mike Thornton	Conference with co counsel regarding claims, regarding complaint, regarding clients, regarding investigation and consultant	3.5			
4/18/2011	Mike Thornton	Travel to and from San Francisco [on 17th and 19th]; meetings with B. Lieff re STT strategy and updates	20			
4/29/2011	Mike Thornton	prepare and meet with Professor Rubenstein re ehtics opinion	1.5			

5/26/2011	Mike Thornton	Review emails from co counsel re briefing issues	0.1			
6/7/2011	Mike Thornton	emails with co counsel re ethics opinions	0.2			
6/8/2011	Mike Thornton	travel to and from NYC for meeting with L. Sucharow and S. Fineman re STT updates and strategy	6			
6/8/2011	Mike Thornton	Call with co-counsel re motion to dismiss assignments; internal meeting re the same	1			
7/6/2011	Mike Thornton	travel to and from NYC for meeting with L. Sucharow and S. Fineman re STT updates and strategy	4.5			
8/5/2011	Mike Thornton	emails with co counsel re notice of supplemental authority after Gertner decision	0.3			
8/17/2011	Mike Thornton	Meeting in NYC with J. Bernstein re strategy and progress; travel to and from	6			
9/2/2011	Mike Thornton	emails to co counsel re Judge Wolf and case status	0.4			
9/15/2011	Mike Thornton	emails with co-counsel re status of case and strategy meeting	0.2			
9/16/2011	Mike Thornton	emails with co-ounsel re case strategy meeting	0.4			
9/19/2011	Mike Thornton	Meeting with co-counsel re strategy; travel to and from MYC	6.5			
10/14/2011	Mike Thornton	Conference call with LCHB re [redacted]	1			
10/17/2011	Mike Thornton	Call with co-counsel re [redacted]	0.6			
12/5/2011	Mike Thornton	meeting and Labaton with co counsel; travel to and from NYC re the same	6			
12/13/2011	Mike Thornton	conference call with J. Bernstein re status	0.6			
1/11/2012	Mike Thornton	travel to and from NYC for meeting with B. Lieff re case status and strategy	4			
1/12/2012	Mike Thornton	emails and phone calls with co counsel re oral argument date and strategy	0.7			
1/17/2012	Mike Thornton	travel to and from NYC for meeting with Labaton co counsel re case status and strategy	8			
2/16/2012	Mike Thornton	emails with co counsel re cancelation of oral argument	0.4			
2/17/2012	Mike Thornton	emails with co counsel re status of mtd hearing	0.2			
2/28/2012	Mike Thornton	emails with co counsel re STT press	0.1			
4/13/2012	Mike Thornton	emails with co counsel re new hearing date	0.1			
4/25/2012	Mike Thornton	emails with co counsel re oral argument	0.2			
5/1/2012	Mike Thornton	Conference call with co-counsel re 5/28 MTD hearing	0.5			
5/8/2012	Mike Thornton	Prepare and attend Judge Wolf MTD Hearing	6			
5/9/2012	Mike Thornton	Call with B. Lieff re strategy	0.5			
5/10/2012	Mike Thornton	Call with co-counsel re settlement and class issues	0.5			

5/11/2012	Mike Thornton	emails with co counsel re scheduling call to discuss mediation	0.2			
5/15/2012	Mike Thornton	Call with co-counsel re strategy after Wolf denial of MTD and settlement discussion suggestion	0.4			
5/17/2012	Mike Thornton	emails with co counsel re mediation issues	0.4			
5/18/2012	Mike Thornton	emails with co counsel re SEC at hearing	0.1			
5/24/2012	Mike Thornton	emails and calls re mediation meeting	0.3			
5/29/2012	Mike Thornton	emails and calls re mediation meeting	0.5			
6/6/2012	Mike Thornton	emails with co counsel re mediation issues	0.2			
6/8/2012	Mike Thornton	emails with co counsel re mediation dates and pension fund data and damages	0.4			
6/13/2012	Mike Thornton	Travel to NYC	2			
6/13/2012	Mike Thornton	Meeting with B. Lieff and L. Sucharow re meditation	3			
6/13/2012	Mike Thornton	Travel back to BOS	2			
6/20/2012	Mike Thornton	Conferences and telephone calls with and emails to/from co counsel re draft settlement language, re mediators, re case strategy; analyze State Street Investment Manager Guide re same; draft and amend draft settlement agreement;	5			
6/21/2012	Mike Thornton	Calls with co-counsel re mediation meeting with STT counsel	1.1			
6/22/2012	Mike Thornton	meetings with STT counsel and co-counsel re settlement; conference and conference call with co counsel re settlement proposals, re mediation, re discussions with FX Transparency	6.1			
6/23/2012	Mike Thornton	emails with co counsel re FX Transparency data and questions	1.2			
6/24/2012	Mike Thornton	emails with co counsel re mediation	0.1			
6/25/2012	Mike Thornton	emails and calls with co counsel re [redacted]	1.1			
7/5/2012	Mike Thornton	emails and calls with co counsel re damages chart for ARTRS	1			
7/10/2012	Mike Thornton	E-mails to/from co counsel re: mediation dates re: submission to court re: artrs DATA analysis	1.5			
7/10/2012	Mike Thornton	Meeting w B. Lieff re case status	2			
7/16/2012	Mike Thornton	emails to co counsel re potential mediators	0.6			
7/23/2012	Mike Thornton	Emails to co-counsel re mediation dates	0.4			
7/24/2012	Mike Thornton	emails to co counsel re mediators	0.2			
7/27/2012	Mike Thornton	emails to co counsel re mediation	0.3			

