

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	<b>CIVIL ACTION NO.</b>
BANK OF NEW YORK MELLON CORP.	)	MASTER FILE
FOREX TRANSACTIONS LITIGATION	)	12 MD 2335 (LAK)
	)	
This Document Relates to: 11 Civ. 09175	)	
	)	
	)	

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**DECLARATION OF JOHN C. BROWNE IN SUPPORT OF: (A) LEAD PLAINTIFF'S  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN  
OF ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

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Dated: September 15, 2015

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1. I, John C. Browne, am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G” or “Lead Counsel”). BLB&G is counsel for the Court-appointed Lead Plaintiff the State of Oregon by and through the Oregon State Treasurer on behalf of the Common School Fund and, together with the Oregon Public Employee Retirement Board, on behalf of the Oregon Public Employee Retirement Fund (“Lead Plaintiff” or “Oregon”). I have personal knowledge of the matters set forth herein based on my active participation in the prosecution and settlement of this action (the “Securities Action” or “Action”).

2. I respectfully submit this Declaration in support of: (a) Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation (the “Final Approval Motion”); and (b) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Fee and Expense Motion”).

## **I. INTRODUCTION**

3. The proposed Settlement, if approved by the Court, will resolve all claims in the Securities Action in exchange for a cash payment of \$180 million from Defendant the Bank of New York Mellon Corporation (“BNYM” of the “Bank”). The Settlement was achieved after nearly three-and-a-half years of highly-contested litigation. During that time, Securities Counsel<sup>1</sup> expended enormous efforts and resources on behalf of a putative class of investors in BNYM

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<sup>1</sup> As used herein, “Securities Counsel” refers to BLB&G together with Stoll Stoll Berne Lokting & Shlachter, P.C. (“Stoll Berne”) and, for ease of reference in certain instances, it also includes Additional Plaintiffs’ Counsel. As detailed below, BLB&G and Stoll Berne were the two firms that jointly litigated this case from the time of the filing of the amended complaint through settlement. BLB&G and Stoll Berne also acted as co-counsel to Court-appointed Lead Plaintiff Oregon. In that capacity, these firms focused on all aspects of the case, dividing responsibilities as appropriate to maximize efficiencies. Additional Plaintiffs’ Counsel refers to Saxena White LLP (“Saxena White”), who were counsel for Named Plaintiffs Pompano Beach General Employees Retirement System (“Pompano”) and Local 235 Benefit Fund (“Local 235”), which asserted claims under the Securities Act of 1933 (“Securities Act”), and focused their efforts on that aspect of the litigation. As set forth below, the Securities Act claims were ultimately voluntarily dismissed near the end of fact discovery.

common stock. These efforts included investigating and initiating the first (and only) securities fraud class action complaint relating to these matters filed against BNYM, engaging in a massive discovery process, including the review and analysis of nearly 30 million pages of documents, and conducting, defending or otherwise participating in 90 depositions.

4. The proposed Settlement was reached several months after the coordinated Customer Class Cases<sup>2</sup> and Government Actions<sup>3</sup> settled, and only after the parties in the Securities Action completed fact discovery, completed expert discovery relating to class certification, filed competing class certification briefs, conducted additional depositions, and were on the verge of exchanging merits expert reports. The Settlement was the product of a months-long mediation process before former United States District Judge Layn Phillips, who ultimately provided a mediator's recommendation accepted by the parties.

5. Lead Counsel respectfully submits that the proposed Settlement represents an excellent result for the Class. As described in more detail below, the Settlement was achieved through an immense litigation effort undertaken in the face of vigorous opposition and truly substantial and unique risks not present in most securities class actions.

6. The gravamen of this Securities Action is the allegation that BNYM engaged in a widespread scheme to wrongfully mark-up the rates it charged custody clients who used the Bank's

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<sup>2</sup> "Customer Class Cases" refers to a group of class actions brought on behalf of BNYM custody clients, alleging that BNYM had overcharged its customers for standing instruction FX services. These include: *International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corp., et al.*, No. 12 Civ. 3067 (LAK) (JLC), *Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corp., et al.*, No. 12 Civ. 3066 (LAK) (JLC), *Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corp., et al.*, No. 12 Civ. 3470 (LAK) (JLC), and two ERISA actions captioned *Carver v. The Bank of New York Mellon, et al.*, No. 12 Civ. 9248 (S.D.N.Y.), and *Fletcher v. Bank of New York Mellon et al.*, No. 14 Civ. 05496 (S.D.N.Y.).

<sup>3</sup> "Government Actions" refers to the action brought by the Department of Justice ("DOJ" or "USAO") captioned *United States v. Bank of New York Mellon, et al.*, No. 11 Civ. 6969 (LAK) ("DOJ Action") and the action brought by the New York Attorney General ("NYAG") captioned *People ex rel. Schneiderman v. The Bank of New York Mellon Corp.*, Index No. 114735/09 (N.Y. Sup. Ct.) ("NYAG Action").

standing instruction foreign exchange (“FX”) services and that, in light of this scheme, BNYM misrepresented its reported revenues and FX services in public filings and on its website. The Complaint asserted claims on behalf of investors in BNYM common stock (as opposed to the Bank’s custody clients) under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 11 and 15 of the Securities Act. Lead Plaintiff further alleged that investors were damaged when the truth about the Bank’s FX pricing scheme began to come to light in 2011 and the price of BNYM’s common stock declined.

7. On June 22, 2012, the Court appointed BLB&G, along with the two primary lead counsel in the Customer Class Cases, Kessler Topaz Meltzer & Check, LLP (“KTMC”) and Lief Cabraser Heimann & Bernstein, LLP (“LCHB”), as the Plaintiffs’ Executive Committee. The Plaintiffs’ Executive Committee was charged with overseeing all discovery in the private actions. Lead Counsel worked diligently – and with notable success – alongside the other members of the Plaintiffs’ Executive Committee to coordinate litigation efforts not only among all private counsel but also with the DOJ and, later, the NYAG.

8. Lead Counsel was unique on the Plaintiffs’ Executive Committee – and, indeed, in the entire MDL Litigation – as it was the only firm pursuing claims on behalf of BNYM investors for alleged violations of the securities laws. All three members of the committee shared equal focus on developing the factual record necessary to establish that BNYM engaged in a wrongful FX scheme to overcharge its custody clients, and Lead Counsel shared the burden, costs and risks of developing that record with KTMC and LCHB. But only Lead Counsel had to also establish that BNYM and its executives committed securities fraud as a result of this wrongful scheme. Put differently, in order to prove that Defendants violated the federal securities laws and harmed investors by misrepresenting and concealing wrongful standing instruction FX pricing practices,

Lead Plaintiff had to show both that BNYM's FX pricing practices were, in fact, wrongful and that, as a result, Defendants made materially misleading statements about BNYM's revenues and operations that caused legally cognizable damages to BNYM's investors.

9. This was no simple matter. As the Court is aware, BNYM vehemently denied that there was anything wrongful about its FX pricing practices. The Bank contended, among other things, that it was fully entitled to earn a spread on standing instruction FX services, its custodial contracts did not prevent it from doing so, and there was nothing improper about the vast majority of the FX revenue the Bank earned during the Class Period. Further, in an argument that BNYM advanced throughout the litigation, including in its opposition to class certification in the Securities Action filed on April 27, 2015, the Bank contended that its custody clients and their sophisticated investment managers were well aware that the Bank was charging large spreads on its standing instruction FX services but chose to use those services anyway because of the convenience and quality they provided.

10. These were serious arguments that had been accepted by other courts in similar circumstances. *See Louisiana Municipal Police Employees' Retirement System v. JPMorgan Chase & Co. et al.*, 12 Civ. 06659, 2013 WL 3357173 (S.D.N.Y. July 3, 2013). As a consequence, Lead Plaintiff and Lead Counsel faced substantial risks and challenges, along with the other plaintiffs, in developing the factual record necessary to overcome BNYM's many defenses to the alleged underlying customer fraud.

11. The enormity of the effort required to develop this record has been well documented to the Court. Plaintiffs had to obtain, analyze, and understand a vast number of documents from BNYM and non-parties in order to educate themselves regarding the details of opaque FX services

conducted in an unregulated market for hundreds of custody clients over the course of multiple years.

12. The volume of documents produced was enormous, totally nearly 30 million pages. BNYM itself produced more than 25 million pages. BNYM and the USAO also served document subpoenas on more than 275 non-parties, who collectively produced nearly 4 million additional pages of documents. As described in more detail below, the review and analysis of this extensive document production was critically important to the ability of Securities Counsel to effectively prosecute this Action.

13. Deposition testimony was likewise important. In that regard, Securities Counsel prepared for, defended, took, or otherwise participated in 90 depositions, including depositions of witnesses associated with Lead Plaintiff, expert witnesses, multiple non-parties deposed by BNYM and BNYM witnesses, with Lead Counsel taking the lead in deposing many of BNYM's most senior executives.<sup>4</sup> For example, before the Securities Action settled, the parties conducted 27 depositions of non-parties in far-flung places such as London, England; Edinburgh, Scotland; Seattle, Washington; Santa Fe, New Mexico; Dallas, Texas; and Anchorage, Alaska. The vast majority of these depositions took place in a compressed four-month time frame when Lead Counsel was simultaneously deposing BNYM's senior executives and preparing expert reports.

14. The litigation of this Action was made even more challenging by an unusually aggressive defense strategy employed by BNYM. No fewer than twelve partners from BNYM's primary defense firm (out of a total of 32 partners at the firm) made appearances and at least 14 full time counsel and associates from that firm were active in these cases. BNYM vigorously

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<sup>4</sup> To conserve costs and litigate efficiently, Securities Counsel did not attend the depositions of other plaintiffs and their representatives in the MDL Litigation who were represented by their own separate counsel, including the depositions of representatives of the Customer Class Plaintiffs.

litigated every issue, large or small, in an apparent attempt to leverage BNYM's unlimited resources to overwhelm Securities Counsel. For example, BNYM's counsel challenged everything from the validity of signatures on Lead Plaintiff's documents to a parent company's liability for public statements made about its principal business by a wholly owned subsidiary, as well as a host of other issues. To prove their case and fulfill their fiduciary duties to the Class, Securities Counsel had to (and did) muster the resources to match BNYM's litigation efforts step for step over the course of several years until the proposed Settlement was reached.

15. On February 5, 2015, the Customer Class Cases and the Government Cases reached a settlement in principle. At that point, with fact discovery not yet complete, the other two firms on the Plaintiffs' Executive Committee (KTMC and LCHB) stopped participating in the litigation or paying any litigation costs, as did the USAO and the NYAG. Undeterred, Securities Counsel continued to litigate alone, taking or defending an additional six depositions, completing fact discovery, completing expert depositions relating to class certification, exchanging lengthy class certification briefs, drafting and serving more than one hundred pages of extremely detailed responses to contention interrogatories served by BNYM, doing extensive work on merits expert discovery (including loss causation and damages), and filing a successful motion to unseal documents that BNYM had improperly marked as confidential.

16. Given this effort, by the time the parties in the Securities Action accepted the mediators' recommendation and agreed to settle on or about May 21, 2015, Securities Counsel were well aware of the merits of the proposed Settlement and fully understood the strengths and risks of the claims asserted in the Securities Action.

17. While Lead Plaintiff and Securities Counsel obviously filed and prosecuted this action believing in its merit, we were aware of the very significant risks faced in the litigation. To

start, Securities Counsel shared with the Customer Class Cases the risks and burdens of mustering the necessary proof to show that BNYM had engaged in illicit FX practices – and had done so across a sufficiently broad swath of its custody clients to materially impact its revenues and, in turn, the price of BNYM common stock. Securities Counsel carried their full share of the weight, and bore their full share of the litigation costs, toward developing that record.

18. But, as noted, the Securities Action carried additional risks and burdens. A mere showing that BNYM engaged in widespread wrongful FX practices against its *custody clients*, standing alone, would be insufficient to establish that Defendants had violated the federal securities laws and damaged BNYM’s *investors*. To establish its claims in the Securities Action, Lead Plaintiffs had to also prove the elements of falsity (of statements to investors as opposed to statements to custody clients), materiality, scienter and damages. As discussed in more detail below, Defendants had a host of extremely serious arguments relating to materiality, “price impact,” and loss causation that posed grave and unique risks to the Securities Action.

19. If Defendants prevailed on any of these arguments at summary judgment, in connection with *Daubert* motions, or at trial, it would have eliminated the Class’s claims for compensable damages. The proposed Settlement provides the Class with a substantial recovery while avoiding the genuine risk that continued litigation could result in no recovery or a recovery much smaller than that achieved by the Settlement. Lead Plaintiff and Securities Counsel strongly endorse the Settlement and believe that it provides an excellent recovery for the Class, particularly in light of these substantial risks. *See* Declaration of Frederick M. Boss, Deputy Attorney General for the State of Oregon (“Boss Decl.”), attached hereto as Exhibit 1, at ¶9.

20. Securities Counsel are very proud of the hard-fought result obtained in this Action. As a full-share member of the Plaintiffs’ Executive Committee, Lead Counsel worked extremely

hard to help achieve what we believe was an unprecedented level of cooperation between multiple private cases, the USAO and the NYAG. Moreover, even after the settlement of the Customer Class Cases and the Government Actions, Securities Counsel continued to litigate the Securities Action aggressively for many months to push for and ultimately obtain an excellent result for the Class of investors they represent.

21. Set forth below is a description of the history of this Action, a summary of the efforts of counsel in achieving the proposed settlement and a lengthier description of the risks and challenges posed by this Securities Action. In addition, explained below are the reasons why the Settlement and Plan of Allocation should be finally approved as fair and reasonable and the proposed Settlement Class certified, as well as why Lead Counsel's motion for attorneys' fees and reimbursement of litigation expenses should be approved.

## **II. THE HISTORY OF THE LITIGATION**

### **A. BACKGROUND**

22. BNYM is a public company listed on the NYSE. It is one of the largest custody and trust banks in the world and provides custodial services to public pension funds, colleges, and foundations. The Bank was formed in 2007 through a merger of Mellon Inc. and the Bank of New York.

23. One of the services that BNYM offered to its clients during the Settlement Class Period (February 28, 2008 through October 4, 2011) was the ability to conduct foreign exchange transactions, which customers would use when purchasing or selling foreign securities or repatriating income from foreign investments to U.S. Dollars. BNYM's "standing instruction" or "indirect" FX service was an automated service in which clients relied upon BNYM to execute an FX trade without negotiation, supervision or direct involvement by the customer. As described in greater detail below and in the operative Complaint (defined below), Lead Plaintiff alleged that,

for more than a decade prior to commencement of the Securities Action, BNYM would surreptitiously markup or markdown the rates it gave to customers on standing instruction FX trades, depending on which was worse for BNYM's customers. Lead Plaintiff alleged that this practice caused BNYM's customers to pay the least favorable rates of the day.

24. The first details about BNYM's allegedly deceptive FX practices began to emerge publicly in early 2011. In January 2011, a *qui tam* lawsuit filed against BNYM on behalf of Virginia pension funds was unsealed, which alleged that BNYM "knowingly and intentionally charged [Virginia] false exchange rates for purchases and sales of foreign currency...." Further public scrutiny on BNYM's FX practices arose from a series of additional FX-related probes and lawsuits by state prosecutors, including from Florida and Tennessee, and articles published by the *Wall Street Journal* and other publications.

25. On October 4, 2011, the DOJ filed a civil fraud action under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") against BNYM, alleging that the Bank had "engaged in a scheme to defraud custodial clients who used BNYM's foreign exchange services." On that same day, the NYAG commenced a civil fraud action under the Martin Act against BNYM in New York state court seeking \$2 billion in damages.

26. A common thread to these initial FX-related investigations, lawsuits and news reports was an exclusive focus on an alleged FX fraud perpetrated against BNYM's customers. None of them focused on potential damages suffered by BNYM's investors.

## **B. THE PROSECUTION OF THE SECURITIES ACTION**

### **1. Lead Counsel's Efforts to Identify And Preserve Investor Claims By Filing The Securities Action**

27. The Class Period in this case ends on October 4, 2011, upon the announcement that the DOJ and the NYAG had sued BNYM for allegedly overcharging the Bank's custody clients

for standing instruction FX services. Following disclosure of those lawsuits – which focused solely on alleged wrongdoing against the Bank’s custody clients and did not mention BNYM’s investors – the price of BNYM’s common stock dropped from \$18.82 per share to \$18.28 per share, a decline of \$0.54 cents.

28. This small stock drop reflects the reality that the Government Actions, while potentially being viewed as bolstering the private claims against BNYM’s custody clients, were not widely understood as providing support for the notion that BNYM had defrauded its investors. This fact, along with the overall high risk profile and heavy burdens inherent in this Action, most likely explains why no securities class actions were filed relating to these matters for more than two months after the October 4, 2011 disclosure.

29. It was Lead Counsel who first stepped in to protect BNYM’s investors when, on December 13, 2011, Lead Counsel filed a securities class action captioned *Louisiana Municipal Police Employees’ Retirement System v. The Bank of New York Mellon Corporation et al.*, 11 Civ. 9175 (LAK). The initial complaint in the Securities Action asserted claims under Sections 10(b) and 20(a) of the Exchange Act against BNYM and various BNYM executives. It also asserted claims under Sections 11, 12(a)(2) and/or 15 of the Securities Act of 1933 arising from secondary offerings of BNYM common stock on May 11, 2009 and June 3, 2010 against various defendants, including key BNYM officers, directors and certain underwriters.

30. Prior to filing the initial complaint, Lead Counsel conducted an extensive investigation and analysis of the potential claims that could be asserted on behalf of investors in BNYM common stock. This investigation included, among other things, a detailed review and analysis of a large volume of publicly available information concerning BNYM. For example, Lead Counsel reviewed BNYM’s SEC filings, earnings announcements, press releases, and

transcripts of analyst conference calls. Lead Counsel also consulted with an expert to analyze the difficult and risky loss causation issues that were presented by the Action.

31. The fact that the December 13, 2011 complaint filed by Lead Counsel was the first – and it remained the only – complaint asserting violations of the federal securities laws filed against BNYM arising from Defendants’ allegedly improper FX practices underscores the substantial risks that Securities Counsel assumed in initiating and prosecuting this case.<sup>5</sup> Unlike many securities class actions, the Securities Action was not filed following a corporate restatement, or any other accusation by a government or regulatory agency that BNYM had committed fraud against investors. To this day no government regulator has brought any claim or made any finding that BNYM defrauded its investors as a result of the alleged FX standing instruction scheme. Nor has any government regulator (or private plaintiff) recovered any money for BNYM investors as a result of the wrongful activity alleged in the Securities Action.

32. Thus, absent Lead Counsel’s initiative in investigating and filing the Securities Action, it is quite possible that BNYM investors would not have recovered anything at all, let alone the outstanding amount of \$180 million.

## **2. The Appointment of Lead Plaintiff and Lead Counsel**

33. On February 13, 2012, Oregon filed a motion seeking to be appointed as Lead Plaintiff and for the appointment of its counsel, BLB&G, as Lead Counsel for the Class. *See* No. 11 Civ. 9175, ECF Nos. 17-18. That motion was fully briefed on March 12, 2012. *See* 11 Civ. 9175, ECF No. 33. On March 29, 2012, the Court held a hearing on the pending lead plaintiff motions. At that hearing, the Court appointed Oregon as the exclusive Lead Plaintiff and approved

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<sup>5</sup> By contrast, at least three large private class actions were filed on behalf of BNYM custody clients, as well as approximately four private class actions on behalf of ERISA employee benefit plans, two individual actions filed by the Bank’s custody clients, and at least two whistleblower actions asserting wrongdoing against BNYM’s custody clients.

Lead Plaintiff's selection of BLB&G as Lead Counsel. *See* 11 Civ. 09175, ECF No. 39. At the same hearing, Lead Counsel explained that Stoll Berne would also serve as co-counsel for Lead Plaintiff Oregon and would perform work in the Securities Action. *Id.*, ECF No. 73 (Transcript of Proceedings re Argument held on March 29, 2012 before Judge Lewis A. Kaplan) at 19-24. Further, the Court set a deadline of May 11, 2012 for filing a consolidated class action complaint in the Securities Action.

34. By order dated April 27, 2012, the Securities Action was consolidated for pretrial purposes with various other actions concerning BNYM's FX pricing under the caption *In re: Bank of New York Mellon Corp. Forex Transactions Litigation*, 12 MD 2335<sup>6</sup> (LAK) (the "MDL Litigation").<sup>7</sup> ECF No. 9.

### **3. The Consolidated Complaint**

35. On May 11, 2012, Lead Plaintiff filed the Consolidated Class Action Complaint (the "Complaint"). ECF No. 56. The Complaint asserted claims under Sections 10(b) and 20(a) of the Exchange Act, on behalf of Lead Plaintiff and all other persons and entities who purchased shares of BNYM common stock from February 28, 2008 through October 4, 2011. The Complaint named as Defendants for the Exchange Act claims: BNYM and various BNYM executives, including its former CEO, Robert P. Kelly, its current CFO, Thomas P. Gibbons, its former CFO, Bruce W. Van Saun, its current Controller, John A. Park and other key executives, including Jorge

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<sup>6</sup> Unless otherwise noted herein, all references to "ECF No. \_\_\_" refers to entries on the *In re: Bank of New York Mellon Corp. Foreign Exchange Transactions Litig.*, 12 MD 2335 docket. References to "11 Civ. 9175, ECF No. \_\_\_" refer to entries specifically on the *Louisiana Municipal Police Employees' Retirement System v. The Bank of New York Mellon Corp., et al.* docket.

<sup>7</sup> In addition to the Securities Action, the consolidated actions included: (i) the Customer Class Cases; and (ii) two actions by California governmental subdivisions, *Bank of New York Mellon Corp. False Claims Act Foreign Exch. Litig. v. Bank of New York Mellon Corp.*, No. 12 Civ. 3064 (LAK), and *Los Angeles County Employee Ret. Ass'n et al. v. Bank of New York Mellon Corp., et al.*, No. 12 Civ. 8990 (LAK). *See* September 12, 2013 Scheduling Order (ECF No. 273) at n.1.

Rodriguez and Michael K. Hughey. The Complaint also asserted claims under Sections 11, 12(a)(2) and/or 15 of the Securities Act arising from secondary offerings of BNYM common stock on May 11, 2009 and June 3, 2010. As defendants subject to these Securities Act claims, the Complaint named various BNYM directors and certain underwriters of BNYM's two offerings.

36. The Complaint alleged that, during the Class Period, BNYM and its top executives told investors that the Bank was earning hundreds of millions of dollars from legitimate foreign exchange trading operations that it conducted on behalf of its custodial clients. For example, BNYM repeatedly emphasized that FX trading was one of its highest margin businesses, and analysts noted that these margins resulted in "outsized growth in bottom line profitability" at the Bank. ECF No. 56 at ¶79. According to the Complaint, BNYM's FX-related revenues were artificially inflated as a result of Defendants' widespread scheme to defraud its custodial customers on standing instruction FX trades. In particular, Lead Plaintiff alleged that BNYM was adding an unauthorized "mark-up" to each standing instruction FX trade that it conducted during the Class Period, contrary to representations that its customers were receiving "best execution" or the "best price" on such trades. Lead Plaintiff alleged that these mark-ups were improper and added potentially hundreds of millions of dollars in illicit revenue to BNYM's publicly reported financial results. Lead Plaintiff further alleged that the truth about BNYM's FX practices was slowly revealed starting in early 2011, while Defendants continued to deny the allegations, until investors learned the truth about BNYM's FX practices on October 4, 2011, when the DOJ and New York AG filed complaints against the Bank for its FX pricing practices.

37. In sum, Lead Plaintiff alleged that BNYM was improperly earning unauthorized revenues from an illicit FX pricing scheme that, in turn, caused its publicly reported revenues, financial position and results of operations to be materially misstated. Thus, in order to prove its

claims, Lead Plaintiff had to establish that Defendants' FX pricing practices were unauthorized and that those practices rendered BNYM's financial results materially false and misleading.

#### **4. Lead Counsel's Appointment To The Plaintiffs' Executive Committee**

38. On May 23, 2012, the Court held a Scheduling Conference in the consolidated cases. At this conference, the Court ordered the parties to propose an executive committee structure to lead the consolidated proceedings. Following an extensive meet and confer process, the parties submitted their proposed pre-trial orders.

39. By order dated June 20, 2012, this Court appointed Lead Counsel as one of the three firms that comprised the Plaintiffs' Executive Committee. ECF No. 103. The other two member firms were KTMC and LCHB, which were plaintiffs' counsel in two separate customer class actions. In its capacity as a member of the Plaintiffs' Executive Committee, Lead Counsel was, together with KTMC and LCHB, responsible for presenting plaintiffs' positions to the Court and Defendants on all pre-trial matters, coordinating the initiation and conduct of discovery on behalf of plaintiffs, including written discovery, depositions and conferences with Defense counsel and monitoring the activities of all plaintiffs' counsel to ensure that schedules were met and unnecessary expenditures of time and funds were avoided.

40. Lead Counsel's appointment as one of only three members of the Plaintiffs' Executive Committee obligated Lead Counsel to shoulder an equal financial burden with its co-members. For example, Lead Counsel paid the same amount for document hosting and court-reporting services as each of KTMC and LCHB – and, collectively, the three firms covered the majority of these costs for all plaintiffs in the MDL, as set forth in the below chart.

<b>Plaintiffs</b>	<b>Share of Discovery Costs</b>
BLB&G	21.34%
LCHB	21.34%
KTMC	21.34%
ERISA Counsel	10%
USAO	16%
LACERA/LADWP Counsel	10%

Once discovery in the NYAG Action was coordinated with the MDL and the USAO Actions, these costs were adjusted slightly, with BLB&G, LCHB and KTMC still covering the lion's share in the following proportions: BLB&G – 19%; LCHB – 19%; KTMC – 19%; ERISA Counsel – 10%; USAO – 16%; LACERA/LADWP Counsel – 10%; NYAG – 3.5%; NYC Funds – 3.5%.

41. Also at the May 23, 2012 conference, the Court permitted Lead Plaintiff and Lead Counsel to serve discovery (described in greater detail below) and participate in the meet and confer process.

#### **5. Negotiation Of The Protective Order**

42. After the Securities Action was consolidated with the MDL Litigation, the parties began to negotiate a protective order governing the treatment of confidential information in the litigation. After extensive negotiations the parties were able to reach agreement on many issues, but were ultimately not able to reach a final agreement on the protective order. Accordingly, the parties filed competing submissions on the appropriate protective order with the Court.

43. On June 20, 2012, the Court entered Defendants' proposed form of protective order. ECF No. 104. The protective order entered by the Court enabled the parties to mark documents as "Confidential" or "Highly Confidential, Attorneys' Eyes Only." It also provided for Defendants to be given advance notice and the opportunity to object to any expert to which plaintiffs desired to show information that Defendants had designated as "confidential," before that information could be shared with the expert. The protective order also governed the inadvertent production of

privileged documents and the manner for challenging assertions of privilege or confidentiality going forward. The latter provision proved to be extremely important because, as described below, Lead Plaintiff successfully challenged Defendants' confidentiality designations on certain key documents at a crucial juncture in the litigation of the Securities Action.

## **6. Defendants' Motions to Dismiss**

44. On June 22, 2012, Defendants filed four separate motions to dismiss the Complaint under Rule 12(b)(6). ECF Nos. 108-116. Defendants' motions to dismiss consisted of 75 pages of briefing and over 40 exhibits. Defendants argued that the Complaint should be dismissed on numerous grounds, including those described below:

- (a) Lead Plaintiff did not properly allege that BNYM committed fraud in connection with its standing instruction services because it was not under a duty to disclose its pricing methodology or the revenues that it generated from standing instruction FX transactions and because the Complaint did not allege a relevant affirmative misrepresentation that Defendants made to customers;
- (b) Lead Plaintiff failed to establish a strong inference of scienter on behalf of Defendants with respect to its customers;
- (c) Lead Plaintiff failed to identify any misleading statements made by Defendants to investors because the Bank's statements regarding historical foreign exchange revenue were not misleading;
- (d) BNYM's statements concerning its "transparency" and "integrity" were nonactionable statements of opinion or puffery;
- (e) Lead Plaintiff failed to plead the falsity of the statements on BNYM's website with particularity and, therefore, statements on the website could not support liability;
- (f) BNYM's responses to accusations of fraud were not misleading because the Complaint did not properly allege that any of the Bank's responses were inaccurate or fraudulent;
- (g) The Complaint failed to raise a strong inference of scienter by BNYM or the individual defendants; and
- (h) Allegations in the Complaint based on BNYM's partial settlement with the DOJ and complaints in other actions should be given no weight.

45. On July 30, 2012, Lead Plaintiff filed its 66-page omnibus opposition papers responding to all four motions to dismiss. ECF Nos. 143-144. Among other things, Lead Plaintiff argued that:

- (a) BNYM's internal documents demonstrated that Defendants knew their public statements were false and misleading and that Defendants took affirmative steps to conceal the Bank's foreign exchange scheme, evidencing a strong inference of scienter;
- (b) Defendants' scienter was amply supported by multiple Bank documents, witness statements and substantive investigations as well as the other allegations in the Complaint;
- (c) Defendants' statements that attributed fluctuations in FX revenue to "volume" and "volatility" were actionable because they failed to disclose that a material source of the Bank's success was the improper or illegal business methods;
- (d) None of the risk disclosures that Defendants cited to adequately communicated the risks concealed by Defendants' misstatements;
- (e) Defendants' statements concerning BNYM's integrity and transparency were not immaterial puffery;
- (f) Statements on BNYM's website were false and misleading and, therefore, actionable;
- (g) Defendants' denials of wrongdoing were actionable because they were either historical statements of fact or were opinions that were not subjectively believed by the speaker, or the speaker lacked an objectively reasonable basis to make the statement; and
- (h) The Officer Defendants were liable for statements made in BNYM's press releases and website.

46. On August 17, 2012, Defendants served separate reply papers, which consisted of a combined 35-pages of additional briefing. *See* ECF Nos. 150-152, 154.

**7. Lead Plaintiffs Request That The PLSRA Discovery Stay Be Lifted And Rejection of Defendants' Motions To Dismiss**

47. On January 23, 2013, the Court issued an opinion sustaining a Customer Class Plaintiff's (SEPTA) breach of contract claims and, in part, its claims of breach of fiduciary duty. *See Se. Penn. Transp. Auth. v. Bank of New York Mellon Corp.*, 921 F. Supp. 2d 56 (S.D.N.Y. 2013). On April 24, 2013, the Court sustained in part the DOJ's claims that BNYM committed mail and wire fraud and was liable for civil penalties under Section 951a of the FIRREA. *See United States v. Bank of New York Mellon*, 941 F. Supp. 2d 438 (S.D.N.Y. 2013). Also on April 24, 2013, the Court ordered the parties to submit status reports concerning their respective actions.

48. On May 7, 2013, the parties submitted their Joint Status Report. ECF No. 234. In the Joint Status Report, Lead Plaintiff argued that the Court's decisions rejecting the bulk of the motions to dismiss in the SEPTA and DOJ actions were dispositive of significant portions of Defendants' fully briefed motions to dismiss in the Securities Action. In particular, Lead Plaintiff argued that the Court's rulings made clear that Lead Plaintiff's Complaint adequately alleged: (i) scienter as to certain key defendants, including BNYM; and (ii) that BNYM's public statements about providing "best execution" for standing instruction FX transactions were materially false and misleading. Accordingly, Lead Plaintiff requested that the Court lift the PSLRA discovery stay in place in the Securities Action – and permit Lead Plaintiff and Lead Counsel to obtain access to the documents that BNYM had been producing to the other MDL Plaintiffs. *See* ECF No. 234. Defendants opposed Lead Plaintiff's request to lift the PSLRA discovery stay. *Id.*

49. On May 17, 2013, the Court held a conference to discuss the status of the MDL Litigation. At that conference, the Court indicated that, in light of its ruling concerning motions to dismiss in related cases, it was "absolutely clear that some part of the securities case [will go] forward in light of [the Court's] rulings no matter what" and that it was inclined to also lift the

PSLRA discovery stay. *See* Transcript of Proceedings re: Conference held on 5/17/2013 before Judge Lewis A. Kaplan (ECF No. 246) at 18-19. Following the Court's statements at the May 17, 2013 conference concerning the PSLRA discovery stay, Defendants filed submissions in support of maintaining the discovery stay imposed by the PSLRA and, on June 7, 2013, Lead Plaintiff filed a reply brief in support of the discovery stay being lifted. *See* ECF Nos. 244, 245, 251.

50. On June 10, 2013, in a summary order, the Court denied Defendants' motions to dismiss the Securities Action and lifted the PSLRA discovery stay. ECF No. 252. Prior to this point, Lead Plaintiff and Lead Counsel had been permitted to serve discovery requests and participate in the meet and confer process – but had been prohibited from receiving any documents. The Court's denial of Defendants' motions to dismiss cleared the way for discovery to commence in earnest in the Securities Action.

#### **8. Negotiation of the Scheduling Order**

51. For several weeks following the May 2013 status conference with the Court, the parties spent considerable time negotiating a proposed pretrial schedule. As was typical in this extremely hard fought litigation, the parties were unable to reach consensus on deadlines for the most important litigation events. Accordingly, the parties submitted competing schedules to the Court.

52. On September 12, 2013, the Court adopted a pretrial schedule that was largely consistent with the schedule proposed by Lead Plaintiff and the other plaintiffs in the MDL Litigation (the "Scheduling Order"). ECF No. 273. The schedule also contemplated extensive coordination between the Securities Plaintiffs, Customer Plaintiffs, the ERISA Plaintiffs, and the USAO.

53. The Scheduling Order was subsequently amended on July 11, 2014, by agreement of the parties, with all dates being extended by 90 days. The key pre-trial deadlines in the Scheduling Order, as amended, were:

<b>DATE</b>	<b>EVENT</b>
February 28, 2014	Deadline to complete all document discovery.
October 15, 2014	Original deadline to complete all fact discovery.
November 3, 2014	Opening class certification expert reports.
December 5, 2014	Rebuttal class certification expert reports.
January 30, 2015	Close of fact and class certification expert discovery, and deadline for class certification motion.
March 26, 2015	Exchange of merits expert reports.
August 25, 2015	Deadline for summary judgment outlines and Rule 56.1 statements.
November 11, 2015	Summary judgment deadline.
November 26, 2015	Proposed joint pre-trial order.

54. The Scheduling Order was amended on two subsequent occasions, January 21, 2015 and then on February 20, 2015, to allow the USAO, NYAG and Plaintiffs in the Customer and ERISA actions to continue their negotiations towards a global settlement of the DOJ, NYAG and Customer Class Actions. As a courtesy, Lead Plaintiff did not oppose these extensions – even though it was still actively litigating the case while attempting to negotiate its own resolution. As described below, Lead Plaintiff and Securities Counsel ultimately continued to litigate the Securities Action for months after the Government Actions and the Customer Class Actions were no longer litigating.

## **9. Defendants' Answers**

55. On September 15, 2013, Defendants filed their Answers to the Complaint. ECF Nos. 274, 276. In their Answers, Defendants denied Lead Plaintiff's claims in their entirety, and asserted a combined total of 129 affirmative defenses, including, among other things, that: (i) the alleged misstatements and omissions in the Complaint were not false or misleading, and were otherwise immaterial; (ii) Lead Plaintiff failed to plead loss causation; (iii) Plaintiffs' claims were

barred by Plaintiffs' actual and/or constructive knowledge of the alleged false or omitted information; and (iv) that the alleged misstatements and omissions were made in good faith and were based on what the speakers believed to be true at the time the statements were made.

### **C. DISCOVERY**

56. Discovery in these actions was extremely hard-fought. Beginning in June 2013, Lead Counsel, as a member of the Plaintiffs' Executive Committee, had an important leadership role in overseeing and managing discovery across all of the coordinated customer cases. In that role, Lead Counsel (along with the other two members of the Plaintiffs' Executive Committee) also engaged in extensive collaboration with the USAO and, later the NYAG. Given the enormous scope of discovery and the overlap between the coordinated cases, Lead Counsel was in almost daily communication with other members of the Plaintiffs' Executive Committee and/or the USAO regarding multiple issues in the litigation. Further, as described below, by virtue of its leadership role on the Plaintiffs' Executive Committee, Lead Counsel bore a significant amount of the out-of-pocket discovery costs that were shared jointly across the Actions.

57. In the course of this litigation, Lead Counsel was involved in extensive negotiations surrounding the scope and structure of discovery. These efforts involved the exchange of thousands of emails and hundreds of pages of correspondence, formal document requests, responses and objections and, ultimately, tens of millions of pages of actual productions. Further, the pre-trial schedule in these actions was extremely compressed. The parties had approximately 18 months to initiate document production, obtain, review and analyze tens of millions of pages of documents, complete approximately 90 party and non-party depositions, complete expert discovery relating to class certification and file Lead Plaintiff's opening class certification brief.

58. This fast-paced schedule required all plaintiffs to be as efficient as possible and engage in significant collaboration among themselves in the face of an aggressive and well-funded

adversary. Indeed, Lead Counsel is proud of the collaboration between the Plaintiffs' Executive Committee and the USAO throughout these litigations. The parties were in oftentimes daily communication (at all hours of the day) regarding the conduct of discovery, the merits of the claims, and critical strategic litigation decisions. These efforts continued for many months, and the strong working relationship built between the Plaintiffs' Executive Committee and an extremely dedicated and able team of attorneys at the USAO resulted in these Actions being litigated as efficiently as possible to the benefit of all parties and the Court.

59. There were, of course, certain tasks that had to be performed by Securities Counsel in the service of their fiduciary duties to the investor class, and the responsibility for these tasks could not be divvied out to counsel for the Customer Class Cases who represented different constituents with different claims. For example, Securities Counsel recognized from the outset of the case that it would have no control over when or whether the Customer Class Cases or the Government Actions might reach a resolution. This meant that Securities Counsel could not simply rely on the other plaintiffs to develop the record necessary to prove the underlying FX scheme. Securities Counsel was required to put in the necessary work to develop this knowledge, which paid dividends when the Customer Class Cases and the Government Actions settled before fact discovery was complete. Indeed, when Securities Counsel suddenly found themselves litigating alone, they did not miss a beat and continued to aggressively prosecute the Action, secure in the knowledge that they were fully familiar with the documents, evidence and issues relating to the underlying FX fraud. This greatly benefited the Class in the Securities Action because it allowed Securities Counsel to achieve a better recovery.

#### **1. Document Discovery**

60. To carry its burden to prove violations of the federal securities laws, Lead Plaintiff had to independently develop a very substantial amount of evidence. For example, Lead Plaintiff,

along with the other actions, was required to develop the record necessary to prove that BNYM had materially inflated its total FX revenue through a scheme to overcharge its custodial clients who executed trades *via* standing instructions. This was a challenging undertaking given the opaque nature of the Bank's FX standing instruction practices and the reality that BNYM provided these services to hundreds of different customers pursuant to many different contracts that contained differing representations.

61. Document discovery was further complicated by an enormous number of non-party subpoenas primarily issued by BNYM and the USAO to roughly 300 non-parties who were largely customers of the Bank and/or their investment advisers. Discovery from these non-parties was a key part of BNYM's defense strategy in this litigation as the Bank contended, among other things, that the vast majority of its customers were aware that it was charging a significant mark-up on standing instruction FX services. Indeed, in its opposition to class certification in the Securities Action, BNYM heavily relied on evidence that it obtained from these non-parties as its primary argument for denying class certification.

62. To obtain the documents necessary to build their case, plaintiffs issued numerous document requests to Defendants, and engaged in extensive negotiations over the scope and adequacy of Defendants' discovery responses. Lead Plaintiff and the other plaintiffs in the MDL Litigation issued their first set of document requests to Defendants on January 17, 2013. These requests sought, among other things, all documents concerning: (a) revenue from BNYM's FX transactions, including revenue and/or income attributable to negotiated FX transactions and to standing instruction FX transactions; (b) any inquiries from custodial clients, or their agents, including investment managers or consultants, regarding BNYM's disclosure policies with respect to its standing instruction FX services; (c) the impact of the Bank's FX transactions or practices

on its current and future business, financial statements and financial projections; and (d) any communications relating to analyst, rating agency, and/or financial coverage of BNYM's FX transactions or practices or any investigation by a governmental entity into the Bank's transactions or practices. On February 19, 2013, Defendants served their responses and objections.

63. As noted above, Lead Plaintiff's access to discovery, and its review of documents, commenced in July 2013 after the Court denied Defendants' motions to dismiss and lifted the PSLRA stay. ECF No. 252. Securities Counsel also issued additional requests to the Individual Defendants in the Securities Action. For example, on July 26, 2013, Lead Plaintiff issued its First Request for the Production of Documents to Defendant Jorge Rodriguez. These requests sought, among other things, documents relating to public statements made by Defendant Rodriguez that were alleged in the Complaint to be materially false and misleading. Defendant Rodriguez served his responses and objections on August 29, 2013.

64. On September 16, 2013, Lead Plaintiff issued its First Request for the Production of Documents to the Officer Defendants. These requests sought, among other things, all documents concerning: (a) BNYM's policies, procedures or practices with respect to executing FX transactions on behalf of its clients by standing instructions; (b) stock price changes and/or investor reaction to the announcements and disclosures that occurred at the end of the Class Period; (c) the change on BNYM's website that was referenced in the Complaint; and (d) BNYM's practices and disclosure policies with respect to its standing instruction FX transactions. The Officer Defendants served their responses and objections on October 21, 2013.

65. Defendants raised numerous objections to Lead Plaintiff's requests, refused to produce documents on certain subjects, and agreed to produce only some documents on certain other subjects. Lead Counsel then engaged in extensive meet-and-confer with Defendants'

counsel through which the parties negotiated the scope of Plaintiffs' documents requests, Defendants' objections thereto, and proposed custodians whose files would be searched (which ended up being over 150 custodians) and the search terms that would be used (over 500 search terms were used). As discussed below, as the parties' document productions began, a number of disputes arose that could not be amicably resolved and ultimately required Court intervention.

66. Once Lead Counsel obtained documents, they had to be reviewed and analyzed. Given the enormous magnitude of the production involved in this litigation and the complexity of the issues they covered, Lead Counsel and the other Plaintiffs' Executive Committee members sought ways to both save costs and streamline their review and analysis of the documents. In that regard, the Plaintiffs' Executive Committee solicited bids from discovery vendors to arrange for both document-management and court-reporting services. Lead Counsel and the other members of the Plaintiffs' Executive Committee were able to negotiate a favorable pricing arrangement for both document hosting and court-reporting services with D4 Database Management ("D4") – an arrangement that benefitted all plaintiffs in the coordinated cases, including the DOJ and the NYAG. As noted above, Lead Counsel, KTMC and LCHB equally split the majority of the costs for D4's document hosting and court-reporting services – with the other plaintiffs covering the remainder in smaller proportions.

67. To efficiently identify the most relevant documents, Lead Counsel and the other Plaintiffs' Executive Committee firms used algorithm-based "technology assisted review" ("TAR") (also known as "predictive coding"). The TAR process operated as follows: The three executive committee firms split up the review and coding of an initial batch of several thousand documents. Then the TAR software took the coding that had been applied to these so-called "seed" documents and spread it throughout the rest of the production – using an algorithm to assign a

ranking to each document in the production. This permitted Securities Counsel to prioritize its first level of review of the production by focusing on those documents identified as the most likely to be relevant by the TAR software.

68. Attorneys from Securities Counsel then began to review, analyze, and categorize the documents in the electronic database. In reviewing these documents, the attorneys were tasked with making several analytical determinations as to their importance and relevance. Specifically, they determined whether the documents were “hot,” “highly relevant,” “relevant,” or “irrelevant.” They also assessed which specific issues the documents related to, including issues for documents concerning pricing for standing instruction FX trades, documents discussing the use of “best execution” in transacting standing instruction FX trades, documents relating to FX revenues, and documents relating to the disclosure and transparency of BNYM’s FX pricing practices. In addition, the attorneys determined the identities of the BNYM employees to which the documents related so that the documents could be easily retrieved when preparing for the depositions of those employees and make that preparation more efficient.

69. For documents identified as “hot,” Securities Counsel generally took the time to document their substantive analysis of the document’s importance. Specifically, the attorneys made electronic notations on the document review system, explaining what portions of the documents were hot, how they related to the issues in the case, and why the attorney believed that information to be significant.

70. The attorneys also analyzed the documents for several other issues related to the adequacy and scope of BNYM’s document production. For example, the attorneys reviewed all privilege redactions, as well as BNYM’s numerous privilege logs, to determine whether BNYM was redacting or withholding potentially non-privileged information. The attorneys also reviewed

the productions to determine whether BNYM was producing the documents it had agreed to produce in response to plaintiffs' document requests.

71. During the document review process, in addition to *ad hoc* communications regarding the review which often occurred on a daily basis, Securities Counsel held weekly meetings with the attorneys conducting the document review – including those from KTMC, LCHB and certain other plaintiffs' firms in the Customer Class Actions. In advance of these meetings, the most significant documents that had recently been discovered and analyzed were compiled and circulated to all plaintiffs' firms. At the meetings, the attorneys who analyzed documents discussed their importance, and other counsel present asked questions and discussed additional, similar documents that had been discovered. After these weekly calls, an attorney from Lead Counsel, KTMC or LCHB would generally draft a memorandum summarizing the key documents discussed at the meeting. Through these meetings, Lead Counsel ensured that attorneys from Securities Counsel and the other counsel in the MDL Litigation were all aware of the important documentary evidence being developed in the case, and focused the document review teams on developing similar evidence in support of Lead Plaintiff's claims.

72. As the document review process was ongoing, Lead Counsel created a central repository of key documents organized by issue. Important documents related to Lead Plaintiff's claims were arranged chronologically and placed in binders, which were regularly updated as additional key documents were discovered. Creating this repository of key documents allowed attorneys to easily access and analyze the key documents related to any claim in the case without having to independently compile them, which allowed the attorneys to efficiently prepare for depositions and locate evidence for numerous fact-based submissions to the Court.

## **2. Securities Plaintiffs' Document Production To Defendants**

73. BNYM served two sets of document requests on Lead Plaintiff. Lead Plaintiff served responses and objections to both sets of requests, and sought to narrow the universe of documents requested through multiple meet-and-confer sessions with the Bank's counsel. Each of the documents that Lead Plaintiff collected was reviewed for relevance and privilege. Ultimately, Oregon produced over 70,000 pages of documents.

74. To begin, Defendants served their First Set of Requests for the Production of Documents directed to Oregon on July 23, 2013. These requests sought, among other things, all documents: (a) relating to any investment that Oregon made in any BNYM security; (b) that Oregon reviewed in connection with its decision to purchase BNYM securities; (c) reflecting Oregon's investment policies and guidelines; (d) concerning Oregon's relationship with any investment manager, not limited to its investment managers that purchased BNYM common stock during the Class Period; (e) Oregon's discussions with its custodian, State Street, of foreign exchange services; and (f) the foreign exchange practices of other custodial banks.

75. On August 22, 2013, Lead Plaintiff served its responses and objections, identifying certain categories of documents that it would agree to produce and others that it would not on the grounds that such documents were irrelevant.

76. On November 18, 2013, BNYM issued its Second Set of Requests for the Production of Documents to Oregon. These requests sought, among other things, documents relating to Oregon's commitment to purchase BNYM securities, including trading data. On December 23, 2013, Lead Plaintiff served its responses and objections, identifying certain categories of documents that it would agree to produce.

77. Following service of Oregon's objections and responses to BNYM's first set of document requests, the parties commenced a lengthy meet and confer process that involved

countless phone calls, emails and letters as well as scores of hours of attorney time (this process also eventually folded in BNYM's second set of document requests). Indeed, the parties' negotiations concerning Lead Plaintiff's document production stretched over the subsequent year and a half and did not conclude until fact discovery ended on March 27, 2015. Even then, BNYM purported to reserve the right to request additional documents and demand more follow-up by Securities Counsel.

78. As discussed further below, the parties' negotiations concerning Lead Plaintiff's document production gave rise to various disputes. For example, one major area of dispute stemmed from BNYM's position that Lead Plaintiff should search for and produce any documents in its possession that concerned the term "best execution" – even as used by other custodial banks. This issue led to no less than three rounds of motion practice by BNYM, which the Court ultimately rejected. Other disputed areas concerned Oregon's production of documents concerning any request for proposal (RFP) responses sent by BNYM, any FX transaction cost analyses performed concerning custodial FX services (including by other custodial banks), whether or not an Oregon representative signed a PSLRA certification by hand or by authorized electronic signature and FX rates provided by other custodial banks (such as State Street, which was Oregon's custodian).

79. BNYM also served document requests on additional named plaintiffs, Pompano and Local 235. Additional Plaintiffs' Counsel served responses and objections to BNYM's requests and the parties met and conferred concerning the documents to be produced. They then reviewed and produced over 23,000 pages of documents on behalf of Pompano and Local 235.

### **3. Interrogatories**

80. In addition to the extensive document discovery that took place, the parties exchange extensive interrogatories with each other, as summarized below.

**(i) Lead Plaintiff's Interrogatories Directed To Defendants**

81. On August 27, 2014, Lead Plaintiff issued interrogatories to Defendants. These interrogatories were spurred by Lead Counsel's discovery through the review of documents that certain BNYM employees had apparently given testimony or interviews to certain regulatory agencies about BNYM's alleged FX fraud against its custody clients. When BNYM – consistent with its scorched earth litigation tactics – refused to identify those individuals after several meet-and-confers, Securities Counsel served formal interrogatories seeking, *inter alia*, the identification of each current and former BNYM employee who testified in a deposition or participated in an interview by any governmental entity that concerned BNYM's FX services. On September 26, 2014, Defendants served their responses and objections, providing the requested list of current or former employees, but refused to provide further information. Following this response, the parties engaged in an extensive meet and confer process to resolve Lead Plaintiff's request for additional information, including the governmental agency that each witness had testified before. Eventually, Defendants provided the requested information. Lead Counsel also sought, and eventually obtained from BNYM, the transcripts of these depositions or interviews.