8/1/2012	Mike Thornton	analyze Henriquez complaint; emails to co counsel re the same	1.3			
8/7/2012	Mike Thornton	Conference call with co-counsel, mediator, and defense counsel re plans for mediation; emails re the same	1.4			
8/9/2012	Mike Thornton	call with co counsel and defense counsel re data requests for mediation; emails re same	1.5			
8/14/2012	Mike Thornton	Travel to and from NYC and meet with D. Goldsmith and Labaton co counsel re status and strategy	7.4			
8/22/2012	Mike Thornton	Call with LCHB re case status	0.2			
8/23/2012	Mike Thornton	Call with LCHB re case status and mediation; emails re the same; emails re ERISA complaint	2.8			
8/27/2012	Mike Thornton	emails to co counsel re mediation scheduling and logistics	0.5			
8/28/2012	Mike Thornton	Telephone conference with D. Goldsmith re: posture re: Henriquez ERISA class action and mediation	0.3			
8/29/2012	Mike Thornton	Emails with co-counsel re extensions for defendants; meditation dates	0.8			
8/30/2012	Mike Thornton	E-mails internally and with co-counsel re: ERISA action, intervention, mediation strategy issues	0.8			
9/4/2012	Mike Thornton	emails and calls re mediation logistics and strategy	1			
9/5/2012	Mike Thornton	Telephone conference with co-counsel re: ERISA action, intervention, coordination, consolidation, mediation issues; post-call discussion re: same	1			
9/10/2012	Mike Thornton	Conference call with co counsel re: ERISA claims; telephone conference with co counsel re damages estimates	2.5			
9/11/2012	Mike Thornton	Travel to NYC	2			
9/11/2012	Mike Thornton	Meeting with LCHB and Labaton re mediation goals, strategy.	4			
9/13/2012	Mike Thornton	Ex-parte meeting with mediator; discussion with co counsel afterwards	5			
9/13/2012	Mike Thornton	Travel back from NYC to BOS	2			
9/28/2012	Mike Thornton	emails and calls with co counsel re mediation and ERISA case	0.6			
10/2/2012	Mike Thornton	emails and calls with co counsel re mediation	0.5			
10/3/2012	Mike Thornton	conference call with co counsel and preparation for meetings	0.5			
10/9/2012	Mike Thornton	meeting with defense counsel and co counsel re settlement and mediation issues; emails and calls to co counsel re the same	4.7			

10/16/2012	Mike Thornton	Emails with co-counsel re mediation	0.6			
10/17/2012	Mike Thornton	Emails with co-counsel re mediation	0.2			
10/18/2012	Mike Thornton	travel to and from NYC re meeting with L Sucharow re mediation	7.5			
10/19/2012	Mike Thornton	emails with co counsel re mediation	0.3			
10/23/2012	Mike Thornton	Meeting with co-counsel pre-mediation	1			
10/23/2012	Mike Thornton	Mediation with STT counsel	6			
10/24/2012	Mike Thornton	Continued mediation with STT	3			
10/30/2012	Mike Thornton	Emails with co counsel re call to Judge Wolf's clerk and information exchange	0.8			
10/31/2012	Mike Thornton	Call to Judge Wolf's clerk	0.5			
11/1/2012	Mike Thornton	Call to Judge Wolf's clerk	0.5			
11/2/2012	Mike Thornton	Review latest draft of joint status report and protective order; edits and emails to co counsel re the same	1.1			
11/12/2012	Mike Thornton	Emails with co counsel re 11/14 hearing; call re the same	2			
11/13/2012	Mike Thornton	Emails with co counsel re draft status report	1.2			
11/15/2012	Mike Thornton	Pre meeting with co counsel for Judge Wolf meeting	1			
11/15/2012	Mike Thornton	Meeting with Judge Wolf	1			
11/16/2012	Mike Thornton	Emails with co counsel re order and stay; status and discovery	1.1			
11/19/2012	Mike Thornton	emails with co counsel re meetings and logistics	0.5			
11/20/2012	Mike Thornton	Meeting with co counsel re strategy, meditation sessions, discovery issues; travel to and from NYC	7			
11/26/2012	Mike Thornton	Emails with co counsel re mediation dates and topics for January 2013	0.6			
11/27/2012	Mike Thornton	Review co-counsel emails re January mediation	0.2			
11/29/2012	Mike Thornton	Email and call with co counsel re document review and mediation schedule	1.1			
11/30/2012	Mike Thornton	Emails with co counsel re discovery and strategy	1.1			
12/17/2012	Mike Thornton	emails with co counsel re mediation stratgey and deadlines	1			
1/9/2013	Mike Thornton	Emails with co counsel re mediation prep	0.4			
1/11/2013	Mike Thornton	Emails with co counsel and defense re mediation	0.9			
1/21/2013	Mike Thornton	prep for mediation and mediator call	1			
1/22/2013	Mike Thornton	Conference call with mediator and co counsel	2			
1/23/2013	Mike Thornton	emails with co counsel re meidation preparation; prepare for same	3			
1/24/2013	Mike Thornton	Travel to DC	2			
1/24/2013	Mike Thornton	Attend Mediation in DC	4			

1/24/2013	Mike Thornton	Travel back from DC to BOS	2			
2/5/2013	Mike Thornton	Call with L. Sucharow and B. Lieff re steering committee	0.5			
2/12/2013	Mike Thornton	Emails with co counsel re mediation issues	0.3			
3/12/2013	Mike Thornton	Travel to NYC	2			
3/12/2013	Mike Thornton	Meeting with B. Lieff and L. Sucharow re STT videoconference	1.5			
3/13/2013	Mike Thornton	Call with mediator on status of mediation	0.5			
3/13/2013	Mike Thornton	Travel back from NYC to BOS	2			
3/13/2013	Mike Thornton	Video conference with STT re spreadsheet data methodologies	1.5			
3/18/2013	Mike Thornton	conference call with mediator and B. Lieff and L. Sucharow	0.8			
3/19/2013	Mike Thornton	Emails to D. Chiplock re meeting at Labaton	0.2			
3/26/2013	Mike Thornton	Review emails from co counsel re Carver ERISA complaint	0.2			
3/28/2013	Mike Thornton	Review email from mediator re next steps	0.3			
3/28/2013	Mike Thornton	Review email from L. Sucharow re next steps	0.3			
3/29/2013	Mike Thornton	follow up conference call with mediator and STT counsel	0.5			
4/8/2013	Mike Thornton	Review draft bullet point memo to be sent to mediator re plan of allocation	0.3			
4/11/2013	Mike Thornton	Emails with co counsel re ERISA issues with mediation statement	0.6			
4/15/2013	Mike Thornton	Emails with co counsel re mediation and ERISA issues	0.2			
4/24/2013	Mike Thornton	Emails to co counsel re DOJ opinion in BNYM case and mediation status	0.3			
4/25/2013	Mike Thornton	Meeting with E. Hoffman, G. Bradley, M. Lesser re status of mediation and allocation issues	0.8			
4/30/2013	Mike Thornton	meeting in NYC with B. Lieff and E. Cabraser re status of case and strategy; travel to and from re the same	7.5			
5/8/2013	Mike Thornton	Review email from D. Chiplock re [redacted]	0.2			
5/15/2013	Mike Thornton	Review mediator's update re status of mediation	0.4			
5/31/2013	Mike Thornton	Emails with LCHB re Jonathan Marks summary; internal meetings re the same	1			
6/3/2013	Mike Thornton	Emails with co counsel re mediation	1.5			
6/4/2013	Mike Thornton	emails and calls with co counsel re: meeting with co-counsel next week re: mediation re: parties' suggestions re: allocation, class definition	1.7			
6/12/2013	Mike Thornton	Travel to NYC	2			
6/12/2013	Mike Thornton	Meeting with B. Lieff re case status	2			