82. On December 24, 2014, Lead Plaintiff and the other MDL Plaintiffs issued an extensive set of interrogatories to Defendants seeking, among other things, information concerning the materials given to custodial clients of BNYM that utilized the standing instruction FX service, the representations that the Bank made concerning its standing instruction FX service, the monthly revenues, profits and expenses associated with BNYM's standing instruction FX service and the annual compensation BNYM paid to its key executives during the relevant period.

83. As described in greater detail below, on March 27, 2015 – after settlement of the Customer Class Cases and the Government Actions – Defendants served their responses and objections to the interrogatories that Plaintiffs jointly served in December 2014. As the only

member of the Plaintiffs' Executive Committee still litigating, Lead Counsel was required to review and analyze Defendants' responses to these interrogatories.

**(ii) Lead Plaintiff's Responses To Numerous Interrogatories Served by Defendants**

84. The Bank served three sets of far-ranging interrogatories on Lead Plaintiff and responding to each of the interrogatories required a significant amount of work by Lead Plaintiff and Securities Counsel. On June 6, 2014, BNYM issued its First Set of Interrogatories to Oregon, seeking: (a) the identity of the Oregon employee with responsibilities with respect to each of Oregon's investment advisors previously identified; and (b) detailed descriptions and information concerning Oregon's investment portfolios that invested in BNYM common stock. Oregon served its responses and objections on July 1, 2014 and, after meeting and conferring with Defendants, served a revised response on August 13, 2014.

85. On October 29, 2014, BNYM issued its Second Set of Interrogatories to Oregon. This set included wide-ranging contention interrogatories such as Interrogatory No. 11, which called for Lead Plaintiff to:

- identify each alleged materially false and misleading statement or omission;
- provide all details concerning the circumstances in which each alleged misstatement was made; and
- state all facts supporting Lead Plaintiff's contention that each alleged misstatement or omission was materially false or misleading.

These interrogatories also called for Lead Plaintiff to "describe in detail" the knowledge of one of its employees regarding a FX transaction cost analysis performed for another pension fund (Interrogatory No. 10) years earlier and for Lead Plaintiff to prematurely provide detailed information concerning its alleged corrective disclosures and loss causation (Interrogatory No. 12).

86. Responding to BNYM's Second Set of Interrogatories required considerable work. In order to provide adequate responses, Securities Counsel had to review and analyze tens of thousands of pages of BNYM's public statements and SEC filings, as well as millions of pages of deposition testimony, deposition exhibits and BNYM's productions.

87. On December 1, 2014, Lead Plaintiff served approximately 100 pages of responses and objections. This response included citations to hundreds of BNYM's SEC filings, conference calls and other public statements, productions in the litigation and deposition transcripts and exhibits. For example, in response to Interrogatory No. 11, Lead Plaintiff provided an extensive 68-page appendix setting forth more than 100 alleged false and misleading statements, detailed citations to deposition testimony from BNYM's executives and quoted from a multitude of emails and presentations sent to and by BNYM officials. As for Interrogatories Nos. 10 and 12, Securities Counsel had to conduct in-depth legal research to ensure that it had sufficient basis to object to these interrogatories as, *inter alia*, improper and/or premature.

88. As described in greater detail below, on December 27, 2014, BNYM issued its Third Set of Interrogatories to Oregon. On March 27, 2015, after settlement of the DOJ, NYAG and Customer Class Actions, Lead Plaintiff served its detailed 150-page responses and objections. Also on March 27, 2015, Lead Plaintiff served supplemental responses to certain of BNYM's Second Set of Interrogatories.

#### **4. Depositions**

89. Depositions were a critical component of discovery in this case from both a fact-gathering perspective and in terms of the legal arguments each party made. Indeed, the Court recognized the breadth and importance of deposition discovery in the MDL Litigation by providing in the Scheduling Order that each side was permitted to take up to 150 depositions.

90. Merits and class certification depositions relating to BNYM's pricing practices for standing instruction foreign exchange transactions began in March 2014. By the end of fact and class discovery in the Securities Action – which occurred on March 27, 2015 after settlement of the DOJ, NYAG and Customer Class Actions – the parties had taken ninety (90) depositions in the Securities Action. These depositions took place across the country including in Florida, California, Pennsylvania, Washington, Massachusetts, Virginia, Oregon, Texas and New York. Securities Counsel prepared for and actively participated in each of these 90 depositions.

91. From March 2014 through April 2015, Plaintiffs noticed 54 BNYM witnesses and Lead Counsel actively participated, prepared for and/or took the lead in all of these depositions. Notably, Lead Counsel took the lead in deposing such high-ranking BNYM executives as its former CEO (Defendant Kelly), its current CFO (Defendant Gibbons) and Controller (Defendant Park), as well as the former heads of its Asset Servicing division (James Palermo) and its FX division (Richard Mahoney).

92. The other parties in the MDL Litigation – including the DOJ and Customer Plaintiffs' counsel – paid Securities Counsel multiple compliments concerning their deposition-taking skills and, among other things, noted that Securities Counsel had obtained helpful evidence at these depositions.

93. At the end of March 2015 and through April 2015, after the Customer Class and DOJ Actions had settled, Securities Counsel took additional depositions of key Bank witnesses, including a former BNYM employee and a whistleblower (Grant Wilson) and BNYM's former CFO (Bruce Van Saun). Securities Counsel also participated in various non-party depositions during this period, including that of Acadian Asset Management, Capital Guardian LLC and State Street Global Advisors, as well as defending its class certification expert S.P. Kothari.

94. There were also 27 depositions non-parties instigated by BNYM. In preparation for these depositions, Securities Counsel reviewed the documents produced by the non-parties (over 4 million pages), worked extensively with the DOJ and other MDL Plaintiffs to prepare for these depositions, and attended each of them.

95. Each of these depositions involved extensive preparation by Securities Counsel, including detailed review of Defendants' and non-parties' productions, review of prior testimony that related to the witness, and a close analysis of the issues in the case. Securities Counsel also prepared extensive "deposition kits," which included the relevant documents for each witness, as well as a detailed "witness memoranda" and/or analyses. These deposition kits were shared with the other MDL Plaintiffs and the DOJ – who were on several occasions very complimentary of Securities Counsel's work product in helping to prepare for depositions.

96. Securities Counsel also defended the depositions of six representatives of Lead Plaintiff Oregon, including current and former employees, in Oregon and Virginia, as well as two representatives of Pompano and Local 235.<sup>8</sup> In each instance, the attorney from Lead Counsel that defended the deposition reviewed the key documents relating to the particular witness and, relatedly, developed an in-depth understanding of that individual's role within the organization and the corresponding job responsibilities. Prior to each deposition, "deposition kits" were created for each witness, which included an analysis of all important documents (either from the witness's custodial file or other documents that mentioned the witness or spoke to his or her job functions), as well as a discussion of that individual's role within the organization and likely areas of inquiry. Securities Counsel also spent significant time preparing each witness for his or her deposition. At

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<sup>8</sup> To conserve costs, Securities Counsel did not attend the depositions of other plaintiffs in the MDL Litigation.

each of the Securities Plaintiffs' depositions, Securities Counsel actively participated – objecting to Defendants' improper questions and even asking questions in cross-examination.

## **5. Discovery Disputes**

97. While the parties made considerable effort to resolve discovery disputes without Court intervention, a number of disputes did end up before the Court. This section summarizes some of the major discovery disputes that the parties spent considerable time negotiating and, in various instances, briefing and litigating before the Court.

### **(i) The October 2013 Motion to Compel**

98. In September and October 2013, after Lead Plaintiff served its responses and objections to Defendants' First Request for the Production of Documents, the parties engaged in a meet and confer process to resolve Defendants' requests for production, which was followed by the exchange of multiple letters between the parties.

99. On October 2, 2013, Defendants filed a motion to compel the production of documents that were the subject of their first request for the production of documents. ECF No. 286. Specifically, Defendants argued that any documents Oregon had concerning its knowledge of the phrase "best execution" and the foreign exchange pricing practices of custodial banks other than BNYM, were relevant to Oregon's knowledge of BNYM's pricing practices. Defendants also argued that Oregon should produce documents from a longer time period, as well as its trades in BNYM securities after the Class Period, to demonstrate its understanding of foreign-exchange pricing and best execution. On October 4, 2013, the motion was referred to Magistrate Judge Cott. That same day, Lead Plaintiff filed its opposition, arguing that documents relating to the FX or custodial services of banks other than BNYM were not relevant to the Securities Plaintiffs' claims. ECF No. 164. On October 8, 2013, Defendants filed their reply.

100. On October 24, 2013, Magistrate Judge Cott denied Defendants' motion to compel in a written order, holding that documents that did not relate to BNYM had no relevance as to whether BNYM's statements concerning "best execution" were false and misleading and that there was no authority to support the proposition that documents relating to Oregon's "general understanding" of certain industry terms or industry-wide practices can be reasonably calculated to lead to discovery of evidence showing constructive notice of misrepresentation." ECF No. 299. Magistrate Judge Cott also denied Defendants' motion for Oregon to produce documents from a longer time period. *Id.*

**(ii) Defendants' Objection to Magistrate Judge Cott's October 24 Order**

101. On November 6, 2013, Defendants filed an objection to Magistrate Judge Cott's October 24, 2013 ruling denying its motion to compel. Defendants specifically sought review of the portion of the opinion that related to the Securities Plaintiffs' documents concerning "best execution" and their understanding of custodial foreign-exchange practices. ECF Nos. 314-315. On November 11, 2013, Lead Plaintiff filed its opposition (ECF Nos. 319, 320) and Defendants filed a reply on November 18, 2013. The Court denied Defendants' objection on November 19, 2013, affirming Magistrate Judge Cott's denial of Defendants' motion to compel. ECF No. 330.

**(iii) Motion Practice Concerning Non-party Document Subpoenas and Communications**

102. In light of Judge Cott's October 24, 2013 order and the numerous subpoenas that BNYM had issued to non-parties seeking documents relating to other custodial banks' meaning of "best execution," on November 1, 2013, Lead Plaintiff and the other plaintiffs in the MDL Litigation filed a letter motion seeking a protective order prohibiting Defendants from seeking document discovery from absent class members and other third parties. On November 4, 2013, Defendants filed their opposition, and on November 6, 2013, Lead Plaintiff and the other plaintiffs

in the MDL Litigation filed a reply. Also, on November 4, 2013 Defendants filed a motion seeking to prevent Plaintiffs from contacting subpoena recipients to inform them of Judge Cott's October 24, 2013 ruling. Lead Plaintiff and the other plaintiffs in the MDL Litigation filed their opposition on November 4, 2013 and the Court granted Defendants' motion on November 15, 2013. Eventually, pursuant to the Court's direction, the parties negotiated an agreed-upon resolution of Defendants' motion.<sup>9</sup>

103. On November 19, 2013, Magistrate Judge Cott directed the parties to submit letters addressing what effect Judge Kaplan's orders affirming the October 24, 2013 order and granting Defendants' motion had on the MDL Plaintiffs' pending motion for a protective order. On November 25, 2013, counsel for Lead Plaintiff and the other plaintiffs in the MDL Litigation responded to this request. On December 20, 2013, after meeting and conferring on the issue, the parties submitted a letter to the Court indicating resolution of the motion.

**(iv) Defendants' Renewed Motion to Compel**

104. On February 25, 2014, after the parties had held extensive meet-and-confers and exchanged voluminous correspondence, Defendants filed a renewed motion to compel, seeking an order requiring Lead Plaintiff Oregon to produce studies performed by outside consultants that analyzed the rates Oregon received on FX transactions executed with its custodial bank, State Street, as well as Oregon's contract with State Street and emails relating to State Street or "best execution." ECF No. 363. Lead Plaintiff filed its opposition on February 28, 2014, arguing that documents relating to Oregon's understanding of how State Street used the term "best execution"

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<sup>9</sup> Securities Counsel did not include in the lodestar submitted to the Court any time spent by any attorney relating to issues surrounding communications with non-parties regarding Defendants' document subpoenas.

and priced its FX transactions of custodial clients was irrelevant to its claims in the Securities Action. ECF No. 364. On March 4, 2014, Defendants filed their reply. ECF No. 368.

105. On April 23, 2014, Magistrate Judge Cott heard oral argument on Defendants' renewed motion to compel, and on the same day issued an order denying Defendants' renewed motion to compel in its entirety. ECF No. 376.

**(v) Motion Practice Concerning Non-Party Depositions**

106. Four months prior to the end of fact discovery, BNYM began notifying plaintiffs that it intended to take dozens of depositions of non-parties on extremely short notice. On September 24, 2014, the Customer Class Plaintiffs filed a motion for a protective order to enjoin the deposition of 11 absent customer class members and limiting testimony from other absent class members. ECF No. 486. Lead Counsel in the Securities Action were actively involved in this motion, including participating in the meet and confer process with Defendants, on high-level strategy discussions about the motion among the USAO and the Plaintiffs' Executive Committee, providing legal research that was used in the motion, and reviewing and commenting on drafts of the motion.

107. On September 29, 2014, Defendants filed their opposition (ECF No. 488) and on September 30, 2014, Plaintiffs filed a reply (ECF No. 493), which, again, Lead Counsel was actively involved in preparing. On October 9, 2014, the Court granted the motion "in all respects." ECF No. 502.

108. Subsequently, the parties continued to dispute the nature and scope of third party discovery in the MDL Litigation. The Bank interpreted the October 9, 2014 order as applicable only to the specific depositions that were the subject of the MDL Plaintiffs' motion and subsequently noticed an additional 19 non-party depositions. After extensive strategic consultation between the Plaintiffs' Executive Committee and the USAO, Lead Counsel and the

other plaintiffs engaged in a lengthy meet and confer process with Defendants over the course of several weeks, but were unable to reach agreement as to an appropriate limit for non-party discovery, both as to the number of depositions and the scope of such depositions.

109. Accordingly, Lead Counsel and the other members of the Plaintiffs' Executive Committee devised a joint strategy to bring the issue before the Court. On October 22, 2014, Lead Plaintiff and the other plaintiffs in the MDL Litigation and the DOJ filed an additional motion for a protective order seeking to enjoin the 19 additional non-party depositions that Defendants had noticed, and to enjoin Defendants from noticing any further non-party depositions beyond the eight investment managers that were the subject of the Court's October 9, 2014 order. No. 11 Civ. 6969, ECF No. 122. On October 27, 2014, Defendants filed their opposition. No. 11 Civ. 6969, ECF Nos. 124, 125. On October 29, 2014, the MDL Plaintiffs filed their reply, with Lead Plaintiff drafting and filing a separate reply to address the deposition of a non-party that directly related to the Securities Action. No. 11 Civ. 6969, ECF Nos. 128, 130.

110. Concurrently with this motion, the parties also briefed Defendants' motion for reconsideration of the Court's October 9, 2015 Order, which they filed on October 23, 2014. ECF No. 516. On October 30, 2014, Plaintiffs filed their opposition (ECF No. 523), and Defendants filed their reply on November 3, 2014 (ECF No. 526). On November 6, 2014, the Court denied Defendants' motion and reaffirmed its prior decision in favor of Plaintiffs. ECF No. 532.

111. When both of these motions were fully briefed, the Court denied Plaintiffs' second motion for a protective order and directed the parties to meet and confer regarding non-party discovery and present a joint plan to the Court. Importantly, however, the Court held that there must be some limitations on non-party discovery, declaring it was not "open season on non-party

witnesses,” noting that BNYM was seeking to take “a very large number of non-party depositions in the final sixty days of discovery.” No. 11 Civ. 6969, ECF No. 136 at 3-4.

112. Over the next week, the parties engaged in more meet and confers with frequent calls and many email exchanges. The negotiations were extremely intense as they were running up against a Court-imposed deadline. The USAO and the Plaintiffs’ Executive Committee had extensive discussions in order to jointly coordinate a global position for plaintiffs. As they were throughout the litigation, Defendants’ counsel were extremely aggressive in their negotiations and discussions went past the 3 p.m. deadline imposed by the Court. The parties obtained a short extension and were able to place a comprehensive stipulation before the Court that would govern (and limit) all aspects of non-party discovery for the remainder of the litigation. ECF No. 540.

**(vi) Defendants’ Motion to Strike the Expert Report of David DeRosa**

113. On January 12, 2015, as the parties were in the midst of the last month of fact discovery and preparing for a mediation, Defendants filed a motion to strike the expert report of Plaintiffs’ reply expert, David DeRosa, who opined on the definition of “best execution” within the foreign exchange industry, arguing that his report was in the style of an opening report on which Plaintiffs had the burden of proof on class certification. ECF No. 554.

114. After consultation among the Plaintiffs’ Executive Committee, Lead Plaintiff and the other plaintiffs in the MDL Litigation filed their opposition two days later (ECF No. 557) and on January 15, 2015, Defendants filed their reply (ECF No. 559). On March 23, 2015, following the settlement of the Customer Cases and the DOJ Action, and negotiations between Lead Counsel and Defendants’ counsel, Lead Counsel and defense counsel filed a stipulation agreeing to the withdrawal of certain experts from the Securities Action, including David DeRosa, Geert Bekaert, Bradford Cornell, Jonathan R. Macey and Cristiane Mandell. ECF No. 576.

**(vii) Additional Discovery Disputes**

115. In addition to the foregoing, the parties had numerous additional discovery disputes that were not raised with the Court, but were ultimately resolved after considerable time, effort and negotiation between the parties.

116. Additional Disputes Over Discovery From Lead Plaintiff. BNYM aggressively pursued ever-increasing demands for discovery from Lead Plaintiff, consistent with its strategy to overwhelm Securities Counsel by leveraging BNYM's considerable resources. Indeed, after nearly every deposition of plaintiff witnesses, BNYM would follow-up with lengthy correspondence asserting that the deposition had revealed deficiencies in Lead Plaintiff's document production or raised issues that would require Defendants to take additional depositions of Lead Plaintiff's witnesses.

117. As just one example, on July 29, 2014, following depositions of Oregon witnesses, BNYM's counsel wrote a letter raising no less than ten purported deficiencies in Lead Plaintiff's document production, supposed inaccuracies in interrogatory responses previously provided by Lead Plaintiff and a host of other harassing, but time consuming, matters. In multiple subsequent communications and meet-and-confers on these issues, Defendants' counsel repeatedly threatened to file motions with the Court and it took an enormous effort over many months to resolve each of these issues without ultimately involving the Court.

118. Another example is the many hours Securities Counsel spent resolving BNYM's request for discovery into whether the Chief of Staff to the Oregon Treasurer had signed a PSLRA certification by hand or by authorized electronic signature. Similarly, Securities Counsel spent dozens of attorney hours and considerable expenses to litigate whether Michael Viteri, Chief Investment Officer at Oregon, had seen a document concerning BNYM's FX services years earlier while he was at the end of his tenure at Arizona State Retirement System.

Yet another example is provided by BNYM's request for Lead Plaintiff to conduct broad searches in its documents into whether its employees had reviewed a response to a request for proposal regarding custodial services that BNYM provided to Oregon late in 2012. The parties were able to resolve each of these disputes without requiring intervention of the Court. In doing so, Securities Counsel spent numerous hours of attorney time negotiating resolution.

119. Securities Counsel also spent considerable time conducting the agreed-upon follow up for each dispute. For example, in response to several of these disputes, Lead Plaintiff and Securities Counsel conducted additional searches for documents and even agreed to produce additional documents. We did so not because we believed Defendants were correct, but because it was more efficient to produce the additional documents rather than burden the Court and the parties with unnecessary discovery disputes.

120. Additional Disputes Over Discovery From BNYM. Lead Counsel also had to devote substantial time pursuing various follow-up discovery items from BNYM. For example, as noted above, Lead Counsel were forced to engage in multiple meet and confers – and even had to serve interrogatories – in order to learn the identities of various BNYM employees who had given testimony or interviews to certain regulatory agencies about BNYM's alleged FX fraud directed at its customers. Further, Lead Counsel had to separately engage in additional meet and confers and correspondence with BNYM in order to obtain the actual transcripts of those depositions/interviews. Indeed, it was not until Lead Counsel had begun preparing motion papers that BNYM relented and agreed to produce the obviously relevant transcripts.

121. Lead Plaintiff and Lead Counsel were also involved in a time consuming and laborious review of BNYM's privilege claims and redactions – both together with the other Plaintiffs' Executive Committee members and separately. For example, Plaintiffs challenged more

than 180 redactions on documents and, after multiple letters and meet and confers, were successful in obtaining the previously withheld information.<sup>10</sup>

## **6. Expert Reports And Expert Discovery**

122. To meet its burden to establish the applicability of fraud on the market in support of class certification, Lead Plaintiff retained Dr. S.P. Kothari, the Gordon Y. Billard Professor of Accounting and Finance at the Sloan School of Management, to opine on the market efficiency of BNYM's common stock. In that regard, Lead Counsel worked with Professor Kothari to produce a market efficiency report. This required Dr. Kothari and Lead Counsel to develop a thorough understanding of *inter alia* BNYM's stock price movements and trading volume, BNYM's SEC filings and conference calls, as well as analyst reports, news articles and other public information concerning BNYM during the more than three-and-a-half year Class Period (*i.e.*, February 28, 2008 to October 4, 2011). Dr. Kothari and his team also performed extensive statistical analyses in order to reach the conclusion that BNYM's common stock was efficient during the Class Period.

123. Lead Plaintiff submitted Dr. Kothari's market efficiency expert report on November 3, 2014. Subsequently, BNYM issued various demands for discovery from Dr. Kothari, including for his work papers. Lead Counsel had to work with Dr. Kothari in order to respond to each of BNYM's demands for discovery concerning Dr. Kothari.

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<sup>10</sup> In addition, the parties in the Securities Action engaged in multiple meet and confers and communications about the status of the Securities Act claims originally asserted in the Complaint. As noted above, the Complaint included claims under Sections 11, 12(a)(2) and/or 15 of the Securities Act of 1933 arising from secondary offerings of BNYM common stock on May 11, 2009 and June 3, 2010, which were asserted by additional named plaintiffs, Pompano and Local 235. In the middle of the litigation, Pompano sold its holdings of BNYM common stock, which meant that it no longer had standing to pursue these claims, and the evidence developed by BNYM indicated that Local 235 likewise did not have standing. Accordingly, Pompano and Local 235 agreed to voluntarily dismiss their claims, and the parties negotiated a stipulation to give effect to this agreement. On March 23, 2015, at virtually the end of fact discovery, the Court entered the Stipulation and Order dismissing the Securities Act claims asserted by Pompano and Local 235. ECF No. 75.

124. Defendants did not submit a report specifically attempting to rebut Dr. Kothari's report. Defendants did, however, depose Dr. Kothari on April 2, 2015, which, as discussed below, Lead Counsel prepared for and defended.

125. In connection with class certification, Defendants also submitted six expert reports that, *inter alia*, concerned the definition of "best execution" and sought to support Defendants' position that there was no uniform definition of the term. Because four of Defendants' expert reports were specifically submitted in connection with the Securities Action, Lead Counsel was required to spend considerable time analyzing each of Defendants' expert reports. Defendants' reports included the following:

- **Professor Jonathan R. Macey:** Defendants submitted a 108-page expert report (including Exhibits) from Professor Jonathan Macey, the Sam Harris Professor of Corporate Law, Finance and Securities Regulation at Yale University, who *inter alia* opined on whether "best execution" has a settled definition in the FX markets as well as the factors that would have to be considered to determine whether a BNYM customer had obtained best execution on its standing instruction transactions.
- **Professor Bradford Cornell:** Defendants submitted an 83-page expert report (including Exhibits) from Professor Bradford Cornell, a Visiting Professor of Financial Economics at the California Institute of Technology (and former Professor of Finance from UCLA), who *inter alia* opined on whether the FX trading patterns of BNYM's custodial customers indicated that they shared a common understanding that BNYM was providing "best rates" on standing instruction FX

trades or whether they shared any common understanding of BNYM's standing instruction FX pricing at all.

- **Professor Geert Bekaert:** Defendants submitted a 130-page expert report (including Exhibits and Appendices) from Professor Geert Bekaert, the Leon G. Cooperman Professor of Finance and Economics at Columbia Business School, who *inter alia* opined on whether BNYM's custodial customers could have been expected to all receive the same rate on negotiated FX transactions or a single, uniform spread over the prevailing interbank rates for FX trades of different sizes and for different currency pairs.
- **Cristiane Mandell:** Defendants submitted a 49-page expert report (including Exhibits) from Cristiane Mandell, a financial markets professional with "27 years experience in the foreign exchange markets," who, *inter alia*, opined on the type of FX transaction terms that would have been reasonably available to BNYM's custodial clients and the factors that would have to be considered to determine whether a given standing instruction FX transaction offered the most favorable terms available under the circumstances.

126. To respond to these expert reports, which all related in various ways to the critical issue of "best execution," Lead Plaintiff, together with the other plaintiffs in the MDL Litigation, retained Dr. David DeRosa of Columbia University and DeRosa Research and Trading, Inc. At the time that Lead Plaintiff and the other plaintiffs in the MDL Litigation retained Dr. DeRosa, he had been serving as a consulting expert for the USAO. Given the common interest in Dr. De Rosa's opinions, all Plaintiffs shared the costs relating to Dr. DeRosa's expenses, with Lead Counsel funding 23% of Dr. DeRosa's fees and expenses – the same proportion as each of KTMC

and LCHB (the remainder was covered by the USAO, NYAG, ERISA Counsel and other customer plaintiffs in varying proportions). Lead Counsel also worked closely with Dr. DeRosa, KTMC and LCHB in responding to Defendants' expert reports.

127. On January 9, 2015, Lead Plaintiff and the Customer Class Plaintiffs served a 94-page expert report (including Appendices) by Dr. DeRosa concerning *inter alia* the definition of "best execution." As discussed above, Defendants filed a motion to strike Dr. DeRosa's report, which the parties spent considerable time briefing.

128. Ultimately, following settlement of the DOJ, NYAG and Customer Actions, Lead Plaintiff and Defendants negotiated a stipulation withdrawing Defendants' expert reports and the report of Dr. DeRosa from the Securities Action. The Court entered the stipulation as an order on March 23, 2015. *See* ECF No. 576. Prior to entering into this stipulation, however, Lead Counsel spent time preparing to depose Defendants' experts. This process required Lead Counsel to review and analyze the expert reports themselves as well as numerous articles and other sources of information concerning the experts and their opinions.

129. In light of the withdrawal of the expert reports and the fact that the other actions had settled, Defendants' motion to strike Dr. DeRosa's expert report was rendered moot and the Court was not required to decide it on the merits.

130. As discussed below, Lead Counsel prepared for and defended the deposition of Dr. Kothari on April 2, 2015.

**D. SECURITIES COUNSEL'S LITIGATION EFFORTS FOLLOWING THE SETTLEMENT OF THE CUSTOMER CLASS CASES AND THE GOVERNMENT ACTIONS**

**1. Settlement Of The Customer And Government Actions**

131. As discussed in greater detail below, the parties in the MDL Litigation participated in a global mediation on January 19 and 20, 2015. While the parties to the Securities Action were

not able to settle the Securities Action at that time, the parties in the Customer Class Cases and the Government Actions reached the verge of settlement.

132. Accordingly, on January 20, 2015, the parties jointly called the Court to request a temporary discovery stay, which the Court granted on January 21, 2015. ECF No. 560 (granting a 28-day extension of the deadlines in the Scheduling Order). As set forth in the Customer Plaintiffs' final approval motion papers, the parties in the Customer Class Cases and Government Actions reached an agreement in principle to settle by February 5, 2015. *See, e.g.*, Joint Declaration of Sharan Nirmul and Daniel P. Chiplock (ECF No. 622) at 72.

133. In light of the undeniable discovery record amassed in the coordinated cases, including through the significant efforts of Securities Counsel, BNYM made certain admissions in a stipulation entered into in connection with its settlement of the Government Actions. For example, BNYM acknowledged that its FX pricing practices gave its standing-instruction customers "prices that were at or near the worst interbank rates reported during the trading day or session," which was "contrary to [the Bank's] representations" to certain custody clients. BNYM also stated that it "generally did not disclose" its FX pricing methodology to its customers and that "many clients did not fully understand the Bank's pricing methodology for [standing instruction FX] transactions." These admissions were, frankly, dragged out of BNYM through the enormous litigation efforts of the Plaintiffs' Executive Committee, Securities Counsel, and extremely able and dedicated attorneys from the USAO and NYAG over the course of the prior 18 months of intense discovery.

134. BNYM's admissions – though welcomed by Lead Plaintiff – fell far short of removing the risks present in the Securities Action. They were drafted very narrowly and plainly constructed to avoid admitting any aspect of a securities fraud. For example, no Defendant

admitted to making any material misstatements to investors, and none of the admissions prejudiced the falsity, scienter, price impact, materiality, or loss causation arguments Defendants were advancing against the Securities Action.

135. To the extent that BNYM admitted to making any misrepresentations at all, they were not specifically identified and were confined exclusively to certain of the Bank's "existing and potential custodial clients" – not investors. For example, BNYM did not admit that it had made any misrepresentations to investors regarding the purchase or sale of BNYM common stock. Further, BNYM made no admission that its SEC filings or publicly reported financial results were materially false and misleading. On the contrary, the Bank admitted only that it may have made misleading representations to *its customers*, "including [in] certain responses to requests for proposals [RFPs] and on the Bank's website." BNYM was willing to make this statement while still litigating the Securities Action because the RFPs were not disseminated to the investing public and the Bank was not concerned about admitting to a misrepresentation on an obscure website that it strongly believed could not possibly have impacted BNYM's stock price.

136. Indeed, the Bank had serious arguments that the webpage that included the "best execution" statement in question could not have been relied upon by investors. The Bank argued that it was purely a customer-facing website, which was not viewed by any investors or otherwise disseminated into the marketplace for BNYM's stock. For example, in the Securities Action, BNYM argued that the webpage in question had its own domain name, which was completely separate and distinct from the Bank's main corporate website containing investor relations information such as press releases, SEC filings and financial reports. Further, BNYM pointed to the fact that there was not even a direct link between the main corporate website and the customer-facing webpage containing the term "best execution."

137. BNYM also argued that there was no evidence whatsoever of any market reaction of BNYM stock to changes it made to the customer-facing webpage. For example, there was no statistically significant change in BNYM's stock price when BNYM changed the webpage by removing the "free of charge" language in October 2009 or provided additional explanation of "best execution" in November 2009. Moreover, BNYM argued that, prior to February 2011, news and other press media contained no relevant discussion of BNYM providing "best execution" in its standing instruction FX program. Thus, according to BNYM, the statements regarding "best execution" made on the Bank's customer-facing website were not made "in connection with the purchase and sale of securities," did not have any "price impact" on BNYM common stock and could not, in any event, establish loss causation.

138. Further, and in any event, BNYM also would have continued to argue that any of its statements made in connection with settlement of the Government Action were irrelevant or inadmissible because they were made only on behalf of The Bank of New York Mellon and not by BNYM (*i.e.*, BNYM Corp. – the bank holding company), which was the corporate defendant in the Securities Action. The Bank also would have argued that vague statements it "generally" did not disclose its FX pricing methodology" and that "many clients" did not understand this methodology were effectively useless for purposes of providing the specific evidence required to establish even the underlying customer fraud.

139. To be sure, BNYM later argued vigorously in opposing class certification in the Securities Action that "BNYM[']s SI [*i.e.*, Standing Instruction] customers...had widely differing levels of knowledge about BNYM's SI pricing [and] no fewer than 456 [of such customers], who collectively owned 65.3% of BNYM's outstanding shares...had actual or inquiry knowledge of how SI traders were priced." *See, e.g.*, ECF No. 599 at 1. In addition, BNYM's admissions had

absolutely no bearing on the most significant risk in the Securities Action – namely, Lead Plaintiff’s obligation to establish loss causation.

140. In sum, although BNYM’s admissions (again, achieved in part due to Securities Counsel’s intense efforts in discovery) were helpful, they by no means established liability in the Securities Action. This is further demonstrated by the fact that BNYM continued to defend against the Securities Action for several months after the Customer Class Cases and the Government Actions had settled, and throughout that time continued to vigorously dispute falsity, materiality, scienter, class certification, price impact, and loss causation.

## **2. Additional Depositions**

141. Following the resolution of the Customer Class Cases and the Government Actions in early February 2015, Securities Counsel continued to vigorously prosecute the Securities Action for months – taking it through the end of fact discovery, the end of class certification expert discovery and through the bulk of briefing on Lead Plaintiff’s motion for class certification. During this time, Lead Plaintiff was the sole member of the Plaintiffs’ Executive Committee still litigating.

142. On February 6, 2015, after learning of the handshake settlement in the Customer Class Cases and the Government Actions, Lead Counsel stepped in on short notice to take the deposition of BNYM’s former CFO, Defendant Van Saun (which had previously been slated to be taken by other Plaintiffs’ counsel). Because of Securities Counsel’s depth of knowledge of the facts and issues, extensive efforts to prepare witness kits and independent analysis of the production, Lead Counsel was able to seamlessly step into this deposition on short notice. On March 26, 2015, Securities Counsel took lead for Plaintiffs at the important deposition of a former BNYM employee, Grant Wilson, who was a whistleblower and the relator in the *qui tam* actions that were filed against the Bank. During this period, Securities Counsel also actively prepared for

and participated in three non-party depositions, including that of Acadian Asset Management (March 24, 2015), State Street Global Advisors (April 7, 2015) and Capital Guardian LLC (April 22, 2015). Further, as described below, on April 2, 2015, Lead Counsel defended the deposition of Lead Plaintiff's class certification expert, Dr. S.P. Kothari.

### **3. Additional Document Discovery And Discovery Disputes**

143. During the period from January to March 2015, Lead Plaintiff and Securities Counsel also spent significant time conducting the additional document searches and collecting the additional discovery that had been agreed to with Defendants. On March 27, 2015, Securities Counsel served this additional discovery, which included a declaration from a representative of Oregon, as well as the results of various document searches.

144. During this time there were literally dozens of pages of correspondence, multiple meet-and-confers, and other communications between Securities Counsel and defense counsel regarding outstanding discovery disputes. In a flurry of intense activity during a time when Lead Counsel was the sole remaining active member of the Plaintiffs' Executive Committee and Securities Counsel were preparing merits expert reports, their opening class certification papers, taking additional depositions, Securities Counsel worked hard to resolve the remaining discovery disputes and avoid burdening the Court with additional motion practice.

### **4. Additional Interrogatory Responses**

145. On December 27, 2014, BNYM issued its Third Set of Interrogatories to Oregon. The Bank's Third Set of Interrogatories were particularly wide-ranging contention interrogatories. For example:

- **Interrogatory No. 13** called for Lead Plaintiff to identify all facts supporting its contention that each of the more than 104 alleged false and misleading statements "were made with scienter;"

- **Interrogatory No. 14** called for Lead Plaintiff to identify every person it contended acted with scienter and all facts supporting the contention that his or her fraudulent intent could be imputed to BNYM;
- **Interrogatory No. 15** called for Lead Plaintiff to identify all alleged “control persons” as well all facts supporting its contention that each controlled BNYM and “culpably participated” in each of the more than 104 alleged false and misleading statements;
- **Interrogatory No. 16** called for Lead Plaintiff to identify all facts supporting its contention that each of the more than 104 alleged false and misleading statements were material to BNYM investors; and
- **Interrogatory No. 17** called for Lead Plaintiff to “[d]escribe in detail the circumstances surrounding” the signing of three PSLRA certifications made by Oregon.

146. Responding to these Interrogatories was a massive undertaking that implicated the entire discovery record. Indeed, in order to provide adequate responses, Securities Counsel had to review and analyze tens of thousands of pages of deposition testimony as well as literally millions of pages of deposition exhibits and productions. Securities Counsel also had to conduct careful legal research and analysis to identify and ensure that it satisfied the requisite legal standards.

147. Lead Plaintiff responded to BNYM’s Third Set of Interrogatories on March 27, 2015 – the same day that it filed its opening class certification motion papers (discussed below). Lead Plaintiff’s responses and objections to these contention interrogatories spanned 150 pages and provided detailed citations to hundreds of productions, deposition exhibits and deposition transcripts. For example, Lead Plaintiff’s responses cited deposition testimony from many of

BNYM's top executives, as well as dozens of emails and presentations sent to or by those executives. Although its contents are marked highly confidential – and so its specifics cannot be discussed herein – Lead Plaintiff's responses provided an extensive analysis of many of the major issues in the Securities Action, including Defendants' scienter, control person liability and the materiality of BNYM's allegedly false and misleading statements.

#### **5. Class Certification Briefing And Class Certification Expert Discovery**

148. On March 27, 2015, Lead Plaintiff filed its 35-page motion for class certification, with 51 exhibits totaling 814 pages, seeking certification of a “class consisting of all persons or entities who purchased BNYM common stock during the Class Period (February 28, 2008 through October 4, 2011) and were damaged thereby.” ECF Nos. 586-589.

149. On April 2, 2015, Lead Plaintiff produced its market efficiency expert, Dr. S.P. Kothari, for a full day deposition by BNYM's counsel, which was prepared for and defended by Lead Counsel. This deposition focused extensively on issues surrounding “price impact,” and loss causation, as well as the statistical significance of the price movements that were alleged in the Complaint to be corrective disclosures.

150. On April 27, 2015, BNYM filed its papers in opposition to Lead Plaintiff's class certification motion. Among other things, Defendants contended that the action was inappropriate for class treatment because: (i) questions about individual class members' knowledge of BNYM's FX pricing practices would predominate over class-wide issues; (ii) Oregon's alleged knowledge concerning these pricing practices made it an atypical or inadequate class representative; (iii) Lead Plaintiff had failed to establish a class-wide damages methodology; and (iv) no presumption of reliance was applicable because Lead Plaintiff could not establish the “price impact” of the alleged misrepresentations on the price of BNYM stock.

151. Securities Counsel were working on papers in reply to class certification when the parties agreed to settle the Action.

#### **6. Additional Motion Practice Relating To Confidentiality Designations**

152. Shortly after filing Lead Plaintiff's motion for class certification, Securities Counsel sent BNYM a letter seeking to remove the confidentiality designations on BNYM documents that were attached as exhibits to Securities Counsel's class certification motion but had been filed under seal because the Bank had marked them as "confidential" or "highly confidential." Over the next several weeks, the parties had several meet-and-confers regarding Securities Counsel's request. During these meet-and-confers, BNYM agreed to remove the confidentiality designations on some but not all of the documents at issue.

153. On April 23, 2015, Securities Counsel filed a motion to unseal the remaining documents, each of which were directly related to the alleged fraud and were cited in Lead Plaintiff's opening class certification brief. ECF No. 593-595. On April 27, 2015, Defendants filed papers in opposition to Lead Plaintiff's motion to de-designate (ECF No. 598) and on April 28, 2015, Securities Counsel filed reply papers in further support of the de-designation motion (ECF No. 603). On April 30, 2015, the Court issued a ruling on the pending de-designation motion, which granted Lead Plaintiff's motion in "all respects." ECF No. 605.

154. This ruling came at a decisive time in the Securities Action and the mediators' recommendation was proposed shortly after the Court's issuance of this ruling.

#### **7. Preparation of Merits Expert Reports**

155. At the time that the Customer Class Cases and the Government Action settled, the scheduling order called for the exchange of merits expert reports on May 26, 2015, the same day that Lead Plaintiff's class certification reply brief was due. On April 27, 2015, the parties

exchanged the identifications of rebuttal merits experts who they intended to issue expert reports.

Lead Plaintiff identified four testifying experts in the Securities Action:

- **Dr. S.P. Kothari**, a professor at the Massachusetts Institute of Technology, on damages, loss causation, and materiality;
- **Harris Devor**, of Schechtman Marks Devor PC, on accounting and materiality;
- **Dr. David DeRosa**, of DeRosa Research & Trading Inc., on the FX Industry and Best Execution; and
- **Steven P. Feinstein**, of Crownenshield LLC, on damages, loss causation, and materiality.

156. BNYM identified ten experts to provide expert testimony in the Securities Action, some of which had also been identified in connection with class certification, as well as a host of entirely new experts particularly focused on issues to be addressed in the Securities Action:

- **Geert Bekaert**, the Leon G. Cooperman Professor of Finance and Economics at Columbia Business School on materiality, standing instruction pricing methodology and the FX industry;
- **Bradford Cornell**, a Professor at Caltech University on materiality, price impact, loss causation and damages;
- **Kevin Faulkner**, a Director of Digital Forensics at Stroz Friedberg, on materiality, price impact, damages, loss causation;
- **Daniel R. Fischel**, a professor at the University of Chicago Law School, on issues of materiality, loss causation and damages;
- **Christine Hammer**, a Senior Adviser to Cornerstone Research, on issues relating to profits from standing instruction FX services;

- **Harvey R. Kelly**, a Managing Director and Global Financial Advisory Services Leader with AlixPartners, on accounting and materiality;
- **Allan Kleidon**, a Senior Vice President of Cornerstone Research, on damages, materiality, price impact and loss causation;
- **Jonathan R. Macey**, the Sam Harris Professor of Corporate Law, Finance, and Securities Regulation at Yale University, on FX markets, securities markets and standing instruction FX services;
- **Robert Savage**, Chief Executive Officer of CCTrack Solutions, on issues relating to standing instruction FX services; and
- **Gail Von Drashek** on issues relating to standing instruction FX services.

157. Notably, BNYM had identified five experts to give testimony on the critical issues of loss causation, materiality, price impact and damages. With the exchange of merits expert reports due at the same time that class certification briefing was concluded, Securities Counsel expended significant time in April and May 2015 preparing merits expert reports for the Securities Action.

158. In the weeks prior to the proposed Settlement being reached, at the same time the parties were briefing class certification and other discovery motions (as well as engaging in settlement talks), Securities Counsel were spending significant time with their testifying damage expert, Dr. S.P. Kothari, and expert consultant, Chad Coffman, CFA, the Founder and President of the Global Economics Group, refining and Lead Plaintiff's damage methodology and preparing an opening expert report on damages, materiality, loss causation, and price impact.

159. Securities Counsel were also preparing reports from Dr. David DeRosa and Harris Devor on other issues germane to the Securities Action. While the proposed Settlement negated

the need to file opening merits expert reports, the fact that expert discovery reached such an advanced stage furthered Lead Counsel's understanding of the strengths and risks associated with key issues such as damages, price impact and loss causation.

### **III. THE PARTIES' RESPECTIVE LEGAL TEAMS**

160. Throughout this litigation, Lead Counsel took extreme care to ensure that the staffing on the Securities Action was as lean as possible while costs and lodestar were minimized wherever possible without negatively impacting the prosecution of the Securities Action.

161. As described above, in its role on the Plaintiff's Executive Committee, Lead Counsel worked closely with KTMC and LCHB, the firms representing the Customer Class Cases, to coordinate and streamline efforts across all private firms and the USAO and NYAG. Plaintiffs and the USAO (and to a lesser extent the NYAG) were in near-daily communication at many points throughout fact discovery.

162. Issues ranged from strategic case prosecution issues, to revising drafts of motions, to scheduling depositions and conducting meet-and-confers. Briefing on key discovery disputes was shared and Plaintiffs repeatedly shared their work product with the Government Actions in connection with deposition preparation, document reviews, factual and legal research and numerous other issues. As noted herein, on multiple occasions the USAO's team of able and dedicated attorneys specifically praised the work of Lead Counsel both in taking the lead on depositions and in preparing document and witness kits to assist the USAO to take lead on the depositions. Of course, as explained above, Securities Counsel also paid approximately 20% of the costs of discovery incurred across all cases. In short, the collaboration between the Government Actions and the Plaintiffs' Executive Committee was unparalleled in my experience and worked greatly to the benefit of all cases by increasing efficiencies and decreasing costs.

163. In addition to Lead Counsel's role on the Plaintiffs' Executive Committee, Securities Counsel made enormous efforts to control staffing and use only the resources absolutely necessary for the successful prosecution of the Securities Action, consistent with their fiduciary duty to the Class and the complexity of the litigation. In total, only four partners at Lead Counsel's firm billed time on the case. These were Max W. Berger, Gerald Silk, Steven Singer, and myself.

164. But that total obscures the fact that the Securities Action was at all times primarily litigated by only one partner at Lead Counsel's firm (who, of course, spent the vast bulk of their time on the case). The initial investigation, filing the initial complaint and Lead Plaintiff motions were directed by Gerald Silk, who stepped aside after Lead Counsel was appointed. Afterwards, the consolidated complaint, motions to dismiss and the very beginning of discovery was handled by Steven Singer, until his retirement from BLB&G in February 2014.

165. At that time, I personally became the partner in charge of the Securities Action and spent a substantial amount of time on a daily basis litigating the case until the proposed Settlement was reached (and afterwards). I was responsible for drafting, reviewing and finalizing all court filings, and there was no wasted time conferring among multiple partners on drafts of motions or daily litigation matters. Max W. Berger, Lead Counsel's senior founding partner and a renowned attorney with more than 35 years of experience prosecuting securities class actions, was an available resource throughout the case and particularly focused his time where it was most valuable: negotiating and achieving the proposed Settlement, dealing with the mediator and the Government Actions and Customer Class Cases in connection with settlement discussions, and engaging in high-level discourse with counsel for BNYM regarding discovery.

166. As reflected in the time records attached hereto as Exhibit 4A-1, 83% of Lead Counsel's partner time was contributed by only two partners (Steven Singer and me), who did not

overlap on the case, and 69% of Lead Counsel's partner time was contributed by a single partner, myself.

167. As reflected in the time records attached hereto as Exhibit 4A-1, the primary team that prosecuted the case through the bulk of discovery, class certification and up to the Settlement included a senior counsel (Jeremy Robinson), counsel (Kurt Hunciker), and three associates (Laura Gundersheim, Katherine Stefanou and Evan Berkow). This team served as the front line for Lead Plaintiff in the Securities Action and was responsible for all aspects of the litigation of the case as appropriate for their experience level and skills. A brief biography of each member of Lead Counsel's core, front-line legal team is included in Exhibit 4A-3.

168. The leanness of Lead Counsel's primary legal team contrasts sharply with the equivalent legal team on Defendants' side. BNYM's primary defense firm of Kellogg Huber Hansen & Figel, LP ("Kellogg Huber") assembled an enormous legal team consisting of highly credentialed and experienced attorneys. Indeed, the front line alone of BNYM's legal defense team consisted of at least 25 attorneys from Kellogg Huber, including 12 partners, 1 counsel and 13 associates – all but one of which had at least one circuit court or Supreme Court clerkship under their belts. Plus, these were simply the most visible attorneys acting for BNYM – the Bank clearly had more attorneys working behind the scenes. Further, as noted above, BNYM's counsel used the Bank's vast resources to litigate this case aggressively and relentlessly, employing a "scorched earth" litigation strategy that left no stone unturned in defending the Bank.

169. Lead Counsel worked extensively with Stoll Berne, and BLB&G carefully divided work with Stoll Berne to ensure there were not overlapping efforts and to take advantage of each team's strengths and efficiencies. Because of Stoll Berne's substantial past representation of Oregon in other securities matters and its knowledge of the Oregon Public Employee Retirement

Fund's structure, documents, personnel and third-party money managers and consultants, Stoll Berne, among other things, worked with the State of Oregon on responsive discovery, defended depositions of Oregon State Treasury employees, and represented Oregon and the class at non-party depositions noticed by BNYM of Oregon's money managers and consultants. In addition, to save time and money, Stoll Berne, which is based in Portland, Oregon, appeared at almost all of the third-party depositions that were on the West Coast. Because of the reasonableness of Stoll Berne's Oregon-based hourly rates, the firm also took a substantial role in document discovery. The firm was primarily led by two partners, Scott Shorr and Keith Dubanevich, and a senior associate, Keil Mueller. As evidenced in the Declaration of Scott Shorr in Support of Lead Counsel's Motion for an Award of Attorneys' Fees ("Shorr Declaration"), attached hereto as Exhibit 4B, the firm was incredibly efficient and had a small group of lawyers working on this matter. The firm's resume and the resumes of the three primary attorneys on the team is attached at Exhibit 3 to the Shorr Declaration.

170. In order to match BNYM's well-funded and formidable defense team while still litigating efficiently and economically, Securities Counsel also assembled a team of staff attorneys for the extremely time-intensive and critical tasks of reviewing, analyzing and digesting the large volume of complex documents produced in the case. *See* Exhibit 4A for a list of Lead Counsel's thirty-four staff attorneys who worked on the Securities Action as well as a brief summary of their respective credentials and experience. All of Lead Counsel's staff attorneys are employees of the firm who work in BLB&G's offices at 1285 Avenue of the Americas on the same floor as partners, associates and support staff. Lead Counsel's staff attorneys are W-2 employees of Lead Counsel, meaning that the firm paid FICA and Medicare taxes on their behalf, along with state and federal unemployment taxes. In addition, the staff attorneys employed by Lead Counsel have access to a

401(k) program and are eligible to receive year-end bonuses. Lead Counsel's staff attorneys are fully supervised by on-site attorneys and have access to secretarial and paralegal support. Lead Counsel also assigns firm email addresses to all staff attorneys it employs.

171. Lead Counsel views these attorneys as critical members of any litigation team. Many of the staff attorneys who worked on the Securities Action have worked at our firm for years and have worked directly with me on multiple cases since the time I was an associate at the Firm. In this case and others they have served as valuable members of Lead Counsel's team.