6/13/2013	Mike Thornton	Attend mediation at Labaton re mediation proposals and next steps	2			
6/13/2013	Mike Thornton	Travel back from NYC to BOS	2			
6/18/2013	Mike Thornton	Emails To LCHB re status and discovery	0.3			
6/25/2013	Mike Thornton	Emails to co counsel re mediation preparation	0.4			
6/25/2013	Mike Thornton	Telephone conference with R. Lieff, L. Sucharow; L. Sarko re: mediation and settlement strategy and July 8 meeting	0.6			
7/8/2013	Mike Thornton	Travel to NYC	2			
7/8/2013	Mike Thornton	Attend pre mediation session at Labaton; calls with co counsel	2.7			
7/9/2013	Mike Thornton	Travel back from NYC to BOS	2			
7/30/2013	Mike Thornton	Review emails to co counsel re draft settlement agreement	0.1			
8/13/2013	Mike Thornton	emails with co counsel re settlement stipulation	1			
8/17/2013	Mike Thornton	Review draft settlement agreement	0.2			
8/26/2013	Mike Thornton	Emails with co counsel re draft settlement papers	0.3			
8/27/2013	Mike Thornton	Emails and calls with co counsel re draft settlement papers	1.1			
8/28/2013	Mike Thornton	Emails with co counsel re ERISA counsel agreement	0.3			
8/29/2013	Mike Thornton	Emails to co counsel re proposed settlement papers	0.8			
8/30/2013	Mike Thornton	Emails and phone call with co counsel re settlement papers and ERISA; emails re fee split with ERISA counsel	2.4			
8/31/2013	Mike Thornton	Emails to co counsel re draft settlement agreement and ERISA counsel comments	0.4			
9/3/2013	Mike Thornton	Emails and phone calls with co counsel re draft settlement papers and mediation strategies	1.5			
9/4/2013	Mike Thornton	Call with co counsel re mediation and settlement papers	0.8			
9/6/2013	Mike Thornton	Call with co counsel re mediation	1			
9/9/2013	Mike Thornton	Emails with co counsel re draft settlement agreement; analyze same	1.9			
9/11/2013	Mike Thornton	Review final draft of settlement agreement; emails to co counsel re the same	0.2			
9/12/2013	Mike Thornton	Emails with team re ERISA counsel status and mediation	0.9			
9/13/2013	Mike Thornton	Calls with co counsel re mediation status	1			
9/17/2013	Mike Thornton	Travel to NYC	2			
9/17/2013	Mike Thornton	Attend mediation with mediator; pre and post sessions with co counsel	4.5			

9/17/2013	Mike Thornton	Travel back from NYC to BOS	2			
9/20/2013	Mike Thornton	Call with co counsel re mediation de briefing and Hill case updates	0.5			
9/28/2013	Mike Thornton	Review email from Jonathan Marks re future mediation plans	0.2			
9/30/2013	Mike Thornton	Review co counsel letter re Hill case discovery; emails re the same	0.2			
10/15/2013	Mike Thornton	Travel to and from NYC re meeting with L. Sucharow re status of meditation	7.5			
10/15/2013	Mike Thornton	Review email from STT counsel re continuation of stay and discovery issues	0.2			
10/16/2013	Mike Thornton	Call with co counsel re mediation status and Hill status	0.9			
10/22/2013	Mike Thornton	Call with co counsel re mediation status and documents; emails re the same	1			
10/29/2013	Mike Thornton	call with L. Sucharow re mediation issues	1			
11/13/2013	Mike Thornton	Travel to NYC	2			
11/13/2013	Mike Thornton	Attend meditation session; pre and post meetings with co counsel	4			
11/13/2013	Mike Thornton	Travel back from NYC to BOS	2			
11/15/2013	Mike Thornton	Review motion to stay; emails re the same	0.1			
11/20/2013	Mike Thornton	Emails with co counsel re December meeting	0.3			
12/12/2013	Mike Thornton	Emails with co counsel re ERISA fee split	0.2			
12/13/2013	Mike Thornton	Emails and calls with co counsel re strategy session	0.6			
12/17/2013	Mike Thornton	Travel to California for strategy session; dinner meeting with co counsel re the same	13			
12/18/2013	Mike Thornton	Litigation/mediation strategy session with co counsel and ERISA counsel; emails and conferences re the same	7			
12/19/2013	Mike Thornton	Travel from CA to BOS	8			
1/2/2014	Mike Thornton	Emails to co counsel re information exchange letter to be sent to mediator	0.3			
1/8/2014	Mike Thornton	e-mails to/from co-counsel and ERISA counsel re exchange of markup numbers for mediator	2			
1/14/2014	Mike Thornton	call with B. Lieff and STT counsel	0.5			
1/17/2014	Mike Thornton	call with B. Lieff and STT counsel	0.5			
1/23/2014	Mike Thornton	Calls with LCHB re [redacted]	1			
1/29/2014	Mike Thornton	Meeting with B. Lieff re case status	4.5			
2/3/2014	Mike Thornton	Emails and calls with co counsel re [redacted]	1			