172. Many have significant credentials and experience. For example: Robert Jeffrey Powell joined Lead Counsel in 2011, graduated from Harvard Law School with a J.D. in 2001 and previously worked as an associate at Pillsbury Winthrop LLP. Mr. Powell worked with me on the team that prosecuted *In re Citigroup Inc. Bond Litig.* No. 08 Civ. 9522 (S.D.N.Y.). Indeed, in that case, Mr. Powell helped me prepare for the deposition of Citigroup's former CEO, Charles Prince in August 2012. Andrew Tolan joined Lead Counsel in 2005, graduated from Brooklyn Law School in 1990, and has a M.B.A. from New York University (1997). Over the last ten years at the firm, Mr. Tolan has worked on numerous securities class actions, including *In re Bank of America Secs. Litig.* (S.D.N.Y.), *In re Mills Corp. Sec. Litig.* (E.D. Va.) and *In re Nortel Networks Corp. Sec. Litig.* (S.D.N.Y.). Ryan Candee joined Lead Counsel in 2011, graduated from New York University Law School with a J.D. in 2002 and previously was an associate at Dorsey and Whitney. Mr. Candee and I have worked on the same teams in litigating various securities actions, including *In re Citigroup Inc. Bond Litig.* and *In re State Street Corp. Sec. Litig.* Addison Golladay joined Lead Counsel in 2011, graduated from the University of Michigan Law School with a J.D. in 2005, and previously worked as a litigation associate at Latham & Watkins LLP. Mr. Golladay also worked with me on the team that prosecuted *In re Citigroup Inc. Bond Litig.* Evan Ambrose

joined Lead Counsel in 2008, graduated from New York University Law School with a J.D. in 2001, and has worked on multiple litigations at the firm, including working with me on the team that prosecuted the class action lawsuit captioned *Football Ass'n Premier League et al. v. YouTube Inc.*, No. 07 Civ. 03582 (S.D.N.Y).

173. In the Securities Action, Lead Counsel's staff attorneys primarily focused on fact discovery and depositions, reviewing and analyzing electronically-produced documents and preparing for depositions. To be clear, Lead Counsel's staff attorneys did far more than merely code documents or engage in rote word searches. For example, one of our staff attorneys' chief contributions was to assist in the preparation for the 90 depositions taken in the Securities Action. In that regard, our staff attorneys prepared detailed "witness kits" for the depositions taken in the case, which would typically consist of approximately 200 documents as well as a detailed legal memorandum analyzing the materials and proposing areas of potentially fruitful examination.

174. These witness kits required the staff attorneys to have detailed familiarity with the issues in the case and the federal securities laws and their preparation involved extensive analysis as well as the exercise of significant critical judgment in deciding which of the myriad documents to include for potential use with a deposition witness. In preparing the deposition witness kits, the staff attorneys became, in effect, subject matter experts on a particular witness and, working closely with the more senior attorneys taking the depositions, they would contribute significantly to the preparation and conduct of the examination of the witness. They also second-chaired depositions.

175. Further, many of the witness kits prepared by Lead Counsel's staff attorneys were also used by DOJ attorneys as well as the firms representing Customer Class plaintiffs. Indeed,

both the DOJ and the Customer Case attorneys were complimentary of the witness kits prepared and provided by Lead Counsel's staff attorneys on several occasions.

176. Our staff attorneys also worked on various important case analysis-related projects. For example, the staff attorneys participated in analyzing Defendants' Answers to determine whether there was evidence supporting Defendants' various denials and affirmative defenses. The staff attorneys were also heavily involved in responding to Defendants' wide-ranging interrogatories directed to Lead Plaintiff, which required a detailed analysis of the discovery record and critical and legal judgment in formulating the responses, which collectively totaled hundreds of pages and addressed the proof developed throughout discovery on every element of Lead Plaintiff's claims. In addition, our staff attorneys did an excellent job locating, analyzing and interpreting the numerous "hot" documents that were essential to the prosecution of the Securities Action.

177. For example, after the Government Actions and the Customer Class Cases had settled, our staff attorneys were the ones who found various previously-undiscovered key documents. These documents were cited in Lead Plaintiff's motion for class certification and one was front and center in Lead Plaintiff's motion to de-designate certain BNYM documents described above.

178. By assembling a team of well-credentialed, experienced and trusted staff attorneys who in many cases already had proven themselves in other work for Lead Counsel, Lead Counsel ensured that it could devote talented attorneys to the critical tasks of analyzing documents and preparing for depositions (as well as other tasks) while minimizing eventual lodestar. These attorneys dedicated themselves full time to the prosecution of the Securities Action, working incredibly hard to develop institutionalized and sophisticated knowledge of complex facts.

Frankly, they were critical in allowing Securities Counsel to litigate against a team of highly talented defense lawyers, both before and after the settlement of the Government Cases and the Customer Class Cases.

179. In addition, the Stoll Berne firm had eight staff attorneys (along with other associates) who reviewed documents in this matter. As discussed in the Shorr Declaration, Stoll Berne similarly treats their staff attorneys as employees and these attorneys contributed by reviewing and analyzing documents, preparing witness kits for deposition preparation and locating key documents that were used to on key issues at depositions in this case. Stoll Berne's staff attorney time was coordinated to ensure that each firm's staff attorneys were assigned different document custodians, depositions and issues so as not to overlap efforts. A more extensive discussion of the Stoll Berne team of staff attorneys and their work appears at paragraph 8 to the Shorr Declaration.

#### **IV. MEDIATION, CONTINUED DISCOVERY AND SETTLEMENT**

##### **A. INITIAL MEDIATION**

180. In November 2014, the parties in the Securities Action, the Customer Class Cases and the Government Actions began discussing a potential mediation. In its role on the Plaintiffs' Executive Committee, Lead Counsel was closely involved in discussions around the parameters of a mediation and the selection of a potential mediator. After much discussion among the Government Actions, the Plaintiffs' Executive Committee, and BNYM a mediation was scheduled in New York City on January 19 and 20, 2015 with the former United States District Court Judge Layn R. Phillips.

181. In advance of that two-day session, the Plaintiffs' Executive Committee and the USAO took the lead in preparing a global mediation statement. The statement set forth the facts relevant to the underlying alleged FX scheme, which had been unearthed in discovery so far, citing

to multiple deposition transcripts and dozens of exhibits Plaintiffs had developed. The Securities Action was discussed in each of Plaintiffs' and Defendants' mediation statements, including submissions concerning its strengths and weaknesses.

182. Opening mediation statements were exchanged on January 7 and replies on January 12, 2015. These submissions were prepared and finalized over a period of less than four weeks during which intense fact discovery and class certification expert discovery was also taking place. For example, between December 9, 2015 and January 9, 2015, the parties took 10 depositions in locations ranging from Anchorage, Alaska to Fort Lauderdale, Florida. These depositions including several senior BNYM witnesses taken by Lead Counsel, including BNYM's former controller John Park (December 22, 2014), BNYM's former Chief Executive Officer Robert Kelly (January 7, 2015), and BNYM's current Chief Financial Officer Thomas Gibbons (January 8, 2015). This period also coincided with efforts to prepare and finalize class certification rebuttal expert reports, which as discussed above were due on January 12, 2015.

183. On January 6, 2015, prior to the initial mediation session, Lead Counsel hosted a meeting in New York attended by representatives of the Plaintiffs' Executive Committee, representatives of the NYAG, and, by telephone, representatives of the USAO in order to coordinate efforts at the upcoming mediation. At that meeting, it was determined that – because the Customer Class Cases and the Government Actions sought recovery for wrongdoing aimed at essentially an identical class of victims (BNYM's custody clients) – those cases would negotiate a settlement as a group. The Securities Action, which sought a recovery on behalf of BNYM's investors and faced unique issues relating to the federal securities laws would negotiate separately.

184. The mediation took place on January 19 and 20, 2015. For the Securities Action the mediation was attended by myself and Max W. Berger of Lead Counsel, and Keith Dubanavich

and Scott Shorr of Stoll Berne. At the end of the first day, Lead Counsel prepared a brief written response to various issues raised by Defendants relating specifically to the Securities Action. By roughly mid-day on the second day of the January mediation session, it was apparent to the parties – and the mediator – that an amicable resolution of the Securities Action would not be reached at that time. Lead Counsel covered 23% of the costs of this initial joint mediation session.

## **B. CONTINUED NEGOTIATIONS**

185. While the January 2015 session did not end with a settlement in the Securities Action, the parties continued to engage in informal settlement discussions.

186. On March 4, 2015, the parties and Judge Phillips held another in-person mediation session at the offices of Paul, Weiss, Rifkind, Wharton & Garrison in New York with counsel from BLB&G and counsel for Defendants in the Securities Action, as well as various representatives of BNYM’s insurers, to engage in continued negotiations.

187. In advance of the March 4, 2015 session, Defendants provided a supplemental mediation statement focusing on loss causation and damages issues, and Lead Plaintiff provided Judge Phillips with a written response. The March 4, 2015 mediation session also ended without a settlement agreement being reached. Nevertheless, as the litigation again heated up, the parties continued to engage in informal settlement discussions both directly and through Judge Phillips. As a result of these ongoing efforts, the parties were able to move closer towards a resolution. But a final resolution still remained out of reach at that time.

## **C. THE SETTLEMENT**

188. On May 4, 2015, after even more negotiations and a significant amount of hard work by all parties, the negotiations had reached a point where Judge Phillips believed it was appropriate to recommend that the parties agree to settle at a specific number. Accordingly, Judge Phillips made a final mediator’s recommendation that the parties agree to resolve the Securities

Action for a cash payment by BNYM of \$180 million. Judge Phillips requested that the parties respond to this recommendation by May 7, 2015 in a “double blind” process through which neither side would know whether or not the other side had accepted. On consent of all parties, the response deadline was extended to May 12, 2015.

189. On May 12, 2015, Lead Counsel and Defendants’ counsel participated in a settlement conference before the Court. Shortly thereafter, the parties accepted Judge Phillips’ final mediator’s recommendation and reached an agreement-in-principle to settle the Securities Action for \$180,000,000. Judge Phillips has submitted a declaration describing the settlement negotiations, which he describes as “vigorous, fully at arm’s-length and conducted in good faith,” and stating that he believes that the Settlement “represents a recovery and outcome that is reasonable and fair for the Class and all parties involved” and that he “strongly support[s] the approval of the Settlement in all respects.” *See* Declaration of Layn R. Phillips, attached hereto as Exhibit 2, at ¶¶14-15.

190. The parties then negotiated a term sheet memorializing their agreement to settle, which they executed on May 21, 2015. Following additional negotiations, the parties executed a final Stipulation and Agreement of Settlement on June 23, 2015. That same day, Lead Plaintiff submitted its Motion for (i) Certification of the Settlement Class, (ii) Authorization to Notify the Settlement Class of a Proposed Settlement, and (iii) Scheduling a Settlement Hearing. On July 23, 2015, the Court entered the Notice Concerning Proposed Settlement (ECF No. 614) (the “Notice Order”), which preliminarily certified the Settlement Class and authorized dissemination of notice of the proposed Settlement to Settlement Class Members.

## **V. THE SIGNIFICANT RISKS INVOLVED IN THE SECURITIES ACTION**

191. As summarized below, Securities Counsel respectfully submit that they assumed significant risk in prosecuting the Securities Action on an entirely contingent basis. Even though

the Securities Action had survived Defendants' motions to dismiss, settlement was by no means inevitable and certainly not at the high level ultimately achieved.

**A. GENERAL RISKS INVOLVED IN PROSECUTING THE SECURITIES ACTION**

192. In recent years, securities class actions as a group have become riskier than they perhaps were in prior years. For example, data from Cornerstone Research shows that, in each year between 2008 and 2011, a majority of the securities class actions filed were dismissed – and the percentage of dismissals was as high as 59% in 2010 and 58% in 2011.<sup>11</sup> Well-known economic consulting firm NERA found that, out of securities class actions in which a motion to dismiss was decided from January 2000 through December 2014, 54% were dismissed.<sup>12</sup>

193. Even when they have survived motions to dismiss, securities class actions are increasingly dismissed at the class certification stage, in connection with *Daubert* motions or at summary judgement. For example, class certification was denied in several recent securities class actions filed in the Southern District of New York. *See, e.g., Gordon v. Sonar Cap. Mgmt. LLC*, 2015 WL 1283636 (S.D.N.Y. Mar. 19, 2015); *Sicav v. James Jun Wang*, 2015 WL 268855 (S.D.N.Y. Jan. 21, 2015); *IBEW Local 90 Pension Fund v. Deutsche Bank AG*, 2013 WL 5815472 (S.D.N.Y. Oct. 29, 2013); *George v. China Automotive Systems, Inc.*, 2013 WL 3357170 (S.D.N.Y. July 3, 2013).

194. Multiple securities class actions also recently have been dismissed at the summary judgment stage. *See, e.g., In re Omnicom Grp., Inc. Sec. Litig.* 541 F. Supp. 2d 546, 554-55 (S.D.N.Y. 2008), *aff'd* 597 F.3d 501 (2d Cir. 2010); *see also In re Xerox Corp. Sec. Litig.*, 935 F.

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<sup>11</sup> *See* Cornerstone Research, *Securities Class Action Filings, 2014 Year In Review* (2015) at 12.

<sup>12</sup> *See* Dr. Renzo Comolli and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review" (NERA 2015 at p. 18, Figure 15).

Supp. 2d 448, 496 (D. Conn. 2013), *aff'd* 766 F.3d 172 (2d Cir. 2014). And even cases that have survived summary judgment are dismissed prior to trial in connection with *Daubert* motions. For example, in *In re Pfizer Inc. Sec. Litig.*, Judge Swain of the Southern District of New York granted the defendants' motion *in limine* to exclude the testimony of the plaintiffs' proffered damages expert. Then, Judge Swain granted the defendants' renewed motion for summary judgment based on the plaintiffs' failure to proffer admissible loss causation and damages evidence. *See In re Pfizer Inc. Sec. Litig.*, 2014 WL 3291230 (S.D.N.Y. July 8, 2014); *see also Bricklayers and Trowel Trades Int'l Pension Fund v. Credit Suisse First Boston*, 853 F. Supp. 2d 181 (D. Mass. 2012), *aff'd* 752 F.3d 82 (1st Cir. 2014) (granting summary judgment *sua sponte* in favor of the defendants after finding that the event study offered by plaintiffs' expert was unreliable and that there was accordingly no evidence that the market reacted negatively to disclosures).

195. Even when securities class action plaintiffs are successful in getting a class certified, have prevailed at summary judgment, overcome *Daubert* motions, and have gone to trial, there are still very real risks that there will be no recovery or substantially less recovery for class members. For example, in *In re BankAtlantic Bancorp, Inc.* (S.D. Fla. 2010), a jury rendered a verdict in plaintiffs' favor on liability in 2010. In 2011, the district court granted defendants' motion for judgment as a matter of law and entered judgment in favor of the defendants on all claims. 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011). In 2012, the Eleventh Circuit affirmed the district court's ruling, finding that there was insufficient evidence to support a finding of loss causation. *In re BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

196. In the case of a high-profile securities litigation that was successful at trial, intervening changes in the law have resulted in not a single dollar being recovered in over thirteen years of litigation. In *In re Vivendi Universal, S.A. Securities Litigation* (S.D.N.Y. 2010), a jury

found Vivendi liable for violations of the federal securities laws after a trial in the Southern District of New York in 2010. Subsequently, the class was significantly narrowed by the Supreme Court's opinion in *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247 (2010) (holding that Section 10(b) does not apply extraterritorially), which eviscerated the plaintiffs' damage claims. Since then, the parties have been arguing over the apportionment of damages to various class members. Thus, thirteen years after the action commenced and nearly five years after the jury verdict was delivered, the litigation remains ongoing, with Vivendi seeking to rebut the presumption of reliance on an individual basis. Judge Scheindlin recently granted summary judgment in favor of Vivendi with respect to claims by a large investor group who purchased through a single asset manager, ruling that Vivendi had rebutted the presumption of reliance with respect to the asset manager and rejecting the group's \$57 million damages claim. See *In re Vivendi Universal, S.A. Securities Litigation*, 02-cv-05571, 2015 WL 4758869 (S.D.N.Y. Aug. 11, 2015).

197. Indeed, a change in the law recently resulted in this Court dismissing a securities fraud class action in *City of Westland Police & Fire Ret. Sys. v. Metlife, Inc.*, No. 12 Civ. 0256 (LAK), slip op. (S.D.N.Y. Sept. 11, 2015). There, the Court had already sustained one complaint by the plaintiff when an intervening change in the law occurred – specifically the Supreme Court's opinion in *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, 135 S. Ct. 1318 (2015) – and resulted in the Court dismissing all of the securities fraud claims at issue in the case.

198. Yet another example of the risk that always attaches to securities class action litigation may be found in *Jaffe v. Household Int'l* (N.D. Ill. 2009), where a jury returned a verdict for plaintiffs in May 2009. In October 2013, the district court entered a post-verdict judgment of

\$2.45 billion. In May 2015, however, the Seventh Circuit reversed and ordered a new trial on loss causation and damages. 787 F.3d 408 (7th Cir. 2015).

199. In sum, Securities Counsel respectfully submit that securities class actions face serious risks of dismissal and non-recovery at all stages of litigation.

**B. SPECIFIC RISKS IN PROSECUTING THE SECURITIES ACTION**

200. The risk of each case obviously varies upon its own merits, and the risks in this Securities Action were particularly high. To begin, Lead Plaintiff faced an unusual risk from the outset because, in order to prevail in the Securities Action, Lead Plaintiff had to establish both the underlying FX fraud perpetrated against BNYM's customers and that BNYM and its executives committed securities fraud. As explained further below and in other submissions to the Court, Defendants had substantial defenses that they vigorously pursued, which created a very real possibility that, after years of protracted litigation, Lead Plaintiff and the Settlement Class could achieve no recovery at all, or a significantly lesser recovery than the Settlement Amount.

201. Indeed, in a similar FX-related securities class action against JP Morgan (where BLB&G was co-Lead Counsel) – another custodial bank and one of BNYM's major competitors on FX services – was dismissed in the Southern District of New York. *See Louisiana Municipal Police Emps.' Ret. Sys. v. JPMorgan Chase & Co. et al.*, 12 Civ. 06659, 2013 WL 3357173, at \*17 (S.D.N.Y. July 3, 2013). Some of the risks attendant to this Securities Action are summarized below.

202. It bears mention that no government entity or regulator asserted a securities fraud claim on behalf of BNYM's investors relating to the Bank's standing instruction FX practices. Rather, the government actions that were filed against BNYM related solely to the customer-oriented FX scheme and did not contain any allegations that BNYM defrauded its investors.

203. Nor did this case involve a corporate accounting restatement, the firing of a CFO, the withdrawal of an audit opinion, or some other strong indication that a corporation may have committed securities fraud. Indeed, as noted, there were no securities fraud complaints filed for more than two months after the October 4, 2011 there were no securities fraud class actions relating to these matters filed – the only securities fraud class action complaint was filed in December 2011, more than two months after the October 4, 2011 disclosure.

### **1. Risks Faced In Proving The Underlying Customer Fraud**

204. Establishing the underlying predicate to Lead Plaintiff’s securities claims (the standing instruction FX scheme) was fraught with risk and uncertainty. BNYM raised a host of substantial arguments in defense of its FX pricing practices, including that it was entitled to earn a spread on its standing instruction FX services, that the vast majority of its custodial contracts did not prohibit it from doing so, and there was nothing improper or wrongful about the FX revenue the Bank earned during the Class Period. Further, in an argument that BNYM asserted throughout the litigation, including in its opposition to class certification in the Securities Action, the Bank maintained that its custody clients and their sophisticated investment managers were well aware that the bank was charging spreads on its standing instruction FX services but continued to use those services because of the convenience and quality they provided.

205. Securities Counsel thus faced a very unusual risk – shared with the Customer Class Cases – that BNYM’s many defenses to the underlying alleged FX scheme would prove successful at the class certification stage, summary judgment, or at trial, which, in turn, would have eviscerated the Securities Action.

### **2. Risks Faced In Proving Securities Fraud**

206. Securities Counsel bore additional risks in establishing the elements of securities fraud. Defendants argued vigorously that, even if Lead Plaintiff successfully established that

certain custodial contracts prohibited the charging of a mark-up, the revenue generated under those contracts was an immaterial amount. In support of this argument, BNYM pointed to the Bank's yearly revenues of \$13.9 billion, its \$1.17 trillion in assets under management and its \$25 trillion in assets under custody and administration. In the face of these vast sums, the Bank had a serious argument that even a widespread customer fraud (if proven) was immaterial to investors because it amounted at most to a few hundred million dollars over multiple years. These arguments posed a real risk that the Court would find as a matter of law that this was immaterial to investors.

207. Lead Plaintiff also faced the burden of establishing that Defendants acted with *scienter* – i.e., that they intentionally or recklessly misled BNYM investors. The *scienter* requirement is commonly regarded as the most difficult element to prove in a securities fraud claim. *See, e.g., Fishoff v. Coty Inc.*, 2010 WL 305358, at \*2 (S.D.N.Y. Jan. 25, 2010) (2d Cir. 2011) (“[T]he element of scienter is often the most difficult and controversial aspect of a securities fraud claim”). Here, Defendants had compelling arguments that they had no intent to mislead investors and that any misstatements were made in good faith and were, at worst, merely negligent.

208. Finally, Lead Plaintiff was required to establish the applicability of the “fraud on the market” theory of reliance, including by demonstrating “price impact” by showing that the alleged misrepresentations on BNYM's website and elsewhere impacted the price of BNYM common stock. In particular, as discussed above, Defendants had amassed powerful arguments that statements on its customer-facing corporate website, even if misleading, could not have been reasonably relied upon – or even seen – by investors purchasing BNYM stock. In this regard, Defendants pointed out that the website was difficult to access (at certain points in the Class Period they claimed it was password protected), was completely separate from the investor relations portion of the Bank's website, and it was never mentioned in analyst reports or news articles about

BNYM. When combined with the already noted small stock price declines at issue in this case, establishing price impact presented real challenges to Lead Plaintiff.

209. Indeed, in the exchange of rebuttal expert reports that took place on April 27, 2015, BNYM designated no less than *five* experts to give testimony on the issues of price impact and materiality. Thus, at a minimum establishing price impact would have been a risky and expensive battle of experts with no certain outcome.

210. Even if Lead Plaintiff could establish Defendants' liability for material misstatements made with scienter, it faced an even greater risk in establishing damages on those claims.

211. In order to prove damages in the Securities Action, Lead Plaintiff bears the burden of establishing "loss causation," *i.e.*, that BNYM's statements caused their alleged loss. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear the burden of proving "that the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'" quoting 15 U.S.C. § 78u-4(b)(4)). To establish loss causation, plaintiffs must demonstrate a sufficient connection between the alleged fraudulent conduct and the losses suffered. Defendants would have continued to argue that Lead Plaintiff could not establish that its losses were attributable to the revelation of the Bank's fraud and not the various other factors that affect a company's stock price. Indeed, "[a] decline in stock price following a public announcement of 'bad news' does not, by itself, demonstrate loss causation." *Richman v. Goldman Sachs Grp., Inc.*, 868 F. Supp. 2d 261, 282 (S.D.N.Y. 2012).

212. To meet this burden, Lead Plaintiff alleged in the Complaint that Defendants' fraudulent FX scheme was gradually revealed to the investing public through a series of partial allegedly corrective disclosures beginning in January 2011 – when it was revealed that certain

Virginia pension funds had filed a FX-related *qui tam* lawsuit against BNYM in which the Virginia attorney general had intervened – and ending on October 5, 2011 – when the NYAG and the DOJ sued BNYM for fraud against its customers. According to the Complaint, each of these corrective disclosures revealed new information about the alleged FX fraud, which caused BNYM’s stock price to decline, and in turn, resulted in losses to investors.

213. Defendants had several powerful arguments against Lead Plaintiff’s loss causation allegations. *First*, Defendants would have argued that the declines in the price of BNYM common stock that followed each alleged corrective disclosure were small – less than \$1 with nearly half of the declines under \$0.50 – and were actually caused by reasons unrelated to the alleged FX fraud. *Second*, Defendants would have argued that many of the alleged “corrective” disclosure dates did not involve stock price declines that were statistically significant in light of broader market movements and the historical patterns of BNYM common stock.

214. *Third*, Defendants contended that, with respect to those corrective disclosure dates that *did* involve statistically significant price declines, none of them involved the revelation of any new information concerning the alleged FX fraud. Defendants argued that allegations that the Bank was defrauding its custodial clients emerged on January 28, 2011 – when the Virginia lawsuit was revealed – which did not itself result in a statistically significant stock price decline. According to Defendants, the remaining “corrective” disclosures essentially repeated the same or similar information without adding any new corrective information concerning the alleged FX fraud.

215. Thus, Defendants contended that none of the alleged corrective disclosures could constitute a valid basis for establishing loss causation. In that regard, Defendants provided a strong signal of the resources they were willing to devote to their attack on loss causation when they

identified on April 27, 2015 that they had retained at least four experts to give rebuttal testimony specifically on issues of damages and loss causation.

216. If Defendants had succeeded on their loss causation arguments, Lead Plaintiff could have established liability but nevertheless have been unable to establish damages. While Lead Plaintiff and Securities Counsel believe that the case had substantial merit and that they had significant responses to each of Defendants' arguments, it is nevertheless true that Defendants had serious defenses that, if successful, would have resulted in the class recovering far less than the proposed Settlement or, indeed, nothing at all. In this context, Lead Plaintiff and Securities Counsel believe that the Settlement is an excellent result for the Settlement Class.

### **C. RISK OF APPEAL**

217. Finally, even if Lead Plaintiff prevailed at summary judgment and trial, BNYM would likely have appealed the judgment – leading to many additional months, if not years, of further litigation. On appeal, Defendants would have renewed their host of arguments as to why Lead Plaintiff had failed to establish liability and damages, thereby exposing Lead Plaintiff to the risk of having any favorable judgment reversed or reduced below the Settlement Amount. *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of \$81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant).

## **VI. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S NOTICE ORDER**

218. The Court's July 23, 2015 Notice Order directed that the Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and Proof of Claim Form ("Claim Form") be disseminated to the Settlement Class. The Notice Order also set a September 29, 2015 deadline for Settlement Class

Members to submit objections to the Settlement, the Plan of Allocation and/or the Fee and Expense Application or to request exclusion from the Settlement Class, and set a final approval hearing date of October 20, 2015.

219. Pursuant to the Notice Order, Lead Counsel instructed Epiq Class Action & Claims Solutions, Inc. (“Epiq”), the Court-approved Claims Administrator, to begin disseminating copies of the Notice and the Claim Form by mail and to publish the Summary Notice. The Notice contains, among other things, a description of the Action, the Settlement, the proposed Plan of Allocation and Settlement Class Members’ rights to participate in the Settlement, object to the Settlement, the Plan of Allocation and/or the Fee and Expense Application, or exclude themselves from the Settlement Class. The Notice also informs Settlement Class Members of Lead Counsel’s intent to apply for an award of attorneys’ fees in an amount not to exceed 25% of the Settlement Fund, and for reimbursement of Litigation Expenses in an amount not to exceed \$3 million. To disseminate the Notice, Epiq obtained information from BNYM and from banks, brokers and other nominees regarding the names and addresses of potential Settlement Class Members. *See* Declaration of Stephanie Thurin Regarding: (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date (“Thurin Decl.”), attached hereto as Exhibit 3, at ¶¶3-4.

220. On July 29 and 30, 2015, Epiq disseminated 32,667 copies of the Notice and Claim Form (together, the “Notice Packet”) to potential Settlement Class Members and nominees by first-class mail. Thurin Decl. ¶¶3-5. As of September 11, 2015, Epiq had disseminated a total of 934,632 Notice Packets. *Id.* ¶8.

221. On August 11, 2015, in accordance with the Notice Order, Epiq caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over the *PR Newswire*. *Id.* ¶9.

222. Lead Counsel also caused Epiq to establish a dedicated settlement website, [www.bnymfxsecuritieslitigation.com](http://www.bnymfxsecuritieslitigation.com), to provide information concerning the Settlement and access to downloadable copies of the Notice and Claim Form, as well as copies of the Stipulation and Notice Order. *Id.* ¶14. Copies of the Notice and Claim Form are also available on BLB&G's website, [www.blbglaw.com](http://www.blbglaw.com).

223. As set forth above, the deadline for Settlement Class Members to file objections to the Settlement, the Plan of Allocation and/or the Fee and Expense Allocation or to request exclusion from the Settlement Class is September 29, 2015. To date, 23 requests for exclusion have been received; and two objections to the Settlement, the Plan of Allocation or Lead Counsel's Fee and Expense Application have been received. Lead Counsel believes the objections are each without merit. However, pursuant to the schedule ordered by the Court and rather than addressing the objections in a piecemeal fashion, Lead Counsel will file reply papers on October 13, 2015 that will address the requests for exclusion and any and all objections that have been received.

## **VII. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT**

224. Pursuant to the Notice Order, and as set forth in the Notice, all Settlement Class Members who want to participate in the distribution of the Net Settlement Fund (*i.e.*, the Settlement Fund less (a) any taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court, and (d) any attorneys' fees awarded by the Court) must submit a valid Claim Form with all required information postmarked no later than December 11, 2015.

225. The plan of allocation proposed by Lead Plaintiff and Lead Counsel (the "Plan of Allocation") is set forth on pages 8 to 11 of the Notice. If approved, the Plan of Allocation will

govern how the Net Settlement Fund will be distributed among Authorized Claimants.<sup>13</sup> The proposed Plan of Allocation is designed to achieve an equitable and rational distribution of the Net Settlement Fund. However, the Plan of Allocation is not a formal damage analysis and the calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial.

226. Lead Counsel developed the Plan of Allocation in consultation with Lead Plaintiff's expert consultant on damages, Chad Coffman. In developing the Plan of Allocation, Mr. Coffman calculated the potential amount of estimated alleged artificial inflation in the per share closing prices of BNYM common stock, which was alleged to have been proximately caused by Defendants' false and misleading statements and omissions. In calculating the estimated artificial inflation purportedly caused by Defendants' alleged misrepresentations and omissions, Mr. Coffman considered price changes in BNYM common stock in reaction to certain public announcements regarding BNYM in which such alleged misrepresentations and omissions were alleged to have been revealed to the market, adjusting for price changes that were attributable to market or industry forces, the allegations in the Complaint and the evidence developed in support thereof, as advised by Lead Counsel. *See* Notice ¶53. The Plan of Allocation developed by Mr. Coffman reflects changes in the estimated artificial inflation on certain of the dates alleged to be corrective disclosures in the Complaint. *Id.* ¶54.

227. Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase of BNYM common stock during the Settlement Class Period (*i.e.*, from February

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<sup>13</sup> An "Authorized Claimant" means a person or entity who or which submits a Proof of Claim Form to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund.

28, 2008 through and including October 4, 2011) that is listed in the Claim Form and for which adequate documentation is provided. The calculation of Recognized Loss Amounts will depend upon when the BNYM common stock was purchased and sold. In general, the Recognized Loss Amount calculated will be the difference between the estimated artificial inflation on date of purchase and the estimated artificial inflation on date of sale, or the difference between the actual purchase price and sales price of the stock, whichever is less. Notice ¶¶57. Claimants who did not hold their BNYM shares over one of the disclosure dates in the Plan of Allocation – that is, those who sold their shares before the first disclosure date or who purchased and then sold all their shares between two such disclosure dates – will have no Recognized Loss Amount as to those transactions under the Plan of Allocation because the level of alleged artificial inflation would be the same on their date of purchase and date of sale. *Id.* ¶54.

228. The sum of the Recognized Loss Amounts for all of a Claimant’s purchases of BNYM common stock during the Settlement Class Period is the claimant’s “Recognized Claim” and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Notice ¶¶60-61.

229. In sum, the Plan of Allocation was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered on transactions in BNYM common stock that were attributable to the conduct alleged in the Complaint and on the relative strengths of their claims. Accordingly, Lead Counsel respectfully submits that the Plan of Allocation is fair and reasonable and should be approved by the Court.

230. As noted above, as of September 11, 2015, more than 934,000 copies of the Notice, which contains the Plan of Allocation, and advises Settlement Class Members of their right to

object to the Proposed Plan of Allocation, have been sent to potential Settlement Class Members and their nominees. *See* Ex. 3 (Thurin Decl.), ¶8. One of the objections received relates to the proposed Plan of Allocation. As noted, that objection (and any others) will be addressed in Lead Plaintiff's reply papers.

### **VIII. THE FEE AND LITIGATION EXPENSE APPLICATION**

231. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel is applying to the Court for an award of attorneys' fees and reimbursement of litigation expenses on behalf of all Securities Counsel.

232. Specifically, for Securities Counsel's extensive efforts on behalf of the Settlement Class, Lead Counsel is applying for a fee award of 25% of the Settlement Fund, or \$45,000,000, plus interest earned at the same rate as earned by the Settlement Fund, and for reimbursement of \$1,616,575.69 in Securities Counsel's litigation expenses. The amount of Securities Counsel's incurred litigation expenses for which Lead Counsel is seeking reimbursement is below the maximum expense amount of \$3 million set forth in the Notice.

233. Based on the factors discussed below, and on the legal authorities set forth in the accompanying Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee Memorandum") being filed contemporaneously herewith, we respectfully submit that Lead Counsel's motion for fees and expenses should be granted.

#### **A. THE FEE APPLICATION**

##### **1. The Time and Labor Required to Achieve the Settlement**

234. The time and labor expended by Securities Counsel in pursuing this Action and achieving the Settlement strongly demonstrate the reasonableness of the requested fee. Attached here as Exhibits 4A, 4B and 4C are declarations of each of the Securities Counsel firms which

include summaries of the amount of time spent by attorneys and professional support staff employees of each firm on this Action from its inception through May 21, 2015 (the date that agreement in principle to settle was reached), and a lodestar calculation based on their current billing rates. As set forth on Exhibit 4, the total number of hours expended by Securities Counsel on this Action from its inception through May 21, 2015 is 118,867, for a total lodestar of \$46,805,333.00. The requested fee of 25% of the Settlement Fund, or \$45,000,000, therefore represents a multiple of only 0.96 of Securities Counsel's lodestar. As discussed in further detail in the Fee Motion, the requested multiplier is well below the fee multipliers typically awarded in comparable securities class actions and in other class actions involving contingency fee risk, in this Circuit and elsewhere. Moreover, Securities Counsel's efforts to litigate this case efficiently resulted in an extremely reasonable blended hourly rate of just \$394 per hour for all professional time spent on the case.

235. As set forth in Exhibits 4A, 4B and 4C, the schedules included in those exhibits setting forth the hours worked by the attorneys and professional staff on this Action were created from contemporaneous daily time records regularly prepared and maintained by the respective Securities Counsel, which are available at the request of the Court. Securities Counsel have reviewed their time records and made certain reductions to ensure that the hours presented to the Court reflect meaningful and necessary work that contributed to the resolution of this litigation.

236. As noted above, Securities Counsel have not submitted any time incurred after May 21, 2015, which was the date that an agreement in principle was reached to settle this litigation. Since that date, Lead Counsel has expended considerable additional time (a) negotiating final settlement documentation, including the Stipulation of Settlement and form of notice to the securities class; (b) preparing and filing a motion for preliminary approval hearing; (c) overseeing

the distribution of notice to class members; (d) preparing and filing papers in support of final approval; and (e) responding to class member inquiries. If the Settlement is approved, Lead Counsel will continue to expend additional time for many months monitoring and overseeing the administration of the Settlement and distribution of payment to class members.

237. The hourly rates for attorneys and professional support staff included in the schedules are their current hourly rates. For personnel who are no longer employed by Securities Counsel, the lodestar calculation is based upon the billing rates for such personnel in their final year of employment.

238. As detailed above, throughout this case, Securities Counsel devoted substantial time to the prosecution of this Action. BLB&G, as Lead Counsel, maintained control of and monitored the work performed by lawyers on this case. While I personally devoted substantial time to this case, and personally reviewed and edited all significant pleadings, court filings and other correspondence prepared on behalf of Lead Plaintiff, other highly experienced and knowledgeable attorneys at our firms assisted in all aspects of the case as needed. More junior attorneys and paralegals also assisted in working on matters appropriate to their skill and experience levels.

239. In *In re IndyMac Mortgage-Backed Sec. Litig.*, the Court noted that it found helpful a common breakdown of counsel's "time records that distinguish[ed] hours billed by category of task." 2015 WL 1315147, \*5 (S.D.N.Y. Mar. 24, 2015). To assist the Court, Lead Counsel has provided a similar breakdown of its time records as Exhibit 1 to Exhibit 4A. Stoll Berne and Additional Plaintiffs' Counsel have likewise provided similar breakdowns of their respective time records. See Exhibits 4B and 4C. In addition, Lead Counsel has provided a brief description of

the major tasks in the litigation that were handled by each of its attorneys and staff. *See* Exhibit 5.

## **2. The Quality of the Result Achieved by Lead Counsel**

240. The Settlement provides for a recovery of \$180 million for the benefit of the Settlement Class. For the reasons set forth above and in light of the substantial risks of the litigation, Lead Counsel believes that the Settlement represents a very favorable result for members of the Settlement Class. Indeed, given the serious challenges that Lead Plaintiff faced in this case, including the formidable hurdles discussed above, there was significant risk that there would be no recovery at all.

241. As noted above, when the Settlement was reached, the parties were less than two weeks away from serving merits expert reports. As such, Lead Counsel had done significant work with experts and consultants on the issue of damages and had refined its damage analysis to the point where Lead Counsel had formed a view as to the maximum damages that the Class would actually seek in this litigation. This process was also informed by the deposition of Lead Plaintiff's market efficiency expert, which took place on April 2, 2015, and additional work regarding defensible levels of statistical significance for the alleged corrective disclosures in the Complaint. Further, Lead Plaintiff's damages analysis had to account for the specifics of each of the remaining alleged corrective disclosures, including by determining whether the information disclosed was truly new or "corrective." Ultimately, although the damages analysis was not finalized, Lead Plaintiff's consultant estimated the likely maximum recoverable damages in case to be approximately \$1 billion. Thus, the proposed \$180 million Settlement represents a recovery for Settlement Class members of approximately 18% of their likely maximum recoverable damages.

242. Under these circumstances, the Settlement represents an excellent result for the Settlement Class. The quality of the result achieved on behalf of the Settlement Class is evidence

of the quality of Securities Counsel's representation and supports the reasonableness of the requested fee.

243. Indeed, the excellence of the Settlement is amply demonstrated by the fact that recent securities class action statistics indicate that, when investor losses are between \$1 billion and \$5 billion (as here), the median settlement is approximately 1% of investor losses.<sup>14</sup> The \$180 million Settlement represents a recovery that is nearly 20 times this median, as it is 18% of estimated likely maximum recoverable damages of \$1 billion. In reality, however, the Settlement is even better than this ratio would suggest because, given the myriad and substantial risks in the Securities Action, there was a significant chance that Lead Plaintiff and the Class would recover nothing.

### **3. The Skill and Experience of Securities Counsel**

244. The skill and expertise of Securities Counsel also supports the requested fee. Lead Counsel has extensive experience in successfully prosecuting some of the largest and most complex securities class actions in history, and is consistently ranked among the top plaintiffs' firms in the country. Lead Counsel's experience and track record in complex securities class action litigation are summarized in the resume attached as Exhibit 3 to Exhibit 4A.

245. In addition, Stoll Berne is a premier securities class action firm based in the Northwest and has also litigated national securities class actions through trial. The primary Stoll Berne partner on this case, Scott Shorr, is an experienced securities and class action attorney who, among other things, has argued a class action appeal before the United States Supreme Court. Stoll Berne was heavily involved in helping this case reach a successful resolution. A copy of their firm

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<sup>14</sup> See, e.g., Cornerstone Research, *Securities Class Action Settlements: 2014 Review and Analysis* (2015), at 9.

bio and a list of some of their other securities class action work appears at Exhibit 3 to the Shorr Declaration (Exhibit 4B).

246. The quality of the work performed by Securities Counsel in obtaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendants were primarily represented in the litigation by Kellogg Huber, a prestigious and experienced firm, which vigorously and ably defended the Action for over three and a half years. Against this formidable opposition, Lead Counsel presented a case that was sufficiently strong that they were able to negotiate the substantial recovery reflected in the proposed Settlement. The Kellogg Huber firm devoted at least 12 partners and 14 counsel/associates to the front lines of the litigation. Each of these attorneys was highly credentialed with at least one Circuit Court or Supreme Court clerkship for all but one.

247. Moreover, the law firm of Paul Weiss Wharton Rifkind and Garrison LLP (“Paul Weiss”) also acted as counsel to Defendants in this action. Paul Weiss is one of the largest and most respected law firms in the world, filled with litigators who are highly experienced in securities class actions. In Lead Counsel’s view, Paul Weiss consistently provides clients with the highest quality representation in complex litigations. In short, Securities Counsel faced very high quality opposition in this case, which further supports the requested fee.

#### **4. The Fully Contingent Nature of the Fee and the Extensive Risks of the Litigation**

248. This prosecution was undertaken by Securities Counsel on an entirely contingent-fee basis. The extensive risks by Securities Counsel in bringing those claims have been detailed above and those same risks are equally relevant to an award of attorneys’ fees.

249. From the outset, Securities Counsel understood that they were embarking on a complex, expensive and likely lengthy litigation with no guarantee of compensation for the

substantial investment of time, money and effort that the case would require. Securities Counsel understood that Defendants would raise numerous challenges to liability, damages, and class certification, and that there was no assurance of success.

250. In undertaking the responsibility of prosecuting this Action, Securities Counsel ensured that ample resources were dedicated to it, and that funds were available to compensate staff and to advance the significant expenses that a case of this magnitude and complexity requires. Indeed, for nearly four years, Securities Counsel vigorously prosecuted this Action for the benefit of the Settlement Class and received no compensation, while incurring over \$1.6 million in expenses.

251. Securities Counsel bore the risk that no recovery would be achieved. Indeed, this case presented numerous risks that could have prevented any recovery whatsoever. Despite the vigorous efforts of Securities Counsel, success in contingent litigation such as this is never assured. Securities Counsel firmly believe that the commencement of a securities class action, or the survival of a class action after a motion to dismiss, does not guarantee settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop facts and theories that are needed to induce sophisticated defendants to engage in serious settlement negotiations involving significant sums of money.

252. Moreover, the United States Supreme Court and numerous other courts have repeatedly recognized that the public has a strong interest in having experienced and able counsel enforce the federal securities laws through private actions. *See, e.g., Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide “‘a most effective weapon in the enforcement of the securities laws and are a ‘necessary supplement to [SEC] action.’”) (citation omitted). Further, as Congress recognized through the passage of the

PSLRA, vigorous private enforcement of the securities laws can only occur if private plaintiffs, particularly institutional investors, take an active role in prosecuting securities class actions. If this important public policy is to be carried out, it is essential that plaintiffs' counsel be adequately compensated for undertaking actions with significant risk and achieving remarkable results, as Lead Counsel did here.

#### **5. Lead Plaintiff's Endorsement of the Fee Application**

253. Lead Plaintiff is a highly sophisticated public pension fund that closely supervised and monitored both the prosecution and the settlement of this Action. Lead Plaintiff has evaluated the Fee Application and believes it to be fair and reasonable. As set forth in the declaration submitted by Lead Plaintiff, it has concluded that the requested fee has been earned based on the favorable recovery obtained for the Settlement Class in a case that involved serious risk. *See* Boss Decl. (Ex. 1 hereto), at ¶10. Accordingly, Lead Plaintiff's endorsement of Lead Counsel's fee request further demonstrates its reasonableness and should be given meaningful weight in the Court's consideration of the fee award.

254. In addition, the requested fee of 25% of the Settlement Fund is made pursuant to a pre-litigation fee agreement between Lead Plaintiff and Lead Counsel. Based on the recovery of \$180 million after the conclusion of factual discovery, Lead Counsel were expressly permitted to apply for a fee of 25% under the agreement. The fact that the requested fee is authorized by an agreement that was negotiated and agreed to by a sophisticated institutional investor at the outset of the litigation is further confirmation of its reasonableness – as is the fact that enforcement of the fee agreement results in a negative lodestar multiplier.

#### **6. The Reaction of the Settlement Class to the Fee Application to Date**

255. As noted above, as of September 11, 2015, over 934,000 Notice Packets had been mailed to potential Settlement Class Members advising them that Lead Counsel would apply for

an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund. *See* Thurin Decl. (Ex. 3 hereto), at ¶8. In addition, the Court-approved Summary Notice has been published in *the Wall Street Journal* and transmitted over the *PR Newswire*. *Id.* ¶9. To date, one objection to the attorneys' fees set forth in the Notice have been received. As noted above, Lead Counsel believes that this objection is without merit, but to avoid addressing objections in a piecemeal fashion as they come in, all objections will be addressed in Lead Counsel's reply papers, which will be filed on October 13, 2015.

256. In sum, Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted it for three and a half years without any compensation or guarantee of success. Based on the favorable result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Lead Counsel respectfully submits that a fee award of 25%, resulting in a multiplier of 0.96 is fair and reasonable, particularly given the low blended hourly rate of \$394 per hour, and is amply supported by the fee awards courts have granted in other comparable cases.

## **B. THE LITIGATION EXPENSE APPLICATION**

257. Lead Counsel also seeks reimbursement from the Settlement Fund of \$1,616,575.69 in litigation expenses that were reasonably incurred by Lead Counsel in connection with commencing, litigating and settling the claims asserted in this Action.

258. From the beginning of the case, Securities Counsel were aware that they might not recover any of their expenses and, even in the event of a recovery, would not recover any of their out-of-pocket expenditures until such time as the Action might be successfully resolved. Securities Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced by them to prosecute the Action. Accordingly, Securities Counsel were motivated to and did take

appropriate steps to avoid incurring unnecessary expenses and to minimize costs without compromising the vigorous and efficient prosecution of the case.

259. As set forth in Exhibit 4 hereto, Securities Counsel have incurred a total of \$1,616,575.69 in unreimbursed litigation expenses in connection with the prosecution of the Action. These expenses, as attested to in the respective firm Declarations, are reflected on the books and records maintained by each firm. These books and records are prepared from expense vouchers, check records and other source materials, and provide an accurate accounting of the litigation expenses incurred in this matter. The expenses are set forth in detail in each firm's declaration, each of which identifies the specific category of expense, *e.g.*, on-line research, experts' fees, out-of-town travel costs, photocopying, telephone, fax and postage expenses, and other costs actually incurred for which counsel seek reimbursement. These expense items are billed separately by Securities Counsel, and such charges are not duplicated in the firms' billing rates.

260. Of the total amount of expenses, \$845,365.78, or 52%, was expended on Lead Plaintiff's experts, including Lead Plaintiff's market efficiency and damages expert, Dr. S.P. Kothari, and Lead Plaintiff's damages consultant, Chad Coffman. As noted above, Lead Counsel retained Dr. Kothari to provide an expert report concerning the efficiency of the market for BNYM's common stock for purposes of Lead Plaintiff's motion for class certification. Dr. Kothari provided an opening expert report on market efficiency and was deposed on April 2, 2015. Lead Counsel also hired Dr. Kothari to provide a merits expert report on damages, which was underway when the Settlement was achieved. Lead Counsel also hired Mr. Coffman as a consulting expert regarding damages. In that regard, Mr. Coffman assisted Lead Counsel throughout the litigation,

including during the preparation of the Complaint, during the settlement negotiations with the Defendants, and assisted Lead Counsel with the development of the proposed Plan of Allocation.

261. Another large component of the expenses, \$282,151.13, or 17%, was for the necessary costs and services relating to the vast amount of documents produced in this Action, including for both the creation and maintenance of an electronic database that enabled Securities Counsel to efficiently and effectively search and review the nearly 30 million pages of documents produced to Lead Plaintiff from Defendants and non-parties, and the costs associated with the review and production of Lead Plaintiff's documents. Lead Counsel also sought to reduce the associated expenses by having the electronic discovery vendor remove exact duplicates from the review queues in order to ensure resources were used most efficiently.

262. Another substantial litigation expense was online legal and factual research. The on-line research conducted by Securities Counsel was necessary to their factual investigation of the claims, the preparation of the Complaint, responding to Defendants' motions to dismiss, and to litigate the various contested discovery motions and class certification. The charges for on-line legal and factual research together amounted to \$89,221.90. These are the amounts that were charged to Securities Counsel by their vendors; Securities Counsel do not impose any surcharges or otherwise make any profit from these services.

263. The other expenses for which Securities Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, costs of out-of-town travel, miscellaneous copying costs, long distance telephone and facsimile charges, and postage and delivery expenses.

264. All of the litigation expenses incurred by Securities Counsel were reasonably necessary to the successful litigation of this Action, and have been approved by the Lead Plaintiff.

265. The Notice informed potential Settlement Class Members that Lead Counsel would be seeking reimbursement of expenses in an amount not to exceed \$3,000,000. The total amount requested, \$1,616,575.69, is significantly below the \$3,000,000 that Settlement Class Members were advised could be sought and, to date, no objection has been raised as to the maximum amount of expenses set forth in the Notice.

266. In view of the complex nature of the Action, the expenses incurred by Securities Counsel were reasonable and necessary to represent the Settlement Class and achieve the Settlement. Accordingly, Lead Counsel respectfully submits that the Litigation Expenses incurred by are fair and reasonable and should be reimbursed in full from the Settlement Fund.

267. Attached hereto are true and correct copies of the following documents cited in the Fee Memorandum:

- Exhibit 6: List of all PSLRA cases of which we are aware that achieved recoveries from \$130 million to \$230 million and their lodestar multipliers
- Exhibit 7: *Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-1519 (AET), slip op. (D.N.J. Jan. 30, 2013), ECF No. 405
- Exhibit 8: *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), slip op. (S.D.N.Y. July 18, 2011), ECF No. 117
- Exhibit 9: Declaration of Geoffrey P. Miller, *Standard Iron Works v. Arcelormittal*, No. 08-CV-5214 (N.D. Ill. October 1, 2014), ECF No. 519-5
- Exhibit 10: *Standard Iron Works v. Arcelormittal*, No. 08-CV-5214, slip op. (N.D. Ill. October 22, 2014), ECF No. 539
- Exhibit 11: *In re Brocade Sec. Litig.*, No. 05-CV-2042-CRB, slip op. (N.D. Cal. Jan. 26, 2009), ECF No. 496-1
- Exhibit 12: *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (KAJ), slip op. (D. Del. Feb. 5, 2004)

**IX. CONCLUSION**

268. For all the reasons set forth above, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable and adequate. Lead Counsel further submits that the requested fee in the amount of 25% of the Settlement Fund should be approved as fair and reasonable, and the request for reimbursement of total litigation costs and expenses in the total amount of \$1,616,575.69 should also be approved.

I declare, under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 15th day of September, 2015 at New York, New York.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the signatory.

# **Exhibit 1**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

BANK OF NEW YORK MELLON CORP.  
FOREX TRANSACTIONS LITIGATION

This Document Relates to: 11-CV-09175

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) **CIVIL ACTION NO.**  
) MASTER FILE  
) 12 MD 2335 (LAK)  
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**DECLARATION OF FREDERICK M. BOSS,  
DEPUTY ATTORNEY GENERAL FOR THE STATE OF OREGON  
IN SUPPORT OF (A) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION;  
AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

I, Frederick M. Boss, hereby declare under penalty of perjury as follows:

1. I am Deputy Attorney General for the State of Oregon and have been at the Oregon Department of Justice ("DOJ") since 1994. I submit this declaration on behalf of Lead Plaintiff the State of Oregon, by and through the Oregon State Treasurer on behalf of the Common School Fund and together with the Oregon Public Employee Retirement Board on behalf of the Oregon Public Employee Retirement Fund ("Lead Plaintiff" or "Oregon"). I submit this declaration in support of (a) Lead Plaintiff's motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action including those set forth in the Private Securities Litigation Reform Act of 1995. I have personal knowledge of the matters set forth in this Declaration based on my role as the Supervising Attorney at DOJ for this class action

litigation; regular communications with both Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP (BLBG), and our long-standing outside securities counsel, Stoll Stoll Berne Lokting & Shlachter, P.C. (Stoll Berne) (collectively, "Securities Counsel"); updates from Jennifer Peet, who is the Senior Assistant Attorney General at DOJ who was assigned to further oversee and work with the Securities Counsel on this case; consultations with Lisa Udland, who supervised this matter in her role as Chief Counsel of the Civil Enforcement Division of DOJ; and communications with the Oregon Attorney General Ellen Rosenblum, and the Oregon State Treasurer Ted Wheeler and his staff. I have been directly involved in monitoring and overseeing the prosecution of the Action as well as the negotiations leading to the Settlement, and I could and would testify competently thereto.

3. The State of Oregon, acting by and through the Oregon State Treasurer, sought recovery in this Action through two separate public funds, the Oregon Public Employee Retirement Fund ("OPERF") and the Oregon Common School Fund ("CSF"). OPERF is a state government pension fund that provides retirement benefits for state government employees, all school district employees in Oregon, and almost all city, county and local government employees. As of July 31, 2015, OPERF had assets of over \$70.49 billion. As of February 2015, there were 204,000 active and inactive members of Oregon Publics Employee Retirement System, 128,000 benefit recipients, and approximately 925 participating public employers in the plan. CSF is a state fund that provides support to Oregon public K-to-12 schools and is funded by the sale of certain state lands and public property. As of March 31, 2015, CSF had assets of over \$1.46 billion. This year the CSF will distribute approximately \$54 million to local school districts. The Oregon Treasurer and the Oregon Investment Council oversee the investments of both OPERF and CSF assets.

4. At the outset, Oregon carefully selected the two firms that it wanted as a team to litigate this Action on behalf of Oregon and ultimately, subject to this Court's approval, the class. Oregon selected the team of Stoll Berne and BLBG for a number of reasons as each provided different, and significant, strengths and abilities to litigate this Action to a successful conclusion.

5. Oregon has regularly worked with Stoll Berne since at least 1999 on securities litigation, including class actions and opt-out, individual securities cases. Stoll Berne is one of the premier securities litigation firms in the Northwest. Because of Stoll Berne's long history working for Oregon on securities cases, the firm is very familiar with Oregon's personnel (both within the Oregon DOJ and the Oregon State Treasury); its documents, public records laws and procedures; and the laws and structures of the entities that oversee Oregon's funds. For instance, OPERF has a complex governance structure. It is governed in different capacities by different state boards, including the Oregon Public Employee Retirement Board on the administration and benefits side and the State Treasurer and the Oregon Investment Council on the investment side. It also has many outside investment managers governed by separate investment management agreements, and those managers' selected investments are, in turn, held by an independent custodial bank. Stoll Berne's intimate familiarity with all of these entities and their personnel helped Oregon easily facilitate the production of relevant documents and witnesses. Stoll Berne was very efficient in working with Oregon to fulfill its discovery obligations in this Action. Stoll Berne prepared, presented, and defended Oregon witnesses at depositions as well as appeared and defended Oregon's interests at various depositions of third-party investment manager and consultants. Because of Stoll Berne's past success in securities litigation for the State, the DOJ also trusts Stoll Berne's judgment, its legal research, and strategic insight. The DOJ appreciated having their counsel, along with national counsel, on this case.

6. Along with Stoll Berne, Oregon selected BLBG to prosecute this Action. The DOJ considers BLBG one of the premier national securities class action firms with in-depth experience prosecuting complex securities class action cases such as this one. The Oregon DOJ was very impressed by BLBG's knowledge of the federal securities laws, expertise on class action procedure, sophisticated analysis of complex legal issues, and the respect the firm appears to command from its adversaries and in the federal courts. The Oregon DOJ appreciated that BLBG has the substantial experience and internal capacity to litigate against well-financed Wall Street institutions. BLBG is prepared to take securities litigation matters to trial, which helps facilitate favorable resolutions even when a case is resolved before trial. We also appreciated BLBG's substantial work in, among other things, reviewing millions of documents, taking the lead in offensive discovery and deposition practice, and briefing complex issues relating to the motion to dismiss, class certification motion and discovery motions. The Oregon DOJ was very well served in this Action by BLBG's legal counsel and strategic advice in leading this matter and bringing it to a successful resolution on behalf of Oregon and the class.

7. On behalf of Oregon, my staff and I had regular communications with both BLBG and Stoll Berne. Oregon—through the DOJ's and Oregon State Treasury's continuous involvement—supervised, monitored, and was actively involved in material aspects of the prosecution of the Action. Oregon received periodic status reports from Securities Counsel on case developments, and participated in discussions with attorneys from Securities Counsel concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, DOJ employees (and, at many times, Oregon State Treasury employees):

(a) participated in discussions concerning significant developments in the litigation, including case strategy;

(b) reviewed significant pleadings and briefs filed in the Action;

(c) supervised the production of discovery by Oregon, including document productions that resulted from the collection of documents from 25 separate current or former state employee custodians);

(d) reviewed written document requests and interrogatories and responses thereto;

(e) prepared for and sat for depositions in connection with Lead Plaintiff's class certification motion (indeed, six separate current employees of the Oregon DOJ or Oregon State Treasury sat for depositions in the case);

(f) consulted with Securities Counsel concerning the settlement negotiations as they progressed; and

(g) evaluated, approved and recommended approval to the Oregon Attorney General and the Oregon State Treasurer of the proposed settlement for \$180 million in cash.

8. Oregon was involved in both approving and overseeing the general strategy for the formal mediation and lengthy negotiations in this Action, which led to the settlement. In particular, I participated in telephone conversations, email communications and an in-person meeting in Salem, Oregon with Securities Counsel to discuss the settlement strategy and ultimately approve the settlement authority (in consultation with the Oregon Attorney General and Oregon State Treasurer) for resolving this Action, which settlement is, of course, subject to this Court's approval. Prior to and during the mediation and in the continued settlement negotiations thereafter, I conferred with Securities Counsel regarding the parties' respective positions, as did other DOJ employees.

9. Based on its involvement throughout the prosecution and resolution of the claims, Oregon strongly endorses the Settlement and believes it provides an excellent recovery for the Settlement Class, particularly in light of the substantial risks of continuing to prosecute the claims in the Action.

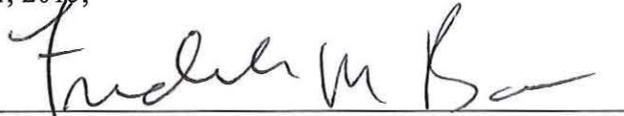
10. Oregon has approved Lead Counsel's request for an award of attorneys' fees in the amount of 25% of the Settlement Fund and believes that it is fair and reasonable in light of the work Securities Counsel performed on behalf of the Class. Oregon negotiated with BLBG and Stoll Berne prior to retaining those firms as Securities Counsel. Oregon reached an agreement with Securities Counsel that they would be paid based on a sliding scale percentage fee that gradually increased as the litigation continued, but would be capped at 25 percent following a decision on the motion to dismiss. Oregon takes seriously its role as a class representative to ensure that the attorneys' fees are fair in light of the result achieved for the class and reasonably compensate plaintiffs' counsel for the work involved and the substantial risks they undertook in litigating the Action. Oregon has evaluated Lead Counsel's fee request by considering the work performed, the risks presented, and the substantial recovery obtained for the Settlement Class.

11. Oregon further believes that the litigation expenses being requested for reimbursement by Securities Counsel are reasonable, and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with its obligation to the class to obtain the best result at the most efficient cost, Oregon fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

12. In conclusion, Oregon was closely involved throughout the prosecution and settlement of the claims in this Action, strongly endorses the Settlement as fair, reasonable and adequate, and believes that it represents a significant recovery for the Settlement Class. Accordingly, Oregon respectfully requests that the Court approve Lead Plaintiff's motion for final approval of the proposed Settlement and approval of the Plan of Allocation and Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses, as set forth above.

I declare under penalty of perjury under the laws of the United States of America that that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of Oregon.

Executed this 14th day of September, 2015,

A handwritten signature in cursive script, appearing to read "Frederick M. Boss", written over a horizontal line.

**Frederick M. Boss**  
Deputy Attorney General for the State of Oregon

# **Exhibit 2**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	) <b>CIVIL ACTION NO.</b>
	)	) MASTER FILE
BANK OF NEW YORK MELLON CORP.	)	) 12 MD 2335 (LAK)
FOREX TRANSACTIONS LITIGATION	)	)
	)	)
This Document Relates to: 11-CV-09175	)	)
	)	)
	)	)

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**DECLARATION OF LAYN R. PHILLIPS**

I, LAYN R, PHILLIPS, declare as follows:

1. I am filing this Declaration in my capacity as the mediator in connection with the proposed settlement of the securities claims concerning BNYM’s foreign exchange (FX) pricing practices asserted by Lead Plaintiff, the State of Oregon, by and through the Oregon State Treasurer on behalf of the Common School Fund and, together with the Oregon Public Employee Retirement Board on behalf of the Oregon Public Employee Retirement Fund (“Lead Plaintiff” or “Oregon”) and the Class against Defendants, The Bank of New York Mellon Corporation (“BNYM” or the “Bank”), its former CEO, Robert P. Kelly, its current CFO, Thomas P. Gibbons, its former CFO, Bruce W. Van Saun, its current Controller John A. Park and other key executives, including BNYM Managing Director, Jorge Rodriguez, and former Controller, Michael K. Hughey (collectively, the “Officer Defendants” and, together with BNYM, “Defendants”) in the above-captioned action (the “Securities Action”). I will note that I also served as mediator for multiple related actions concerning BNYM’s FX pricing practices, which were consolidated under the caption *In re: Bank of New York Mellon Corp. Forex Transactions Litigation*, 12 MD 2335 (LAK) (together with the Securities Action, the “Consolidated Actions”).

## **Background And Qualifications**

2. I am a former U.S. District Judge, a former United States Attorney, and a former litigation partner with the firm of Irell & Manella LLP. I currently serve as a mediator and arbitrator with my own alternative dispute resolution company, Phillips ADR Enterprises (“Phillips ADR”), which is based in Corona Del Mar, California. I am a member of the bars of Oklahoma, Texas, California and the District of Columbia, as well as the U.S. Courts of Appeals for the Ninth and Tenth Circuits and the Federal Circuit.

3. I earned my Bachelor of Science in Economics as well as my J.D. from the University of Tulsa. I also completed two years of L.L.M. work at Georgetown University Law Center in the area of economic regulation of industry. After serving as an antitrust prosecutor and an Assistant United States Attorney in Los Angeles, California, I was nominated by President Reagan to serve as a United States Attorney in Oklahoma, and did so for approximately four years.

4. I personally tried many cases and oversaw the trials of numerous other cases as a United States Attorney. While serving as a United States Attorney, I was nominated by President Reagan to serve as a District Judge for the Western District of Oklahoma. While on the bench, I presided over a total of more than 140 federal trials and sat by designation on the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico and Colorado.

5. I left the federal bench in 1991 and joined Irell & Manella, where for 23 years I specialized in alternative dispute resolution, complex civil litigation and internal investigations. In 2014, I left Irell & Manella to found my own company, Phillips ADR, which provides mediation and other alternative dispute resolution services.

6. Over the past 24 years, I have devoted a considerable amount of my professional life to serving as a mediator and arbitrator in connection with large, complex cases such as this one. I have successfully mediated numerous complex commercial cases, including dozens of securities class action cases.

**The January 2015 Mediation**

7. In November 2014, Plaintiffs' counsel contacted me with a request – which I understand they had already discussed with counsel for the other Plaintiffs in the Consolidated Actions as well as counsel for Defendants – that I attempt to mediate a resolution of Plaintiffs' claims against Defendants in the Consolidated Actions. I agreed to do so, and was able to schedule a two-day mediation session on January 19-20, 2015. In advance of that two-day session, the parties in the Consolidated Actions submitted and exchanged detailed omnibus mediation statements with supporting exhibits on January 7, 2015 and omnibus reply statements on January 12, 2015.

8. The Securities Action was discussed in each of Plaintiffs' and Defendants' mediation statements, including submissions concerning its strengths and weaknesses. I found these discussions to be extremely valuable in helping me to understand the relative merits of each party's positions in the Securities Action, and to identify the issues that were likely to serve as the primary drivers and obstacles to achieving a settlement. Counsel for Lead Plaintiffs in the Securities Action and for the Defendants each presented significant arguments regarding their clients' positions, and it was apparent to me that both sides possessed strong, non-frivolous arguments, and that neither side was assured of victory. Because the parties submitted their mediation statements and arguments in the context of a confidential mediation process pursuant to Federal Rule of Evidence 408, I cannot reveal their content. I can say, however, that the arguments

and positions asserted by all involved were the product of much hard work, and they were complex and highly adversarial. After reviewing all of the written mediation statements, I believed that this would be a difficult and adversarial process through which all involved would hold strong to their convictions that they had the better legal and substantive arguments, and that a resolution without further litigation was by no means certain.

9. With these issues, and many others in mind, we held an in-person mediation session over January 19 and 20, 2015 in New York City, which was attended by counsel for both Plaintiffs (Bernstein Litowitz Berger & Grossmann LLP and Stoll Stoll Berne Lokting & Schlachter, P.C.) Defendants (Kellogg, Huber, Hansen, Todd, Evans & Figel P.L.L.C. and Paul, Weiss, Rifkind, Wharton & Garrison LLP) in the Securities Action as well as counsel for the other parties in the Consolidated Actions. Over the course of those two days, I engaged in extensive discussions with counsel for both sides in an effort to find common ground between the parties' respective positions.

10. At the end of the first day, Lead Plaintiff's counsel prepared a brief written response to various issues raised by Defendants relating specifically to the Securities Action. Nevertheless, by roughly mid-day on the second day of the January mediation session, it was apparent to me and the parties that an amicable resolution of the Securities Action would not be reached at that time. Accordingly, we ended the January 2015 mediation session without a settlement.

#### **Continued Negotiations**

11. As the Court is aware, I was able to successfully mediate a resolution of most of the remaining consolidated actions on or around February 4, 2015. But the parties were unable to resolve the Securities Action at that time. Following the initial mediation session, the parties in the Securities Action and I continued to engage in communications by phone and in-person in an ongoing effort to resolve this dispute. On March 4, 2015, we held another in-person mediation

session at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP in New York with Lead Counsel from Bernstein Litowitz Berger & Grossmann LLP and counsel for Defendants in the Securities Action, as well as various representatives of BNYM's insurers, to engage in continued negotiations. In advance of the March 4, 2015 session, Defendants provided a supplemental mediation statement, and the Securities Plaintiffs provided me with a response. The March 4, 2015 mediation session also ended without a settlement agreement being reached. Subsequently, the parties continued to engage in informal settlement discussions directly, as well as through me.

12. As a result of these ongoing efforts, the parties were able to move closer towards a resolution. For example, in an effort to narrow the wide divergence between the parties' respective positions on settlement, I made multiple recommendations whereby the parties reduced their respective demands and offers to within a specified dollar-value range. The parties accepted each of these recommendations, which successfully narrowed the gap somewhat. But a final resolution still remained out of reach for many more weeks.

### **The Settlement**

13. On May 4, 2015, after even more negotiations and a significant amount of hard work by all parties, the discussions had reached a point where I felt that I could fruitfully make a mediators' proposal that the parties agree to settle at a specific number. In that regard, I made a final mediator's recommendation that the parties agree to resolve the Securities Action for a cash payment by BNYM of \$180 million. I requested that the parties respond to this recommendation by May 7, 2015 in a "double blind" process through which neither side would know whether or not the other side had accepted. On consent of all parties, the response deadline was extended to May 12, 2015. On May 12, 2015, I was pleased to announce that all parties had accepted my final

recommendation and reached an agreement in principle to settle the Securities Action for a \$180 million cash payment by BNYM for the benefit of the Class (the “Settlement”).

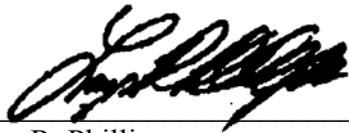
14. As discussed herein, it was an extremely hard-fought and difficult negotiation. I cannot delve into the specifics regarding each party’s positions and thinking due to the fact that many discussions occurred during confidential mediation sessions. However, I can say that there were many complex issues that required complex thought and solutions. I can also attest that the negotiations were vigorous, fully at arm’s-length and conducted in good faith, with no collusion whatsoever.

15. Based on my experience as a litigator, a former U.S. District Judge and a mediator, I believe this settlement represents a recovery and outcome that is reasonable and fair for the Class and all parties involved. I further believe it was in the best interests of all of the parties that they avoid the burdens and risks associated with taking a case of this size and complexity to trial, and that they agree upon the settlement now before the Court. In sum, I strongly support the approval of the Settlement in all respects.

16. Lastly, the advocacy on both sides of the case was outstanding. I have experience with the principal attorneys working on this case for Lead Plaintiffs (from the law firm of Bernstein Litowitz Berger & Grossmann LLP) from other cases I have mediated, and I was familiar with the effort, creativity, and zeal they put into their work. I expected that they would represent their clients and the Class in the same manner here, as they did. Similarly, the advocacy from counsel representing Defendants (from the Kellogg, Huber, Hansen, Todd, Evans & Figel P.L.L.C. firm) was of the highest caliber and they also exhibited enormous effort, creativity and zeal in their defense of the Securities Action. Defendants in the Securities Action also received top-quality advice from the firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP in connection with the

mediation process of the Securities Action. All counsel displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients. The settlement is a direct result of all counsel's experience, reputation and ability in these types of cases.

Dated: September 12, 2015



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Layn R. Phillips

# **Exhibit 3**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	<b>CIVIL ACTION NO.</b>
BANK OF NEW YORK MELLON CORP.	)	MASTER FILE
FOREX TRANSACTIONS LITIGATION	)	12 MD 2335 (LAK)
	)	
This Document Relates to: 11-CV-09175	)	
	)	
	)	

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**DECLARATION OF STEPHANIE A. THURIN REGARDING: (A) MAILING OF THE NOTICE AND PROOF OF CLAIM FORM; (B) PUBLICATION OF THE SUMMARY NOTICE; AND (C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

I, Stephanie A. Thurin, declare and state as follows:

1. I am a Project Manager employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”). Pursuant to the Court’s July 23, 2015 Notice Order Concerning Proposed Settlement (ECF No. 270) (“Notice Order”), Epiq was authorized to act as the Claims Administrator in connection with the Settlement of the above-captioned action.<sup>1</sup> The following statements are based on my personal knowledge and information provided by other Epiq employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

**DISSEMINATION OF THE NOTICE PACKET**

2. Pursuant to the Notice Order, Epiq mailed the Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Notice”) and the Proof of Claim and Release Form (the “Claim Form”)

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<sup>1</sup>Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Stipulation and Agreement of Settlement dated as of June 23, 2015 (ECF No. 266-1) (the “Stipulation”).

(collectively, the Notice and Claim Form are referred to as the “Notice Packet”), to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

3. On July 22, 2015, Epiq received an excel file from Lead Counsel that had been received from Defense Counsel, with a total of 30,996 names and addresses of potential Settlement Class Members for initial noticing. Epiq extracted these names and addresses and after clean-up and de-duplication there remained 30,996 unique names and addresses. Epiq formatted the Notice Packet, and caused it to be printed, personalized with the name and address of each potential Settlement Class Member, posted for first-class mail, postage prepaid, and mailed to these 30,996 potential Settlement Class Members on July 29, 2015.

4. As in most class actions of this nature, the large majority of potential Settlement Class Members are beneficial purchasers whose securities are held in “street name” – *i.e.*, the securities are purchased by brokerage firms, banks, institutions and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. Epiq maintains and updates an internal list of the largest and most common banks, brokers and other nominees. At the time of the initial mailing, Epiq’s internal broker list contained 1,671 mailing records. On July 30, 2015, Epiq caused additional Notice Packets to be mailed to the 1,671 mailing records contained in its internal broker list.

5. In total, 32,667 copies of the Notice Packet were mailed to potential Settlement Class Members and nominees by first-class mail by July 30, 2015.

6. The Notice directed those who purchased or otherwise acquired the common stock of The Bank of New York Mellon Corporation for the beneficial interest of a person or organization other than themselves to either: (i) request within seven (7) calendar days of receipt of the Notice additional copies of the Notice Packet for such beneficial owners from the Claims

Administrator, and send a copy of the Notice Packet to such beneficial owners, no later than seven (7) calendar days after such nominees' receipt of the additional copies of the Notice Packet; or (ii) provide to Epiq the names and addresses of such beneficial owners no later than seven (7) calendar days after such nominees' receipt of the Notice.

7. Through September 11, 2015, Epiq mailed an additional 770,077 Notice Packets to potential members of the Settlement Class whose names and addresses were received from individuals or nominees requesting that Notice Packets be mailed to such persons, and mailed another 131,888 Notice Packets to nominees who requested Notice Packets to forward to their customers. Each of the requests was responded to in a timely manner, and Epiq will continue to timely respond to any additional requests received.

8. As of September 11, 2015, an aggregate of 934,632 Notice Packets had been disseminated to potential Settlement Class Members and nominees by first-class mail. In addition, Epiq has re-mailed 158 Notice Packets to persons whose original mailing was returned by the U.S. Postal Service and for whom updated addresses were provided to Epiq by the Postal Service.

#### **PUBLICATION OF THE SUMMARY NOTICE**

9. In accordance with paragraph 6(d) of the Notice Order, Epiq caused the Summary Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Notice") to be published once in the national edition of *The Wall Street Journal* and to be transmitted over the *PR Newswire* on August 11, 2015. Attached as Exhibit B is a Confirmation of Publication attesting to the

publication of the Summary Notice in *The Wall Street Journal*. Attached as Exhibit C is a screen shot attesting to the transmittal of the Summary Notice over the *PR Newswire*.

### **CALL CENTER SERVICES**

10. Epiq reserved a toll-free phone number for the Settlement, (877) 819-9774, which was set forth in the Notice, the Claim Form, the published Summary Notice, and on the Settlement website.

11. The toll-free number connects callers with an Interactive Voice Recording (“IVR”). The IVR provides callers with pre-recorded information, including a brief summary about the Action and the option to request a copy of the Notice. The toll-free telephone line with pre-recorded information is available 24 hours a day, 7 days a week.

12. Epiq made the IVR available on July 29, 2015, the same date Epiq began mailing the Notice Packets.

13. In addition, Monday through Friday from 6:00 a.m. to 6:00 p.m. Pacific Time (excluding official holidays), callers are able to speak to a live operator regarding the status of the Action and/or obtain answers to questions they may have about communications they receive from Epiq. During other hours, callers may leave a message for an agent to call them back.

### **WEBSITE**

14. Epiq established and is maintaining a website dedicated to this Settlement ([www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com)) to provide additional information to Settlement Class Members. Users of the website can download copies of the Notice, the Claim Form, the Stipulation, and the Notice Order, among other relevant documents. The web address was set forth in the published Summary Notice, the Notice, and on the Claim Form. The website was operational beginning on July 29, 2015, and is accessible 24 hours a day, 7 days a week. Epiq

will continue operating, maintaining and, as appropriate, updating the website until the conclusion of this administration.

### EXCLUSION REQUESTS

15. Pursuant to the Notice Order, Settlement Class Members who wish to be excluded from the Settlement Class are required to request exclusion in writing so that the request is received by September 29, 2015. This deadline has not yet passed. As of the date of this Declaration, Epiq has received 23 requests for exclusion. Epiq will submit a supplemental declaration after the September 29, 2015 deadline for requesting exclusion that will address all requests received.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on September 11, 2015, at Beaverton, Oregon.



Stephanie A. Thurin

# **Exhibit A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

BANK OF NEW YORK MELLON CORP.  
FOREX TRANSACTIONS LITIGATION

This Document Relates to: 11-CV-09175

CIVIL ACTION NO.  
MASTER FILE  
12 MD 2335 (LAK)

**NOTICE OF (I) PENDENCY OF CLASS ACTION,  
CERTIFICATION OF SETTLEMENT CLASS, AND PROPOSED SETTLEMENT;  
(II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

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

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned securities class action (the "Action") pending in the United States District Court for the Southern District of New York (the "Court"), if you purchased the common stock of The Bank of New York Mellon Corporation ("BNYM") during the period beginning on February 28, 2008 through and including October 4, 2011 (the "Settlement Class Period") and were damaged thereby.<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiff, on behalf of itself and the Settlement Class (as defined in ¶ 26 below), has reached a proposed settlement of the Action for \$180,000,000 in cash that, if approved, will resolve all claims in the Action (the "Settlement").

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.**

**If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact BNYM, any other Defendants in the Action, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 85 below).**

1. **Description of the Action:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors alleging, among other things, that defendants BNYM, and Robert P. Kelly, Bruce W. Van Saun, Thomas P. Gibbons, Jorge Rodriguez, Michael K. Hughey, and John A. Park (collectively, the "Individual Defendants" and, together with BNYM, the "Defendants") violated the federal securities laws by making, or controlling others who made, false and misleading statements or failing to disclose material facts regarding BNYM's foreign-exchange pricing practices. A more detailed description of the Action is set forth in paragraphs 11-25 below. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class, as defined in paragraph 26 below.

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, Lead Plaintiff, on behalf of itself and the Settlement Class, has agreed to settle the Action in exchange for a settlement payment of \$180,000,000 in cash (the "Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (the "Settlement Fund") less (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court, and (d) any attorneys' fees awarded by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Settlement Class. The proposed plan of allocation (the "Plan of Allocation") is set forth on pages 8-11 below.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiff's damages expert's estimate of the number of shares of BNYM common stock that may have been affected by the conduct at issue in the Action, and assuming that all those shares participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses and costs as described herein) per affected share of BNYM common stock would be approximately \$0.22.<sup>2</sup> Settlement Class Members should note, however, that the foregoing average recovery per share is only an estimate based on the overall number of potentially affected shares in the Settlement Class. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and at what prices they purchased or sold their BNYM stock, and the total number of valid claim forms submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth herein (*see* pages 8-11 below) or such other plan of allocation as may be ordered by the Court.

<sup>1</sup> Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated June 23, 2015 (the "Stipulation"), which is available at [www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com).

<sup>2</sup> An allegedly affected share might have been traded more than once during the Settlement Class Period, and this average recovery would be the total for all purchasers of that share.

4. **Average Amount of Damages Per Share:** The Parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiff were to prevail in the Action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Settlement Class as a result of their conduct.

5. **Attorneys' Fees and Expenses Sought:** Plaintiffs' Counsel, which have been prosecuting the Action on a wholly contingent basis since its inception, have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP, will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 25% of the Settlement Fund. In addition, Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against the Defendants, in an amount not to exceed \$3,000,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. If the Court approves Lead Counsel's fee and expense application, the average cost per affected share of BNYM common stock will be approximately \$0.06.

6. **Identification of Attorneys' Representative:** Lead Plaintiff and the Settlement Class are represented by John C. Browne, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, NY 10019, 1-800-380-8496, blbg@blbglaw.com.

7. **Reasons for the Settlement:** Lead Plaintiff's principal reason for entering into the Settlement is the substantial immediate cash benefit for the Settlement Class without the risk or the delays inherent in further litigation. Moreover, the substantial cash benefit provided under the Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved after contested motions, a trial of the Action and likely appeals that would follow a trial, a process that could be expected to last several years. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN DECEMBER 11, 2015.</b>	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (defined in ¶ 35 below) that you have against Defendants and the other Defendants' Releasees (defined in ¶ 36 below), so it is in your interest to submit a Claim Form.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN SEPTEMBER 29, 2015.</b>	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants or the other Defendants' Releasees concerning the Released Plaintiffs' Claims.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN SEPTEMBER 29, 2015.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
<b>GO TO A HEARING ON OCTOBER 20, 2015 AT 10:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN SEPTEMBER 29, 2015.</b>	Filing a written objection and notice of intention to appear by September 29, 2015 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
<b>DO NOTHING.</b>	If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

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## WHY DID I GET THIS NOTICE?

8. The Court directed that this Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased BNYM common stock during the Settlement Class Period. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights. If the Court approves the Settlement, and the Plan of Allocation (or some other plan of allocation), the claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation and the motion by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Hearing"). See paragraph 76 below for details about the Settlement Hearing, including the date and location of the hearing.

10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

## WHAT IS THIS CASE ABOUT?

11. On December 14, 2011, a class action complaint was filed in the United States District Court for the Southern District of New York (the "Court"), styled *Louisiana Municipal Police Employees' Retirement System vs. The Bank of New York Mellon Corporation et al.*, 11 Civ. 9175 (LAK) (the "Securities Action" or the "Action").

12. By Order dated March 29, 2012, the Court appointed the State of Oregon, by and through the Oregon State Treasurer on behalf of the Common School Fund and, together with the Oregon Public Employee Retirement Board on behalf of the Oregon Public Employee Retirement Fund ("Lead Plaintiff" or "Oregon") as Lead Plaintiff for the consolidated action and approved Lead Plaintiff's selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the class ("Lead Counsel").

13. By Order dated April 27, 2012, the Court consolidated the Securities Action for pretrial purposes with certain other actions concerning BNYM's foreign-exchange practices. The consolidated litigation is captioned: *In re: Bank of New York Mellon Corp. Forex Transactions Litigation*, 12 MD 2335 (LAK) (the "MDL Litigation").

14. On May 11, 2012, Lead Plaintiff filed and served its Consolidated Class Action Complaint (the "Complaint") asserting claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, against Defendants BNYM and the Individual Defendants and under Section 20(a) of the Exchange Act against the Individual Defendants. Among other things, the Complaint alleged that Defendants made materially false and misleading statements and omissions concerning BNYM's standing-instruction foreign-exchange business and revenues derived therefrom which caused the price of BNYM common stock to be artificially inflated during the class period.

15. The Complaint also asserted claims under Sections 11, 12(a)(2) and/or 15 of the Securities Act of 1933 against BNYM, certain of the Individual Defendants, the Former Director Defendants and the Former Underwriter Defendants arising from secondary offerings of BNYM common stock on May 11, 2009 and June 3, 2010. On March 23, 2015, the Court entered a Stipulation and Order dismissing those claims with prejudice.

16. On June 22, 2012, Defendants served motions to dismiss the Complaint. On July 30, 2012, Lead Plaintiff served its papers in opposition and, on August 17, 2012, Defendants served their reply papers. On June 10, 2013, the Court denied Defendants' motions without prejudice to renewal on motion for summary judgment to the extent that the arguments made in these motions were not foreclosed by the Court's rulings in certain related actions.

17. On September 15, 2013, Defendants filed and served their answers to the Complaint.

18. Fact discovery in the Securities Action took place from mid-2013 to March 27, 2015. During the course of this discovery, more than 20 million pages of documents were produced. Plaintiffs' Counsel reviewed and analyzed these documents for use in conjunction with the dozens of fact depositions which Plaintiffs' Counsel took or defended or in which they otherwise participated. Additionally, multiple discovery motions were litigated.

19. On March 27, 2015, Lead Plaintiff filed its motion for class certification. The motion was vigorously contested. Defendants filed their opposition on April 27, 2015. The Parties completed class-related expert discovery, which included Lead Plaintiff's damages expert preparing a detailed expert report on market efficiency and other matters at issue in the Action.

20. On January 19 and 20, 2015, Lead Counsel, Defendants' Counsel, the U.S. Attorney's Office and counsel for other plaintiffs in the MDL Litigation participated in a two-day mediation session before the Hon. Layn R. Phillips, former United States District Court Judge for the Western District of Oklahoma. In advance of the mediation, the parties exchanged detailed mediation statements and exhibits. The mediation ended without a settlement agreement being reached in the Securities Action. Lead Counsel and Defendants' Counsel participated in an additional mediation session dedicated to the Securities Action before Judge Phillips on March 4, 2015, in advance of which the Defendants provided a supplemental mediation statement. This mediation also ended without a settlement agreement being reached in the Securities Action. Following these mediation sessions, Lead Counsel and Defendants' Counsel continued to engage in informal settlement discussions directly as well as through Judge Phillips. Judge Phillips ultimately made a mediator's proposal.

21. On May 12, 2015, Lead Counsel and Defendants' Counsel participated in a settlement conference before the Hon. Lewis A. Kaplan. Shortly thereafter, the Parties accepted Judge Phillips' mediator's proposal and reached an agreement in principle to settle the Action that was memorialized in a term sheet (the "Term Sheet") executed on May 21, 2015. The Term Sheet sets forth, among other things, the Parties' agreement to settle and release all claims asserted against Defendants in the Action in return for a cash payment by or on behalf of Defendants of \$180 million for the benefit of the Settlement Class.

22. As noted, the proposed Settlement Amount is the amount proposed by Judge Phillips, who mediated this case along with several other matters arising out of the same underlying facts. His recommendation was based on his neutral evaluation of the risks facing all parties. He made his recommendation based on his review and consideration of all of the orders issued as of the date of his proposal, the evidence and arguments offered by all parties, and the substantial risks to all parties that the future litigation landscape presented. Judge Phillips is of the opinion that: "the proposed Settlement is the result of vigorous arm's-length negotiations by the Parties." Moreover, based on his extensive discussions with all parties and their counsel and the information made available to him both before and during the mediation sessions, his opinion is that "the Settlement was negotiated in good faith and the Settlement is fair and reasonable." He has indicated that he "strongly support[s] the approval of the Settlement in all respects."

23. Based on their investigation and prosecution of the case, Lead Plaintiff and Lead Counsel have concluded that the terms and conditions of the proposed Settlement are fair, reasonable and adequate to members of the Settlement Class and in their best interests. Based on Lead Plaintiff's direct oversight of the prosecution of this matter and with the advice of its counsel, Lead Plaintiff has agreed to settle and release the claims raised in the Action pursuant to the terms and provisions of the Stipulation, after considering (a) the substantial financial benefit that Lead Plaintiff and the other members of the Settlement Class will receive under the proposed Settlement; (b) the significant risks of continued litigation and trial; and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of the Stipulation.

24. Defendants are entering into the Stipulation solely to eliminate the uncertainty, burden and expense of further protracted litigation. Each of the Defendants denies any wrongdoing, and the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, or any other of the Defendants'

Releasees (defined in ¶ 36 below), with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted. Similarly, the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Lead Plaintiff or any of the other Plaintiffs' Releasees of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit.

25. On July 23, 2015, the Court entered the Notice Order Concerning Proposed Settlement, which authorized this Notice to be disseminated to potential Settlement Class Members and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?  
WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

26. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

all persons and entities who or which purchased BNYM common stock during the period beginning on February 28, 2008 through and including October 4, 2011, inclusive (the "Settlement Class Period") and were damaged thereby.

Excluded from the Settlement Class are (i) Defendants; (ii) BNYM's subsidiaries and affiliates in which BNYM has a majority ownership interest; (iii) any person who is, or was at any time during the Settlement Class Period, an Officer or director of BNYM; (iv) the members of the Immediate Family of each of the Individual Defendants or of any other person who is, or was at any time during the Settlement Class Period, an Officer or director of BNYM; (v) the Former Underwriter Defendants and their respective Officers and directors at any time during the Settlement Class Period or currently; (vi) the members of the Immediate Families of each person who is, or was at any time during the Settlement Class Period, an Officer or director of any of the Former Underwriter Defendants; and (vii) any entity in which any of the foregoing, at any time during the Settlement Class Period, held or as of May 21, 2015 held a majority interest; provided, however, that any Investment Vehicle<sup>3</sup> shall not be deemed an excluded person by definition. Also excluded from the Settlement Class are any persons or entities who or which exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. See "What if I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself," on page 11 below.

**PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.**

**IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN DECEMBER 11, 2015.**

**WHAT ARE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENT?**

27. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the remaining Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. Lead Plaintiff faced many challenges in developing the factual record necessary to support the underlying allegations about BNYM's foreign-exchange pricing practices, BNYM's duties and obligations to its custody clients, and the information that was conveyed to the market about those practices. Additionally, in order to prove its claims under the securities laws, Lead Plaintiff would have had to establish that the alleged misrepresentations impacted the price of BNYM's common stock. Lead Plaintiff would also have been required to show at summary judgment and prove at trial that the alleged misrepresentations regarding BNYM's foreign-exchange pricing practices were material to investors in BNYM common stock. Finally, even if Lead Plaintiff were successful in establishing liability and certifying a class, there remained significant risks to establishing damages under the securities laws. Defendants proffered multiple arguments in support of their contention that declines in BNYM's stock price were not caused by revelations of the alleged false or misleading statements about BNYM's foreign-exchange business. For example, Defendants could argue that the declines in the prices of BNYM common stock that followed certain of the alleged corrective disclosures of BNYM's misstatements were not statistically significant when

<sup>3</sup> "Investment Vehicle" means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which BNYM or any of the Former Underwriter Defendants, have, has or may have a direct or indirect interest, or as to which any of their respective affiliates may act as an investment advisor but of which BNYM or any Former Underwriter Defendant or any of their respective affiliates is not a majority owner or does not hold a majority beneficial interest. This definition of Investment Vehicle does not bring into the Settlement Class BNYM or any of the Former Underwriter Defendants or any other Person who is excluded from the Settlement Class by definition.

viewed in light of broader market movements and the historical pricing patterns of BNYM common stock and that the disclosures that *did* result in statistically significant price declines, did not actually reveal any new information concerning the alleged fraud. If Defendants were successful in all or some of their loss causation arguments, it would have substantially reduced or eliminated the class's claim to compensable damages. Further, Lead Plaintiff would have had to prevail at several stages – a motion for summary judgment, trial, and if they prevailed on those, on the appeals that were likely to follow. Thus, there were very significant risks attendant to the continued prosecution of the Action.

28. In light of these risks, the amount of the Settlement and the immediacy of recovery to the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, namely \$180,000,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no recovery after summary judgment, trial and appeals, possibly years in the future.

29. Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement solely to eliminate the uncertainty, burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by Defendants.

### **WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

30. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of its claims against Defendants, neither Lead Plaintiff nor the other members of the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, either at summary judgment, at trial or on appeal, the Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all.

### **HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED BY THE ACTION AND THE SETTLEMENT?**

31. As a Settlement Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” below.

32. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?,” below.

33. If you are a Settlement Class Member and you wish to object to the Settlement, the Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” below.

34. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiffs' Claim (as defined in ¶ 35 below) against the Defendants and the other Defendants' Releasees (as defined in ¶ 36 below), and shall forever be enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

35. “Released Plaintiffs' Claims” means any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, whether known or Unknown Claims, whether arising under any federal law, state, foreign or statutory law, common law or administrative law, or any other law, rule or regulation, whether fixed or contingent, accrued or not accrued, matured or unmatured, liquidated or unliquidated, at law or in equity, whether class or individual in nature, that Lead Plaintiff or any other member of the Settlement Class (a) asserted in the Complaint, or (b) could have asserted in the Action or in any other action or in any forum that arise out of, are based upon, or relate to the allegations, transactions, facts, matters, occurrences, disclosures, statements, representations or omissions or failures to act involved, set forth, or referred to in the Complaint and that relate to the purchase of BNYM common stock during the Settlement Class Period. Released Plaintiffs' Claims do not include (i) any claims asserted in all derivative actions that have been filed, including but not limited to: *In re Bank of New York Mellon*

*Corp. State Derivative Litig.*, No. 112133/2011 (N.Y. Sup. Ct.) and *Simon v. Hassell, et al.*, No. 100640/2012 (N.Y. Sup. Ct.); (ii) any books and records demands made, including but not limited to: *Kops v. The Bank of New York Mellon Corporation*, C.A. No. 8064 (Del. Ch. Ct.) (Nos. BL-93, BL-94); *Kops v. Bank of New York Mellon Corp.*, C.A. No. 10146-VCG (Del. Ch. Ct.) (No. BL-54); and *Zucker v. Bank of New York Mellon Corp.*, C.A. No. 10102-VCG (Del. Ch. Ct.) (No. BL-67); (iii) any claims relating to the enforcement of the Settlement; and (iv) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court.

36. “Defendants’ Releasees” means Defendants, the Former Underwriter Defendants,<sup>4</sup> and the current and former parents, subsidiaries and divisions of BNYM or the Former Underwriter Defendants, and entities in which any Defendant or Former Underwriter Defendant holds a majority interest, and the predecessors and successors of each of them, and the current and former officers, directors (including the Former Director Defendants<sup>5</sup>), and employees of each of them in their capacities as such, and the providers of primary and excess directors and officers liability insurance to the Defendants,<sup>6</sup> including such providers’ respective parents, subsidiaries and reinsurers and their directors, officers, and employees in their capacities as such.

37. “Unknown Claims” means any Released Claims which Lead Plaintiff or any other Settlement Class Member, each of the Defendants or any of the other Releasees, does not know or suspect to exist in his, her or its favor at the time of the release of each or any of the other Releasees, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the Defendants shall expressly waive, and each of the other Settlement Class Members and each of the other Releasees shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and each of the Defendants acknowledge, and each of the other Settlement Class Members and each of the other Releasees shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

38. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants’ Claim (as defined in ¶ 39 below) against Lead Plaintiff and the other Plaintiffs’ Releasees (as defined in ¶ 40 below), and shall forever be enjoined from prosecuting any or all of the Released Defendants’ Claims against any of the Plaintiffs’ Releasees.

39. “Released Defendants’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate to the institution, prosecution, or settlement of the claims asserted in the Action against the Defendants. Released Defendants’ Claims do not include any claims relating to the enforcement of the Settlement or any claims against any Person who submits a request for exclusion from the Settlement Class that is accepted by the Court.

40. “Plaintiffs’ Releasees” means Lead Plaintiff, all other plaintiffs in the Action, their respective attorneys, and all other Settlement Class Members, and their respective current and former officers, directors, agents, parents, affiliates, subsidiaries, successors, predecessors, assigns, employees, and attorneys, in their capacities as such.

## HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

41. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation ***postmarked no later than December 11, 2015***. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, [www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-877-819-9774. Please retain all records of your ownership of

<sup>4</sup> The “Former Underwriter Defendants” are Barclays Capital Inc., BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Inc., and UBS Securities LLC.

<sup>5</sup> The “Former Director Defendants” are Ruth E. Bruch, Nicholas M. Donofrio, Steven G. Elliott, Gerald L. Hassell, Edmund F. Kelly, Richard J. Kogan, Michael J. Kowalski, John A. Luke, Jr., Robert Mehrabian, Mark A. Nordenberg, Catherine A. Rein, William C. Richardson, Samuel C. Scott III, John P. Surma, and Wesley W. von Schack.

<sup>6</sup> The providers of such insurance are XL Specialty Insurance Company, U.S. Specialty Insurance Company, ACE American Insurance Company, Illinois National Insurance Company, Hartford Accident and Indemnity Company, Endurance Specialty Insurance Ltd., and Allied World Assurance Company Ltd.

and transactions in BNYM common stock, as they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

### HOW MUCH WILL MY PAYMENT BE?

42. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

43. Pursuant to the Settlement, Defendants have agreed to pay or cause to be paid one hundred eighty million dollars (\$180,000,000) in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less (a) all federal, state and/or local taxes on any income earned by the Settlement Fund and the expenses and costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members; and (c) any attorneys’ fees and Litigation Expenses awarded by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

44. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

45. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court’s order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund or the plan of allocation.

46. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

47. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form *postmarked no later than December 11, 2015* shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiffs’ Claims (as defined in ¶ 35 above) against the Defendants’ Releasees (as defined in ¶ 36 above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs’ Claims against any of the Defendants’ Releasees whether or not such Settlement Class Member submits a Claim Form.

48. Participants in and beneficiaries of a plan covered by ERISA (“ERISA Plan”) should NOT include any information relating to their transactions in BNYM common stock held through the ERISA Plan in any Claim Form that they may submit in this Action. They should include ONLY those shares that they purchased or acquired outside of the ERISA Plan. Claims based on any ERISA Plan’s purchases of BNYM stock during the Settlement Class Period may be made by the plan’s trustees. To the extent any of the Defendants or any of the other persons or entities excluded from the Settlement Class are participants in the ERISA Plan, such persons or entities shall not receive, either directly or indirectly, any portion of the recovery that may be obtained from the Settlement by the ERISA Plan.

49. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member.

50. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim Form.

51. Only Settlement Class Members, *i.e.*, persons and entities who purchased BNYM common stock during the Settlement Class Period and were damaged as a result of such purchases, will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. The only security included in the Settlement is BNYM common stock.

### PROPOSED PLAN OF ALLOCATION

52. The objective of the Plan of Allocation is to equitably distribute the Settlement proceeds to those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

53. In developing the Plan of Allocation, Lead Plaintiff's damages expert calculated the potential amount of estimated alleged artificial inflation in the per share closing prices of BNYM common stock which allegedly was proximately caused by Defendants' alleged false and misleading statements and material omissions. In calculating the estimated alleged artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Lead Plaintiff's damages expert considered price changes in BNYM common stock in reaction to certain public announcements regarding BNYM in which such misrepresentations and material omissions were alleged to have been revealed to the market, adjusting for price changes that were attributable to market or industry forces, the allegations in the Complaint and the evidence developed in support thereof, as advised by Lead Counsel. The estimated potential alleged artificial inflation in BNYM common stock is shown in Table A set forth at the end of this Notice.

54. In order to have recoverable damages, disclosure of the alleged misrepresentations or omissions must be the cause of the decline in the price of the BNYM common stock. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted material facts from February 28, 2008 through and including October 4, 2011, which had the effect of artificially inflating the prices of BNYM common stock. Alleged corrective disclosures that removed the artificial inflation from the price of BNYM common stock occurred on February 2, 2011 (after the close of trading); February 3, 2011 (after the close of trading); February 14, 2011 (after the close of trading); April 19, 2011 (prior to the opening of trading); August 11, 2011 (after the close of trading); and October 4, 2011 (after the close of trading). These alleged corrective disclosures impacted the market price of BNYM common stock in a statistically significant manner. Accordingly, in order to have a Recognized Loss Amount:

- (a) BNYM common stock purchased from February 28, 2008 through and including February 2, 2011 must have been held through the close of trading on February 2, 2011 and must have suffered a loss.
- (b) BNYM common stock purchased on February 3, 2011 must have been held at least through the next corrective disclosure, *i.e.*, through the close of trading on February 3, 2011 and must have suffered a loss.
- (c) BNYM common stock purchased on February 4, 2011 through and including February 14, 2011 must have been held at least through the next corrective disclosure, *i.e.*, through the close of trading on February 14, 2011 and must have suffered a loss.
- (d) BNYM common stock purchased on February 15, 2011 through and including April 18, 2011 must have been held at least through the next corrective disclosure, *i.e.*, through the close of trading on April 18, 2011 and must have suffered a loss.
- (e) BNYM common stock purchased on April 19, 2011 through and including August 11, 2011 must have been held at least through the next corrective disclosure, *i.e.*, through the close of trading on August 11, 2011 and must have suffered a loss.
- (f) BNYM common stock purchased on August 12, 2011 through and including October 4, 2011 must have been held at least through the next corrective disclosure, *i.e.*, through the close of trading on October 4, 2011 and must have suffered a loss.

55. To the extent a Claimant does not satisfy one of the conditions set forth in the preceding paragraph, his, her or its Recognized Loss Amount for those transactions will be zero.

#### **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

56. Based on the formula set forth below, a "Recognized Loss Amount" shall be calculated for each purchase of BNYM common stock during the Settlement Class Period that is listed in the Proof of Claim Form and for which adequate documentation is provided. In the calculations below, if a Recognized Loss Amount calculates to a negative number, that Recognized Loss Amount shall be zero.

57. For each share of BNYM common stock purchased between February 28, 2008 and the close of trading on October 4, 2011, inclusive, and:

- (a) Sold between February 28, 2008 and the close of trading on October 4, 2011, the Recognized Loss Amount shall be ***the lesser of***: (i) the amount of artificial inflation per share as set forth in Table A on the date of purchase ***minus*** the amount of artificial inflation per share as set forth in Table A on the date of the sale; or (ii) the purchase price ***minus*** the sale price.
- (b) Sold between October 5, 2011 and the close of trading on December 30, 2011,<sup>7</sup> the Recognized Loss Amount shall be ***the least of***: (i) the amount of artificial inflation per share as set forth in Table A on the date of purchase;

<sup>7</sup> Pursuant to Section 21D(e)(1) of the PSLRA, "in any private action arising under this Act in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the PSLRA, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of BNYM common stock during the 90-day look-back period (December 30, 2011 was the last trading day during the 90-day look-back period). The mean (average) closing price for BNYM common stock for the 90-day look-back period was \$19.68.

(ii) the purchase price *minus* the sale price; or (iii) the purchase price *minus* the average closing price between October 5, 2011 and the date of sale as shown on Table B set forth at the end of this Notice.