2/5/2014	Mike Thornton	Call with co counsel re [redacted]	1			
2/20/2014	Mike Thornton	Review and comments to Annual FX margin damages sheet	0.2			
2/20/2014	Mike Thornton	Emails to co counsel re scheduling of next mediation	0.4			
3/3/2014	Mike Thornton	Review ch. 93A presentation from D. Chiplock in advance of mediation	0.4			
3/4/2014	Mike Thornton	Travel to NYC	2			
3/4/2014	Mike Thornton	Attend mediation session with mediator	4			
3/4/2014	Mike Thornton	Travel back from NYC to BOS	2			
3/7/2014	Mike Thornton	emails with co counsel re: mediation tasks and strategy	1.8			
4/2/2014	Mike Thornton	Emails to co counsel re May 9th mediation	0.2			
5/7/2014	Mike Thornton	Review Jonathan Marks email re mediation schedule and agenda	0.1			
5/8/2014	Mike Thornton	Travel to NYC	2			
5/9/2014	Mike Thornton	Pre-mediation meeting with co counsel; Attend mediation	8			
5/9/2014	Mike Thornton	Travel back to BOS	2			
5/23/2014	Mike Thornton	Review emails from L. Sucharow re mediation status	0.2			
5/28/2014	Mike Thornton	Emails with co counsel re trade data	1			
9/22/2014	Mike Thornton	emails to co counsel and analyze letter from A. Hornstein re: ARTRS document production	0.7			
10/1/2014	Mike Thornton	Emails with co counsel re communications with Bill Paine	0.5			
10/27/2014	Mike Thornton	Conference call with co counsel re: mediation scheduling and message for Marks and SST; e-mails to/from co counsel re: same	1			
11/18/2014	Mike Thornton	Emails with co counsel re mediation phone call	0.3			
12/12/2014	Mike Thornton	Call with co counsel re mediation next steps	0.6			
12/13/2014	Mike Thornton	call with co counsel re conference call mediator and defendant's counsel re settlement negotiations	0.7			
12/14/2014	Mike Thornton	Review email from L. Sucharow re conversation with defendants and mediator; call re the same	0.6			
12/15/2014	Mike Thornton	Call with co counsel and defendants and mediator re mediation and follow up meetings; emails re the same	2			
12/31/2014	Mike Thornton	Call with co counsel re mediation	1.4			
1/5/2015	Mike Thornton	Travel to NYC	2			
1/5/2015	Mike Thornton	Attend mediation; conferences with co counsel re the same	4			
1/5/2015	Mike Thornton	Fly back from NYC to BOS	2			

1/8/2015	Mike Thornton	Calls and emails with co counsel re case strategy	0.6			
1/26/2015	Mike Thornton	Emails with MAL re STT mediation	0.2			
2/3/2015	Mike Thornton	Conferences with co counsel re mediation strategy; damages and volume analyses	5			
2/4/2015	Mike Thornton	Attend mediation session re damages and settlement issues	6			
2/13/2015	Mike Thornton	conference call with B. Lieff and . Sucharow re mediation	1			
2/18/2015	Mike Thornton	Calls and emails with co counsel and mediator re February 26 mediation	1.3			
2/19/2015	Mike Thornton	Emails to co counsel re scheduling of mediation session	0.6			
2/25/2015	Mike Thornton	Travel to NYC	2			
2/25/2015	Mike Thornton	Conferences with co counsel re: mediation session; emails re: hot documents	6.1			
2/26/2015	Mike Thornton	Attend mediation session; conferences with co counsel re the same	8			
2/26/2015	Mike Thornton	Travel back from NYC to BOS	2			
3/4/2015	Mike Thornton	Review email from J. Marks re mediation update; emails to co counsel re the same	0.5			
3/12/2015	Mike Thornton	Review email from L. Sucharow re updates on STT and SEC and DOJ; emails with co counsel re the same	0.3			
3/27/2015	Mike Thornton	Review J. Marks email re status report for next mediation; emails re the same	0.2			
3/28/2015	Mike Thornton	Review email from D. Chiplock re [redacted]	0.1			
3/31/2015	Mike Thornton	Emails and calls with co counsel re class certification and April 9th mediation	1			
4/3/2015	Mike Thornton	Review email from L. Sucharow re update from mediator on STT position with government entities	0.2			
4/6/2015	Mike Thornton	Call with co counsel re mediation meeting and calls with J. Marks and B. Paine	1.3			
4/7/2015	Mike Thornton	Calls and e-mails to co counsel re: communications with governmental agencies; conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel re the same	2.7			
4/8/2015	Mike Thornton	Telephone conference with co-counsel re: SEC call, mediation issues and strategy, prepare for same;	1.3			