- (c) Held as of the close of trading on December 30, 2011, the Recognized Loss Amount shall be *the lesser of*: (i) the amount of artificial inflation per share as set forth in Table A on the date of purchase; or (ii) the purchase price *minus* \$19.68, the average closing price for BNYM common stock between October 5, 2011 and December 30, 2011 (the last entry on Table B).

#### **ADDITIONAL PROVISIONS**

58. The Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined in paragraph 61 below) is \$20.00 or greater.

59. If a Settlement Class Member has more than one purchase or sale of BNYM common stock, purchases and sales shall be matched on a First In, First Out (“FIFO”) basis. Settlement Class Period sales will be matched first against any holdings at the beginning of the Settlement Class Period, and then against purchases in chronological order, beginning with the earliest purchase made during the Settlement Class Period.

60. A Claimant’s “Recognized Claim” under the Plan of Allocation shall be the sum of his, her or its Recognized Loss Amounts.

61. The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a “Distribution Amount” will be calculated for each Authorized Claimant, which shall be the Authorized Claimant’s Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If any Authorized Claimant’s Distribution Amount calculates to less than \$20.00, it will not be included in the calculation and no distribution will be made to such Authorized Claimant.

62. Purchases and sales of BNYM common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance or operation of law of BNYM common stock during the Settlement Class Period shall not be deemed a purchase or sale of BNYM common stock for the calculation of an Authorized Claimant’s Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase of BNYM common stock unless (i) the donor or decedent purchased such BNYM common stock during the Settlement Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to those shares; and (iii) it is specifically so provided in the instrument of gift or assignment.

63. The date of covering a “short sale” is deemed to be the date of purchase of the BNYM common stock. The date of a “short sale” is deemed to be the date of sale of the BNYM common stock. Under the Plan of Allocation, however, the Recognized Loss Amount on “short sales” is zero. In the event that a Claimant has an opening short position in BNYM common stock, the earliest Settlement Class Period purchases shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

64. Option contracts are not securities eligible to participate in the Settlement. With respect to BNYM common stock purchased or sold through the exercise of an option, the purchase/sale date of the BNYM common stock is the exercise date of the option and the purchase/sale price of the BNYM common stock is the exercise price of the option.

65. To the extent a Claimant had a market gain with respect to his, her, or its overall transactions in BNYM common stock during the Settlement Class Period, the value of the Claimant’s Recognized Claim shall be zero. Such Claimants shall in any event be bound by the Settlement. To the extent that a Claimant suffered an overall market loss with respect to his, her, or its overall transactions in BNYM common stock during the Settlement Class Period, but that market loss was less than the total Recognized Claim calculated above, then the Claimant’s Recognized Claim shall be limited to the amount of the actual market loss.

66. For purposes of determining whether a Claimant had a market gain with respect to his, her, or its overall transactions in BNYM common stock during the Settlement Class Period or suffered a market loss, the Claims Administrator shall determine the difference between (i) the Total Purchase Amount<sup>8</sup> and (ii) the sum of the Total Sales Proceeds<sup>9</sup> and Holding Value.<sup>10</sup> This difference shall be deemed a Claimant’s market gain or loss with respect to his, her, or its overall transactions in BNYM common stock during the Settlement Class Period.

<sup>8</sup> The “Total Purchase Amount” is the total amount the Claimant paid (excluding commissions and other charges) for all BNYM common stock purchased during the Settlement Class Period.

<sup>9</sup> The Claims Administrator shall match any sales of BNYM common stock during the Settlement Class Period, first against the Claimant’s opening position in BNYM common stock (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (excluding commissions and other charges) for the remaining sales of BNYM common stock sold during the Settlement Class Period shall be the “Total Sales Proceeds.”

<sup>10</sup> The Claims Administrator shall ascribe a value of \$18.28 per share for BNYM common stock purchased during the Settlement Class Period and still held as of the close of trading on October 4, 2011 (the “Holding Value”).

67. After the initial distribution of the Net Settlement Fund, the Claims Administrator shall make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund nine (9) months after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator shall conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$20.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$20.00 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, Lead Counsel shall seek an order approving the contribution of the balance to one or more non-sectarian, not-for-profit 501(c)(3) organization(s). Lead Counsel's motion shall identify at least three proposed recipients. The proposed recipients shall have been selected by one or more of the following individuals: the President of the New York City Bar Association, the President of the New York State Bar Association, and the President of the American Bar Association. The proposed recipients shall not include any organization listed in the preceding sentence and shall be independent of Lead Counsel so that Lead Counsel does not derive a direct or indirect benefit from the selection of such organization as the recipient of a charitable contribution. Lead Counsel's motion will include a declaration detailing the means by which the proposed recipients were selected.

68. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Plaintiffs' Counsel, Lead Plaintiff's damages expert, Defendants, Defendants' Counsel, or any of the other Releasees, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiff, Defendants and their respective counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

69. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Lead Plaintiff after consultation with its damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the settlement website, [www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com).

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?**

70. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Settlement Class, nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 25% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for reimbursement of Litigation Expenses in an amount not to exceed \$3,000,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?  
HOW DO I EXCLUDE MYSELF?**

71. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to *In re Bank of New York Mellon Corp. Securities Action*, EXCLUSIONS, c/o Epiq Systems, P.O. Box 3410, Portland, OR 97208-3410. The exclusion request must be **received no later than September 29, 2015**. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must (a) state the name, address and telephone number of the person or entity requesting exclusion, and in the case of entities the name and telephone number of the appropriate contact person; (b) state that such person or entity "requests exclusion from the Settlement Class in *In re Bank of New York Mellon Corp. Securities Action*"; (c) state the number of shares of BNYM common stock that the person or entity requesting exclusion purchased and/or sold during the Settlement Class Period (*i.e.*, from February 28, 2008 through October 4, 2011, inclusive), as well as the dates and prices of each such purchase and sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

72. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Defendants' Releasees.

73. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment out of the Net Settlement Fund.

74. BNYM has the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by Lead Plaintiff and BNYM.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

**75. Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.**

76. The Settlement Hearing will be held on October 20, 2015 at 10:00 a.m., before the Honorable Lewis A. Kaplan at the United States District Court for the Southern District of New York, Courtroom 21B of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Settlement Class.

77. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Southern District of New York at the address set forth below on or before September 29, 2015. You must also serve the papers on Lead Counsel and on Representative Defendants' Counsel at the addresses set forth below so that the papers are *received on or before September 29, 2015*.

**Clerk's Office**

United States District Court  
Southern District of New York  
Clerk of the Court  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

**Lead Counsel**

**Bernstein Litowitz Berger &  
Grossmann LLP**  
John C. Browne, Esq.  
1285 Avenue of the Americas  
New York, NY 10019

**Representative  
Defendants' Counsel**

**Kellogg Huber Hansen  
Todd Evans & Figel PLLC**  
Reid M. Figel, Esq.  
1615 M Street NW #400  
Washington, DC 20036

78. Any objection (a) must state the name, address and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of BNYM common stock that the objecting Settlement Class Member purchased and/or sold during the Settlement Class Period (*i.e.*, from February 28, 2008 through and including October 4, 2011), as well as the dates and prices of each such purchase and sale. You may not object to the Settlement, the Plan of Allocation or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

79. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

80. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Representative Defendants' Counsel at the addresses set forth above so that it is *received on or before September 29, 2015*. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

81. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a

notice of appearance with the Court and serve it on Lead Counsel and Representative Defendants' Counsel at the addresses set forth in ¶ 77 above so that the notice is *received on or before September 29, 2015*.

82. The Settlement Hearing may be adjourned by the Court without further written notice to the Settlement Class. If you plan to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

83. **Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

#### WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

84. If you purchased BNYM common stock from February 28, 2008 through and including October 4, 2011, for the beneficial interest of persons or organizations other than yourself, you must either (a) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to *In re Bank of New York Mellon Corp. Securities Action*, c/o Epiq Systems, P.O. Box 3410, Portland, OR 97208-3410. If you choose the second option, the Claims Administrator will send a copy of the Notice and the Claim Form to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may also be obtained from the website maintained by the Claims Administrator, [www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com), or by calling the Claims Administrator toll-free at 1-877-819-9774.

#### CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

85. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, [www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com).

All inquiries concerning this Notice and the Claim Form should be directed to:

*In re Bank of New York Mellon Corp.*  
*Securities Action*  
c/o Epiq Systems  
P.O. Box 3410  
Portland, OR 97208-3410  
1-877-819-9774  
[www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com)

and/or

John C. Browne, Esq.  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019  
1-800-380-8496  
[blbg@blbglaw.com](mailto:blbg@blbglaw.com)

**DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS OR THEIR COUNSEL REGARDING THIS NOTICE.**

Dated: July 29, 2015

By Order of the Court  
United States District Court  
Southern District of New York

**TABLE A****Estimated Artificial Inflation from February 28, 2008 to October 4, 2011**

Transaction Date	Inflation Per Share
February 28, 2008 - February 2, 2011	\$3.38
February 3, 2011	\$2.96
February 4, 2011 - February 14, 2011	\$2.57
February 15, 2011 - April 18, 2011	\$1.59
April 19, 2011 - August 11, 2011	\$1.27
August 12, 2011 - October 4, 2011	\$0.85

**TABLE B****BNYM Common Stock Closing Price and Average Closing Price  
October 5, 2011–December 30, 2011**

Date	Closing Price	Average Closing Price Between October 5, 2011 and Date Shown
10/5/2011	\$18.28	\$18.28
10/6/2011	\$18.34	\$18.31
10/7/2011	\$17.83	\$18.15
10/10/2011	\$18.85	\$18.33
10/11/2011	\$18.90	\$18.44
10/12/2011	\$19.33	\$18.59
10/13/2011	\$18.84	\$18.62
10/14/2011	\$18.97	\$18.67
10/17/2011	\$18.37	\$18.63
10/18/2011	\$19.77	\$18.75
10/19/2011	\$19.54	\$18.82
10/20/2011	\$20.21	\$18.94
10/21/2011	\$20.70	\$19.07
10/24/2011	\$21.26	\$19.23
10/25/2011	\$20.74	\$19.33
10/26/2011	\$20.96	\$19.43
10/27/2011	\$22.39	\$19.60
10/28/2011	\$22.41	\$19.76
10/31/2011	\$21.28	\$19.84
11/1/2011	\$20.22	\$19.86
11/2/2011	\$20.93	\$19.91
11/3/2011	\$21.33	\$19.98
11/4/2011	\$20.99	\$20.02
11/7/2011	\$21.26	\$20.07
11/8/2011	\$21.93	\$20.15
11/9/2011	\$20.30	\$20.15
11/10/2011	\$20.72	\$20.17
11/11/2011	\$21.51	\$20.22
11/14/2011	\$20.55	\$20.23
11/15/2011	\$20.39	\$20.24
11/16/2011	\$19.64	\$20.22

Date	Closing Price	Average Closing Price Between October 5, 2011 and Date Shown
11/17/2011	\$18.94	\$20.18
11/18/2011	\$18.92	\$20.14
11/21/2011	\$18.42	\$20.09
11/22/2011	\$18.02	\$20.03
11/23/2011	\$17.80	\$19.97
11/25/2011	\$17.70	\$19.91
11/28/2011	\$18.09	\$19.86
11/29/2011	\$18.08	\$19.81
11/30/2011	\$19.46	\$19.80
12/1/2011	\$19.10	\$19.79
12/2/2011	\$19.29	\$19.78
12/5/2011	\$19.82	\$19.78
12/6/2011	\$19.89	\$19.78
12/7/2011	\$20.03	\$19.78
12/8/2011	\$19.06	\$19.77
12/9/2011	\$19.60	\$19.77
12/12/2011	\$19.01	\$19.75
12/13/2011	\$18.71	\$19.73
12/14/2011	\$18.58	\$19.71
12/15/2011	\$18.82	\$19.69
12/16/2011	\$19.12	\$19.68
12/19/2011	\$18.59	\$19.66
12/20/2011	\$19.58	\$19.66
12/21/2011	\$19.55	\$19.65
12/22/2011	\$19.98	\$19.66
12/23/2011	\$20.08	\$19.67
12/27/2011	\$19.98	\$19.67
12/28/2011	\$19.58	\$19.67
12/29/2011	\$20.07	\$19.68
12/30/2011	\$19.91	\$19.68



## **PART II – GENERAL INSTRUCTIONS**

1. It is important that you completely read and understand the Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") that accompanies this Claim Form, including the Plan of Allocation of the Net Settlement Fund set forth in the Notice. The Notice describes the proposed Settlement, how Settlement Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.

2. This Claim Form is directed to all persons and entities who or which purchased common stock of The Bank of New York Mellon Corporation ("BNYM") during the period beginning on February 28, 2008 through and including October 4, 2011 (the "Settlement Class Period") and were damaged thereby (the "Settlement Class"). All persons and entities that are members of the Settlement Class are referred to as "Settlement Class Members."

3. Excluded from the Settlement Class by definition are: (i) Defendants; (ii) BNYM's subsidiaries and affiliates in which BNYM has a majority ownership interest; (iii) any person who is, or was at any time during the Settlement Class Period, an Officer or director of BNYM; (iv) the members of the Immediate Family of each of the Individual Defendants or of any other person who is, or was at any time during the Settlement Class Period, an Officer or director of BNYM; (v) the Former Underwriter Defendants and their respective Officers and directors at any time during the Settlement Class Period or currently; (vi) the members of the Immediate Families of each person who is, or was at any time during the Settlement Class Period, an Officer or director of any of the Former Underwriter Defendants; and (vii) any entity in which any of the foregoing, at any time during the Settlement Class Period, held or as of May 21, 2015 held a majority interest; provided, however, that any Investment Vehicle shall not be deemed an excluded person by definition. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in the Notice.

4. **IF YOU ARE NOT A SETTLEMENT CLASS MEMBER, OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, SUBMITTED A REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS, DO NOT SUBMIT A CLAIM FORM. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A SETTLEMENT CLASS MEMBER.** **THUS, IF YOU ARE EXCLUDED FROM THE SETTLEMENT CLASS (AS SET FORTH IN PARAGRAPH 3 ABOVE), ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.**

5. You are eligible to participate in the distribution of the Net Settlement Fund only if you are a member of the Settlement Class and if you complete and return this form as specified below. If you fail to submit a timely, properly addressed, and completed Claim Form with the required documentation, your claim may be rejected and you may be precluded from receiving any distribution from the Net Settlement Fund.

6. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.**

7. Use the Schedule of Transactions in Part III of this Claim Form to supply all required details of your transaction(s) (including free transfers) in and holdings of BNYM common stock. On the Schedule of Transactions, please provide all of the requested information with respect to your holdings, purchases, acquisitions and sales of BNYM common stock, whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.**

8. **Please note:** Only BNYM common stock purchased during the Settlement Class Period (*i.e.*, February 28, 2008 through and including October 4, 2011) is eligible under the Settlement. However, under the PSLRA "90-day look-back period" (described in the Plan of Allocation set forth in the Notice), your sales of BNYM common stock during the period from October 5, 2011 through and including December 30, 2011 will be used for purposes of calculating your Recognized Loss Amounts under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested purchase information during the 90-day look-back period must also be provided.

9. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of the BNYM common stock set forth in the Schedule of Transactions in Part III of this Claim Form. Documentation may consist of copies of brokerage confirmations or monthly statements. The Parties and the Claims Administrator do not independently have information about your investments in BNYM common stock. **IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. Please keep a copy of all documents that you send to the Claims Administrator. Also, please do not highlight any portion of the Claim Form or any supporting documents.**

10. Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not include separate transactions through an account that is in the name of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made through an account in the individual's name). Conversely, a single Claim Form

should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (e.g., a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

11. All joint beneficial owners must sign this Claim Form and their names must appear as “Beneficial Owners” in Part I of this Claim Form. If you purchased BNYM common stock during the Settlement Class Period and held the stock in your name, you are the beneficial owner as well as the record owner and you must sign this Claim Form to participate in the Settlement. If, however, you purchased BNYM common stock during the Settlement Class Period and the stock was registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of that stock, but the third party is the record owner. The beneficial owner, not the record owner, must sign this Claim Form.

12. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

- (a) expressly state the capacity in which they are acting;
- (b) identify the name, account number, Social Security Number (or taxpayer identification number), address and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the BNYM common stock; and
- (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade stock in another person’s accounts.)

13. By submitting a signed Claim Form, you will be swearing that you:

- (a) own(ed) the BNYM common stock you have listed in the Claim Form; or
- (b) are expressly authorized to act on behalf of the owner thereof.

14. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

15. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after the completion of all claims processing. This could take substantial time. Please be patient.

16. **PLEASE NOTE:** As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant, however, calculates to less than \$20.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

17. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, Epiq Systems, at P.O. Box 3410, Portland, OR 97208-3410, or by toll-free phone at (877) 819-9774, or you may download the documents from the Settlement website, [www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com).

18. **NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the Settlement website at [www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com) or you may email the Claims Administrator’s electronic filing department at [info@BNYMFXSecuritiesLitigation.com](mailto:info@BNYMFXSecuritiesLitigation.com). Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email after processing your file with your claim numbers and respective account information. **Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at [info@BNYMFXSecuritiesLitigation.com](mailto:info@BNYMFXSecuritiesLitigation.com) to inquire about your file and confirm it was received and is acceptable.**

#### **IMPORTANT: PLEASE NOTE**

**YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, PLEASE CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT (877) 819-9774.**

**PART III – SCHEDULE OF TRANSACTIONS IN BNYM COMMON STOCK**

Please be sure to include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 9, above. Do not include information regarding securities other than BNYM common stock.

<b>1. BEGINNING HOLDINGS</b> – State the total number of shares of BNYM common stock held as of the opening of trading on February 28, 2008. If none, write “zero” or “0.” (Must be documented.)				<input style="width: 100%; height: 20px;" type="text"/> . <input style="width: 20px; height: 20px;" type="text"/> shares	Proof of Position Enclosed <input type="checkbox"/> Y <input type="checkbox"/> N
<b>2. PURCHASES/ACQUISITIONS DURING THE SETTLEMENT CLASS PERIOD</b> – Separately list each and every purchase/acquisition (including free receipts) of BNYM common stock from after the opening of trading on February 28, 2008 through and including the close of trading on October 4, 2011. (Must be documented.)				<b>IF NONE, CHECK HERE</b> <input type="checkbox"/>	
Date of Purchase/Acquisition (List Chronologically) MM - DD - YY	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)	Proof of Purchase/Acquisition Enclosed <input type="checkbox"/> Y <input type="checkbox"/> N	
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<b>3. PURCHASES/ACQUISITIONS DURING THE 90-DAY LOOK-BACK PERIOD</b> – State the total number of shares of BNYM common stock purchased/acquired (including free receipts) from after the opening of trading on October 5, 2011 through and including the close of trading on December 30, 2011. If none, write “zero” or “0.” (Must be documented.) <sup>1</sup>				<input style="width: 100%; height: 20px;" type="text"/> . <input style="width: 20px; height: 20px;" type="text"/> shares	Proof of Purchase/Acquisition Enclosed <input type="checkbox"/> Y <input type="checkbox"/> N
<b>4. SALES DURING THE SETTLEMENT CLASS PERIOD AND DURING THE 90-DAY LOOK-BACK PERIOD</b> – Separately list each and every sale/disposition (including free deliveries) of BNYM common stock from after the opening of trading on February 28, 2008 through and including the close of trading on December 30, 2011. (Must be documented.)				<b>IF NONE, CHECK HERE</b> <input type="checkbox"/>	
Date of Sale (List Chronologically) MM - DD - YY	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)	Proof of Sale Enclosed <input type="checkbox"/> Y <input type="checkbox"/> N	
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<b>5. ENDING HOLDINGS</b> – State the total number of shares of BNYM common stock held as of the close of trading on December 30, 2011. If none, write “zero” or “0.” (Must be documented.)				<input style="width: 100%; height: 20px;" type="text"/> . <input style="width: 20px; height: 20px;" type="text"/> shares	Proof of Position Enclosed <input type="checkbox"/> Y <input type="checkbox"/> N

<sup>1</sup> **Please note:** Information requested with respect to your purchases/acquisitions of BNYM common stock from after the opening of trading on October 5, 2011 through and including the close of trading on December 30, 2011 is needed in order to balance your claim; purchases during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation. Similarly, acquisitions, other than through purchases, are needed in order to balance your claim.

**IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER’S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX**

**PART IV – RELEASE OF CLAIMS AND SIGNATURE**

**YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW  
AND SIGN ON PAGE 6 OF THIS CLAIM FORM.**

I (We) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (as defined in the Stipulation and in the Notice) against the Defendants and the other Defendants' Releasees (as defined in the Stipulation and in the Notice) and shall forever be enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

**CERTIFICATION**

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) certifies (certify), as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice and in paragraph 2 on page 2 of this Claim Form, and is (are) not excluded by definition from the Settlement Class as set forth in the Notice and in paragraph 3 on page 2 of this Claim Form;
3. that the claimant has **not** submitted a request for exclusion from the Settlement Class;
4. that I (we) own(ed) the BNYM common stock identified in the Claim Form and have not assigned the claim against any of the Defendants or any of the other Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant(s) has (have) not submitted any other claim covering the same purchases of BNYM common stock, and knows (know) of no other person having done so on the claimant's (claimants') behalf;
6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator or the Court may require;
8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the Court's summary disposition of the determination of the validity or amount of the claim made by this Claim Form;
9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant(s) is (are) exempt from backup withholding or (b) the claimant(s) has (have) not been notified by the IRS that he/she/it is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant(s) that he/she/it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he, she or it is subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

Signature of claimant

Date  -  -   
MM DD YY

Print your name here

Signature of joint claimant, if any

Date  -  -   
MM DD YY

Print your name here

***If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:***

Signature of person signing on behalf of claimant

Date  -  -   
MM DD YY

Print your name here

Capacity of person signing on behalf of claimant, if other than an individual, e.g., executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – see paragraph 12 on page 3 of this Claim Form.)

**REMINDER CHECKLIST:**

1. Please sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Remember to attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.
3. Please do not highlight any portion of the Claim Form or any supporting documents.
4. Do not send original security certificates or documentation. These items cannot be returned to you by the Claims Administrator.
5. Keep copies of the completed Claim Form and documentation for your own records.
6. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at (877) 819-9774.**
7. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, please send the Claims Administrator written notification of your new address. If you change your name, please inform the Claims Administrator.
8. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at [info@BNYMF securitieslitigation.com](mailto:info@BNYMF securitieslitigation.com), or toll-free at (877) 819-9774, or visit [www.BNYMF securitieslitigation.com](http://www.BNYMF securitieslitigation.com). Please **DO NOT** call BNYM or any of the other Defendants or their counsel with questions regarding your claim.

**THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY PREPAID, FIRST-CLASS MAIL, POSTMARKED NO LATER THAN DECEMBER 11, 2015, ADDRESSED AS FOLLOWS:**

In re Bank of New York Mellon Corp. Securities Action  
c/o Epiq Systems, Claims Administrator  
P.O. Box 3410  
Portland, OR 97208-3410

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before December 11, 2015 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

# **Exhibit B**

# CONFIRMATION OF PUBLICATION

IN THE MATTER OF: *BNYM FX Securities Litigation*

I, Kathleen Komraus, hereby certify that

(a) I am the Media Coordinator at Epiq Systems Class Action & Claims Solutions, a noticing administrator, and;

(b) The Notice of which the annexed is a copy was published in the following publications on the following dates:

*8.11.15 – Wall Street Journal*

*8.11.15 – PR Newswire*

X Kathleen Komraus  
(Signature)

Media Coordinator  
(Title)

# BIGGEST 1,000 STOCKS

Continued From Page C6			Stock			Stock			Stock			Stock			Stock			Stock			Stock														
Stock	Sym	Close	Net Chg	Stock	Sym	Close	Net Chg	Stock	Sym	Close	Net Chg	Stock	Sym	Close	Net Chg	Stock	Sym	Close	Net Chg	Stock	Sym	Close	Net Chg	Stock	Sym	Close	Net Chg	Stock	Sym	Close	Net Chg				
HCCInsurance	HCC	77.25	-0.04	Koninklijke	KPH	28.23	0.34	NRG Energy	NRG	19.85	0.25	SpiritAerosp	SPR	56.52	1.57	UtdParcel B	UPS	103.43	1.29	AlnylamPharm	ALNY	105.67	-0.52	FlextronInt	FLEX	11.26	0.22	NuanceComms	NUAN	18.55	-0.08				
HCC	77.25	-0.04	Kroger	KRO	51.87	-0.28	NVR	NVR	146.15	13.55	ProcterGamb	PG	76.38	0.90	UnitedRentals	URI	66.71	2.90	Altera	ALTR	49.10	0.10	Fortinet	FTNT	47.54	0.64	NVIDIA	NVDA	23.78	0.80	Oracle	ORCL	55.17	0.81	
HDFCBankADR	HDB	63.03	0.04	NationalGridADR	NRG	67.11	0.11	PRU	PRU	91.68	2.27	ProgressPro	PRG	30.90	0.33	US Bop	USB	46.02	0.91	Amazon.com	AMZN	24.00	1.38	FrontierComms	FTT	5.33	0.16	OpenText	OTEX	46.34	0.39	KeyCorp	KEY	31.87	0.29
HSCHoldingsADR	HSCB	45.46	-0.03	NationalRealty	NRE	40.90	1.17	PubSvntEnt	PUE	47.27	-0.32	PrudentialFin	PRU	91.68	2.27	US Steel	X	21.39	0.57	Amdocs	AMDO	58.92	0.64	Garmin	GRMN	41.08	0.46	PaneraBrd A	PANR	20.21	1.49	Kimco Realty	KIMC	24.67	-0.24
Halliburton	HAL	41.62	1.86	NetSuite	NT	96.48	1.11	PubStrg	PSA	20.45	-1.36	PubSvntEnt	PUE	47.27	-0.32	UnitedTech	UTX	99.55	1.21	Ameco	AMEC	116.58	2.14	GoodYear	GT	31.84	0.95	Patterson	PATC	63.02	0.87	KindredMorgan	KMI	32.50	0.36
Hanesbrands	HBI	29.32	0.69	NY CmntyBcp	NYCB	18.47	0.27	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08	Kohl's	KSS	61.60	1.58
HarleyDavid	HOG	60.41	1.66	Newell	NWL	43.66	0.42	PubStrg	PSA	20.45	-1.36	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HarmantInt	HAR	118.25	2.16	NewfildExp	NFX	35.65	1.42	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Harris	HRS	84.59	3.02	NewmMln	NEM	19.65	0.81	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HrtfrdFnl	HRT	48.38	0.45	NexEradEnergy	NEE	106.53	-0.47	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HtchRt	HCH	67.37	-0.43	NidcADR	NJ	22.17	...	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HealthNet	HNT	69.30	0.44	Nilsen	NLSM	48.00	1.55	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HelmPayne	HP	62.67	3.21	Nike B	NKE	115.36	0.85	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Herbalife	HLF	60.77	1.09	NipponElecADR	NTT	40.11	0.63	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Hershey	HSY	91.81	2.08	Nisource	NI	16.88	-0.03	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HertzGlobal	HTZ	17.12	1.19	NobleEnergy	NBL	34.24	1.54	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Hess	HES	58.44	2.52	NokiaADR	NOK	6.87	0.09	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HewlettPk	HPQ	30.24	0.83	NorthCo	NOC	82.62	1.51	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HiltonWorldwide	HLT	26.21	0.30	Northgrum	NOC	17.25	2.60	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HollyFrontier	HFC	52.45	2.17	NorthstarRealty	NRF	15.40	-0.78	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Home Depot	HD	117.60	0.67	NovartisADR	NVS	103.00	0.19	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HondaMotorADR	HMC	35.62	0.37	NovoriskADR	NVO	58.05	0.38	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Howell	HON	107.30	1.84	Nucor	NUE	46.69	1.55	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HormelFood	HRL	60.86	0.63	NuSTAREnergy	NS	51.73	1.87	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HR Horton	HRT	29.06	0.55	OCG Energy	OCGE	30.27	0.33	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Hospira	HSP	89.51	-0.03	ONEOK	ONEK	37.50	1.38	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HstHlts&Res	HST	19.20	0.23	ONEOKPartners	OKS	31.65	0.43	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HowardHughes	HHC	137.56	2.06	Oracle	ORCL	55.17	0.81	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HuamengPowerADR	HNP	49.31	0.54	OrangeADR	ORA	16.70	0.38	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Hubbell	HUBB	180.52	1.62	OrixADR	OIX	74.94	0.42	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Hudon	HUM	186.26	2.20	OwensCorng	OC	45.21	0.64	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Huntington	HII	120.55	4.74	PG&E	PCG	52.24	-0.65	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
HuyatHotels	H	53.84	1.55	PNC FInSvcs	PNC	99.86	2.06	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
ICI(Bank)ADR	IBN	10.17	0.03	POSCOADR	POX	45.50	0.77	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
ICSCIA	IHS	126.36	3.01	PPG Ind	PPG	106.61	2.69	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
IGHealthHoldings	IMS	30.74	0.19	PPL	PPG	32.41	0.05	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
INGGroepADR	ING	16.64	0.37	PVH Corp	PVH	115.12	1.32	PubTg	PTG	20.12	0.38	StawdHltsRst	SHUT	77.24	0.86	UnihgHgt	UHG	122.48	0.66	AmeriCapAg	ACAG	19.26	0.02	Goodyear	G	31.84	0.95	PaycomSoft	PYPL	39.05	-0.08				
Invesco	IVZ																																		

# **Exhibit C**

# CONFIRMATION OF PUBLICATION

IN THE MATTER OF: *BNYM FX Securities Litigation*

I, Kathleen Komraus, hereby certify that

(a) I am the Media Coordinator at Epiq Systems Class Action & Claims Solutions, a noticing administrator, and;

(b) The Notice of which the annexed is a copy was published in the following publications on the following dates:

*8.11.15 – Wall Street Journal*

*8.11.15 – PR Newswire*

X Kathleen Komraus  
(Signature)

Media Coordinator  
(Title)

See more news releases in

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Legal Issues (<http://www.prnewswire.com/news-releases/policy-public-interest-latest-news/legal-issues-list/>)

## The law firm of Bernstein Litowitz Berger & Grossmann LLP announces a proposed settlement of the In re: Bank of New York Mellon Corp. FOREX Transactions Litigation securities class action.



NEW YORK, Aug. 11, 2015 /PRNewswire/ --

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

	)	
In re:	)	
	)	<b>CIVIL ACTION NO.</b>
BANK OF NEW YORK MELLON CORP.	)	MASTER FILE
FOREX TRANSACTIONS LITIGATION	)	12 MD 2335 (LAK)
	)	
This Document Relates to: 11-CV-09175	)	
_____	)	

#### **SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION, CERTIFICATION OF SETTLEMENT CLASS, AND PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

**TO: All persons and entities who or which purchased the common stock of The Bank of New York Mellon Corporation ("BNYM") during the period beginning on February 28, 2008 through and including October 4, 2011, and were damaged thereby (the "Settlement Class"):**

**PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York, that the above-captioned litigation (the "Action") has been preliminarily certified as a class action on behalf of the Settlement Class, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in the full printed Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice").

YOU ARE ALSO NOTIFIED that Lead Plaintiff in the Action has reached a proposed settlement of the Action for \$180,000,000 in cash (the "Settlement"), that, if approved, will resolve all claims in the Action.

A hearing will be held on October 20, 2015 at 10:00 a.m., before the Honorable Lewis A. Kaplan at the United States District Court for the Southern District of New York, Courtroom 21B of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl

Street, New York, NY 10007, to determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated June 23, 2015 (and in the Notice) should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses should be approved.

**If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund.** If you have not yet received the Notice and the Proof of Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at *In re Bank of New York Mellon Corp. Securities Action*, c/o Epiq Systems, P.O. Box 3410, Portland, OR 97208-3410, 1-877-819-9774. Copies of the Notice and Proof of Claim Form can also be downloaded from the website maintained by the Claims Administrator, [www.BNYMFXSecuritiesLitigation.com](http://www.BNYMFXSecuritiesLitigation.com) (<http://www.bnymfxsecuritieslitigation.com/>).

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Proof of Claim Form **postmarked no later than December 11, 2015**. If you are a Settlement Class Member and do not submit a proper Proof of Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is **received no later than September 29, 2015**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of expenses, must be filed with the Court and delivered to Lead Counsel and Representative Defendants' Counsel such that they are **received no later than September 29, 2015**, in accordance with the instructions set forth in the Notice.

**Please do not contact the Court, the Clerk's office, BNYM, or its counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to Lead Counsel or the Claims Administrator.**

<p>Inquiries, other than requests for the Notice and Proof of Claim Form, should be made to Lead Counsel:</p>	<p>Requests for the Notice and Proof of Claim Form should be made to:</p>
<p>BERNSTEIN LITOWITZ BERGER &amp; GROSSMANN LLP John C. Browne, Esq. 1285 Avenue of the Americas New York, NY 10019 1-800-380-8496 blbg@blbglaw.com (mailto:blbg@blbglaw.com)</p>	<p><i>In re Bank of New York Mellon Corp. Securities Action</i> c/o Epiq Systems P.O. Box 3410 Portland, OR 97208-3410 1-877-819-9774 <a href="http://www.BNYMFXSecuritiesLitigation.com">www.BNYMFXSecuritiesLitigation.com</a> (<a href="http://www.bnymfxsecuritieslitigation.com/">http://www.bnymfxsecuritieslitigation.com/</a>)</p>

By Order of the Court

SOURCE Bernstein Litowitz Berger & Grossmann LLP

# **Exhibit 4**

*In re Bank of New York Mellon Corp. FOREX Transactions Litigation,*  
Master File No. 08 Civ. 9522 (SHS)  
This Document Relates to 11-CV-09175

**SUMMARY OF SECURITIES COUNSEL'S  
LODESTAR AND EXPENSES**

<b>TAB</b>	<b>FIRM</b>	<b>HOURS</b>	<b>LODESTAR</b>	<b>EXPENSES</b>
A	Bernstein Litowitz Berger & Grossmann LLP	106,545.00	\$42,982,612.50	\$1,555,716.21
B	Stoll Stoll Berne Lokting & Shlachter P.C.	11,052.40	\$3,185,996.75	\$40,313.93
C	Saxena White P.A.	1,270.50	\$636,723.75	\$20,545.55
	<b>TOTAL:</b>	<b>118,867.90</b>	<b>\$46,805,333.00</b>	<b>\$1,616,575.69</b>

# **Exhibit 4A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	<b>CIVIL ACTION NO.</b>
BANK OF NEW YORK MELLON CORP.	)	MASTER FILE
FOREX TRANSACTIONS LITIGATION	)	12 MD 2335 (LAK)
	)	
This Document Relates to: 11-CV-09175	)	
	)	
	)	

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**DECLARATION OF JOHN C. BROWNE  
IN SUPPORT OF LEAD COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’  
FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

John C. Browne, declares as follows:

1. I am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP, Court-appointed Lead Counsel in the above-captioned action (the “Action”). I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees in connection with services rendered in the Action, as well as for reimbursement of expenses incurred in connection therewith.

2. My firm served as Court appointed Lead Counsel and was involved in all aspects of the litigation and its settlement. The specifics of the work performed by my firm are set forth in the concurrently filed Declaration of John C. Browne in Support of: (A) Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (B) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who

were involved in this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based 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.

4. Time expended on the Action after May 21, 2015, the day the term sheet memorializing the agreement in principle to settle the Action was executed, has not been included in this request. Thus, among other things, all time expended on Lead Counsel's application for fees and reimbursement of expenses has been excluded. Lead Counsel has also carefully reviewed its time records and made certain reductions to ensure that the hours presented to the Court reflect meaningful and necessary work that contributed to the resolution of this litigation.

5. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.

6. The total number of hours reflected in Exhibit 1 from inception through and including May 21, 2015, is 106,545. The total lodestar reflected in Exhibit 1 for that period is \$42,982,612.50, consisting of \$42,143,718.75 for attorneys' time and \$838,893.75 for professional support staff time. The hours reflected in Exhibit 1 are further broken down for each person by various task codes.

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

8. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$1,555,716.21 in expenses incurred in connection with the prosecution of this Action from its inception through and including September 14, 2015.

9. The expenses reflected in Exhibit 2 are the actual incurred expenses or reflect “caps” based on the application of the following criteria:

(a) Out-of-town travel - airfare is at coach rates, hotel charges per night are capped at \$350 for large cities and \$250 for small cities (the relevant cities and how they are categorized are reflected on Exhibit 2); meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.

(b) Out-of-Office Meals - Capped at \$25 per person for lunch and \$50 per person for dinner.

(c) In-Office Working Meals - Capped at \$20 per person for lunch and \$30 per person for dinner.

(d) Internal Copying - Charged at \$0.10 per page.

(e) On-Line Research - Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

10. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

11. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed  
on September 15, 2015.

*/s John C. Browne*

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JOHN C. BROWNE

# 926842

EXHIBIT 1  
**In re Bank of New York Mellon Corp. FOREX Transactions Litigation**  
 Master File No. 08 Civ. 9522 (SHS)  
 Relates to 11-CV-09175  
 BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP  
 TIME REPORT  
 Inception through May 21, 2015

Task Codes:

- 1. Investigation and Factual Research
- 2. Pleadings, Briefs and Pre-trial Motions
- 3. Document Review
- 4. Depositions (including preparation for depositions)
- 5. Other Discovery (excluding motions)
- 6. Motions

- 7. Experts
- 8. Class Certification
- 9. Mediation/Settlement
- 10. Litigation Strategy and Analysis
- 11. Court Appearances

Professional / Task Code	01	02	03	04	05	06	07	08	09	10	11	Hours	Billable Rate	Lodestar
<b>PARTNERS</b>														
Berger, Max	-	3.50	1.75	1.50	11.25	-	-	4.75	123.25	78.50	4.50	<b>229.00</b>	975.00	<b>223,275.00</b>
Browne, John	-	-	14.50	328.25	502.25	94.25	225.25	131.00	173.75	95.00	12.00	<b>1,576.25</b>	775.00	<b>1,221,593.75</b>
Silk, Gerald	11.50	62.00	-	-	-	-	-	-	-	90.50	-	<b>164.00</b>	875.00	<b>143,500.00</b>
Singer, Steven	-	78.50	-	-	112.75	51.50	-	-	-	47.50	31.50	<b>321.75</b>	875.00	<b>281,531.25</b>
<b>OF COUNSEL</b>														
Hunciker, Kurt	9.75	-	-	181.00	851.75	59.00	190.25	163.00	152.50	240.75	-	<b>1,848.00</b>	700.00	<b>1,293,600.00</b>
<b>SENIOR COUNSEL</b>														
Robinson, Jeremy	13.00	-	28.00	762.25	907.75	8.00	357.00	46.50	26.00	12.00	-	<b>2,160.50</b>	550.00	<b>1,188,275.00</b>
<b>ASSOCIATES</b>														
Alexander, Abe	32.75	415.75	63.50	233.00	12.00	21.50	-	-	-	7.00	-	<b>785.50</b>	525.00	<b>412,387.50</b>
Berkow, Evan	1.25	-	45.00	597.00	206.75	118.00	-	67.75	-	85.25	-	<b>1,121.00</b>	450.00	<b>504,450.00</b>
Blatchley, Michael	0.75	41.75	-	-	-	-	-	-	-	26.00	-	<b>68.50</b>	525.00	<b>35,962.50</b>
Gundersheim, Laura	5.00	440.50	45.50	137.00	228.00	63.00	1.00	28.50	1.00	83.00	25.00	<b>1,057.50</b>	550.00	<b>581,625.00</b>
Stefanou, Katherine	3.75	1.00	49.25	371.00	191.75	30.00	9.25	113.50	30.75	92.00	-	<b>892.25</b>	450.00	<b>401,512.50</b>
<b>STAFF ATTORNEYS</b>														
Ambrose, Evan	-	-	243.75	828.50	47.75	-	-	-	-	-	-	<b>1,120.00</b>	395.00	<b>442,400.00</b>
Boruch, Andrew	-	-	581.75	1,293.50	466.25	-	19.25	8.00	-	-	-	<b>2,368.75</b>	340.00	<b>805,375.00</b>

EXHIBIT 1  
**In re Bank of New York Mellon Corp. FOREX Transactions Litigation**  
Master File No. 08 Civ. 9522 (SHS)  
Relates to 11-CV-09175  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP  
TIME REPORT  
Inception through May 21, 2015

<b>Professional / Task Code</b>	<b>01</b>	<b>02</b>	<b>03</b>	<b>04</b>	<b>05</b>	<b>06</b>	<b>07</b>	<b>08</b>	<b>09</b>	<b>10</b>	<b>11</b>	<b>Hours</b>	<b>Billable Rate</b>	<b>Lodestar</b>
Burke, Erin	-	-	1,418.00	139.75	-	-	-	-	-	-	-	<b>1,557.75</b>	375.00	<b>584,156.25</b>
Butler, Alexa	-	-	545.00	545.25	107.00	-	-	-	-	-	-	<b>1,197.25</b>	395.00	<b>472,913.75</b>
Candee, Ryan	11.75	-	505.50	2,180.25	429.00	-	-	63.25	-	-	-	<b>3,189.75</b>	395.00	<b>1,259,951.25</b>
Clarkin, Christopher	-	-	671.50	2,853.00	221.75	-	159.25	-	-	-	-	<b>3,905.50</b>	375.00	<b>1,464,562.50</b>
Cyr, Reico	-	-	1,530.00	1,680.75	112.50	-	22.75	14.25	-	-	-	<b>3,360.25</b>	395.00	<b>1,327,298.75</b>
Doumas, George	-	-	1,284.50	1,315.00	773.00	-	57.50	13.00	-	-	-	<b>3,443.00</b>	395.00	<b>1,359,985.00</b>
Gandy, Cheryl	-	-	329.25	664.25	15.00	-	39.50	-	-	-	-	<b>1,048.00</b>	395.00	<b>413,960.00</b>
Gill, Cynthia	-	-	440.75	3,551.75	-	-	-	-	-	-	-	<b>3,992.50</b>	395.00	<b>1,577,037.50</b>
Golladay, Addison, F.	9.00	-	1,221.00	290.50	38.75	-	-	-	-	-	-	<b>1,559.25</b>	375.00	<b>584,718.75</b>
Gruttadaro, Daniel	45.50	-	791.50	299.50	598.00	-	-	-	-	-	-	<b>1,734.50</b>	340.00	<b>589,730.00</b>
Hoffman, Jared	-	-	1,509.25	388.25	147.00	-	-	-	-	-	-	<b>2,044.50</b>	375.00	<b>766,687.50</b>
Hosmer, Lawrence	22.50	-	1,690.25	1,607.75	301.50	-	-	18.00	-	-	-	<b>3,640.00</b>	395.00	<b>1,437,800.00</b>
Imundo, Stephen	19.25	-	1,631.75	1,665.50	994.75	-	70.25	14.75	-	-	-	<b>4,396.25</b>	395.00	<b>1,736,518.75</b>
Katsetos, Stavros	-	-	517.25	906.25	80.50	-	-	-	-	-	-	<b>1,504.00</b>	340.00	<b>511,360.00</b>
Koslow, Jed	-	-	1,654.00	1,377.25	47.25	-	-	-	-	-	-	<b>3,078.50</b>	375.00	<b>1,154,437.50</b>
Lee, Arthur	-	-	724.50	1,466.75	495.00	-	136.25	-	-	-	-	<b>2,822.50</b>	375.00	<b>1,058,437.50</b>
Lefkowitz, Laura	-	-	1,737.75	1,277.00	24.75	-	-	-	-	-	-	<b>3,039.50</b>	395.00	<b>1,200,602.50</b>
McGoey, Andrew	-	-	1,959.50	1,711.75	67.75	-	93.50	12.50	-	-	-	<b>3,845.00</b>	395.00	<b>1,518,775.00</b>
McLaren, Joanne	-	-	1,151.00	178.50	111.25	-	-	-	-	-	-	<b>1,440.75</b>	395.00	<b>569,096.25</b>
Molk, Rebecca	-	-	920.50	435.50	32.00	-	-	-	-	-	-	<b>1,388.00</b>	340.00	<b>471,920.00</b>
Noble, Jon	-	-	1,961.00	1,468.50	118.00	-	-	-	-	-	-	<b>3,547.50</b>	340.00	<b>1,206,150.00</b>
Powell, Jeff	3.25	-	261.25	2,921.50	138.50	-	35.25	7.75	-	-	-	<b>3,367.50</b>	395.00	<b>1,330,162.50</b>
Rastogi, Shalu	15.75	-	1,263.25	1,554.75	198.75	-	-	-	-	-	-	<b>3,032.50</b>	395.00	<b>1,197,837.50</b>
Renahan, Daniel	-	-	478.25	1,534.00	856.00	-	56.75	-	-	-	-	<b>2,925.00</b>	395.00	<b>1,155,375.00</b>
Scott, Noreen Rhosean	-	-	1,400.25	415.25	-	-	-	-	-	-	-	<b>1,815.50</b>	395.00	<b>717,122.50</b>

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TIME REPORT  
Inception through May 21, 2015

Professional / Task Code	01	02	03	04	05	06	07	08	09	10	11	Hours	Billable Rate	Lodestar
Strickland, Emily	-	-	636.50	885.00	40.25	-	34.50	-	-	-	-	1,596.25	340.00	542,725.00
Tolan, Andrew	10.00	-	1,240.00	2,842.50	628.50	10.00	37.00	-	-	-	-	4,768.00	395.00	1,883,360.00
Tsirkin, Alina	-	-	1,114.50	39.50	17.25	-	-	-	-	-	-	1,171.25	375.00	439,218.75
Turisse, Allan	-	-	645.25	2,307.00	370.00	-	39.50	-	-	-	-	3,361.75	395.00	1,327,891.25
van der Harst, Mark	11.25	-	3,616.50	201.75	14.50	-	-	-	-	-	-	3,844.00	375.00	1,441,500.00
Van Kampen, Catherine	-	-	1,297.25	2,265.50	1,132.50	5.25	213.00	-	-	-	-	4,913.50	395.00	1,940,832.50
Vincent, Dana	-	-	2,335.50	846.25	276.75	-	-	-	-	-	-	3,458.50	395.00	1,366,107.50
<b>PARALEGALS</b>														
Augusty, Ricia	196.50	53.50	40.50	665.25	338.00	26.00	9.00	22.00	33.00	-	1.00	1,384.75	310.00	429,272.50
Echegaray, Jose	9.75	-	-	41.00	46.75	0.25	12.50	28.25	-	-	-	138.50	245.00	33,932.50
Taylor, Nyema	316.75	80.25	198.25	210.00	351.00	58.25	3.50	23.00	-	-	7.25	1,248.25	285.00	355,751.25
<b>LITIGATION SUPPORT</b>														
Pedro, Babatunde	-	-	34.00	-	38.50	-	-	-	-	-	-	72.50	275.00	19,937.50
<b>SUMS</b>	<b>749.00</b>	<b>1,176.75</b>	<b>39,828.00</b>	<b>47,465.25</b>	<b>12,700.25</b>	<b>545.00</b>	<b>1,822.00</b>	<b>779.75</b>	<b>540.25</b>	<b>857.50</b>	<b>81.25</b>	<b>106,545.00</b>		<b>42,982,612.50</b>

**EXHIBIT 2**

*In re Bank of New York Mellon Corp. FOREX Transactions Litigation,*  
Master File No. 08 Civ. 9522 (SHS)  
This Document relates to 11-CV-09175

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**  
**EXPENSE REPORT**  
Inception through September 14, 2015

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$ 750.00
PSLRA Notice Costs	2,730.00
On-Line Legal Research	62,009.15
On-Line Factual Research	23,551.18
Document Management/Litigation Support	282,151.13
Telephones/Faxes	1,015.32
Postage & Express Mail	14,208.23
Hand Delivery Charges	1,235.75
Local Transportation	18,210.35
Internal Copying	36,186.80
Outside Copying	88,239.24
Out of Town Travel*	35,812.22
Working Meals	14,774.25
Court Reporters and Transcripts	66,985.61
Deposition/Meeting Hosting Costs	11,929.87
Experts	845,365.78
Mediator's Fees	7,716.66
Temporary Litigation Support	7,844.67
Contributions to Plaintiffs' Executive Committee Litigation Fund	35,000.00
<b>TOTAL EXPENSES:</b>	<b>\$1,555,716.21</b>

\* Out of town travel includes hotels in the following "large" cities capped at \$350 per night: Boston, MA; Ft. Lauderdale, FL; Seattle, WA and the following "small" cities capped at \$250 per night: Portland, OR; Richmond, VA; Pittsburgh, PA; and Dallas TX.

**EXHIBIT 3**

*In re Bank of New York Mellon Corp. FOREX Transactions Litigation,*  
Master File No. 08 Civ. 9522 (SHS)  
This Document relates to 11-CV-09175

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP  
FIRM RESUME AND BIOGRAPHIES**



Bernstein Litowitz Berger & Grossmann LLP

Attorneys at Law

# Firm Resume

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Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history – over \$27 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.

## FIRM OVERVIEW

Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”), a national law firm with offices located in New York, California, Louisiana and Illinois, prosecutes class and private actions on behalf of individual and institutional clients. The firm’s litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; alternative dispute resolution; distressed debt and bankruptcy; civil rights and employment discrimination; consumer class actions and antitrust. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants’ liability, breach of fiduciary duty, fraud, and negligence.

We are the nation’s leading firm in representing institutional investors in securities fraud class action litigation. The firm’s institutional client base includes the New York State Common Retirement Fund; the California Public Employees’ Retirement System (CalPERS); the Ontario Teachers’ Pension Plan Board (the largest public pension funds in North America); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; Forsta AP-fonden (“AP1”); Fjarde AP-fonden (“AP4”); the Florida State Board of Administration; the Public Employees’ Retirement System of Mississippi; the New York State Teachers’ Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers’ Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities.

## MORE TOP SECURITIES RECOVERIES

Since its founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has litigated some of the most complex cases in history and has obtained over \$27 billion on behalf of investors. Unique among its peers, the firm has negotiated the largest settlements ever agreed to by public companies related to securities fraud, and obtained four of the ten largest securities recoveries in history:

- *In re WorldCom, Inc. Securities Litigation* – \$6.19 billion recovery
- *In re Cendant Corporation Securities Litigation* – \$3.3 billion recovery

- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – \$2.43 billion recovery
- *In re Nortel Networks Corporation Securities Litigation* (“Nortel II”) – \$1.07 billion recovery

For over a decade, Securities Class Action Services (SCAS – a division of ISS Governance) has compiled and published data on securities litigation recoveries and the law firms prosecuting the cases. BLB&G has been at or near the top of their rankings every year – often with the highest total recoveries, the highest settlement average, or both.

BLB&G also eclipses all competitors on SCAS’s “Top 100 Settlements” report, having recovered 39% of all the settlement dollars represented in the report (over \$23 billion); and having prosecuted more than a third of all the cases on the list (34 of 100).

## GIVING SHAREHOLDERS A VOICE AND CHANGING BUSINESS PRACTICES FOR THE BETTER

BLB&G was among the first law firms ever to obtain meaningful corporate governance reforms through litigation. In courts throughout the country, we prosecute shareholder class and derivative actions, asserting claims for breach of fiduciary duty and proxy violations wherever the conduct of corporate officers and/or directors, as well as M&A transactions, seek to deprive shareholders of fair value, undermine shareholder voting rights, or allow management to profit at the expense of shareholders.

We have prosecuted seminal cases establishing precedents which have increased market transparency, held wrongdoers accountable, addressed issues in the boardroom and executive suite, challenged unfair deals, and improved corporate business practices in groundbreaking ways.

From setting new standards of director independence, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management’s benefit, to confronting stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

## ADVOCACY FOR VICTIMS OF CORPORATE WRONGDOING

While BLB&G is widely recognized as one of the leading law firms worldwide advising institutional investors on issues related to corporate governance, shareholder rights, and securities litigation, we have also prosecuted some of the most significant employment discrimination, civil rights and consumer protection cases on record. Equally important, the firm has advanced novel and socially beneficial principles by developing important new law in the areas in which we litigate.

The firm served as co-lead counsel on behalf of Texaco’s African-American employees in *Roberts v. Texaco Inc.*, which resulted in a recovery of \$176 million, the largest settlement ever in a race discrimination case. The creation of a Task Force to oversee Texaco’s human resources activities for five years was unprecedented and served as a model for public companies going forward.

In the consumer field, the firm has gained a nationwide reputation for vigorously protecting the rights of individuals and for achieving exceptional settlements. In several instances, the firm has obtained recoveries for consumer classes that represented the entirety of the class’s losses – an extraordinary result in consumer class cases.

## PRACTICE AREAS

### SECURITIES FRAUD LITIGATION

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has had the distinction of having tried and prosecuted many of the most high-profile securities fraud class actions in history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients. BLB&G continues to play a leading role in major securities litigation pending in federal and state courts, and the firm remains one of the nation's leaders in representing institutional investors in securities fraud class and derivative litigation.

The firm also pursues direct actions in securities fraud cases when appropriate. By selectively opting out of certain securities class actions, we seek to resolve our clients' claims efficiently and for substantial multiples of what they might otherwise recover from related class action settlements.

The attorneys in the securities fraud litigation practice group have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many of the attorneys in this practice group also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities.

### CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

The Corporate Governance and Shareholders' Rights Practice Group prosecutes derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. The group has obtained unprecedented victories on behalf of shareholders seeking to improve corporate governance and protect the shareholder franchise, prosecuting actions challenging numerous highly publicized corporate transactions which violated fair process and fair price, and the applicability of the business judgment rule. We have also addressed issues of corporate waste, shareholder voting rights claims, and executive compensation. As a result of the firm's high-profile and widely recognized capabilities, the corporate governance practice group is increasingly in demand by institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the board's accountability to shareholders.

The firm is actively involved in litigating numerous cases in this area of law, an area that has become increasingly important in light of efforts by various market participants to buy companies from their public shareholders "on the cheap."

### EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

The Employment Discrimination and Civil Rights Practice Group prosecutes class and multi-plaintiff actions, and other high-impact litigation against employers and other societal institutions that violate federal or state employment, anti-discrimination, and civil rights laws. The practice group represents diverse clients on a wide range of issues including Title VII actions: race, gender, sexual orientation and age discrimination suits; sexual harassment, and "glass ceiling" cases in which otherwise qualified employees are passed over for promotions to managerial or executive positions.

Bernstein Litowitz Berger & Grossmann LLP is committed to effecting positive social change in the workplace and in society. The practice group has the necessary financial and human resources to ensure that the class action approach to discrimination and civil rights issues is successful. This litigation method serves to empower employees and other civil rights victims, who are usually discouraged from pursuing litigation because of personal financial limitations, and offers the potential for effecting the greatest positive change for the greatest number of people affected by discriminatory practice in the workplace.

## GENERAL COMMERCIAL LITIGATION AND ALTERNATIVE DISPUTE RESOLUTION

The General Commercial Litigation practice group provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees and other business entities. We have faced down powerful and well-funded law firms and defendants – and consistently prevailed. However, not every dispute is best resolved through the courts. In such cases, BLB&G Alternative Dispute practitioners offer clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. BLB&G has extensive experience – and a marked record of successes – in ADR practice. For example, in the wake of the credit crisis, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. Our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association (AAA), FINRA, JAMS, International Chamber of Commerce (ICC) and the London Court of International Arbitration.

## DISTRESSED DEBT AND BANKRUPTCY CREDITOR NEGOTIATION

The BLB&G Distressed Debt and Bankruptcy Creditor Negotiation Group has obtained billions of dollars through litigation on behalf of bondholders and creditors of distressed and bankrupt companies, as well as through third-party litigation brought by bankruptcy trustees and creditors' committees against auditors, appraisers, lawyers, officers and directors, and other defendants who may have contributed to client losses. As counsel, we advise institutions and individuals nationwide in developing strategies and tactics to recover assets presumed lost as a result of bankruptcy. Our record in this practice area is characterized by extensive trial experience in addition to completion of successful settlements.

## CONSUMER ADVOCACY

The Consumer Advocacy Practice Group at Bernstein Litowitz Berger & Grossmann LLP prosecutes cases across the entire spectrum of consumer rights, consumer fraud, and consumer protection issues. The firm represents victimized consumers in state and federal courts nationwide in individual and class action lawsuits that seek to provide consumers and purchasers of defective products with a means to recover their damages. The attorneys in this group are well versed in the vast array of laws and regulations that govern consumer interests and are aggressive, effective, court-tested litigators. The Consumer Practice Advocacy Group has recovered hundreds of millions of dollars for millions of consumers throughout the country. Most notably, in a number of cases, the firm has obtained recoveries for the class that were the entirety of the potential damages suffered by the consumer. For example, in actions against MCI and Empire Blue Cross, the firm recovered all of the damages suffered by the class. The group achieved its successes by advancing innovative claims and theories of liabilities, such as obtaining decisions in Pennsylvania and Illinois appellate courts that adopted a new theory of consumer damages in mass marketing cases. Bernstein Litowitz Berger & Grossmann LLP is, thus, able to lead the way in protecting the rights of consumers.

## THE COURTS SPEAK

Throughout the firm’s history, many courts have recognized the professional excellence and diligence of the firm and its members. A few examples are set forth below.

### ***IN RE WORLD COM, INC. SECURITIES LITIGATION***

**THE HONORABLE DENISE COTE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

*“I have the utmost confidence in plaintiffs’ counsel...they have been doing a superb job.... The Class is extraordinarily well represented in this litigation.”*

*“The magnitude of this settlement is attributable in significant part to Lead Counsel’s advocacy and energy.... The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court’s experience with plaintiffs’ counsel in securities litigation.”*

*“Lead Counsel has been energetic and creative. . . . Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions.”*

### ***IN RE CLARENT CORPORATION SECURITIES LITIGATION***

**THE HONORABLE CHARLES R. BREYER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

*“It was the best tried case I’ve witnessed in my years on the bench . . .”*

*“[A]n extraordinarily civilized way of presenting the issues to you [the jury]. . . . We’ve all been treated to great civility and the highest professional ethics in the presentation of the case....”*

*“These trial lawyers are some of the best I’ve ever seen.”*

### ***LANDRY’S RESTAURANTS, INC. SHAREHOLDER LITIGATION***

**VICE CHANCELLOR J. TRAVIS LASTER OF THE DELAWARE COURT OF CHANCERY**

*“I do want to make a comment again about the excellent efforts . . . put into this case. . . . This case, I think, shows precisely the type of benefits that you can achieve for stockholders and how representative litigation can be a very important part of our corporate governance system . . . you hold up this case as an example of what to do.”*

### ***MCCALL V. SCOTT (COLUMBIA/HCA DERIVATIVE LITIGATION)***

**THE HONORABLE THOMAS A. HIGGINS OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE**

*“Counsel’s excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries.”*

## RECENT ACTIONS & SIGNIFICANT RECOVERIES

Bernstein Litowitz Berger & Grossmann LLP is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. Some examples from our practice groups include:

### SECURITIES CLASS ACTIONS

**CASE:** *IN RE WORLDCom, INC. SECURITIES LITIGATION*

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** \$6.19 billion securities fraud class action recovery – the second largest in history; unprecedented recoveries from Director Defendants.

**CASE SUMMARY:** Investors suffered massive losses in the wake of the financial fraud and subsequent bankruptcy of former telecom giant WorldCom, Inc. This litigation alleged that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. It further alleged a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom, and by WorldCom’s former CEO and CFO. As Court-appointed Co-Lead Counsel representing Lead Plaintiff the **New York State Common Retirement Fund**, we obtained unprecedented settlements totaling more than \$6 billion from the Investment Bank Defendants who underwrote WorldCom bonds, including a \$2.575 billion cash settlement to settle all claims against the Citigroup Defendants. On the eve of trial, the 13 remaining “Underwriter Defendants,” including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly \$3.5 billion to resolve all claims against them. Additionally, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants had agreed to pay over \$60 million to settle the claims against them. An unprecedented first for outside directors, \$24.75 million of that amount came out of the pockets of the individuals – 20% of their collective net worth. *The Wall Street Journal*, in its coverage, profiled the settlement as literally having “shaken Wall Street, the audit profession and corporate boardrooms.” After four weeks of trial, Arthur Andersen, WorldCom’s former auditor, settled for \$65 million. Subsequent settlements were reached with the former executives of WorldCom, and then with Andersen, bringing the total obtained for the Class to over \$6.19 billion.

**CASE:** *IN RE CENDANT CORPORATION SECURITIES LITIGATION*

**COURT:** United States District Court for the District of New Jersey

**HIGHLIGHTS:** \$3.3 billion securities fraud class action recovery – the third largest in history; significant corporate governance reforms obtained.

**CASE SUMMARY:** The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company’s revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996 and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for \$2.8 billion to adopt some of the most extensive corporate governance changes in history. E&Y settled for \$335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs **CalPERS – the California Public Employees’ Retirement System**, the **New York State Common Retirement Fund** and the **New York City Pension Funds**, the three largest public pension funds in America, in this action.

**CASE:** *IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION*

**COURT:** **United States District Court for the Southern District of New York**

**HIGHLIGHTS:** \$2.425 billion in cash; significant corporate governance reforms to resolve all claims. This recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim – the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; and one of the 10 largest securities class action recoveries in history.

**DESCRIPTION:** The firm represented Co-Lead Plaintiffs the **State Teachers Retirement System of Ohio**, the **Ohio Public Employees Retirement System**, and the **Teacher Retirement System of Texas** in this securities class action filed on behalf of shareholders of Bank of America Corporation (“BAC”) arising from BAC’s 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies’ current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

**CASE:** *IN RE NORTEL NETWORKS CORPORATION SECURITIES LITIGATION (“NORTEL II”)*

**COURT:** **United States District Court for the Southern District of New York**

**HIGHLIGHTS:** Over \$1.07 billion in cash and common stock recovered for the class.

**DESCRIPTION:** This securities fraud class action charged Nortel Networks Corporation and certain of its officers and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel’s financial results during the relevant period. BLB&G clients the **Ontario Teachers’ Pension Plan Board** and the **Treasury of the State of New Jersey and its Division of Investment** were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay \$2.4 billion in cash and Nortel common stock (all figures in US dollars) to resolve both matters. Nortel later announced that its insurers had agreed to pay \$228.5 million toward the settlement, bringing the total amount of the global settlement to approximately \$2.7 billion, and the total amount of the Nortel II settlement to over \$1.07 billion.

**CASE:** *IN RE MCKESSON HBOC, INC. SECURITIES LITIGATION*

**COURT:** **United States District Court for the Northern District of California**

**HIGHLIGHTS:** \$1.05 billion recovery for the class.

**DESCRIPTION:** This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson and McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC’s and McKesson HBOC’s financial results. On behalf of Lead Plaintiff the **New York State Common Retirement Fund**, BLB&G obtained a \$960 million settlement from the company; \$72.5 million in cash from Arthur Andersen; and, on the eve of trial, a \$10 million settlement from Bear Stearns & Co. Inc., with total recoveries reaching more than \$1 billion.

**CASE:** *IN RE LEHMAN BROTHERS EQUITY/DEBT SECURITIES LITIGATION*

**COURT:** **United States District Court for the Southern District of New York**

**HIGHLIGHTS:** \$735 million in total recoveries.

**DESCRIPTION:** Representing the **Government of Guam Retirement Fund**, BLB&G successfully prosecuted this securities class action arising from Lehman Brothers Holdings Inc.'s issuance of billions of dollars in offerings of debt and equity securities that were sold using offering materials that contained untrue statements and missing material information.

After four years of intense litigation, Lead Plaintiffs achieved a total of \$735 million in recoveries consisting of: a \$426 million settlement with underwriters of Lehman securities offerings; a \$90 million settlement with former Lehman directors and officers; a \$99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a \$120 million settlement that resolves claims against UBS Financial Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were restated, and that the auditors never disavowed the statements.

**CASE:** *HEALTHSOUTH CORPORATION BONDHOLDER LITIGATION*

**COURT:** **United States District Court for the Northern District of Alabama**

**HIGHLIGHTS:** \$804.5 million in total recoveries.

**DESCRIPTION:** In this litigation, BLB&G was the appointed Co-Lead Counsel for the bond holder class, representing Lead Plaintiff the **Retirement Systems of Alabama**. This action arose from allegations that Birmingham, Alabama based HealthSouth Corporation overstated its earnings at the direction of its founder and former CEO Richard Scrushy. Subsequent revelations disclosed that the overstatement actually exceeded over \$2.4 billion, virtually wiping out all of HealthSouth's reported profits for the prior five years. A total recovery of \$804.5 million was obtained in this litigation through a series of settlements, including an approximately \$445 million settlement for shareholders and bondholders, a \$100 million in cash settlement from UBS AG, UBS Warburg LLC, and individual UBS Defendants (collectively, "UBS"), and \$33.5 million in cash from the company's auditor. The total settlement for injured HealthSouth bond purchasers exceeded \$230 million, recouping over a third of bond purchaser damages.

**CASE:** *IN RE CITIGROUP, INC. BOND ACTION LITIGATION*

**COURT:** **United States District Court for the Southern District of New York**

**HIGHLIGHTS:** \$730 million cash recovery; second largest recovery in a litigation arising from the financial crisis.

**DESCRIPTION:** In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of Citigroup bonds and preferred stock alleging that these offerings contained material misrepresentations and omissions regarding Citigroup's exposure to billions of dollars in mortgage-related assets, the loss reserves for its portfolio of high-risk residential mortgage loans, and the credit quality of the risky assets it held in off-balance sheet entities known as "structured investment vehicles." After protracted litigation lasting four years, we obtained a \$730 million cash recovery – the second largest securities class action recovery in a litigation arising from the financial crisis, and the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. As Lead Bond Counsel for the Class, BLB&G represented Lead Bond Plaintiffs Minneapolis Firefighters' Relief Association, Louisiana Municipal Police Employees' Retirement System, and Louisiana Sheriffs' Pension and Relief Fund.

**CASE:** *IN RE WASHINGTON PUBLIC POWER SUPPLY SYSTEM LITIGATION*

**COURT:** **United States District Court for the District of Arizona**

**HIGHLIGHTS:** Over \$750 million – the largest securities fraud settlement ever achieved at the time.

**DESCRIPTION:** BLB&G was appointed Chair of the Executive Committee responsible for litigating the action on behalf of the class in this action. The case was litigated for over seven years, and involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over \$750 million – then the largest securities fraud settlement ever achieved.

**CASE:** *IN RE SCHERING-PLOUGH CORPORATION/ENHANCE SECURITIES LITIGATION; IN RE MERCK & CO., INC. VYTORIN/ZETIA SECURITIES LITIGATION*

**COURT:** **United States District Court for the District of New Jersey**

**HIGHLIGHTS:** \$688 million in combined settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) in this coordinated securities fraud litigations filed on behalf of investors in Merck and Schering-Plough.

**DESCRIPTION:** After nearly five years of intense litigation, just days before trial, BLB&G resolved the two actions against Merck and Schering-Plough, which stemmed from claims that Merck and Schering artificially inflated their market value by concealing material information and making false and misleading statements regarding their blockbuster anti-cholesterol drugs Zetia and Vytorin. Specifically, we alleged that the companies knew that their “ENHANCE” clinical trial of Vytorin (a combination of Zetia and a generic) demonstrated that Vytorin was no more effective than the cheaper generic at reducing artery thickness. The companies nonetheless championed the “benefits” of their drugs, attracting billions of dollars of capital. When public pressure to release the results of the ENHANCE trial became too great, the companies reluctantly announced these negative results, which we alleged led to sharp declines in the value of the companies’ securities, resulting in significant losses to investors. The combined \$688 million in settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) is the second largest securities recovery ever in the Third Circuit, among the top 25 settlements of all time, and among the ten largest recoveries ever in a case where there was no financial restatement. BLB&G represented Lead Plaintiffs **Arkansas Teacher Retirement System**, the **Public Employees’ Retirement System of Mississippi**, and the **Louisiana Municipal Police Employees’ Retirement System**.

**CASE:** *IN RE LUCENT TECHNOLOGIES, INC. SECURITIES LITIGATION*

**COURT:** **United States District Court for the District of New Jersey**

**HIGHLIGHTS:** \$667 million in total recoveries; the appointment of BLB&G as Co-Lead Counsel is especially noteworthy as it marked the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues and possible conflicts between new and old allegations.

**DESCRIPTION:** BLB&G served as Co-Lead Counsel in this securities class action, representing Lead Plaintiffs the **Parnassus Fund**, **Teamsters Locals 175 & 505 D&P Pension Trust**, **Anchorage Police and Fire Retirement System** and the **Louisiana School Employees’ Retirement System**. The complaint accused Lucent of making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly \$679 million in fiscal 2000. The settlement obtained in this case is valued at approximately \$667 million, and is composed of cash, stock and warrants.

**CASE:** *IN RE WACHOVIA PREFERRED SECURITIES AND BOND/NOTES LITIGATION*

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** \$627 million recovery – among the 20 largest securities class action recoveries in history; third largest recovery obtained in an action arising from the subprime mortgage crisis.

**DESCRIPTION:** This securities class action was filed on behalf of investors in certain Wachovia bonds and preferred securities against Wachovia Corp., certain former officers and directors, various underwriters, and its auditor, KPMG LLP. The case alleges that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia’s multi-billion dollar option-ARM (adjustable rate mortgage) “Pick-A-Pay” mortgage loan portfolio, and that Wachovia’s loan loss reserves were materially inadequate. According to the Complaint, these undisclosed problems threatened the viability of the financial institution, requiring it to be “bailed out” during the financial crisis before it was acquired by Wells Fargo. The combined \$627 million recovery obtained in the action is among the 20 largest securities class action recoveries in history, the largest settlement ever in a class action case asserting only claims under the Securities Act of 1933, and one of a handful of securities class action recoveries obtained where there were no parallel civil or criminal actions brought by government authorities. The firm represented Co-Lead Plaintiffs **Orange County Employees Retirement System** and **Louisiana Sheriffs’ Pension and Relief Fund** in this action.

**CASE:** *OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM V. FREDDIE MAC*

**COURT:** United States District Court for the Southern District of Ohio

**HIGHLIGHTS:** \$410 million settlement.

**DESCRIPTION:** This securities fraud class action was filed on behalf of the **Ohio Public Employees Retirement System** and the **State Teachers Retirement System of Ohio** alleging that Federal Home Loan Mortgage Corporation (“Freddie Mac”) and certain of its current and former officers issued false and misleading statements in connection with the company’s previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company’s operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company’s earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than \$5 billion in earnings. A settlement of \$410 million was reached in the case just as deposition discovery had begun and document review was complete.

**CASE:** *IN RE REFCO, INC. SECURITIES LITIGATION*

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** Over \$407 million in total recoveries.

**DESCRIPTION:** The lawsuit arises from the revelation that Refco, a once prominent brokerage, had for years secreted hundreds of millions of dollars of uncollectible receivables with a related entity controlled by Phillip Bennett, the company’s Chairman and Chief Executive Officer. This revelation caused the stunning collapse of the company a mere two months after its initial public offering of common stock. As a result, Refco filed one of the largest bankruptcies in U.S. history. Settlements have been obtained from multiple company and individual defendants, resulting in a total recovery for the class of over \$407 million. BLB&G represented Co-Lead Plaintiff **RH Capital Associates LLC**.

## CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

**CASE:** *UNITEDHEALTH GROUP, INC. SHAREHOLDER DERIVATIVE LITIGATION*

**COURT:** United States District Court for the District of Minnesota

**HIGHLIGHTS:** Litigation recovered over \$920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.

**DESCRIPTION:** This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over \$920 million in ill-gotten compensation directly from the former officer Defendants – the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, “investors everywhere should applaud [the UnitedHealth settlement].... [T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings.” The Plaintiffs in this action were the **St. Paul Teachers’ Retirement Fund Association**, the **Public Employees’ Retirement System of Mississippi**, the **Jacksonville Police & Fire Pension Fund**, the **Louisiana Sheriffs’ Pension & Relief Fund**, the **Louisiana Municipal Police Employees’ Retirement System** and **Fire & Police Pension Association of Colorado**.

**CASE:** *CAREMARK MERGER LITIGATION*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Landmark Court ruling orders Caremark’s board to disclose previously withheld information, enjoins shareholder vote on CVS merger offer, and grants statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise offer by \$7.50 per share, equal to more than \$3.3 billion in additional consideration to Caremark shareholders.

**DESCRIPTION:** Commenced on behalf of the **Louisiana Municipal Police Employees’ Retirement System** and other shareholders of Caremark RX, Inc. (“Caremark”), this shareholder class action accused the company’s directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation (“CVS”), all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark’s shareholders—forcing CVS to increase the consideration offered to shareholders by \$7.50 per share in cash (over \$3 billion in total).

**CASE:** *IN RE PFIZER INC. SHAREHOLDER DERIVATIVE LITIGATION*

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board that will be supported by a dedicated \$75 million fund.

**DESCRIPTION:** In the wake of Pfizer’s agreement to pay \$2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company’s most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer’s senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous “red flags” that Pfizer’s improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs **Louisiana**

**Sheriffs' Pension and Relief Fund and Skandia Life Insurance Company, Ltd.** In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the "Regulatory Committee") to oversee and monitor Pfizer's compliance and drug marketing practices and to review the compensation policies for Pfizer's drug sales related employees.

**CASE:** *IN RE EL PASO CORP. SHAREHOLDER LITIGATION*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Landmark Delaware ruling chastises Goldman Sachs for M&A conflicts of interest.

**DESCRIPTION:** This case aimed a spotlight on ways that financial insiders – in this instance, Wall Street titan Goldman Sachs – game the system. The Delaware Chancery Court harshly rebuked Goldman for ignoring blatant conflicts of interest while advising their corporate clients on Kinder Morgan's high-profile acquisition of El Paso Corporation. As a result of the lawsuit, Goldman was forced to relinquish a \$20 million advisory fee, and BLB&G obtained a \$110 million cash settlement for El Paso shareholders – one of the highest merger litigation damage recoveries in Delaware history.

**CASE:** *IN RE DELPHI FINANCIAL GROUP SHAREHOLDER LITIGATION*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Dominant shareholder is blocked from collecting a payoff at the expense of minority investors.

**DESCRIPTION:** As the Delphi Financial Group prepared to be acquired by Tokio Marine Holdings Inc., the conduct of Delphi's founder and controlling shareholder drew the scrutiny of BLB&G and its institutional investor clients for improperly using the transaction to expropriate at least \$55 million at the expense of the public shareholders. BLB&G aggressively litigated this action and obtained a settlement of \$49 million for Delphi's public shareholders. The settlement fund is equal to about 90% of recoverable Class damages – a virtually unprecedented recovery.

**CASE:** *QUALCOMM BOOKS & RECORDS LITIGATION*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Novel use of "books and records" litigation enhances disclosure of political spending and transparency.

**DESCRIPTION:** The U.S. Supreme Court's controversial 2010 opinion in *Citizens United v. FEC* made it easier for corporate directors and executives to secretly use company funds – shareholder assets – to support personally favored political candidates or causes. BLB&G prosecuted the first-ever "books and records" litigation to obtain disclosure of corporate political spending at our client's portfolio company – technology giant Qualcomm Inc. – in response to Qualcomm's refusal to share the information. As a result of the lawsuit, Qualcomm adopted a policy that provides its shareholders with comprehensive disclosures regarding the company's political activities and places Qualcomm as a standard-bearer for other companies.

**CASE:** *IN RE NEWS CORP. SHAREHOLDER DERIVATIVE LITIGATION*

**COURT:** Delaware Court of Chancery – Kent County

**HIGHLIGHTS:** An unprecedented settlement in which News Corp. recoups \$139 million and enacts significant corporate governance reforms that combat self-dealing in the boardroom.

**DESCRIPTION:** Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder

concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped \$139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence and functioning of its board, and the compensation and clawback policies for management.

**CASE:** *IN RE ACS SHAREHOLDER LITIGATION (XEROX)*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** BLB&G challenged an attempt by ACS CEO to extract a premium on his stock not shared with the company's public shareholders in a sale of ACS to Xerox. On the eve of trial, BLB&G obtained a \$69 million recovery, with a substantial portion of the settlement personally funded by the CEO.

**DESCRIPTION:** Filed on behalf of the **New Orleans Employees' Retirement System** and similarly situated shareholders of Affiliated Computer Service, Inc., this action alleged that members of the Board of Directors of ACS breached their fiduciary duties by approving a merger with Xerox Corporation which would allow Darwin Deason, ACS's founder and Chairman and largest stockholder, to extract hundreds of millions of dollars of value that rightfully belongs to ACS's public shareholders for himself. Per the agreement, Deason's consideration amounted to over a 50% premium when compared to the consideration paid to ACS's public stockholders. The ACS Board further breached its fiduciary duties by agreeing to certain deal protections in the merger agreement that essentially locked up the transaction between ACS and Xerox. After seeking a preliminary injunction to enjoin the deal and engaging in intense discovery and litigation in preparation for a looming trial date, Plaintiffs reached a global settlement with Defendants for \$69 million. In the settlement, Deason agreed to pay \$12.8 million, while ACS agreed to pay the remaining \$56.1 million.

**CASE:** *IN RE DOLLAR GENERAL CORPORATION SHAREHOLDER LITIGATION*

**COURT:** Sixth Circuit Court for Davidson County, Tennessee; Twentieth Judicial District, Nashville

**HIGHLIGHTS:** Holding Board accountable for accepting below-value "going private" offer.

**DESCRIPTION:** A Nashville, Tennessee corporation that operates retail stores selling discounted household goods, in early March 2007, Dollar General announced that its Board of Directors had approved the acquisition of the company by the private equity firm Kohlberg Kravis Roberts & Co. ("KKR"). BLB&G, as Co-Lead Counsel for the **City of Miami General Employees' & Sanitation Employees' Retirement Trust**, filed a class action complaint alleging that the "going private" offer was approved as a result of breaches of fiduciary duty by the board and that the price offered by KKR did not reflect the fair value of Dollar General's publicly-held shares. On the eve of the summary judgment hearing, KKR agreed to pay a \$40 million settlement in favor of the shareholders, with a potential for \$17 million more for the Class.

**CASE:** *LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Protecting shareholders from predatory CEO's multiple attempts to take control of Landry's Restaurants through improper means. Our litigation forced the CEO to increase his buyout offer by four times the price offered and obtained an additional \$14.5 million cash payment for the class.

**DESCRIPTION:** In this derivative and shareholder class action, shareholders alleged that Tilman J. Fertitta – chairman, CEO and largest shareholder of Landry's Restaurants, Inc. – and its Board of Directors stripped public shareholders of their controlling interest in the company for no premium and severely devalued remaining public shares in breach of their fiduciary duties. BLB&G's prosecution of the action on behalf of Plaintiff **Louisiana Municipal Police Employees' Retirement System** resulted in recoveries that included the creation of a settlement fund composed of \$14.5 million in cash, as well as significant corporate governance reforms and an increase in consideration to shareholders of the purchase price valued at \$65 million.

## EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

**CASE:** *ROBERTS V. TEXACO, INC.*

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** BLB&G recovered \$170 million on behalf of Texaco’s African-American employees and engineered the creation of an independent “Equality and Tolerance Task Force” at the company.

**DESCRIPTION:** Six highly qualified African-American employees filed a class action complaint against Texaco Inc. alleging that the company failed to promote African-American employees to upper level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. BLB&G’s prosecution of the action revealed that African-Americans were significantly under-represented in high level management jobs and that Caucasian employees were promoted more frequently and at far higher rates for comparable positions within the company. The case settled for over \$170 million, and Texaco agreed to a Task Force to monitor its diversity programs for five years – a settlement described as the most significant race discrimination settlement in history.

**CASE:** *ECO A - GMAC/NMAC/FORD/TOYOTA/CHRYSLER - CONSUMER FINANCE DISCRIMINATION LITIGATION*

**COURT:** Multiple jurisdictions

**HIGHLIGHTS:** Landmark litigation in which financing arms of major auto manufacturers are compelled to cease discriminatory “kick-back” arrangements with dealers, leading to historic changes to auto financing practices nationwide.

**DESCRIPTION:** The cases involve allegations that the lending practices of General Motors Acceptance Corporation, Nissan Motor Acceptance Corporation, Ford Motor Credit, Toyota Motor Credit and DaimlerChrysler Financial cause African-American and Hispanic car buyers to pay millions of dollars more for car loans than similarly situated white buyers. At issue is a discriminatory kickback system under which minorities typically pay about 50% more in dealer mark-up which is shared by auto dealers with the Defendants.

**NMAC:** The United States District Court for the Middle District of Tennessee granted final approval of the settlement of the class action against Nissan Motor Acceptance Corporation (“NMAC”) in which NMAC agreed to offer pre-approved loans to hundreds of thousands of current and potential African-American and Hispanic NMAC customers, and limit how much it raises the interest charged to car buyers above the company’s minimum acceptable rate.

**GMAC:** The United States District Court for the Middle District of Tennessee granted final approval of a settlement of the litigation against General Motors Acceptance Corporation (“GMAC”) in which GMAC agreed to take the historic step of imposing a 2.5% markup cap on loans with terms up to 60 months, and a cap of 2% on extended term loans. GMAC also agreed to institute a substantial credit pre-approval program designed to provide special financing rates to minority car buyers with special rate financing.

**DAIMLERCHRYSLER:** The United States District Court for the District of New Jersey granted final approval of the settlement in which DaimlerChrysler agreed to implement substantial changes to the company’s practices, including limiting the maximum amount of mark-up dealers may charge customers to between 1.25% and 2.5% depending upon the length of the customer’s loan. In addition, the company agreed to send out pre-approved credit offers of no-markup loans to African-American and Hispanic consumers, and contribute \$1.8 million to provide consumer education and assistance programs on credit financing.

**FORD MOTOR CREDIT:** The United States District Court for the Southern District of New York granted final approval of a settlement in which Ford Credit agreed to make contract disclosures informing consumers that the customer’s Annual Percentage Rate (“APR”) may be negotiated and that sellers may assign their contracts and retain rights to receive a portion of the finance charge.

## CLIENTS AND FEES

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we will encourage retention where our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client.

Our clients include many large and well known financial and lending institutions and pension funds, as well as privately-held companies that are attracted to our firm because of our reputation, expertise and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

## IN THE PUBLIC INTEREST

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and *pro bono* activities, as well as participating as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School.

**BERNSTEIN LITOWITZ BERGER & GROSSMANN PUBLIC INTEREST LAW FELLOWS COLUMBIA LAW SCHOOL** – BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donated funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This newly endowed fund at Columbia Law School will provide Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

### FIRM SPONSORSHIP OF HER JUSTICE

**NEW YORK, NY** – BLB&G is a sponsor of Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally battered women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody and visitation. To read more about Her Justice, visit the organization's website at [www.herjustice.org](http://www.herjustice.org).

### THE PAUL M. BERNSTEIN MEMORIAL SCHOLARSHIP

**COLUMBIA LAW SCHOOL** – Paul M. Bernstein was the founding senior partner of the firm. Mr. Bernstein led a distinguished career as a lawyer and teacher and was deeply committed to the professional and personal development of young lawyers. The Paul M. Bernstein Memorial Scholarship Fund is a gift of the firm and the family and friends of Paul M. Bernstein, and is awarded annually to one or more second-year students selected for their academic excellence in their first year, professional responsibility, financial need and contributions to the community.

### FIRM SPONSORSHIP OF CITY YEAR NEW YORK

**NEW YORK, NY** – BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

### MAX W. BERGER PRE-LAW PROGRAM

**BARUCH COLLEGE** – In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.

### NEW YORK SAYS THANK YOU FOUNDATION

**NEW YORK, NY** – Founded in response to the outpouring of love shown to New York City by volunteers from all over the country in the wake of the 9/11 attacks, The New York Says Thank You Foundation sends volunteers from New York City to help rebuild communities around the country affected by disasters. BLB&G is a corporate sponsor of NYSTY and its goals are a heartfelt reflection of the firm's focus on community and activism.

## OUR ATTORNEYS

### MEMBERS

**MAX W. BERGER**, the firm’s senior founding partner, supervises BLB&G’s litigation practice and prosecutes class and individual actions on behalf of the firm’s clients.

He has litigated many of the firm’s most high-profile and significant cases, and has negotiated six of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* (\$3.3 billion); *Citigroup–WorldCom* (\$2.575 billion); *Bank of America/Merrill Lynch* (\$2.4 billion); *JPMorgan Chase–WorldCom* (\$2 billion); *Nortel* (\$1.07 billion); and *McKesson* (\$1.04 billion).

Mr. Berger’s work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. Unique among his peers, *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled “Investors’ Billion-Dollar Fraud Fighter,” which also discussed his role in the *Bank of America/Merrill Lynch Merger* litigation. In 2011, Mr. Berger was twice profiled by *The American Lawyer* for his role in negotiating a \$627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation*, and a \$516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. Previously, Mr. Berger’s role in the *WorldCom* case generated extensive media coverage including feature articles in *BusinessWeek* and *The American Lawyer*. For his outstanding efforts on behalf of WorldCom investors, *The National Law Journal* profiled Mr. Berger (one of only eleven attorneys selected nationwide) in its annual 2005 “Winning Attorneys” section. He was subsequently featured in a 2006 *New York Times* article, “A Class-Action Shuffle,” which assessed the evolving landscape of the securities litigation arena.

#### One of the “100 Most Influential Lawyers in America”

Widely recognized for his professional excellence and achievements, Mr. Berger was named one of the “100 Most Influential Lawyers in America” by *The National Law Journal* for being “front and center” in holding Wall Street banks accountable and obtaining over \$5 billion in cases arising from the subprime meltdown, and for his work as a “master negotiator” in obtaining numerous multi-billion dollar recoveries for investors.

Described as a “standard-bearer” for the profession in a career spanning over 40 years, he is the 2014 recipient of *Chambers USA*’s award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Mr. Berger’s “numerous headline-grabbing successes,” as well as his unique stature among colleagues – “warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table.”

*Law360* published a special feature discussing his life and career as a “Titan of the Plaintiffs Bar,” and also named him one of only six litigators selected nationally as a “Legal MVP” for his work in securities litigation.

For the past ten years in a row, Mr. Berger has received the top attorney ranking in plaintiff securities litigation by *Chambers* and is consistently recognized as one of New York’s “local litigation stars” by *Benchmark Litigation* (published by *Institutional Investor* and *Euromoney*). *Law360* also named him one of only six litigators selected nationally as a “Legal MVP” for his work in securities litigation.

Since their various inception, he has also been named a “leading lawyer” by the *Legal 500 US* guide, one of “10 Legal Superstars” by *Securities Law360*, and one of the “500 Leading Lawyers in America” and “100 Securities Litigators You Need to Know” by *Lawdragon* magazine. Further, *The Best Lawyers in America* guide has named Mr. Berger a leading lawyer in his field.

Mr. Berger also serves the academic community in numerous capacities as a member of the Dean’s Council to Columbia Law School, and as a member of the Board of Trustees of Baruch College. He has taught Profession of Law, an ethics course at Columbia Law School, and currently serves on the Advisory Board of Columbia Law School’s Center on Corporate Governance. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in February 2011, Mr. Berger received Columbia Law School’s most prestigious and highest honor, “The Medal for Excellence.” This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Mr. Berger was profiled in the Fall 2011 issue of *Columbia Law School Magazine*.

Mr. Berger is currently a member of the New York State, New York City and American Bar Associations, and is a member of the Federal Bar Council. He is also a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. In addition, Mr. Berger is a member of the Board of Trustees of The Supreme Court Historical Society.

Mr. Berger lectures extensively for many professional organizations. In 1997, Mr. Berger was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, where he was a “Trial Lawyer of the Year” Finalist for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco’s African-American employees.

Among numerous charitable and volunteer works, Mr. Berger is an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July 2005, he was named City Year New York’s “Idealist of the Year,” for his long-time service and work in the community. He and his wife, Dale, have also established the Dale and Max Berger Public Interest Law Fellowship at Columbia Law School and the Max Berger Pre-Law Program at Baruch College.

EDUCATION: Baruch College-City University of New York, B.B.A., Accounting, 1968; President of the student body and recipient of numerous awards. Columbia Law School, J.D., 1971, Editor of the *Columbia Survey of Human Rights Law*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit; U.S. Supreme Court.

**EDWARD A. GROSSMANN**, one of the firm’s founding partners, served as lead counsel in the *Prudential-Bache Energy Income Limited Partnership* and the *In re Bennett Funding Group* class actions, well-publicized cases which have each settled for in excess of \$120 million.

He is a past chairman of the Class and Derivative Action Trials Subcommittee of the Litigation Section of the American Bar Association and a past chairman of the Commercial Litigation Section of the Association of Trial Lawyers of America (now known as the American Association for Justice), and has lectured for that organization. Mr. Grossmann is a member of the Executive Committee of the Jackson Gabriel Silver Foundation and the Chairman of the Board of Trustees of the Kaplen JCC on the Palisades. He is also past President of the Kaplen JCC on the Palisades and is a past trustee of the UJA Federation of Northern New Jersey.

EDUCATION: University of Wisconsin, B.A., cum laude, 1970. University of Michigan Law School, J.D., 1973.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York; U.S. Courts of Appeals for the Second, Third, Fifth, Ninth and Eleventh Circuits.

**GERALD H. SILK**'s practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

A member of the firm's Management Committee, Mr. Silk is one of the partners who oversee the firm's New Matter department, in which he, along with a group of financial analysts and investigators, counsels institutional clients on potential legal claims. He was the subject of "Picking Winning Securities Cases," a feature article in the June 2005 issue of *Bloomberg Markets* magazine, which detailed his work for the firm in this capacity. A decade later, in December 2014, Mr. Silk was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" – one of 50 lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies – in no small part for the critical role he has played in helping the firm's investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters. In addition, *Lawdragon* magazine, which has named Mr. Silk one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers in America" and one of America's top 500 "rising stars" in the legal profession, also recently profiled him as part of its "Lawyer Limelight" special series, discussing subprime litigation, his passion for plaintiffs' work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners by *Chambers USA*, Mr. Silk is also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected by *New York Super Lawyers* every year since 2006.

Mr. Silk is currently advising institutional investors worldwide on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "Mortgage Investors Turn to State Courts for Relief."

Mr. Silk is also representing the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars. In addition, he is actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation – which led to an increase of approximately \$3.5 billion in the consideration offered to shareholders.

Mr. Silk was one of the principal attorneys responsible for prosecuting the *In re Independent Energy Holdings Securities Litigation*. A case against the officers and directors of Independent Energy as well as several investment banking firms which underwrote a \$200 million secondary offering of ADRs by the U.K.-based Independent Energy, the litigation was resolved for \$48 million. Mr. Silk has also prosecuted and successfully resolved several other securities class actions, which resulted in substantial cash recoveries for investors, including *In re Sykes Enterprises, Inc. Securities Litigation* in the Middle District of Florida, and *In re OM Group, Inc. Securities Litigation* in the Northern District of Ohio. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for \$3.2 billion.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Mr. Silk served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Mr. Silk lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including “Improving Multi-Jurisdictional, Merger-Related Litigation,” American Bar Association (February 2011); “The Compensation Game,” *Lawdragon*, Fall 2006; “Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?,” *75 St. John’s Law Review* 31 (Winter 2001); “The Duty To Supervise, Poser, Broker-Dealer Law and Regulation,” 3<sup>rd</sup> Ed. 2000, Chapter 15; “Derivative Litigation In New York after Marx v. Akers,” *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He is a frequent commentator for the business media on television and in print. Among other outlets, he has appeared on NBC’s *Today*, and CNBC’s *Power Lunch*, *Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times*, *Financial Times*, *Bloomberg*, *The National Law Journal*, and the *New York Law Journal*.

EDUCATION: Wharton School of the University of Pennsylvania, B.S., Economics, 1991.  
Brooklyn Law School, J.D., *cum laude*, 1995.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York.

**BLAIR A. NICHOLAS** is a senior and managing partner of the firm and widely recognized as one of the leading securities litigators in the country. He has extensive experience representing prominent private and public institutional investors in high-stakes actions involving federal and state securities laws, accountants’ liability, market manipulation, and corporate governance matters. Mr. Nicholas has recovered billions of dollars in courts throughout the nation on behalf of some of the largest mutual funds, investment managers, insurance companies, public pension plans, and hedge funds in North America and Europe.

On behalf of institutional investor clients, Mr. Nicholas currently serves, and has served in prior litigation, as counsel in a wide variety of high-profile actions. Select representations include:

**RMBS Trustee Actions** – Currently representing BlackRock, PIMCO, and nine other prominent institutional investors in six representative actions pending in the U.S. District Court of the Southern District of New York against the principal financial crisis-era RMBS trustee banks: U.S. Bank National Association; Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas; The Bank of New York Mellon; Wells Fargo; HSBC Bank USA, National Association; and Citibank N.A. The actions are brought by the plaintiffs in their representative capacity on behalf of over 2,200 RMBS trusts issued between 2004 and 2008. The suits allege that the trustees breached contractual, statutory and common law duties owed to the trusts and certificate-holders. The suits are brought as derivative actions, or in the alternative, as class actions on behalf of all current owners of certificates in the trusts. **Tyco Direct Action** – Lead Counsel on behalf of prominent mutual funds, hedge funds and a public pension fund in a direct action against Tyco International and certain of its former officers, which was successfully resolved for over \$105 million. **International Rectifier Securities Litigation** – Co-Lead Counsel in securities fraud action resolved for \$90 million. **AXA Rosenberg Breach of Fiduciary Duty Action** – recovered over \$65 million for investors in AXA Rosenberg’s funds and strategies who incurred losses as a result of an error in the company’s quantitative investment model. **Maxim Integrated Securities Litigation** – Lead Counsel in a stock options backdating action which resulted in \$173 million cash for investors – the largest backdating recovery in the Ninth Circuit. **Dendreon Securities Litigation** – Lead Counsel in securities fraud action resulting in \$40 million cash settlement for investors. **Qwest Direct Action** – represented prominent mutual funds in a direct action which resulted in significant and confidential recovery. **Legato Securities Litigation** – Lead Counsel in securities fraud action resolved for \$85 million. **Gemstar Securities Litigation**

– Lead Counsel in a securities fraud action which was successfully resolved for \$92.5 million. **Countrywide Equity Direct Action** – represented seventeen prominent institutional investors, including many of the largest in the world, in a direct action that was successfully and confidentially resolved against Countrywide Financial, certain of its former executive officers, and KPMG LLP. **BP Direct Action** – currently representing prominent institutional investors against British Petroleum and certain of its former officers arising out of the Company’s material false statements and omissions about its safety practices and the severity of the Deepwater Horizon oil spill. **Williams Securities Litigation** – Lead Counsel in a securities fraud action resolved for \$311 million. **Marsh & McLennan Direct Action** – successfully resolved direct securities action against Marsh & McLennan on behalf of several prominent mutual funds. **Informix Securities Litigation** – Co-Lead Counsel in securities fraud action resolved for \$142 million. **Toyota Securities Litigation** – Lead Counsel in securities fraud action resulting in \$25.5 million settlement arising out of Toyota’s concealment of unintended acceleration. **Clarent Securities Litigation** – Co-Lead Trial Counsel in a securities fraud action prosecuted in the Northern District of California. After a four-week jury trial, in which Mr. Nicholas delivered the closing argument, the jury returned a rare securities fraud verdict in favor of the shareholders against the Company’s former CEO. **Countrywide RMBS Direct Action** – represented prominent institutional investors, including money managers and insurance companies, in a direct action that was successfully and confidentially resolved against Countrywide Financial. **LIBOR Manipulation Actions** – currently representing the Los Angeles County Employees’ Retirement Association and the County of Riverside in actions on behalf of investors and municipalities who were damaged by the LIBOR rate-setting banks conspiracy to manipulate this critical financial benchmark. **Morgan Stanley RMBS Direct Action** – currently representing two prominent insurance companies against Morgan Stanley arising out of its fraudulent sale of residential mortgage-backed securities. **Network Associates Securities Litigation** – Lead Counsel in securities fraud action resolved for \$70 million. **J.P. Morgan RMBS Direct Action** – representing a prominent insurance company in an action alleging fraud claims arising from J.P. Morgan’s sale of residential mortgage pass-through certificates. **Finova Securities Litigation** – Lead Counsel in securities fraud action resolved for \$42 million. **Deutsche Bank RMBS Direct Action** – successfully represented a prominent institutional investor in a securities fraud action against Deutsche Bank arising out of its fraudulent sale of residential mortgage-backed securities. **Assisted Living Concepts** – as Lead Counsel for the Class, obtained settlement for \$12 million in cash, subject to Court approval.

Mr. Nicholas was named one of the “2010 Attorneys of the Year” by *The Recorder*, California’s premier legal daily publication, for his impressive legal achievements and “blockbuster” cases that were resolved favorably for investors in 2010. According to *The Recorder*, “this year’s winners are marked by their perseverance – whether fighting long odds, persuading courts to reconsider their own rulings, or getting great trial results in high-profile, high-pressure situations.” He is also widely recognized by other industry observers and publications for his professional excellence and achievements. *Benchmark Litigation – The Definitive Guide to America’s Leading Litigation Firms & Attorneys* recently named Mr. Nicholas a “Litigation Star – in Securities.” In addition, he has been ranked by *The Best Lawyers in America* guide as a Leading Lawyer in Commercial Litigation, and is consistently selected as a *San Diego Super Lawyer*. *Lawdragon* magazine has named him one of the “100 Securities Litigators You Need to Know,” one of the “500 Leading Lawyers in America,” and one of America’s top 500 “rising stars” in the legal profession. Mr. Nicholas was featured by *The American Lawyer* as one of the top 50 litigators in the country under 45, who have “made their marks already and whom [they] expect to see leading the field for years to come.” He was also honored in the *Daily Journal* for “rack[ing] up a string of multi-million dollar victories for investors,” and was selected as a “recommended lawyer” in M&A-Related Shareholder Litigation by *Legal 500*.

Mr. Nicholas is a Fellow at the American College of Investment Counsel (ACIC), and is an active member of both the Litigation Group and Securities Litigation Committee for the American Bar Association (ABA) and serves on the Affiliate Membership Committee for the California State Association of County Retirement Systems (SACRS). He served as Vice President on the Executive Committee of the San Diego Chapter of the Federal Bar Association and is an active member of the Association of Business Trial Lawyers of San Diego, Consumer Attorneys of

California, Litigation Section of the State Bar of California, and the San Diego County Bar Association. He is also a member of and active in a variety of state, regional and national organizations dedicated to investor education and advocacy, including: National Association of Public Pension Attorneys (NAPPA), State Association of County Retirement Systems (SACRS), California Association of Public Retirement Systems (CALAPRS), and Council of Institutional Investors (CII).

EDUCATION: University of California, Santa Barbara, B.A., Economics. University of San Diego School of Law, J.D.; Lead Articles Editor of the *San Diego Law Review*.

BAR ADMISSIONS: California; U.S. Courts of Appeals for the Fifth and Ninth Circuits; U.S. District Courts for the Southern, Central and Northern Districts of California; U.S. District Court for the District of Arizona; U.S. District Court for the Eastern District of Wisconsin.

**SALVATORE J. GRAZIANO**, an experienced trial attorney, has taken a leading role in a number of major securities fraud class actions over the past twenty years on behalf of institutional investors and hedge funds nationwide. These high-profile cases include *In re Schering-Plough Corp./ENHANCE Sec. Litig.* (D.N.J.); *In re Raytheon Sec. Litig.* (D. Mass.); *In re Refco Sec. Litig.* (S.D.N.Y.); *In re MicroStrategy, Inc. Sec. Litig.* (E.D. Va.); *In re Bristol Myers Squibb Co. Sec. Litig.* (S.D.N.Y.); and *In re New Century* (C.D. Cal.).