4/9/2015	Mike Thornton	Conference calls with and e-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: mediation and progress in governmental actions	2.5			
4/15/2015	Mike Thornton	Emails to co counsel re DOJ status	0.2			
4/23/2015	Mike Thornton	Review email from D. Chiplock re DOJ communications re status of negotiations; emails to co counsel re the same	0.2			
4/24/2015	Mike Thornton	Review email from L. Sucharow re call from defendants and scheduling of next mediation session; internal meetings re the same; emails with co counsel re the same	0.8			
4/28/2015	Mike Thornton	meeting with L. Sucharow in NYC re mediation prep; travel to and from	7.5			
4/28/2015	Mike Thornton	Review proposed term sheet	0.4			
4/29/2015	Mike Thornton	Mediation preparation session with co counsel	3			
4/30/2015	Mike Thornton	Attend mediation session	4			
5/13/2015	Mike Thornton	Call with co counsel re talks with STT; calls and emails with co counsel re the same	1.9			
5/15/2015	Mike Thornton	Emails to co counsel re mediation strategy	1			
5/18/2015	Mike Thornton	Emails to co counsel re scheduling of call with mediator	0.5			
5/19/2015	Mike Thornton	Emails to co counsel re scheduling of call with mediator	0.5			
5/19/2015	Mike Thornton	Call with B. Paine re STT SEC issues	1			
5/22/2015	Mike Thornton	Telephone conference with J. Marks and all parties re: settlement and BNY issues; potential next steps	1			
5/26/2015	Mike Thornton	Conference call with e-mails to/from co-counsel and ERISA counsel re: mediation meeting, meeting with DOJ and strategies re: same	1.2			
5/27/2015	Mike Thornton	E-mails to/from co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: scheduling mediation session	1.2			
5/28/2015	Mike Thornton	Emails to co counsel re upcoming mediation strategy	0.2			
6/2/2015	Mike Thornton	Pre DOJ meeting to discuss strategy	3.5			
6/2/2015	Mike Thornton	Attend meeting at DOJ re class settlement issues and concerns	1.5			
6/2/2015	Mike Thornton	Attend mediation session with defendants at Wilmer Hale re DOJ meeting and updates; meeting with co counsel afterwards	5.5			
6/3/2015	Mike Thornton	Emails to co counsel re settlement numbers and ranges	0.2			
6/5/2015	Mike Thornton	emails with co counsel re DOJ	0.1			
6/8/2015	Mike Thornton	Travel to NYC	2			

6/8/2015	Mike Thornton	Meeting at Labaton to discuss 6/9 mediation	2			
6/9/2015	Mike Thornton	Attend mediation session	2			
6/9/2015	Mike Thornton	Travel back from NYC to BOS	2			
6/12/2015	Mike Thornton	Discussion and emails with MAL re group trust ERISA	0.3			
6/16/2015	Mike Thornton	Emails with co counsel re changing meditation to phone call and strategy	0.4			
6/17/2015	Mike Thornton	Call with mediator, defendants, and co counsel re mediation next steps; follow up call with co counsel re mediation strategy	1			
6/18/2015	Mike Thornton	Review MAL email re midpoint	0.2			
6/24/2015	Mike Thornton	Review email from L. Sucharow re mediation update from STT and mediator;	0.1			
6/26/2015	Mike Thornton	Travel to NYC	2			
6/26/2015	Mike Thornton	Attend mediation session	8.3			
6/26/2015	Mike Thornton	Travel back from NYC to BOS	2			
6/28/2015	Mike Thornton	Review email from L. Sucharow re conversation with mediator and defendants re next mediation session	0.1			
6/29/2015	Mike Thornton	Attend mediation session	9			
7/21/2015	Mike Thornton	conference call with ERISA co counsel re [redacted] conference call with STT counsel re the [redacted]	1.5			
7/29/2015	Mike Thornton	Conference call with all co counsel re STT term sheet proposals; DOL allocation issues; timing issue	1.3			
8/7/2015	Mike Thornton	conference call with co counsel re status of case; internal meetings re the same	5			
8/12/2015	Mike Thornton	conference call with co counsel; call with DOL; meeting with B. Lieff and GJB in NYC	8.5			
9/12/2015	Mike Thornton	review email from N. Zeiss re DOL call and status of term sheet	0.2			
9/13/2015	Mike Thornton	emails with co counsel re fee issues and POA in term sheet	0.8			
4/14/2016	Mike Thornton	review of settlement docs and conference call with co counsel re the same	1			
6/10/2016	Mike Thornton	review and sign final versions of settlement papers	0.8			
8/8/2016	Mike Thornton	attend preliminary approval hearing in front of Judge Wolf; meetings with co counsel before and after to discuss strategy, crafting language responsive to Judge Wolf's suggestions	3			Thornton Total: 585.9
3/11/2015	Rachel Wintterle	Document review	8			
3/12/2015	Rachel Wintterle	Document review	8			