Widely recognized by observers, peers and adversaries as one of the top securities and class action litigators in the country, Mr. Graziano has been cited as “wonderfully talented...excellent judgment...a smart, aggressive lawyer who works hard for his clients” (*Chambers USA*); an attorney who performs “top quality work” (*Benchmark Litigation*); and a “highly effective litigator” (*US Legal500*). One of three Legal MVPs in the nation heralded by *Law360* for his work in class actions, he is regularly named as one of *Lawdragon’s* 500 Leading Lawyers in America, a leading mass tort and plaintiff class action litigator by *Best Lawyers*<sup>®</sup>, and a *New York Super Lawyer*.

Mr. Graziano is a member of the firm’s Management Committee. He has previously served as the President of the National Association of Shareholder & Consumer Attorneys, and has served as a member of the Financial Reporting Committee and the Securities Regulation Committee of the Association of the Bar of the City of New York.

Upon graduation from law school, Mr. Graziano served as an Assistant District Attorney in the Manhattan District Attorney’s Office.

Mr. Graziano regularly lectures on securities fraud litigation and shareholder rights.

EDUCATION: New York University College of Arts and Science, B.A., psychology, *cum laude*, 1988. New York University School of Law, J.D., *cum laude*, 1991.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York; U.S. Courts of Appeals for the First, Second, Third, Ninth and Eleventh Circuits.

**STEVEN B. SINGER**, a former partner of the firm, was a member of the firm’s Management Committee, and was the lead partner responsible for prosecuting a number of the most significant and high-profile securities cases in the country, which collectively recovered billions of dollars for investors. For example, Mr. Singer led the litigation against Bank of America Corp. relating to its acquisition of Merrill Lynch, which resulted in a landmark settlement shortly before trial of \$2.43 billion, one of the largest recoveries in history. The BLB&G *Bank of America* trial team, including Mr. Singer, were the subject of *The New York Times* October 2012 feature article, “Investors’ Billion-Dollar Fraud Fighter.”

Mr. Singer has substantial trial experience, and was one of the lead trial lawyers on the *WorldCom Securities Litigation*, which culminated in a four-week trial against WorldCom’s auditors, and resulted in the historic recovery of over \$6.15 billion from the professionals associated with *WorldCom*. In addition, Trial Lawyers for Public Justice named Mr. Singer as a finalist for “Trial Lawyer of the Year” for his role in the prosecution of the celebrated race discrimination litigation, *Roberts v. Texaco*, which resulted in the largest discrimination settlement in history.

Mr. Singer has also been a speaker at various continuing legal education programs offered by the Practising Law Institute (“PLI”).

EDUCATION: Duke University, B.A., *cum laude*, 1988. Northwestern University School of Law, J.D., 1991.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

**DAVID R. STICKNEY** practices in the firm’s California office, where he focuses on complex litigation in state and federal courts nationwide at both the trial court and appellate levels. For nearly two decades, Mr. Stickney has represented institutions and individuals in many high-profile and historic cases. He has successfully litigated virtually all types of securities cases, including claims under the Securities and Exchange Acts of 1933 and 1934, fraud and non-disclosure cases under state blue-sky laws and myriad additional types of actions.

Mr. Stickney is currently responsible for a number of the firm’s prominent cases, including litigation involving *Genworth Financial*, *Lumber Liquidators*, *Cobalt*, *Rayonier*, and others. Mr. Stickney has prosecuted and, together with his partners, successfully resolved a number of the firm’s significant cases. Among such cases are *In re McKesson Sec. Litig.*, which settled before trial for a total of \$1.023 billion, the largest settlement amount in history for any securities class action within the Ninth Circuit; *In re Lehman Brothers Debt/Equity Sec. Litig.*, which settled for \$615 million; *In re Bear Stearns Mortgage Pass-Through Certificate Litigation*, recovering \$500 million; *Public Employees Ret. Sys. of Miss. vs. Merrill Lynch & Co.*, recovering \$325 million; *Wyatt v. El Paso Corp.*, which settled for \$285 million; *Public Employees Ret. Sys. of Miss. vs. JP Morgan*, which settled for \$280 million; *BFA Liquidation Trust v. Arthur Andersen LLP*, which settled during trial for \$217 million; *In re Wells Fargo Mortgage Pass-Through Certificate Litig.*, which settled for \$125 million; *Public Employees Ret. Sys. of Miss. vs. Morgan Stanley*, which settled for \$95 million. *In re Sunpower Corp.*; *Atlas v. Accredited Home Lenders Holding Company*; *In re Connetics Inc.*; *In re Stone Energy Corp.*; *In re WSB Financial Group Sec. Litig.*; *In re Dura Pharmaceuticals Inc. Sec. Litig.*; *In re EMAC Sec. Litig.*, and additional cases.

In November 2014, *Law360* profiled Mr. Stickney in “Titan of the Plaintiffs Bar: David Stickney,” and he was the subject of “Class Action MVP,” one of only four litigators selected nationally. Mr. Stickney was recognized in 2008-2015 as a Super Lawyer in *San Diego Super Lawyers* and in the Corporate Counsel edition of *Super Lawyers* (published by *Law and Politics*). He was also selected by *Lawdragon* for “500 Leading Lawyers in America,” and was named as a “Litigation Star” and a “Rising Star” in *Benchmark - The Definitive Guide to America’s Leading Litigation Firms & Attorneys*, one of only 40 attorneys selected to this list in California.

Mr. Stickney lectures on securities litigation and shareholder matters for seminars and programs sponsored by professional organizations. He has also authored and co-authored several articles concerning securities litigation and class actions.

During 1996-1997, Mr. Stickney served as law clerk to the Honorable Bailey Brown of the United States Court of Appeals for the Sixth Circuit.

EDUCATION: University of California, Davis, B.A., 1993. University of Cincinnati College of Law, J.D., 1996; Jacob B. Cox Scholar; Lead Articles Editor of the *University of Cincinnati Law Review*.

BAR ADMISSIONS: California; U.S. District Courts for the Northern, Southern and Central Districts of California; U.S. Courts of Appeals for the Second, Fifth, Sixth, Eighth and Ninth Circuits; U.S. District Court for the District of Colorado.

**JOHN C. BROWNE**'s practice focuses on the prosecution of securities fraud class actions. He represents the firm's institutional investor clients in jurisdictions throughout the country and has been a member of the trial teams of some of the most high-profile securities fraud class actions in history.

Mr. Browne was Lead Counsel in the *In re Citigroup, Inc. Bond Action Litigation*, which resulted in a \$730 million cash recovery – the second largest recovery ever achieved for a class of purchasers of debt securities. It is also the second largest civil settlement arising out of the subprime meltdown and financial crisis. Mr. Browne was also a member of the team representing the New York State Common Retirement Fund in *In re WorldCom, Inc. Securities Litigation*, which culminated in a five-week trial against Arthur Andersen LLP and a recovery for investors of over \$6.19 billion – one of the largest securities fraud recoveries in history.

Other notable litigations in which Mr. Browne served as Lead Counsel on behalf of shareholders include *In re Refco Securities Litigation*, which resulted in a \$407 million settlement, *In re the Reserve Fund Securities and Derivative Litigation*, which settled for more than \$54 million, *In re King Pharmaceuticals Litigation*, which settled for \$38.25 million, *In re RAIT Financial Trust Securities Litigation*, which settled for \$32 million, and *In re SFBC Securities Litigation*, which settled for \$28.5 million.

Most recently, Mr. Browne served as lead counsel in the *In re State Street Corporation Securities Litigation*, which has settled for \$60 million, and the *Anadarko Petroleum Corporation Securities Litigation*, which has settled for \$12.5 million. Both of those settlements are subject to Court approval. Mr. Browne also represents the firm's institutional investor clients in the appellate courts, and has argued appeals in the Second Circuit, Third Circuit and, most recently, the Fifth Circuit, where he argued the appeal in the *In re Amedisys Securities Litigation*. That appeal is pending. He is currently prosecuting a number of securities matters, including the *In re BNY Mellon Foreign Exchange Securities Litigation*, which is proceeding in the Southern District of New York.

In recognition for his achievements, *Law360* named Mr. Browne a "Class Action MVP," one of only four litigators selected nationally. He is also recommended by *Legal 500* for his work in securities litigation.

Prior to joining BLB&G, Mr. Browne was an attorney at Latham & Watkins, where he had a wide range of experience in commercial litigation, including defending corporate officers and directors in securities class actions and derivative suits, and representing major corporate clients in state and federal court litigations and arbitrations.

Mr. Browne has been a panelist at various continuing legal education programs offered by the American Law Institute ("ALI") and has authored and co-authored numerous articles relating to securities litigation.

EDUCATION: James Madison University, B.A., Economics, *magna cum laude*, 1994. Cornell Law School, J.D., *cum laude*, 1998; Editor of the *Cornell Law Review*.

BAR ADMISSIONS: New York; U.S. District Court for the Southern District of New York; U.S. Courts of Appeals for the Second, Third and Fifth Circuits.

**MARK LEBOVITCH** heads the firm's corporate governance litigation practice, focusing on derivative suits and transactional litigation. Working with his institutional investor clients, he has helped develop critical new law in the fight to hold management accountable by aggressively pursuing meaningful and novel challenges to alleged corporate governance related misconduct and anti-shareholder practices.

Selected current and past representations include:

- *In re DISH Corp. Shareholder Litigation*: challenging misappropriation and front-running by a controlling shareholder, costing investors over \$800 million.
- *In re TIBCO Software Stockholder Litigation*: pursuing novel and precedent-setting merger agreement reformation and unjust enrichment claims.
- *In re Freeport-McMoRan Derivative Litigation*: settled for a cash recovery of nearly \$154 million, plus corporate governance reforms.
- *In re Jefferies, Inc. Stockholder Litigation*: settled for a \$75 million net payment to a class of former Jefferies investors.
- *Safeway Appraisal Litigation*: provided clients with a nearly 30% increase in value above the negotiated merger consideration.
- *In re News Corp. Shareholder Derivative Litigation*: settled for a \$139 million cash recovery, and an unprecedented package of corporate governance and oversight enhancements.
- *In re El Paso Corp. Shareholder Litigation*: resulted in a \$110 million post-closing settlement and a ruling that materially improved the way M&A financial advisors address conflicts of interest.
- *In re Delphi Financial Group Shareholder Litigation*: challenged the controlling shareholder's unlawful demand for an additional \$55 million in connection with the sale of the company, resulting in the recovery of \$49 million.
- *In re Pfizer Derivative Litigation*: resulted in a \$75 million payment and creation of a new Healthcare Law Regulatory Committee, which sets an improved standard for regulatory compliance oversight by a public company board of directors.
- *In re ACS Shareholder Litigation*: settled on the eve of trial for a \$69 million cash payment to ACS shareholders.

Mr. Lebovitch has been at the forefront of challenging the improper but widespread practice of using "Proxy Put" provisions in corporate debt agreements, obtaining pro-shareholder rulings in cases like *In re Amylin Shareholders Litigation*, *In re SandRidge Energy, Inc. Shareholder Litigation*, and *In re Healthways, Inc. Shareholder Litigation*, which have caused the industry to materially change its use of such provisions. He also prosecutes securities litigations, and in that capacity, was the lead litigation attorney in *In re Merrill Lynch Bondholders Litigation*, which settled for \$150 million; and a member of the team prosecuting *In re Bank of America Securities Litigation*, which settled for \$2.425 billion. Currently, he is the lead attorney prosecuting *In re Allergan Proxy Securities Litigation*.

Mr. Lebovitch has received national recognition for his work in securities and M&A litigation. Named a leading lawyer in M&A litigation by *Best Lawyers*®, he was recently selected as its 2016 M&A Litigation "Lawyer of the Year" for New York City. He is regularly recognized as one of *Lawdragon's* "500 Leading Lawyers in America," a "Litigation Star" by *Benchmark Litigation*, and as one of an elite group of notable practitioners in the field nationally by *Chambers USA* and *Legal 500*. In 2013, *Law360* named him as one of its five "Rising Stars" nationally in

the area of securities litigation – the only plaintiff-side attorney so selected. In 2012, *The Deal* magazine prominently profiled Mr. Lebovitch as one of the top three lawyers nationally representing shareholder plaintiffs in M&A litigation in its feature article, “The Troika Atop the M&A Plaintiffs’ Bar.”

A member of the Board of Advisors for the Institute for Law and Economics, Mr. Lebovitch is an author and a frequent speaker and commentator at industry events on a wide range of corporate governance and securities related issues. His publications include “Of Babies and Bathwater: Detering Frivolous Stockholder Suits Without Closing the Courthouse Doors to Legitimate Claims”; “Making Order Out of Chaos: A Proposal To Improve Organization and Coordination in Multi-Jurisdictional Merger-Related Litigation;” ““Novel Issues’ or a Return to Core Principles? Analyzing the Common Link Between the Delaware Chancery Court’s Recent Rulings in Option Backdating and Transactional Cases” (*NYU Journal of Law & Business*, Volume 4, Number 2); “Calling a Duck a Duck: Determining the Validity of Deal Protection Provisions in Merger of Equals Transactions” (2001 *Columbia Business Law Review* 1) and “Practical Refinement” (*The Daily Deal*, January 2002), each of which discussed evolving developments in the law of directors’ fiduciary duties.

Mr. Lebovitch clerked for Vice Chancellor Stephen P. Lamb on the Court of Chancery of the State of Delaware, and was a litigation associate at Skadden, Arps, Slate, Meagher & Flom in New York, where he represented clients in a variety of corporate governance, commercial and federal securities matters.

EDUCATION: Binghamton University – State University of New York, B.A., *cum laude*, 1996.  
New York University School of Law, J.D., *cum laude*, 1999.

BAR ADMISSIONS: New York; U. S. District Courts for the Southern and Eastern Districts of New York.

**HANNAH ROSS** is involved in a variety of the firm’s litigation practice areas, focusing in particular on securities fraud, shareholder rights and other complex commercial matters. She has over a decade of experience as a civil and criminal litigator, and represents the firm’s institutional investor clients as counsel in a number of major pending actions.

A key member and leader of trial teams that have recovered billions of dollars for investors, Ms. Ross is widely recognized by industry observers for her professional achievements. Named a “Future Star” and one of the “Top 250 Women in Litigation” in the nation by *Benchmark*, she has earned praise from *Legal 500 US* for her achievements, and is one of the “500 Leading Lawyers in America,” part of an exclusive list of the top practitioners in the nation as compiled by leading legal journal *Lawdragon*.

Ms. Ross was a senior member of the team that prosecuted *In re Bank of America Securities Litigation*, which resulted in a landmark settlement shortly before trial of \$2.425 billion, one of the largest securities recoveries ever obtained. In addition, she led the prosecution against Washington Mutual and certain of its former officers and directors for alleged fraudulent conduct in the thrift’s home lending operations, an action which settled for \$208.5 million and represents one of the largest settlements achieved in a case related to the fallout of the subprime crisis and the largest recovery ever achieved in a securities class action in the Western District of Washington. Ms. Ross was also a key member of the team prosecuting *In re The Mills Corporation Securities Litigation*, which settled for \$202.75 million, the largest recovery ever achieved in a securities class action in Virginia and the second largest recovery ever in the Fourth Circuit.

Most recently, Ms. Ross is a key member of the team that has obtained \$204.4 million in partial settlements in the securities litigation arising from the collapse of former leading brokerage MF Global, currently pending court approval. She is also prosecuting a number of high-profile securities class actions, including the litigation arising from the failure of major mid-Atlantic bank

Wilmington Trust, as well as securities fraud class actions against payday lending company, DFC Global Corp.; home healthcare and pharmaceuticals company, BioScrip, Inc.; and Altisource Portfolio Solutions, a provider of support and technology services for mortgage loan servicing.

She has been a member of the trial teams in numerous other major securities litigations which have resulted in recoveries for investors in excess of \$2 billion. Among other matters, Ms. Ross prosecuted the securities class action against New Century Financial Corporation, the Federal Home Loan Mortgage Corporation (“Freddie Mac”) as well as *In re Tronox Securities Litigation*, *In re Delphi Corporation Securities Litigation*, *In re Affiliated Computer Services, Inc. Derivative Litigation*, *In re Nortel Networks Corporation Securities Litigation* and *In re OM Group, Inc. Securities Litigation*.

Ms. Ross handles *pro bono* matters on behalf of the firm and has also served as an adjunct faculty member in the trial advocacy program at the Dickinson School of Law of the Pennsylvania State University.

Before joining BLB&G, Ms. Ross was a prosecutor in the Massachusetts Attorney General’s Office as well as an Assistant District Attorney in the Middlesex County (Massachusetts) District Attorney’s Office.

EDUCATION: Cornell University, B.A., *cum laude*, 1995. The Dickinson School of Law of the Pennsylvania State University, J.D., *with distinction*, 1998; Woolsack Honor Society; Comments Editor of the *Dickinson Law Review*; D. Arthur Magaziner Human Services Award.

BAR ADMISSIONS: Massachusetts; New York; U.S. District Court for the Southern District of New York.

**TIMOTHY A. DELANGE** practices in the firm’s California office, where he focuses on complex litigation in state and federal courts nationwide. He has extensive experience representing prominent private and public institutional investors in class actions, individual actions and derivative cases. Mr. DeLange is a senior member of the firm’s team representing investors who were harmed by the abusive practices of the many players in the mortgage lending arena. He is currently in charge of litigation on behalf of numerous institutions that invested directly in mortgage-backed securities, including litigation involving *Morgan Stanley*, *Bear Stearns*, *JPMorgan*, and others.

Since joining the firm, Mr. DeLange has prosecuted and successfully resolved a number of prominent securities class actions, recovering billions of dollars on behalf of investors. Most recently, along with his partners, Mr. DeLange led the litigation against Washington Mutual, which settled for \$208.5 million, the largest recovery ever achieved in a securities class action in the Western District of Washington. In addition, he served as co-lead counsel on behalf of institutional investors in *In re Maxim Integrated Products, Inc. Securities Litigation*, which settled for \$173 million and represents the largest stock option backdating settlement reached in the Ninth Circuit and the third-largest backdating settlement overall. Among other major cases are *In re McKesson Securities Litigation*, which settled before trial for a total of over \$1.04 billion, the largest settlement amount in history for any securities class action within the Ninth Circuit; *In re Accredo Health, Inc.*, which settled less than 6 weeks before trial for \$33 million; *In re HCA, Inc.*, which settled for \$20 million; and *In re Network Associates Securities Litigation*, which settled for \$70 million.

Mr. DeLange lectures on securities litigation and institutional investor interests and has authored and co-authored several articles concerning securities litigation and class actions.

EDUCATION: University of California, Riverside, B.A., 1994. University of San Diego School of Law, J.D., 1997; Recipient of the American Jurisprudence Award in Contracts.

BAR ADMISSIONS: California; U.S. District Courts for the Central, Eastern, Northern and Southern Districts of California.

**DAVID L. WALES**, an experienced trial and appellate attorney, prosecutes class and private actions in both federal and state courts, specializing in complex commercial and securities litigation, as well as arbitrations.

He has taken more than 15 cases to trial, including obtaining a jury verdict for more than \$11 million in a derivative action against the general partner of a hedge fund, and a multi-million dollar class action settlement with an accounting firm reached during trial.

Mr. Wales has extensive experience litigating securities fraud class actions, derivative actions, shareholders rights and residential mortgage backed securities (“RMBS”) cases. He has led or is currently lead or co-lead counsel in the following cases:

- *In Re Merck & Co., Inc. Securities Litigation*, a certified class action on behalf of investors in Merck Securities;
- *In Re Kinder Morgan Energy Partners, L.P. Capex Litigation*;
- *In Re Nu Skin Enterprises, Inc. Shareholder Derivative Litigation*; and
- *In Re Intuitive Surgical Shareholder Derivative Litigation*.

As lead trial counsel in numerous securities class actions and derivative actions, as well as actions on behalf of private clients, he has recovered hundreds of millions of dollars on behalf of institutional investor clients. Some of his significant recoveries include:

- *In Re Citigroup Inc. Bond Litigation*, a class action on behalf of investors in numerous securities offerings (\$730 million settlement);
- *Public Employees' Retirement System of Mississippi v. Merrill Lynch & Co. Inc.*, \$315 million settlement in a class action on behalf of investors in RMBS;
- *In re Pfizer Inc. Shareholder Derivative Action*, a \$75 million settlement and substantial corporate governance changes in a derivative action;
- *In Re Jefferies Group, Inc. Shareholders Litigation*, a \$70 million settlement on behalf of shareholders in the sale of the company;
- *Bayerische Landesbank v. Deutsche Bank, A.G.*, private action on behalf of institutional investor in RMBS;
- *TIAA-CREF v. Dexia Holdings and Deutsche Bank, A.G.*, two consolidated private actions on behalf of institutional investors in RMBS;
- *In re Sepracor Corp. Securities Litigation*, a \$52.5 million recovery in a securities fraud class action;
- *In re Cablevision Systems Corp. Derivative Litigation*, a \$34.4 million settlement in a back dated stock option action;
- *Public Employees' Retirement System of Mississippi v. Goldman Sachs Group Inc.*, a class action on behalf of investors in RMBS (\$25.3 million settlement on behalf of RMBS investors);
- *In re Marque Partners LP Derivative Action*, an \$11 million jury verdict in a derivative action; and
- *In re Jennifer Convertibles Securities Litigation*, a \$9.55 million recovery in a securities fraud class action, part of the recovery obtained in the middle of trial.

His representative clients have included a variety of public pension funds, Taft-Hartley pension funds, insurance companies, banks, hedge funds and private investment funds.

As a former Assistant United States Attorney for the Southern District of New York, Mr. Wales specialized in investigating and prosecuting fraud and white collar criminal cases.

A member of the Federal Bar Council and the Federal Courts Committee of the New York County Lawyers Association, he is rated AV, the highest rating possible from Martindale-Hubbell®, the country's foremost legal directory.

EDUCATION: State University of New York at Albany, B.A., *magna cum laude*, 1984. Georgetown University Law Center, J.D., *cum laude*, 1987; Notes and Comments Editor for the *Journal of Law and Technology*.

BAR ADMISSIONS: New York; District of Columbia; U.S. Courts of Appeals for the Second and Fourth Circuits; U.S. District Courts for the Eastern, Southern and Western Districts of New York; U.S. District Court for the Eastern District of Michigan; U.S. District Court for the District of Columbia; U.S. District Court for the Northern District of Illinois and Trial Bar.

**AVI JOSEFSON** prosecutes securities fraud litigation for the firm's institutional investor clients, and has participated in many of the firm's significant representations, including *In re SCOR Holding (Switzerland) AG Securities Litigation*, which resulted in a recovery worth in excess of \$143 million for investors. He was also a member of the team that litigated the *In re OM Group, Inc. Securities Litigation*, which resulted in a settlement of \$92.4 million.

As a member of the firm's New Matter department, Mr. Josefson counsels institutional clients on potential legal claims. He has presented argument in several federal and state courts, including an appeal he argued before the Delaware Supreme Court.

Mr. Josefson is also actively involved in the M&A litigation practice, and represented shareholders in the litigation arising from the proposed acquisitions of Ceridian Corporation and Anheuser-Busch. A member of the firm's subprime litigation team, he has participated in securities fraud actions arising from the collapse of subprime mortgage lender American Home Mortgage and the actions against Lehman Brothers, Citigroup and Merrill Lynch, arising from those banks' multi-billion dollar loss from mortgage-backed investments. Mr. Josefson has prosecuted actions against Deutsche Bank and Morgan Stanley arising from their sale of mortgage-backed securities, and is advising U.S. and foreign institutions concerning similar claims arising from investments in mortgage-backed securities.

Mr. Josefson practices in the firm's Chicago and New York Offices.

EDUCATION: Brandeis University, B.A., *cum laude*, 1997. Northwestern University, J.D., 2000; *Dean's List*; Justice Stevens Public Interest Fellowship (1999); Public Interest Law Initiative Fellowship (2000).

BAR ADMISSIONS: Illinois, New York; U.S. District Courts for the Southern District of New York and the Northern District of Illinois.

**JOHN RIZIO-HAMILTON** is involved in a variety of the firm's litigation practice areas, focusing specifically on securities fraud, corporate governance, and shareholder rights. He currently represents the firm's institutional investor clients as counsel in a number of major pending actions, including the securities class action arising from Facebook's IPO, captioned *In re Facebook, Inc. IPO Securities Litigation*, and the securities class action arising from JPMorgan's notorious "London Whale" trading losses, captioned *In re JPMorgan Chase & Co. Securities Litigation*.

Mr. Rizio-Hamilton was a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which settled for \$2.425 billion, the single largest securities class action recovery ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act, and one of the top securities litigation settlements obtained of all time. He also served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which settled for \$730 million, the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. In addition, Mr. Rizio-Hamilton was a member of the team that prosecuted the *In re Wachovia Corp. Bond/Notes Litigation*, in which the firm recovered a total of \$627 million on behalf of investors, one of the 15 largest securities class action recoveries in history.

Mr. Rizio-Hamilton has also been a member of the trial teams in several additional securities litigations through which the firm has successfully recovered hundreds of millions of dollars on behalf of injured investors. Among other matters, he was part of the trial teams that prosecuted *Eastwood Enterprises LLC v. WellCare*, *In re MBIA, Inc. Securities Litigation*, and *In re RAIT Financial Trust Securities Litigation*.

For his remarkable accomplishments, Mr. Rizio-Hamilton was recognized by *Law360* as one of the country's "Top Attorneys Under 40," and a national "Rising Star" in the area of class action litigation.

Before joining BLB&G, Mr. Rizio-Hamilton clerked for the Honorable Chester J. Straub of the United States Court of Appeals for the Second Circuit, and the Honorable Sidney H. Stein of the United States District Court for the Southern District of New York.

EDUCATION: The Johns Hopkins University, B.A., *with honors*, 1997. Brooklyn Law School, J.D., *summa cum laude*; Editor-in-Chief of the *Brooklyn Law Review*; first-place winner of the J. Braxton Craven Memorial Constitutional Law Moot Court Competition.

BAR ADMISSION: New York; U.S. District for the Southern District of New York.

**BENJAMIN GALDSTON** practices in the firm's California office and focuses on complex litigation, securities fraud class actions, and derivative and corporate governance matters. Mr. Galdston has participated in the prosecution and resolution of many of the firm's most significant matters, including *In re Lehman Brothers Holdings, Inc.*, which recovered more than \$735 million for Lehman Brothers shareholders, and *In re McKesson HBOC Securities Litigation*, which settled for more than \$1 billion the largest settlement recovery for a securities class action within the Ninth Circuit. He is currently litigating shareholder and derivative claims in *Government of Guam v. Invacare, et al.*; *Deerfield Beach Police Pension Fund v. Quality Systems, Inc.*; and *Anderson v. Spirit AeroSystems Holdings, Inc.*; as well as representing class plaintiffs in antitrust litigation arising from the manipulation of LIBOR.

Mr. Galdston also has participated in prosecuting some of the firm's most significant matters, including *In re Citigroup Bond Litigation*; *In re Toyota Securities Litigation*; *In re Wachovia Corp. Securities Litigation*; *In re SunPower Corp.*; *West Virginia Laborers' Trust Fund v. STEC, Inc.*; *In re Washington Mutual, Inc. Securities Litigation*; *In re Maxim Integrated Products, Inc. Securities Litigation*; *In re New Century*; *In re International Rectifier Corp. Securities Litigation*; and *In re Stone Energy Corp. Securities Litigation*. Mr. Galdston has represented institutional investors in individual direct actions, as well, including *In re AXA Rosenberg Investor Litigation*, which asserted claims under the Investment Advisers Act of 1940, and *In re EMAC Securities Litigation*, a direct action arising from a private offering of asset-backed securities.

Mr. Galdston earned his law degree from the University of San Diego School of Law. While in law school, Mr. Galdston served on the Moot Court Board, competed in national Moot Court tournaments and directed the University of San Diego School of Law National Criminal Procedure Moot Court Tournament. Following law school, Mr. Galdston represented investors in securities fraud actions at another national law firm.

Previously, Mr. Galdston was the sole proprietor of Litigation Support Systems, where he designed, constructed and maintained relational document databases for small law firms litigating document-intensive cases. He has authored several articles concerning e-discovery practice in the federal courts.

Mr. Galdston is a member of the California Bar Association and the Federal Bar Association, and is a former president of the Greater San Diego Barristers Club.

EDUCATION: Oberlin College, B.A., Sociology and Soviet Area Studies, 1989. University of San Diego School of Law, J.D., 2000; American Trial Lawyers' Association Book Award for Outstanding Scholarship in Appellate Advocacy, American Jurisprudence Award for Property, and the Computer Assisted Learning Institute Award for Excellence.

BAR ADMISSIONS: California; U.S. District Courts for the Central, Northern and Southern Districts of California.

**JAMES A. HARROD**'s practice focuses on representing the firm's institutional investor clients in securities litigation. He has over fifteen years' experience prosecuting complex litigation in federal courts.

Over the course of his career, Mr. Harrod has obtained hundreds of millions of dollars on behalf of investor classes. His high-profile cases include *In re Motorola Securities Litigation*, in which he was a key member of the team that represented the State of New Jersey's Division of Investment and obtained a \$190 million recovery three days before trial. In 2014, Mr. Harrod recovered \$280 million on behalf of a class of investors in *Plumbers' & Pipefitters' Local #562 Supplemental Plan & Trust v. J.P. Morgan Acceptance Corp. I*, which brought claims related to the issuance of mortgage pass-through certificates during 2006 and 2007. Among his other notable recoveries are *Anwar, et al., v. Fairfield Greenwich Limited* (total settlement valued at \$80 million), *In re Service Corporation International* (recovery of \$65 million), *Danis v. USN Communications, Inc.* (recovery of \$44.6 million), *In re Navistar International Securities Litigation* (\$13 million), and *In re Sonus Networks, Inc. Securities Litigation-II* (\$9.5 million).

Most recently, Mr. Harrod has represented institutional investors in several cases concerning the issuance of residential mortgage-backed securities prior to the financial crisis, including: *In re Bear Stearns Mortgage Pass-Through Certificates Litigation*; *Tsereteli v. Residential Asset Securitization Trust 2006-A8*; and *In re Lehman Bros. Mortgage-Backed Securities Litigation*. In connection with his representation of institutional investors, Mr. Harrod is a frequent speaker to public pension fund organizations and trustees concerning fiduciary duties, emerging issues in securities litigation and the financial markets.

Mr. Harrod was recognized for his skill in securities litigation as a *Super Lawyer* in 2013 and 2014, and a *Super Lawyer* "Rising Star" in 2011 and 2012.

EDUCATION: Skidmore College, B.A.; George Washington University Law School, J.D.

BAR ADMISSIONS: New York; U.S. Courts of Appeals for the Second and Seventh Circuits; U.S. District Courts for the Eastern and Southern Districts of New York.

**JEROEN VAN KWAWEGEN** is an accomplished litigator focusing on disputes relating to securities, corporate governance, and regulatory compliance. He is recognized as a New York “Rising Star” by *Super Lawyers*. No more than 2.5% of the lawyers in New York are selected to receive this honor each year.

Mr. van Kwawegen has represented institutional investors and corporations in state and federal courts throughout the country. Currently, he represents institutional investors in a variety of lawsuits relating to the credit market crisis, including disputes regarding the sale of mortgage-backed securities. In addition, Mr. van Kwawegen represents clients in a number of governance disputes relating to corporate transactions, including a derivative action on behalf of Dish Network Corporation in the Nevada Business Court and a class action in connection with the sale of Virgin Media in New York Supreme Court, Commercial Division.

Mr. van Kwawegen has extensive court room experience. For example, he represented a number of European banks that purchased residential mortgage-backed securities at oral argument on motions to dismiss in New York Supreme Court, the lessee of the World Trade Center shopping mall in arbitration proceedings against insurance carriers following the terrorist attacks on 9/11, and the ACLU during a five-week trial in the Eastern District of Pennsylvania resulting in a permanent injunction of an Internet censorship statute that was affirmed by the Third Circuit Court of Appeals.

Recent representations:

- A number of the European banks in common law fraud actions against JPMorgan, Bear Stearns and Washington Mutual in New York Supreme Court, Commercial Division in connection with the sale of \$5 billion in residential mortgage-backed securities;
- Public employee retirement funds from Mississippi and California in a securities class action against Merrill Lynch in the Southern District of New York regarding the sale of mortgage-backed securities resulting in a class recovery of \$315 million;
- Public employee retirement funds from California and Louisiana in a securities class action against Wachovia in the Southern District of New York regarding misleading statements in Wachovia’s financial statements resulting in a class recovery of \$627 million;
- Union-owned bank and public employee retirement fund from Louisiana in a derivative action asserting breach of fiduciary duty claims against Pfizer, Inc.’s Board of Directors in connection with off-label marketing of prescription drugs in the Southern District of New York resulting in extensive corporate governance changes, including new Board committee, and payment of \$75 million;
- Public employee retirement fund from Chicago in a securities class action against Huron Consulting Group, Inc. and its former senior management in the Northern District of Illinois regarding alleged accounting fraud resulting in a class recovery of \$38 million; and
- Public employee retirement fund from Louisiana in a breach of fiduciary duty class action in Delaware Chancery Court against the largest shareholder and Chairman/CEO and a Special Committee of Directors of Landry’s Restaurants, Inc. in connection with a proposed going-private transaction resulting in \$78.5 million recovery, including \$14.5 million for a novel sellers’ class.

Prior to joining BLB&G, Mr. van Kwawegen was a senior associate in the litigation department of Latham and Watkins LLP in New York. He pursued his *Juris Doctor* degree at Columbia Law School. Before moving to the US, Mr. van Kwawegen worked as a Dutch litigator at Schut & Grosheide in the Netherlands where his practice focused on commercial disputes and international arbitration.

EDUCATION: University of Amsterdam School of Law, LL.M., 1998. Columbia University Law School, J.D., 2003; Harlan Fiske Stone Scholar.

BAR ADMISSIONS: New York; U.S. Courts of Appeals for the Second and Third Circuits; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. District Court for the District of Colorado.

**KATHERINE M. SINDERSON** is involved in a variety of the firm's practice areas, including securities fraud, corporate governance, and advisory services. Among other matters, she is currently a member of the teams prosecuting *In re Wilmington Trust Securities Litigation*, *In re Merck Securities Litigation*, and *In re Salix Pharmaceuticals, Ltd. Securities Litigation*.

Ms. Sinderson was a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which resulted in a recovery of \$2.425 billion, the single largest securities class action recovery ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act and one of the largest shareholder recoveries in history. Ms. Sinderson was also a member of the trial team that prosecuted the action against Washington Mutual, Inc. and certain of its former officers and directors for alleged fraudulent conduct in the thrift's home lending operations, an action which resulted in a recovery of \$208.5 million and represents one of the largest settlements achieved in a case related to the fallout of the subprime crisis and the largest recovery ever achieved in a securities class action in the Western District of Washington.

Ms. Sinderson has also been part of the trial teams in several additional securities litigations through which the firm has successfully recovered hundreds of millions of dollars on behalf of injured investors. Among numerous other matters, she was a part of the trial teams that prosecuted the *In re Bristol-Myers Squibb Co. Securities Litigation*, which resulted in a recovery of \$125 million, as well as *In re Biovail Corporation Securities Litigation*, which resulted in a recovery of \$138 million for defrauded investors and represents the second largest recovery in any securities case involving a Canadian issuer.

EDUCATION: Baylor University, B.A., *cum laude*, 2002. Georgetown University, J.D., *cum laude*, 2006; Dean's Scholar; Articles Editor for *The Georgetown Journal of Gender and the Law*.

BAR ADMISSIONS: New York; U.S. District Court for the Southern District of New York; U.S. Court of Appeals for the Second Circuit.

**JONATHAN D. USLANER** prosecutes securities class actions, individual investor actions, and shareholder derivative litigation on behalf of the firm's clients.

Mr. Uslander was a member of the trial team that prosecuted *In re Bank of America Securities Litigation*, which resulted in a historic settlement shortly before trial of \$2.43 billion, one of the largest shareholder recoveries ever obtained. He was also a member of the teams that prosecuted *In re Wells Fargo Mortgage-Backed Certificates Litigation*, which settled for \$125 million; *In re Dendreon Securities Corp. Litigation*, which settled for \$40 million; and *Cambridge Place Investment Management Inc. v. Morgan Stanley & Co., Inc., et al.*, a high-profile non-class litigation brought by an investment manager against over a dozen financial institutions, which settled on undisclosed terms. In addition, Mr. Uslander was a member of the team that successfully brought a derivative action against the senior management and the Board of Directors of Pfizer, Inc., resulting in a \$75 million payment dedicated to improve the company's compliance with healthcare laws and extensive corporate governance reforms.

Mr. Uslaner currently represents the firm's institutional investor clients as counsel in a number of significant actions, including the securities class action arising from Facebook's initial public offering, captioned *In re Facebook, Inc. IPO Securities Litigation*, and the securities class action arising from JPMorgan's notorious "London Whale" trading losses, captioned *In re JPMorgan Chase & Co. Securities Litigation*. He is also representing the firm's clients in securities class actions brought against KBR Inc. and Genworth Financial Inc. relating to their misrepresentations to investors.

Mr. Uslaner was recently elected as a member of the Board of Governors of the San Diego Chapter of the Association of Business Trial Lawyers. For his outstanding work, Mr. Uslaner was also recognized as one of San Diego's "Rising Stars" in 2014 by *Super Lawyers*.

Prior to joining BLB&G, Mr. Uslaner was a senior litigation associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, where he successfully prosecuted and defended claims from the discovery stage through trial. He also gained significant experience as a judicial extern for Justice Steven Wayne Smith of the Supreme Court of Texas and as a volunteer prosecutor for the City of Inglewood, California.

EDUCATION: Duke University, B.A., *magna cum laude*, 2001, William J. Griffith Award for Leadership; Chairperson, Duke University Undergraduate Publications Board. The University of Texas School of Law, J.D., 2005; University of Texas Presidential Academic Merit Fellowship; Articles Editor, *Texas Journal of Business Law*.

BAR ADMISSIONS: California; New York; U.S. District Courts for the Central and Northern Districts of California; U.S. District Court for the Southern District of New York.

## Of Counsel

**G. ANTHONY GELDERMAN, III** heads the firm's Louisiana office and is responsible for the firm's institutional investor and client outreach. He is a frequent speaker at U.S. investor conferences and has written numerous articles on securities litigation and asset protection.

Earlier in his career, Mr. Gelderman served as Chief of Staff and General Counsel to the Treasurer of the State of Louisiana, (1992-1996) and prior to that served as General Counsel to the Louisiana Department of the Treasury. Mr. Gelderman also coordinated all legislative matters for the State Treasurer during his tenure with the Treasury Department. Earlier in Mr. Gelderman's legal career, he served as law clerk to U.S. District Judge Charles Schwartz, Jr., Eastern District of Louisiana (1986-1987).

Mr. Gelderman is a former adjunct professor of law at the Tulane Law School where he has taught a course in legislative process.

Mr. Gelderman is a member of the Louisiana State Bar Association, where he served as Chairman for the Young Lawyers Continuing Legal Education Committee between 1990 and 1993, and the American Bar Association.

BAR ADMISSIONS: Louisiana; U.S. District Courts for the Eastern and Middle Districts of Louisiana.

**KURT HUNCIKER**'s practice is concentrated in complex business and securities litigation. Prior to joining BLB&G, Mr. Hunciker represented clients in a number of class actions and other actions brought under the federal securities laws and the Racketeer Influenced and Corrupt Organizations Act. He has also represented clients in actions brought under intellectual property laws, federal antitrust laws, and the common law governing business relationships.

Mr. Hunciker served as a member of the trial team for the *In re WorldCom, Inc. Securities Litigation* and, more recently, teams that prosecuted various litigations arising from the financial crisis, including the *In re MBIA Inc. Securities Litigation*, *In re Ambac Financial Group, Inc. Securities Litigation*, *In re Wachovia Preferred Securities and Bond/Notes Litigation* and *In re Citigroup, Inc. Bond Litigation*. Mr. Hunciker also was a member of the teams that prosecuted the *In re Bank of New York Mellon Securities Litigation* concerning Bank of New York's foreign exchange practices, and the *In re Schering-Plough Corp./Enhance Securities Litigation* and *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*. He presently is a member of the team prosecuting the *In re Merck & Co., Inc. Securities Litigation*, which arises out of Merck's alleged failure to disclose adverse facts regarding the risks of Vioxx.

EDUCATION: Stanford University, B.A.; Phi Beta Kappa. Harvard Law School, J.D., Founding Editor of the *Harvard Environmental Law Review*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Courts of Appeals for the Second, Fourth and Ninth Circuits.

## SENIOR COUNSEL

**ROCHELLE FEDER HANSEN** has handled a number of high profile securities fraud cases at the firm, including *In re StorageTek Securities Litigation*, *In re First Republic Securities Litigation*, and *In re RJR Nabisco Securities Litigation*. Ms. Hansen has also acted as Antitrust Program Coordinator for Columbia Law School's Continuing Legal Education Trial Practice Program for Lawyers.

EDUCATION: Brooklyn College of the City University of New York, B.A., 1966; M.S., 1976. Benjamin N. Cardozo School of Law, J.D., *magna cum laude*, 1979; Member, *Cardozo Law Review*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit.

**NIKI L. MENDOZA** has helped obtain hundreds of millions of dollars in recoveries on behalf of defrauded investors. Some of Ms. Mendoza's more notable accomplishments include participating in a full jury trial and achieving a rare securities fraud verdict against the company's CEO in *In re Clarent Corporations Securities Litigation*. She also conducted extensive fact and expert discovery, full motion practice and completed substantial trial preparation in *In re Electronic Data Systems, Inc. Securities Litigation*, resulting in settlement just prior to trial for \$137.5 million; one of the larger settlements in non-restatement cases since the passage of the PSLRA. Ms. Mendoza also advocates for employee rights, and previously sought to end racial steering through her prosecution of a race discrimination class action lawsuit filed against Bank of America. Ms. Mendoza handles many of the firm's settlement matters, including matters involving mortgage-backed securities.

Ms. Mendoza has been recognized for her experience and knowledge, and invited as a featured speaker, in the specialized area of class action settlements. She co-authored various articles which have been cited in federal court opinions (including "*Dura Pharm., Inc. v. Broudo*-The Least of All Evils," 1505 PLI/Corp. 272, 274 (Sept. 2005) and "*Dura-Bull: Myths of Loss Causation*," 1557 PLI/Corp. 339 (Sept. 2006). She was also a panel speaker at the Securities Litigation & Enforcement Institute 2007, Practicing Legal Institute (San Francisco, October 2007). In addition to her practice, Ms. Mendoza previously served as the Co-Chair of the San Diego County Bar Association's Children At Risk committee, a committee that works with schools and children's organizations and coordinates literacy and enrichment programs that rely on attorney volunteers.

Ms. Mendoza served as judicial law clerk to the Honorable Chief Judge Michael R. Hogan of the United States District Court for the District of Oregon for three years where she received the Distinguished Service Recognition. While serving as Managing Editor for the *Oregon Law Review*, Ms. Mendoza authored "*Rooney v. Kulungoski*, Limiting The Principle of Separation of Powers?"

EDUCATION: University of Oregon, B.A. and J.D.; Order of the Coif; Managing Editor of the *Oregon Law Review*.

BAR ADMISSIONS: Hawaii (inactive); California; Oregon; U.S. District Courts for the Districts of Hawaii, and the Northern, Southern, Central and Eastern Districts of California; U.S. Courts of Appeals for the Second, Fifth, Ninth, Tenth and Eleventh Circuits.

**JAI K. CHANDRASEKHAR** prosecutes securities fraud litigation for the firm's institutional investor clients. He has been a member of the litigation teams on several of the firm's high-profile securities cases including *In re Refco, Inc. Securities Litigation*, in which multiple settlements were achieved by Lead Plaintiffs resulting in a total recovery of \$367.3 million for the benefit of the settlement class, and *In re Bristol Meyers Squibb Co. Securities Litigation*, in which a settlement of \$125 million was achieved for the class.

Mr. Chandrasekhar is currently counsel for the plaintiffs in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising from misrepresentations and omissions concerning the trading activities of JPMorgan's Chief Investment Officer and the losses suffered by investors following JPMorgan's surprise announcement in May 2012 that it had suffered over \$2 billion in losses on trades tied to complex credit derivative products. He is also counsel for the plaintiffs in *In re MF Global Holdings Ltd. Securities Litigation*, a securities class action arising out of the collapse of MF Global – formerly a leading derivatives brokerage firm – and concerning a series of materially false and misleading statements and omissions about MF Global's business and financial results.

Prior to joining BLB&G, Mr. Chandrasekhar was a Staff Attorney with the Division of Enforcement of the United States Securities and Exchange Commission, where he investigated securities law violations and coordinated investigations involving multiple SEC offices and other government agencies. Before his tenure at the SEC, he was an associate at Sullivan & Cromwell LLP, where he represented corporate issuers and underwriters in public and private offerings of stocks, bonds, and complex securities and advised corporations on periodic reporting under the Securities Exchange Act of 1934, compliance with the Sarbanes-Oxley Act of 2002, and other corporate and securities matters.

Mr. Chandrasekhar currently serves as a member of the Board of Directors of the New York County Lawyers' Association, and is a member of the New York City Bar Association.

EDUCATION: Yale University, B.A., *summa cum laude*, 1987; Phi Beta Kappa. Yale Law School, J.D., 1997; Book Review Editor of the *Yale Law Journal*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Courts of Appeals for Second, Third and Federal Circuits.

**LAUREN McMILLEN ORMSBEE**'s practice focuses on complex commercial and securities litigation out of the firm's New York office.

Following law school, Ms. Ormsbee served as a law clerk for the Honorable Colleen McMahon, District Court Judge for the Southern District of New York.

Prior to joining the firm in 2007, Ms. Ormsbee was a litigation associate at a prominent defense firm where she had extensive experience in securities litigation and complex commercial litigation.

Since joining the firm in 2007, Ms. Ormsbee has represented institutional and private investors in a number of class and direct actions involving securities fraud and other violations. She has been an integral part of the teams that prosecuted *In re HealthSouth Bondholder Litigation*, which obtained \$230 million for the Class; *In re New Century Securities Litigation*, which obtained \$125 million for the benefit of the Class; and *In re Ambac Financial Group Securities Litigation*, which obtained \$33 million from the now-bankrupt insurer; *In re Goldman Sachs Mortgage Pass-Through Litigation*, which obtained \$26.6 million for the benefit of the class of RMBS purchasers and *Barron v. Union Bancaire Privée*, which obtained \$8.9 million on behalf of the class of investors harmed by the fund's investments with Bernard Madoff.

Ms. Ormsbee is currently a member of the teams prosecuting *In re Wilmington Trust Securities Litigation*, *In re Altisource Portfolio Solutions S.A. Securities Litigation*, *In re Tower Group International, Ltd. Securities Litigation* and *In re Cooper Tire & Rubber Company Securities Litigation*.

EDUCATION: Duke University, B.A., History, 1996. University of Pennsylvania Law School, J.D., *cum laude*, 2000; Research Editor for the *University of Pennsylvania Law Review*.

BAR ADMISSIONS: New York; U. S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit.

**BRETT M. MIDDLETON** prosecutes federal and state actions involving securities laws, accountants' liability, and corporate governance matters. He has recovered billions of dollars in courts across the country on behalf of public and private institutional investors.

Mr. Middleton has significant jury trial experience, having worked on the trial team responsible for successfully prosecuting *Clarent Corp. Securities Litigation*, a securities fraud class action which resulted in a rare jury verdict against the former CEO of Clarent Corp.

Most recently, Mr. Middleton helped manage the team that successfully prosecuted *In re Lehman Brothers Securities Litigation*, the securities class action involving the largest bankruptcy in United States history. Lead Plaintiffs achieved a total settlement of \$735 million, which is one of the largest recoveries in a case arising from the financial crisis. The \$99 million settlement with Lehman's public auditor, Ernst & Young, is one of the largest auditor settlements in a securities fraud class action case.

Mr. Middleton has served as member of the firm's team representing investors who were harmed by the abusive practices of the many players in the mortgage lending arena. He has participated in litigation on behalf of numerous institutions that invested directly in mortgage-backed securities, including litigation involving Bear Stearns, JPMorgan, Morgan Stanley, and others.

He also has extensive experience in corporate governance litigation, having prosecuted over twenty successful transactional and derivative actions, including *Louisiana Municipal Police Employee Retirement System v. Crawford*, which arose out of CVS's acquisition of Caremark and resulted in over \$3 billion in additional merger consideration for Caremark's shareholders. He has received national recognition for his achievements in this field, including recognition by *The Legal 500 USA Guide* under the "Mergers, Acquisitions and Buyouts - M&A: Litigation" category.

Prior to joining BLB&G in 2004, Mr. Middleton was a litigation associate at the San Diego office of Gordon & Rees LLP, where he practiced intellectual property and securities litigation for the second largest law firm in San Diego County.

EDUCATION: University of California, Los Angeles, 1993. University of San Diego School of Law, J.D., 1998.

BAR ADMISSIONS: California; U.S. District Courts for the Central, Northern and Southern Districts of California.

**JEREMY P. ROBINSON** has extensive experience in securities and civil litigation. Since joining BLB&G, Mr. Robinson has been involved in prosecuting many high-profile securities cases. For example, he was an integral member of the teams that prosecuted significant recent cases such as *In re Refco Securities Litigation* (total recoveries in excess of \$425 million) and *In re WellCare Health Plans, Inc. Securities Litigation* (\$200 million settlement, representing the

second largest settlement of a securities case in Eleventh Circuit history). He also recently served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which settled for \$730 million, representing the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities and ranking among the fifteen largest recoveries in the history of securities class actions. He is presently a member of the teams prosecuting *Fernandez v. UBS AG, The Department of the Treasury of the State of New Jersey and its Division of Investment v. Cliffs Natural Resources Inc.* and *In re Bank of New York Mellon Corp. Forex Transactions Litigation*.