3/13/2015	Rachel Wintterle	Document review	8			
3/16/2015	Rachel Wintterle	Document review	8			
3/17/2015	Rachel Wintterle	Document review	8			
3/18/2015	Rachel Wintterle	Document review	8			
3/19/2015	Rachel Wintterle	Document review	8			
3/20/2015	Rachel Wintterle	Document review	8			
3/23/2015	Rachel Wintterle	Document review	8			
3/24/2015	Rachel Wintterle	Document review	8			
3/25/2015	Rachel Wintterle	Document review	8			
3/26/2015	Rachel Wintterle	Document review	7.8			
3/27/2015	Rachel Wintterle	Document review	8			
3/30/2015	Rachel Wintterle	Document review	6			
3/31/2015	Rachel Wintterle	Document review	8			
4/1/2015	Rachel Wintterle	Document review	8			
4/2/2015	Rachel Wintterle	Document review	8			
4/3/2015	Rachel Wintterle	Document review	8			
4/6/2015	Rachel Wintterle	Document review	8			
4/8/2015	Rachel Wintterle	Document review	8			
4/9/2015	Rachel Wintterle	Document review	8			
4/10/2015	Rachel Wintterle	Document review	8			
4/13/2015	Rachel Wintterle	Document review	8			
4/14/2015	Rachel Wintterle	Document review	8			
4/15/2015	Rachel Wintterle	Document review	8			
4/16/2015	Rachel Wintterle	Document review	7.5			
4/17/2015	Rachel Wintterle	Document review	8			
4/20/2015	Rachel Wintterle	Document review	8			
4/21/2015	Rachel Wintterle	Document review	8			
4/22/2015	Rachel Wintterle	Document review	8			
4/23/2015	Rachel Wintterle	Document review	8			
4/24/2015	Rachel Wintterle	Document review	8			
4/27/2015	Rachel Wintterle	Document review	8			
4/28/2015	Rachel Wintterle	Document review	8			
4/29/2015	Rachel Wintterle	Document review	7			
4/30/2015	Rachel Wintterle	Document review	8			
5/1/2015	Rachel Wintterle	Document review	7			
5/4/2015	Rachel Wintterle	Document review	8			
5/5/2015	Rachel Wintterle	Document review	8			
5/6/2015	Rachel Wintterle	Document review	8			
5/7/2015	Rachel Wintterle	Document review	8			
5/8/2015	Rachel Wintterle	Document review	7			
5/11/2015	Rachel Wintterle	Document review	7.5			

5/12/2015	Rachel Wintterle	Document review	8			
5/13/2015	Rachel Wintterle	Document review	8			
5/14/2015	Rachel Wintterle	Document review	8			
5/15/2015	Rachel Wintterle	Document review	8			
5/18/2015	Rachel Wintterle	Document review	8			
5/19/2015	Rachel Wintterle	Document review	8			
5/20/2015	Rachel Wintterle	Document review	8			
5/21/2015	Rachel Wintterle	Document review	8			
5/22/2015	Rachel Wintterle	Document review	8			
5/26/2015	Rachel Wintterle	Document review	8			
5/27/2015	Rachel Wintterle	Document review	8			
5/28/2015	Rachel Wintterle	Document review	8			
6/1/2015	Rachel Wintterle	Document review	8			
6/3/2015	Rachel Wintterle	Document review	7			
6/4/2015	Rachel Wintterle	Document review	8			
6/11/2015	Rachel Wintterle	Document review	8			
6/12/2015	Rachel Wintterle	Document review	8			
6/15/2015	Rachel Wintterle	Document review	8			
6/16/2015	Rachel Wintterle	Document review	8			
6/17/2015	Rachel Wintterle	Document review	8			
6/17/2015	Rachel Wintterle	Document review	8			
6/18/2015	Rachel Wintterle	Document review	8			
6/19/2015	Rachel Wintterle	Document review	8			
6/22/2015	Rachel Wintterle	Document review	8			
6/23/2015	Rachel Wintterle	Document review	8			
6/24/2015	Rachel Wintterle	Document review	8			
6/26/2015	Rachel Wintterle	Document review	8			Winterterle Total: 552.8
2/2/2015	Virginia Weiss	Document review	8			
2/3/2015	Virginia Weiss	Document review	8			
2/4/2015	Virginia Weiss	Document review	8			
2/5/2015	Virginia Weiss	Document review	8			
2/6/2015	Virginia Weiss	Document review	8			
2/9/2015	Virginia Weiss	Document review	8			
2/10/2015	Virginia Weiss	Document review	8			
2/11/2015	Virginia Weiss	Document review	8			
2/12/2015	Virginia Weiss	Document review	8			
2/13/2015	Virginia Weiss	Document review	8			
2/17/2015	Virginia Weiss	Document review	8			
2/18/2015	Virginia Weiss	Document review	8			
2/19/2015	Virginia Weiss	Document review	8			
2/20/2015	Virginia Weiss	Document review	8			

2/23/2015	Virginia Weiss	Document review	8			
2/24/2015	Virginia Weiss	Document review	8			
2/25/2015	Virginia Weiss	Document review	8			
2/26/2015	Virginia Weiss	Document review	8			
2/27/2015	Virginia Weiss	Document review	8			
3/2/2015	Virginia Weiss	Document review	8			
3/3/2015	Virginia Weiss	Document review	8			
3/4/2015	Virginia Weiss	Document review	8			
3/5/2015	Virginia Weiss	Document review	8			
3/6/2015	Virginia Weiss	Document review	8			
3/6/2015	Virginia Weiss	Document review	8			
3/9/2015	Virginia Weiss	Document review	8			
3/10/2015	Virginia Weiss	Document review	8			
3/11/2015	Virginia Weiss	Document review	8			
3/12/2015	Virginia Weiss	Document review	8			
3/12/2015	Virginia Weiss	Document review	6			
3/13/2015	Virginia Weiss	Document review	8			
3/16/2015	Virginia Weiss	Document review	8			
3/17/2015	Virginia Weiss	Document review	8			
3/18/2015	Virginia Weiss	Document review	8			
3/19/2015	Virginia Weiss	Document review	8			
3/20/2015	Virginia Weiss	Document review	8			
3/23/2015	Virginia Weiss	Document review	8			
3/24/2015	Virginia Weiss	Document review	8			
3/25/2015	Virginia Weiss	Document review	8			
3/26/2015	Virginia Weiss	Document review	8			
3/27/2015	Virginia Weiss	Document review	8			
3/30/2015	Virginia Weiss	Document review	8			
3/31/2015	Virginia Weiss	Document review	8			
4/1/2015	Virginia Weiss	Document review	8			
4/2/2015	Virginia Weiss	Document review	8			
4/3/2015	Virginia Weiss	Document review	8			
4/6/2015	Virginia Weiss	Document review	8			
4/7/2015	Virginia Weiss	Document review	8			
4/8/2015	Virginia Weiss	Document review	8			
4/9/2015	Virginia Weiss	Document review	8			
4/10/2015	Virginia Weiss	Document review	8			
4/13/2015	Virginia Weiss	Document review	8			
4/14/2015	Virginia Weiss	Document review	8			
4/15/2015	Virginia Weiss	Document review	8			
4/16/2015	Virginia Weiss	Document review	8			

4/17/2015	Virginia Weiss	Document review	8			
4/20/2015	Virginia Weiss	Document review	8			Weiss Total: 454
					TOTAL:	

Name	Status	Rate	Cumulative Hours	Cumulative Lodestar
Michael P. Thornton	P	$850	585.90	$498,015
Garrett J. Bradley	P	$800	734.90	$587,920
Michael A. Lesser	P	$700	1,433.80	$1,003,660
Evan R. Hoffman	P	$535	1,110.20	$593,957
Jotham Kinder	A	$450	328.30	$147,735
Andrea Caruth	PL	$210	571.50	$120,015
Virginia Weiss	CA	$425	454.00	$192,950
Ann Ten Eyck	CA	$425	514.60	$218,450
Jonathan Zaul	CA	$425	327.00	$138,975
Michael Bradley	CA	$500	406.40	$203,200
Chris Jordan	CA	$425	288.00	$122,400
Andrew McClelland	CA	$425	358.50	$152,362
Rachel Wintterle	CA	$425	552.80	$234,940
David Alper	CA	$425	959.30	$407,702
Stephen Dolben	CA	$425	420.90	$178,882
Debra Fouchong	CA	$425	914.80	$388,790
Dorothy Hong	CA	$425	521.10	$221,467
Aron Rosenbaum	CA	$425	540.90	$229,882
Comfort Orji	CA	$425	644.20	$273,785
Albert Powell	CA	$425	678.00	$288,160
Jason Saad	CA	$425	480.70	$204,297
Roger Yamada	CA	$425	147.10	$62,517
Ebone Bishop	CA	$425	464.70	$197,497
Nicole Cameron	CA	$425	132.00	$56,100
Mashariki Daniels	CA	$425	562.10	$238,892
Jacqueline Grant	CA	$425	415.80	$176,715
Anuj Vaidya	CA	$425	442.70	$188,147
Betsy Schulman	CA	$425	274.00	$116,450
Ian Herrick	CA	$425	18.20	$7,735
David Packman	CA	$425	20.10	$8,542
Totals:			**15302.50**	**$7,460,139**

$192,950	454.00
$218,450	514.60
$138,975	327.00
$122,400	288.00
$152,362	358.50
$234,940	552.80