In 2000-01, Mr. Robinson spent a year working with barristers and judges in London, England as a recipient of the Harold G. Fox Education Fund Scholarship. In 2005, Mr. Robinson completed his Master of Laws degree at Columbia Law School where he was honored as a Harlan Fiske Stone Scholar.

EDUCATION: Queen's University, Faculty of Law in Kingston, Ontario, Canada, LL.B., 1998; Graduated within the top 10% of class; Best Brief in the Niagara International Moot Court Competition; Columbia Law School, LL.M., 2005; Harlan Fiske Stone Scholar.

BAR ADMISSIONS: Ontario, Canada; New York; U.S. District Court for the Eastern District of Michigan; U.S. District Court for the Southern District of New York.

**ADAM H. WIERZBOWSKI** has represented institutional investors and other plaintiffs in numerous complex litigations that include securities class actions and derivative suits.

In *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, Mr. Wierzbowski was a senior member of the team that achieved a total settlement of \$688 million on behalf of investors. The combined \$688 million in settlements is the second largest securities class action settlement in the Third Circuit and among the top 25 securities class action settlements of all time. The cases settled after nearly five years of litigation and less than a month before trial. In the *UnitedHealth Derivative Litigation*, which involved executives' illegal backdating of UnitedHealth stock options, Mr. Wierzbowski helped recover in excess of \$920 million from the individual Defendants. In the *Merck Vioxx Securities Litigation*, which arises out of Merck's failure to disclose adverse facts regarding the risks of Vioxx, the plaintiffs achieved a unanimous and groundbreaking victory for investors at the U.S. Supreme Court and that case is currently pending. In *Medtronic*, he was a member of the team that achieved an \$85 million recovery for investors arising out of allegations that Medtronic promoted the Infuse bone graft for dangerous "off-label" uses.

Mr. Wierzbowski also played a key role in obtaining significant recoveries on behalf of investors in *Spahn v. Edward D. Jones* (settlement value of \$127.5 million), *In re American Express Financial Advisors Securities Litigation* (\$100 million recovery) and the *Monster Worldwide Derivative Litigation* (recovery valued at \$32 million). He is currently a member of the teams prosecuting *In re Merck Vioxx Securities Litigation*, *In re Facebook, Inc. IPO Securities Litigation*, *Bach v. Amedisys* and *New York State Teachers' Retirement System v. General Motors Co.*

Mr. Wierzbowski was recognized as one of *Super Lawyers'* 2014 New York "Rising Stars." No more than 2.5% of the lawyers in New York are selected to receive this honor each year.

EDUCATION: Dartmouth College, B.A., *magna cum laude*, 2000. The George Washington University Law School, J.D., *with honors*, 2003; Notes Editor for *The George Washington International Law Review*; Member of the Moot Court Board.

BAR ADMISSIONS: New York; U.S. Supreme Court; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Third Circuit.

**RICHARD D. GLUCK** has almost 25 years of litigation and trial experience in bet-the-company cases. His practice focuses on securities fraud, corporate governance, and shareholder rights litigation. He has been recognized for achieving “the highest levels of ethical standards and professional excellence” by Martindale Hubbell®, and has been named one of San Diego’s ”Top Lawyers” practicing complex business litigation.

Since joining BLB&G, Mr. Gluck has been a key member of the teams prosecuting a number of high-profile cases, including several RMBS class and direct actions against a number of large Wall Street Banks. He was a senior attorney on the team prosecuting the *In re Lehman Brothers Equity/Debt Securities Litigation*, which resulted in over \$615 million for investors and is considered one of the largest total recoveries for shareholders in any case arising from the financial crisis. Specifically, he was instrumental in developing important evidence that led to the \$99 million settlement with Lehman’s former auditor, Ernst & Young – one of the top 10 auditor settlements ever achieved. He was also a senior member of the teams that prosecuted the RMBS class actions against Bear Stearns, which settled for \$500 million; JPMorgan, which settled for \$280 million; and Morgan Stanley, which settled for \$95 million. He also is a key member of the team prosecuting *In re MF Global Holdings Limited Securities Litigation*, which to date has resulted in settlements totaling more than \$200 million, pending court approval.

Before joining BLB&G, Mr. Gluck represented corporate and individual clients in securities fraud and consumer class actions, SEC investigations and enforcement actions, and in actions involving claims of fraud, breach of contract and misappropriation of trade secrets in state and federal courts and in arbitration. He has substantial trial experience, having obtained verdicts or awards for his clients in multi-million dollar lawsuits and arbitrations. Prior to entering private practice, Mr. Gluck clerked for Judge William H. Orrick of the United States District Court for the Northern District of California.

Mr. Gluck currently is a member of the teams prosecuting *In re Wilmington Trust Securities*, *In re MF Global Holdings Limited Securities Litigation*, *Mark Roberti v. OSI Systems Inc., et al.*, *In re Genworth Financial Inc. Securities Litigation*, and *In re Allergan, Inc. Proxy Violation Securities*. He practices out of the firm’s San Diego office.

Mr. Gluck is a former President of the San Diego Chapter of the Association of Business Trial Lawyers and currently is a member of its Board of Governors.

EDUCATION: California State University Sacramento, B.S., Business Administration, *with honors*, 1987. Santa Clara University, J.D., *summa cum laude*, 1990; Articles Editor of the *Santa Clara Computer and High Technology Law Journal*.

BAR ADMISSIONS: California; U.S. District Courts for the Central, Northern and Southern Districts of California.

**JOSEPH COHEN** has extensive complex civil litigation experience, and currently practices in the firm’s settlement department, negotiating, documenting and obtaining court approval of the firm’s securities, merger and derivative settlements.

Prior to joining the firm, Mr. Cohen successfully prosecuted numerous securities fraud, consumer fraud, antitrust and constitutional law cases in federal and state courts throughout the country. Cases in which Mr. Cohen took a lead role include: *Jordan v. California Department of Motor Vehicles*, 100 Cal. App. 4<sup>th</sup> 431 (2002) (complex action in which the California Court of Appeal held that California’s Non-Resident Vehicle \$300 Smog Impact Fee violated the Commerce Clause of the United States Constitution, paving the way for the creation of a \$665 million fund and full refunds, with interest, to 1.7 million motorists); *In re Geodyne Resources, Inc. Sec. Litig.* (Harris Cty. Tex.) (settlement of securities fraud class action, including related litigation, totaling over \$200 million); *In re Community Psychiatric Centers Sec. Litig.* (C.D. Cal.) (settlement of \$55.5 million was obtained from the company and its auditors, Ernst & Young, LLP); *In re*

*McLeodUSA Inc., Sec. Litig.* (N.D. Iowa) (\$30 million settlement); *In re Arakis Energy Corp. Sec. Litig.* (E.D.N.Y.) (\$24 million settlement); *In re Metris Companies, Inc., Sec. Litig.* (D. Minn.) (\$7.5 million settlement); *In re Landry's Seafood Restaurants, Inc. Sec. Litig.* (S.D. Tex.) (\$6 million settlement); and *Freedman v. Maspeth Federal Loan and Savings Association*, (E.D.N.Y.) (favorable resolution of issue of first impression under RESPA and full recovery of improperly assessed late fees).

Mr. Cohen was also a member of the teams that obtained substantial recoveries in the following cases: *In re: Foreign Exchange Benchmark Rates Antitrust Litig.* (S.D.N.Y.) (partial settlements of approximately \$2 billion); *In re Washington Mutual Mortgage-Backed Securities Litigation* (W.D. Wash.) (settlement of \$26 million); *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company* (E.D. Pa.) (\$8 million recovery on behalf of class of indirect purchasers of the prescription drug Doryx); *City of Omaha Police and Fire Retirement Sys. v. LHC Group, Inc.* (W.D. La.) (securities class action settlement of \$7.85 million); and *In re Pacific Biosciences of Cal., Inc. Sec. Litig.* (Cal. Super. Ct.) (\$7.6 million recovery).

EDUCATION: University of Rhode Island, B.S., Marketing, *cum laude*, 1986; Case Western Reserve University School of Law, J.D., 1989; New York University School of Law, LL.M., 1990.

BAR ADMISSIONS: California; District of Columbia; U.S. Court of Appeals for the Ninth Circuit; U.S. District Courts for the Central, Northern and Southern Districts of California.

## ASSOCIATES

**ABE ALEXANDER** practices out of the New York office, where he focuses on securities fraud, corporate governance and shareholder rights litigation. He was a principal member of the trial team that prosecuted *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*, which settled on the eve of trial for a combined \$688 million. This \$688 million settlement represents the largest securities class action recovery against a pharmaceutical company in history and is among the largest securities class action settlements of any kind. He is currently a member of the teams prosecuting securities claims against Merck and others arising from alleged misrepresentations concerning the safety profile of Merck's pain-killer, VIOXX; and against JPMorgan Chase arising from misrepresentations concerning the trading activities of the so-called "London Whale."

Prior to joining the firm, Mr. Alexander represented institutional clients in a number of high-profile securities, corporate governance, and antitrust matters.

Mr. Alexander was an award-winning member of his law school's national moot court team. Following law school, he served as a judicial clerk to Chief Justice Michael L. Bender of the Colorado Supreme Court.

EDUCATION: New York University - The College of Arts and Science, B.A., Analytic Philosophy, *cum laude*, 2003. University of Colorado Law School, J.D., 2008; Order of the Coif.

BAR ADMISSIONS: Delaware; New York; U.S. District Court for the District of Delaware; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the First Circuit.

**EVAN M. BERKOW**, a former associate at the firm, litigated securities fraud, corporate governance and shareholder rights cases on behalf of the firm's institutional investor clients. He was a member of the teams prosecuting the *In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re State Street Securities Litigation*.

Before joining BLB&G, Mr. Berkow was a litigation associate at a prominent defense firm, where he represented clients in numerous shareholder class actions, complex commercial litigation, government investigations, and intellectual property matters.

EDUCATION: Wesleyan University, B.A., English and Anthropology, *with honors*, 2004. University of Chicago Law School, J.D., 2011; Topics and Submissions Editor for the *Chicago Journal of International Law*.

BAR ADMISSION: New York

**MICHAEL D. BLATCHLEY**'s practice focuses on securities fraud litigation. He is currently a member of the firm's New Matter department in which he, along with a team of attorneys, financial analysts, forensic accountants, and investigators, counsels the firm's clients on their legal claims.

Mr. Blatchley has also served as a member of the litigation teams responsible for prosecuting a number of the firm's significant cases. For example, he was a member of the litigation team in *In re Medtronic, Inc. Securities Litigation*, an action arising out of allegations that Medtronic promoted the Infuse bone graft for dangerous "off-label" uses, which resulted in an \$85 million recovery for investors. Mr. Blatchley has also served on the litigation teams in a number of cases related to the financial crisis, including several actions arising out of wrongdoing related to the issuance of residential mortgage-backed securities and other complex financial products. Currently, he serves as a member of the team prosecuting *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising out of misrepresentations and omissions concerning JPMorgan's Chief Investment Office, the company's risk management systems, and the trading activities of the so-called "London Whale."

While attending Brooklyn Law School, Mr. Blatchley held a judicial internship position for the Honorable David G. Trager, United States District Judge for the Eastern District of New York. In addition, he worked as an intern at The Legal Aid Society's Harlem Community Law Office, as well as at Brooklyn Law School's Second Look and Workers' Rights Clinics, and provided legal assistance to victims of Hurricane Katrina in New Orleans, Louisiana.

EDUCATION: University of Wisconsin, B.A., 2000. Brooklyn Law School, J.D., *cum laude*, 2007; Edward V. Sparer Public Interest Law Fellowship, William Payson Richardson Memorial Prize, Richard Elliott Blyn Memorial Prize, Editor for the *Brooklyn Law Review*, Moot Court Honor Society.

BAR ADMISSIONS: New York, New Jersey; U.S. District Courts for the Southern District of New York and the District of New Jersey.

**REBECCA BOON** practices out of the New York office, where she prosecutes securities fraud, corporate governance and shareholder rights litigation for the firm's institutional investor clients.

Prior to joining the firm, Ms. Boon was an associate at a major international law firm, where she represented clients in securities litigation, ERISA litigation, contract disputes, international arbitration, white collar crime and criminal appeals.

Ms. Boon is currently a senior member of the teams prosecuting *New York State Teachers' Retirement System v. General Motors Company, et al.*; *The Department of The Treasury of the State of New Jersey and Its Division of Investment v. Cliffs Natural Resources Inc., et al.*; and *Public School Teachers' Pension and Retirement Fund of Chicago v. Northern Trust Investments N.A., et al.* In addition, over the past few years, Ms. Boon has been a senior member of the teams prosecuting numerous actions against Morgan Stanley and Deutsche Bank arising out of their allegedly fraudulent sales of residential mortgage-backed securities, which have resulted in millions of dollars in recovery for investors, including *Metropolitan Life Insurance Company v. Morgan Stanley, et al.*, among others.

While in law school, Ms. Boon served as the research assistant to Dean Nora Demleitner. Ms. Boon also worked as an intern at Her Justice (formerly known as inMotion, Inc.), as well as Hofstra Law School's Political Asylum Clinic.

EDUCATION: Vassar College, B.A., 2004 (History, Correlate in Women's Studies); Social Justice Community Fellow. Hofstra University School of Law, 2007, J.D., *cum laude*; Charles H. Revson Foundation Law Students Public Interest Fellow; *Hofstra Law Review*; Distinguished Contribution to the School and Excellence in International Law Awards; Merit Scholarship.

BAR ADMISSIONS: New York; U.S. District Court for the Southern District of New York.

**DAVID L. DUNCAN**'s practice concentrates on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining BLB&G, Mr. Duncan worked as a litigation associate at Debevoise & Plimpton, where he represented clients in a wide variety of commercial litigation, including contract disputes, antitrust and products liability litigation, and in international arbitration. In addition, he has represented criminal defendants on appeal in New York State courts and has successfully litigated on behalf of victims of torture and political persecution from Sudan, Côte d'Ivoire and Serbia in seeking asylum in the United States.

While in law school, Mr. Duncan served as an editor of the *Harvard Law Review*. After law school, he clerked for Judge Amalya L. Kearsse of the U.S. Court of Appeals for the Second Circuit.

EDUCATION: Harvard College, A.B., Social Studies, *magna cum laude*, 1993. Harvard Law School, J.D., *magna cum laude*, 1997.

BAR ADMISSIONS: New York; Connecticut; U.S. District Court for the Southern District of New York.

**SCOTT R. FOGLIETTA** focuses his practice on securities litigation and is a member of the firm's New Matter group, in which he, as part of a team of attorneys, financial analysts, and investigators, counsels institutional clients on potential legal claims.

Before joining the firm, Mr. Foglietta represented institutional and individual clients in a wide variety of complex litigation matters, including securities class actions, commercial litigation, and ERISA litigation.

While in law school, Mr. Foglietta served as a legal intern in the Financial Industry Regulatory Authority's (FINRA) Enforcement Division, and in the general counsel's office of NYSE Euronext. Prior to law school, Mr. Foglietta earned his M.B.A. in finance from Clark University and worked as an analyst for a boutique investment banking firm.

EDUCATION: Clark University, B.A., Management, *cum laude*, 2006. Clark University, Graduate School of Management, M.B.A., Finance, 2007. Brooklyn Law School, J.D., 2010.

BAR ADMISSIONS: New York; New Jersey.

**LUCAS E. GILMORE** practices out of the firm's San Diego office and focuses on securities class actions and individual investor actions.

Mr. Gilmore currently represents BlackRock, PIMCO, and nine other prominent institutional investors in six representative actions pending in the U.S. District Court of the Southern District of New York against the principal financial crisis-era RMBS trustee banks: U.S. Bank National Association; Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas; The Bank of New York Mellon; Wells Fargo; HSBC Bank USA, National Association; and Citibank N.A. The actions are brought by the plaintiffs in their representative capacity on behalf of over 2,200 RMBS trusts issued between 2004 and 2008. The suits allege that the trustees breached contractual, statutory and common law duties owed to the trusts and certificate-holders. The suits are brought as derivative actions, or in the alternative, as class actions on behalf of all current owners of certificates in the trusts.

In addition, Mr. Gilmore is currently litigating securities fraud class action lawsuits, including *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations* pending in the District of Columbia, *Government of Guam Retirement Fund v. Invacare Corporation* pending in the Northeastern District of Ohio, *Deerfield Beach Police Pension Fund v. Quality Systems, Inc.* pending in the Central District of California, and *Anderson v. Spirit AeroSystems Holdings, Inc.* pending in the District of Kansas, as well as representing class plaintiffs in antitrust litigation arising from the manipulation of LIBOR.

Mr. Gilmore is also currently representing prominent U.S. and international institutional investors in numerous direct action matters, including opt out actions against BP plc in Texas federal court arising out of the catastrophic 2010 Gulf of Mexico oil spill, against AIG in California state court arising out of AIG's massive accumulated exposure to the housing and subprime mortgage markets in the years leading up to the financial crisis, and against Petróleo Brasileiro (Petrobras) in Manhattan federal court arising out of the long-running bribery and kickback scheme at the Brazilian oil giant.

Mr. Gilmore was recently selected as a member of the Leadership Development Committee of the San Diego Chapter of the Association of Business Trial Lawyers. For his outstanding work, Mr. Gilmore was also recognized as one of San Diego's "Rising Stars" in 2014 by *Super Lawyers*.

Prior to joining BLB&G, Mr. Gilmore was an associate at a law firm in San Francisco, where he successfully prosecuted and defended a variety of civil actions, including commercial, consumer and antitrust cases from the discovery stage through trial. He also gained significant experience as a judicial extern for the Honorable Vaughn R. Walker of the United States District Court for the Northern District of California.

EDUCATION: Vanderbilt University, B.A., *cum laude*, Political Science, 2002. University of California, Hastings College of the Law, J.D., 2007; Computer Assisted Learning Institute Award for Excellence in Trial Advocacy I and II.

BAR ADMISSIONS: California; U.S. Court of Appeals for the Ninth Circuit; U.S. District Courts for the Eastern and Northern Districts of California.

**LAURA H. GUNDERSHEIM** (n/k/a Laura Posner), a former associate at the firm, represented institutional investors as a lead or co-lead counsel in a number of class and derivative actions, including cases involving securities fraud, consumer fraud, copyright infringement, and employment discrimination. Most notably, she was an integral part of the trial team that prosecuted the landmark *In re Walt Disney Derivative Litigation*, which redefined the fiduciary duties of directors in public companies, *In re Mills Corporation Securities Litigation*, which obtained \$202.75 million plus interest for the class – the largest recovery ever achieved in a securities class action in Virginia, and the second largest ever achieved in the Fourth Circuit – and *In re WellCare Health Plans, Inc.*, which obtained at least \$200 million for the class – the largest recovery ever achieved in a securities class action in Florida and the second largest ever achieved in the Eleventh Circuit.

While in law school, Ms. Gundersheim worked at the Lawyers' Committee for Civil Rights, Health Law Advocates, The Hale & Dorr Legal Services Center and the Tenant Advocacy Project.

EDUCATION: University of California, Los Angeles, B.A., *magna cum laude*, 2001; Phi Beta Kappa. Harvard Law School, J.D., 2004; Founding Member and the Vice-President of the Harvard Advocates for Reproductive Choices; Executive Committee, *Women's Law Journal*.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York; U.S. Court of Appeals for the Third Circuit.

**ADAM HOLLANDER** prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients.

Mr. Hollander has represented institutional investors and corporations in state and federal trial and appellate courts throughout the country. Currently, he represents clients in a number of disputes relating to corporate governance and transactions, including a derivative action on behalf of Dish Network Corporation in the Nevada Business Court, a class and derivative action on behalf of Kinder Morgan Energy Partners, L.P. and its limited partners, and a class action on behalf of the public shareholders of KKR Financial Holdings LLC. In addition, Mr. Hollander has drafted numerous briefs in matters before the federal courts of appeals.

Prior to joining BLB&G, Mr. Hollander clerked for the Honorable Barrington D. Parker, Jr. of the United States Court of Appeals for the Second Circuit, and for the Honorable Stefan R. Underhill of the United States District Court for the District of Connecticut. He has also been associated with two New York defense firms, where he gained significant experience representing clients in various civil, criminal, and regulatory matters, including white collar and complex commercial litigation.

Mr. Hollander is currently a member of the teams prosecuting *Bach v. Amedisys, Inc.*, *The Department of the Treasury of the State of New Jersey and its Division of Investment v. Cliffs Natural Resources Inc.*, *In re Fairway Group Holdings Corp. Securities Litigation*, *In re Dish Network Corp. Shareholder Litigation*, *In re Kinder Morgan Energy Partnership, L.P. Derivative Litigation*, *In re Nu Skin Enterprises, Inc. Derivative Litigation*, *In re KKR Financial Holdings LLC Shareholder Litigation*, *Central Laborers' Pension Fund v. Portnoy*, *Slotoroff v. Kinder Morgan, Inc.*, *City of Cambridge Retirement System v. Devitre*, *International Union of Operating Engineers Local 478 v. Hsu*, *Teamsters Local 443 Health Services & Insurance Plan v. Otis*, and *In re Sanchez Energy Derivative Litigation*.

EDUCATION: Brown University, A.B., *magna cum laude*, 2001, Urban Studies. Yale Law School, J.D., 2006; Editor, *Yale Law and Policy Review*.

BAR ADMISSIONS: New York; Connecticut; U.S. District Courts for the Southern District of New York and the District of Connecticut; U.S. Court of Appeals for the Second Circuit.

**DAVE KAPLAN** practices in the firm's California office and focuses on complex litigation, including securities class actions, individual "opt out" actions, and international securities matters. Mr. Kaplan has over a decade of experience in the field of shareholder and securities litigation. For his outstanding work advising and representing institutional investors, Mr. Kaplan has been recognized for several years as one of San Diego's "Rising Stars" by *Super Lawyers*.

Mr. Kaplan has helped achieve substantial recoveries on behalf of lead plaintiffs in several securities class actions, including as a member of the teams that prosecuted *In re Toyota Motor Corp. Securities Litigation* (\$25.5 million recovery), *In re Dendreon Corp. Securities Litigation* (\$40 million recovery), and *In re AXA Rosenberg Investor Litigation* (\$65 million recovery). Mr. Kaplan currently represents lead plaintiffs in several federal class action lawsuits, including *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations* pending in the District of Columbia Court of Appeals, and the *Invacare Securities Litigation* pending in the Northeastern District of Ohio.

In addition to prosecuting complex litigation in state and federal courts, for the past five years, a significant part of Mr. Kaplan's practice has focused on advising and representing prominent institutional investors on whether to remain in securities class actions or opt-out in order to maximize their recovery. He is currently representing prominent institutional investors in a variety of opt out matters, including direct actions against British Petroleum (BP) in Texas federal court arising out of the 2010 Gulf of Mexico oil spill, against American International Group (AIG) in California state court and Manhattan federal court arising out of AIG's investments the housing

and subprime mortgage markets in the years leading up to the financial crisis, against *Petróleo Brasileiro (Petrobras)* in Manhattan federal court arising out of the long-running bribery and kickback scheme at the Brazilian oil giant, and against American Realty Capital Partners (now known as Vereit) arising out of a multi-year accounting fraud at the world's largest net-lease REIT. Recently, Mr. Kaplan successfully represented sixteen prominent institutional investors – including the largest U.S. public pension fund, the largest sovereign wealth fund, and the largest asset manager in the world – that opted out of *In re Countrywide Financial Corp. Securities Litigation*, in a direct action that was confidentially resolved against Countrywide Financial, certain of its former executive officers, and KPMG LLP.

Mr. Kaplan also has extensive experience counseling institutional investors on international securities claims. Recent examples of foreign securities matters for which he has provided extensive analysis to the firm's institutional investor clients include shareholder "group actions" pending against RBS, Lloyd's, and Tesco in England; shareholder "mass actions" against Olympus and Toshiba in Japan; and shareholder class and collective actions in continental Europe, Canada, Australia, Taiwan, and a variety of other international jurisdictions.

Finally, Mr. Kaplan is a member of the firm's New Matter department in which he, along with a team of attorneys, financial analysts, forensic accountants, and investigators, counsels the firm's institutional clients on potential legal claims.

Prior to joining BLB&G, Mr. Kaplan was a senior associate at Irell & Manella, where he represented plaintiffs, defendants, and transactional clients in a broad range of matters, including fiduciary obligations, SEC compliance, subprime mortgage disputes, commercial contract disputes, private equity investments, trade secret, and insurance coverage and bad faith litigation. While in law school, Mr. Kaplan served on the editorial board of the *Duke Law Journal*, authored *The Scope of Bar Orders in Federal Securities Fraud Settlements*, 52 *Duke L.J.* 211, 241 (2002), and was a Stanley Starr scholar and President of the Duke Law ACLU.

EDUCATION: Washington & Lee University, B.A., *cum laude*, 1999. Duke University School of Law, J.D., 2003; High Honors; *Duke Law Journal*; Stanley Starr Scholar.

BAR ADMISSIONS: California, U.S. District Courts for the Northern, Central and Southern Districts of California; U.S. Courts of Appeals for the Ninth Circuit; U.S. Bankruptcy Court for the Central District of California.

**BRANDON MARSH**'s practice is focused on complex litigation, including matters involving securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients. As a member of the firm's new matter and foreign securities litigation departments, Mr. Marsh, along with a team of attorneys, financial analysts, forensic accountants, and investigators, also counsels the firm's institutional clients on their legal claims and options with respect to shareholder litigation worldwide.

Prior to joining the firm, Mr. Marsh clerked for the Honorable Jerome Farris of the United States Court of Appeals for the Ninth Circuit and was a senior associate at Irell & Manella. While at Irell & Manella, he represented both plaintiffs and defendants in a broad range of matters, including representing one of the world's largest gaming companies in a major securities class action.

Mr. Marsh earned his law degree, "with Distinction," from Stanford Law School. While in law school, he served as an editor of the *Stanford Law Review*, was a teaching assistant in the course "Federal Pretrial Litigation," and authored "Preventing the Inevitable: The Benefits of Contractual Risk Engineering in Light of Venezuela's Recent Oil Field Nationalization," 13 *Stan. J. L. Bus. & Fin.* 453 (2008).

Mr. Marsh was named a "Rising Star" in 2014 by *Southern California Super Lawyers* magazine.

EDUCATION: University of California, Berkeley, B.A., *with Highest Distinction*, History and German, 2000. Stanford Law School, J.D., *with Distinction*, 2009.

BAR ADMISSIONS: California; U.S. District Courts for the Central and Northern Districts of California; U.S. Court of Appeals for the Ninth Circuit.

**KRISTIN A. MEISTER** has extensive experience in commercial and class action litigation. She has argued motions in both state and federal court and has represented plaintiffs and defendants in securities fraud class actions, derivative suits, white collar criminal investigations, federal antitrust multi-district litigation, banking litigation, and federal and state criminal matters.

Ms. Meister served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which resulted in a \$730 million cash recovery – the second largest in history in a securities class action brought on behalf of purchasers of debt securities, and one of the fifteen largest recoveries in any securities class action. It is also the second largest settlement of a litigation arising out of the subprime meltdown and financial crisis. She also served as counsel representing a union-owned bank and public employee retirement fund from Louisiana asserting breach of fiduciary duty claims in the *Pfizer Derivative Litigation* against the senior management and Board of Directors of Pfizer, Inc., which resulted in a \$75 million payment and creation of a new Healthcare Law Regulatory Committee, setting an improved standard for regulatory compliance oversight by a public company board of directors.

Ms. Meister currently represents shareholders in the *Merck Vioxx Securities Litigation*, arising out of Merck’s failure to disclose adverse facts regarding the risks of Vioxx; *Ariad Pharmaceuticals, Inc. Securities Litigation*, which arises out of Ariad’s failure to disclose adverse facts regarding the risks of Iclusig; *In re BioScrip, Inc. Securities Litigation*, arising from the company’s efforts to push a life-threatening drug on its patients in exchange for kickbacks from the drug’s manufacturer, and for concealing the collapse of its most significant business segments from investors; *City of Miami General Employees’ and Sanitation Employees’ Retirement Trust, et al. v. C&J Energy Services, et al.*, which arises from allegations that C&J’s conflicted Board breached its fiduciary duties when it sold control of the company in a negative premium deal; and *GT Advanced Technologies Inc.*, arising from GT’s misrepresentation/concealment of its fiscal strength and ability to meet its contractual obligations for the production of sapphire material.

Prior to joining the firm, she was a Litigation and Trial Practice Group associate at Alston & Bird LLP.

Before attending law school, Ms. Meister was an Honors Scholar in the Department of Justice, Antitrust Division. While in law school, Ms. Meister was an Honors Legal Intern in the Department of Defense at The Pentagon and clerked at an international human rights NGO in London. She was also elected Student Senator for the Law School Student Senate during each of her three years in law school.

Ms. Meister has been named a New York “Rising Star” by *Super Lawyers* in recognition of her accomplishments.

EDUCATION: Kenyon College, B.A., *magna cum laude*, Political Science and English, 2000; Elmer Graham Scholar Full Scholarship Award Recipient; Student Council Vice-President; Editor in Chief of *The Kenyon Observer*. University of Michigan Law School, J.D., 2004; Associate/Contributing Editor of *Michigan Telecommunications and Technology Law Review*; Elected Law School Student Senator.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the First Circuit.

**JOHN J. MILLS**' practice concentrates on Class Action Settlements and Settlement Administration. Mr. Mills also has experience representing large financial institutions in corporate finance transactions.

EDUCATION: Duke University, B.A., 1997. Brooklyn Law School, J.D., *cum laude*, 2000; Member of *The Brooklyn Journal of International Law*; Carswell Merit Scholar recipient.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

**JAKE NACHMANI** practices out of the New York office, where he prosecutes securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients. He is currently a member of the teams prosecuting *In re Wilmington Trust Securities Litigation*, *General Motors Securities Litigation*, *Fernandez et al. v. UBS AG et al.*, *In re Tower Group International, Ltd. Securities Litigation* and *Levy v. Gutierrez et al.* (GT Advanced Technologies, Inc.).

Prior to joining the firm, Mr. Nachmani represented clients in complex commercial litigation, consumer class actions, and False Claims Act cases. He also briefly served as Special Counsel and Policy Advisor in the Office of the Chief Advisor to Mayor Michael Bloomberg for Policy and Strategic Planning. During law school, Mr. Nachmani clerked for the Head Deputy District Attorney in the Major Crimes Division of the Office of the District Attorney in Los Angeles.

EDUCATION: Brown University, B.A., *magna cum laude*, History, 2002; Phi Beta Kappa. Georgetown University Law Center, J.D., 2010; Farrell Scholarship.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

**CHRISTOPHER J. ORRICO**'s practice is focused on complex litigation, including matters involving securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients.

Mr. Orrico has significant experience in complex litigation, representing investor plaintiffs in major securities, antitrust and ERISA litigation, as well as a variety of other business tort litigation. He has also represented insurers in matters involving directors and officers liability policies, errors and omissions, and fiduciary liability.

Mr. Orrico obtained his joint J.D. and M.B.A. from Villanova University School of Law and School of Business. He completed the four-year joint degree program in only three years and has since served as a guest lecturer on securities litigation for the school. Additionally, Mr. Orrico obtained his B.A. in Economics from Yale University where he was Captain of the Varsity Baseball Team. He is the co-author of "Entire Fairness Or Business Judgment? It's Anyone's Guess," which was published by *Law360.com* in 2015 and "The X's and O's of Football's Offseason of Discontent," which was published by the *New York Law Journal* in 2011.

Mr. Orrico is a member of the American Bar Association, the New York State Bar Association and the Connecticut Bar Association, as well as the National Italian American Foundation. He is also a member of the Villanova Law Alumni Mentoring Program.

EDUCATION: Yale University, B.A., Economics, 2005; Paul Sortal Award for Ability and Leadership. Villanova University School of Law and School of Business, J.D., MBA, 2009.

BAR ADMISSIONS: New York; Connecticut.

**DAVID SCHWARTZ** prosecutes securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining the firm, Mr. Schwartz was an associate at a major international law firm, where he represented clients in business and complex commercial litigation, contract disputes, securities class actions, shareholder derivative suits, and SEC and other governmental inquiries and investigations.

Mr. Schwartz received his J.D. from Fordham University School of Law, where he was an Editor of the *Urban Law Journal*, and received his B.A. in economics from the University of Chicago.

EDUCATION: University of Chicago, B.A., Economics, 2003; *Dean's List*. Fordham University School of Law, J.D., 2008; Editor of *Urban Law Journal*.

BAR ADMISSIONS: New York; U.S. District Court for the Southern District of New York.

**ROSS SHIKOWITZ** focuses his practice on securities litigation and is a member of the firm's New Matter group, in which he, as part of a team attorneys, financial analysts, and investigators, counsels institutional clients on potential legal claims.

Mr. Shikowitz has also served as a member of the litigation teams responsible for successfully prosecuting a number of the firm's cases involving wrongdoing related to the securitization and sale of residential mortgage-backed securities ("RMBS"), including *Allstate Insurance Co. v. Morgan Stanley, Bayerische Landesbank, New York Branch v. Morgan Stanley*; and *Metropolitan Life Insurance Company v. Morgan Stanley*. Currently, he serves as a member of the litigation teams prosecuting *Dexia SA/NV v. Morgan Stanley*; and *Sealink Funding Limited v. Morgan Stanley*, which also involve the fraudulent issuance of RMBS.

While in law school, Mr. Shikowitz was a research assistant to Brooklyn Law School Professor of Law Emeritus Norman Poser, a widely respected expert in international and domestic securities regulation. He also served as a judicial intern to the Honorable Brian M. Cogan of the Eastern District of New York, and as a legal intern for the Major Narcotics Investigations Bureau of the Kings County District Attorney's Office.

EDUCATION: Skidmore College, B.A., Music, *cum laude*, 2003. Indiana University-Bloomington, M.M., Music, 2005. Brooklyn Law School, J.D., *magna cum laude*, 2010; Notes/Comments Editor, *Brooklyn Law Review*; Moot Court Honor Society; Order of Barristers Certificate; CALI Excellence for the Future Award in Products Liability, Professional Responsibility.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

**KATHERINE A. STEFANOU** practices out of the New York office, where she prosecutes securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients.

While in law school, Ms. Stefanou served as Article Editor for the *Brooklyn Journal of Corporate, Financial and Commercial Law* and as a judicial intern to the Honorable Ramon E. Reyes Jr. of the Eastern District of New York. She also was a research assistant to Brooklyn Law School Centennial Professor, Roberta S. Karmel, a former SEC Commissioner, and served as a legal intern for the Organized Crime Division of the U.S. Attorney's Office in the Eastern District of New York, and for the U.S. Securities and Exchange Commission's Enforcement Division.

Ms. Stefanou is currently a member of the teams prosecuting *BNY Mellon Corp. Forex Transactions Litigation*, *Tower Group International, Inc., DFC Global Corporation*, and *In re Salix Pharmaceuticals, Ltd. Securities Litigation*.

EDUCATION: University of Michigan, B.A., History and Modern Greek, *with distinction*, 2007. Brooklyn Law School, J.D., *cum laude*, 2011.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

**EDWARD G. TIMLIN** practices out of the firm's New York office, where he prosecutes securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional clients.

Prior to joining BLB&G, Mr. Timlin was a senior litigation associate at a major corporate law firm. Among other matters, he successfully represented corporate clients in complex litigation, including securities class actions, derivative actions, and merger and acquisitions matters, playing a key role in drafting briefs, taking depositions and managing discovery, and was responsible for pre-trial and settlement activities.

He is currently a member of the team prosecuting *In re GFI Group, Inc. Stockholder Litigation*, *In re TIBCO Software Inc. Stockholders Litigation*, *Lieblein v. Ersek (The Western Union Company)*, *In re Empire State Building Associates, L.L.C. Participant Litigation*, and *In re Intuitive Surgical Shareholder Derivative Litigation*.

EDUCATION: Cornell University, B.A., Philosophy and History, 2006. Columbia Law School, J.D., 2009; Harlan Fiske Stone Scholar.

BAR ADMISSION: New York.

**JOHN VIELANDI** practices out of the New York office and prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining BLB&G, Mr. Vielandi clerked at a Manhattan firm, where he assisted partners and associates with preparing SEC filings and transaction documents regarding the issuance of securities in private placements, employee compensation plans, limited public offerings, and other transactions.

EDUCATION: Georgetown University, B.A., History, 2010. Brooklyn Law School, J.D., 2013; Notes and Comments Editor for the *Brooklyn Journal of Corporate, Financial and Commercial Law*.

BAR ADMISSION: New York.

**ALLA ZAYENCHIK** practices out of the firm's New York office, where she prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining BLB&G, Ms. Zayenchik was a litigation associate at a New York law firm, where she successfully represented clients in class action and corporate governance litigation.

While in law school, Ms. Zayenchik was a Symposium Editor for the *Cardozo Public Law, Policy, and Ethics Journal*. She also served as a judicial intern for the Honorable Melvin L. Schweitzer of the New York Supreme Court, Commercial Division, and as a legal intern for The Innocence Project.

EDUCATION: Baruch School of the City College of New York, B.A., *summa cum laude*, Philosophy, 2010. Benjamin N. Cardozo School of Law, J.D., 2013.

BAR ADMISSION: New York.

## STAFF ASSOCIATE

**DAVID STEACIE** has represented institutional investors in numerous securities fraud class actions. He was a member of the teams that prosecuted *In re Refco Securities Litigation* (total recoveries in excess of \$400 million), *Ohio Public Employees Retirement System, et al. v. Freddie Mac, et al.* (\$410 million settlement) and *In re Biovail Corp. Securities Litigation* (\$138 million settlement). Mr. Steacie also supervises the attorneys at BLB&G who are primarily focused on electronic discovery.

Prior to joining BLB&G, Mr. Steacie was an attorney in private practice where he focused on securities and consumer fraud class action litigation.

EDUCATION: University of Massachusetts at Amherst, B.B.A., *cum laude*, 1986. Suffolk University Law School, J.D., 1994.

BAR ADMISSION: Massachusetts.

## BLB&G STAFF ATTORNEY BIOGRAPHIES – BNY MELLON

**EVAN AMBROSE** is a senior staff attorney with significant litigation, discovery and trial preparation experience who focuses on discovery matters from the initial stages of electronic discovery through case completion. Among other cases, Mr. Ambrose has worked on *General Motors Securities Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)* and *YouTube Class Action*. Prior to joining the firm in 2008, Mr. Ambrose worked as an attorney on several complex litigation matters for major law firms in New York City.

EDUCATION: New York University, B.A., 1998. New York University School of Law, J.D., 2001.

BAR ADMISSION: New York.

**ANDREW BORUCH** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Boruch has worked on *In re Kinder Morgan Energy Partnership, L.P. Derivative Litigation*, *In re MF Global Holdings Limited Securities Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, *In re State Street Corporation Securities Litigation*, *SMART Technologies, Inc. Shareholder Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Mr. Boruch was a litigation associate at DLA Piper.

EDUCATION: The Ohio State University, B.A., *magna cum laude*, 2004; Phi Beta Kappa. New York University Law School, J.D., 2007.

BAR ADMISSION: New York.

**ERIN BURKE** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Burke has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*.

Prior to joining the firm in 2014, Ms. Burke was a contract attorney at Quinn Emanuel Urquhart & Sullivan, LLP.

EDUCATION: The Pennsylvania State University, B.A., *summa cum laude*, 1999; Phi Beta Kappa. Tulane University School of Law, J.D., 2005.

BAR ADMISSION: New York.

**ALEXA BUTLER** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Butler has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *In re JPMorgan Chase & Co. Securities Litigation*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; *In re MBIA Inc. Securities Litigation*; *In re Washington Mutual, Inc. Securities Litigation*; *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action)*; *In re Refco, Inc. Securities Litigation* and *Affiliated Computer Services, Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2007, Ms. Butler was a contract attorney at Whatley Drake & Kallas, LLC.

EDUCATION: Georgia Institute of Technology, B.S., 1993. St. John's University School of Law, J.D., 1997.

BAR ADMISSION: New York.

**RYAN CANDEE** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Candee has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *In re State Street Corporation Securities Litigation*; *SMART Technologies, Inc. Shareholder Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Mr. Candee was an associate at Dorsey & Whitney and a staff attorney at Kaplan Fox & Kilsheimer LLP.

EDUCATION: University of Minnesota, B.A., 1994. New York University School of Law, J.D., 2002.

BAR ADMISSIONS: New York, U.S. District Court for the Southern District of New York.

**CHRISTOPHER CLARKIN** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Clarkin has worked on *In re Facebook, Inc., IPO Securities and Derivative Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *SMART Technologies, Inc. Shareholder Litigation*; *In re Citigroup Inc. Bond Litigation* and *In re Pfizer Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2010, Mr. Clarkin worked as a contract attorney for several major law firms in New York City.

EDUCATION: Trinity College, B.A., 2000. New York Law School, J.D., 2006.

BAR ADMISSIONS: Connecticut, New York.

**REIKO CYR** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Cyr has worked on *General Motors Securities Litigation* and *In re Bank of New York Mellon Corp. Forex Transactions Litigation*.

Prior to joining the firm in 2013, Ms. Cyr was an attorney at Constantine Cannon LLP.

EDUCATION: University of Alberta, B.S., 1990. McGill University, Faculty of Law, LL.B. and B.C.L., 1999.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern District of Michigan, the District of Wisconsin, and the Eastern and Southern Districts of New York; U.S. Courts of Appeals for the Second and Ninth Circuits; U.S. Supreme Court.

**GEORGE DOUMAS** is a senior staff attorney with significant litigation, discovery and trial preparation experience who focuses on discovery matters from the initial stages of electronic discovery through case completion. Among other cases, Mr. Doumas has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *JPMorgan Mortgage Pass-Through Litigation*; *In re Citigroup Inc. Bond Litigation*; *In re Huron*

*Consulting Group, Inc. Securities Litigation* and *In re Bristol-Myers Squibb Co. Securities Litigation*.

Prior to joining the firm in 2008, Mr. Doumas worked as a contract attorney for several major law firms in New York City.

EDUCATION: St. John's University, B.S., Accounting, 1994. Southern New England School of Law, J.D., 1997.

BAR ADMISSIONS: Maryland, Massachusetts, U.S. District Courts for the Districts of Maryland and Massachusetts.

**CHERYL GANDY** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Gandy has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*.

Prior to joining the firm in 2014, Ms. Gandy was an associate at Paul Hastings LLP, McCarter & English, LLP and Gersten & Savage LLP.

EDUCATION: State University of New York at Buffalo, A.B.; University at Buffalo, School of Law, J.D.; Harvard Law School, LL.M.; John F. Kennedy School of Government, Harvard University, M.P.A.

BAR ADMISSION: New York.

**CYNTHIA GILL** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Gill has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *Dexia Holdings, Inc. v. JP Morgan*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; *In re Schering-Plough Corp./ENHANCE Securities Litigation*; *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation* and *In re Refco, Inc. Securities Litigation*.

Prior to joining the firm in 2005, Ms. Gill was an associate at Davis, Saperstein & Salomon, P.C.

EDUCATION: Rutgers, The State University of New Jersey, B.A., 1987. Georgetown University Law Center, J.D., 1990.

BAR ADMISSIONS: New Jersey, New York.

**ADDISON GOLLADAY** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Golladay has worked on *Allstate Insurance Company v. Morgan Stanley & Co., Inc.*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, *In re News Corp. Shareholder Litigation*, *In re Citigroup Inc. Bond Litigation* and various corporate governance and shareholder rights litigation.

Prior to joining the firm in 2011, Mr. Golladay was a litigation associate at Latham & Watkins LLP.

EDUCATION: Columbia College, B.A., *cum laude*, 1993. Stephen M. Ross School of Business, M.B.A., 2005. The University of Michigan Law School, J.D., 2005.

BAR ADMISSION: New York.

**DANIEL GRUTTADARO** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Gruttadaro has worked on *General Motors Securities Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*.

Prior to joining the firm in 2014, Mr. Gruttadaro was a staff attorney at Stull, Stull & Brody.

EDUCATION: State University of New York at Geneseo, B.S., 2005. State University of New York at Buffalo Law School, J.D., *cum laude*, 2009.

BAR ADMISSIONS: New York, U.S. District Courts for the Eastern and Southern Districts of New York.

**JARED HOFFMAN** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Hoffman has worked on *In re Facebook, Inc., IPO Securities and Derivative Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *SMART Technologies, Inc. Shareholder Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Mr. Hoffman was an associate at Blank Rome LLP and Sichenzia Ross Friedman Ference LLP.

EDUCATION: Emory University, Goizueta Business School, B.B.A., 2002. New York University, School of Law, J.D., 2005.

BAR ADMISSION: New York.

**LARRY HOSMER** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Hosmer has worked on *General Motors Securities Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re State Street Corporation Securities Litigation*.

Prior to joining the firm in 2012, Mr. Hosmer was a contract attorney and project manager on several matters arising from the conduct of former Tyco International CEO Dennis Kozlowski, including the securities class action, ERISA action, criminal action and other related actions.

EDUCATION: University of Texas at Austin, B.A., 1993; National Merit Scholar. Southern Methodist University School of Law, J.D., 1996.

BAR ADMISSION: Texas.

**STEPHEN IMUNDO** is a senior staff attorney with significant litigation, discovery and trial preparation experience who focuses on discovery matters from the initial stages of electronic discovery through case completion. Among other cases, Mr. Imundo has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *Dexia Holdings, Inc. v. JP Morgan*; *In re Citigroup Inc. Bond Litigation* and *In re Huron Consulting Group, Inc. Securities Litigation*.

Prior to joining the firm in 2010, Mr. Imundo worked as a contract attorney at Labaton Sucharow LLP and Constantine & Cannon, LLP.

EDUCATION: Mercy College, B.S., *summa cum laude*, 1994. Fordham University School of Law, J.D., 2002.

BAR ADMISSIONS: Connecticut, New York.

**STAVROS KATSETOS** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Katsetos has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*.

Prior to joining the firm in 2012, Mr. Katsetos was a contract attorney at Gibson Dunn and Kenyon & Kenyon LLP.

EDUCATION: University of Rochester, B.S., 2000. Fordham University School of Law, J.D., 2008.

BAR ADMISSIONS: Connecticut, New York, U.S. Patent and Trademark Office.

**JED KOSLOW** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Koslow has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *JPMorgan Mortgage Pass-Through Litigation*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; *Dexia Holdings, Inc. v. JP Morgan* and *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*.

Prior to joining the firm in 2009, Mr. Koslow was Of Counsel at Lebowitz Law Office, LLC.

EDUCATION: Wesleyan University, B.A., 1999. Brooklyn Law School, J.D., 2006.

BAR ADMISSION: New York.

**ARTHUR LEE** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Lee has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *JPMorgan Mortgage Pass-Through Litigation*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; *Dexia Holdings, Inc. v. JP Morgan*; *In re Citigroup Inc. Bond Litigation* and *In re Pfizer Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2010, Mr. Lee worked as an associate at Sichenzia Ross Friedman Ference LLP.

EDUCATION: Rutgers, The State University of New Jersey, B.A., 2003; B.S., 2003. Fordham University School of Law, J.D., 2006.

BAR ADMISSION: New York.

**LAURA LEFKOWITZ** is a senior staff attorney with significant litigation, discovery and trial preparation experience who focuses on discovery matters from the initial stages of electronic discovery through case completion. Among other cases, Ms. Lefkowitz has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *JPMorgan Mortgage Pass-Through Litigation*; *SMART Technologies, Inc. Shareholder Litigation*; *In re Citigroup Inc. Bond Litigation* and *In re Pfizer Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2010, Ms. Lefkowitz worked as a litigation associate at Morgenstern Fisher & Blue, LLC.

EDUCATION: University of Michigan, B.A., 1998. American University, Washington College of Law, J.D., *cum laude*, 2001.

BAR ADMISSIONS: New York, U.S. District Courts for the Eastern and Southern Districts of New York.

**ANDREW MCGOEY** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. McGoey has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; *Police & Fire Retirement System of the City of Detroit v. SafeNet, Inc., et al.*; *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action)*; *In re Bristol-Myers Squibb Co. Securities Litigation*; *In re The Mills Corporation Securities Litigation* and *In re Openwave Systems Securities Litigation*.

Prior to joining the firm in 2008, Mr. McGoey was a contract attorney on several major class action litigations.

EDUCATION: State University of New York at Albany, B.A., *summa cum laude*, 1991. Brooklyn Law School, J.D., 1997.

BAR ADMISSION: New York.

**JOANNE MCLAREN** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. McLaren has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*.

Prior to joining the firm in 2013, Ms. McLaren was a litigation associate at Greenberg Traurig, LLC and Weil, Gotshal & Manges LLP.

EDUCATION: University of Pennsylvania, B.A., *magna cum laude*, 1995. University of Pennsylvania Law School, J.D., 1999.

BAR ADMISSIONS: New York, U.S. District Courts for the Eastern and Southern Districts of New York, U.S. Court of Appeals for the Second Circuit.

**REBECCA MOLK** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Molk has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*.

Prior to joining the firm in 2014, Ms. Molk was a contract attorney at Quinn Emanuel Urquhart & Sullivan, LLP.

EDUCATION: Connecticut College, B.A., *cum laude*, 2009. American University Washington College of Law, J.D., 2013.

BAR ADMISSION: New York.

**JONATHAN NOBLE** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Noble has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Mr. Noble worked as an associate at Chadbourne & Parke LLP.

EDUCATION: Brown University, B.A., 2004. Columbia Law School, J.D., 2008.

BAR ADMISSIONS: New York, U.S. District Courts for the Eastern and Southern Districts of New York.

**JEFFREY POWELL** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Powell has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *Bear Stearns Mortgage Pass-Through Litigation*; *Cambridge Place Investment Management Inc. v. Morgan Stanley & Co., Inc., et al.*; *SMART Technologies, Inc. Shareholder Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2010, Mr. Powell was a litigation associate at Pillsbury Winthrop LLP and Constantine Cannon LLP.

EDUCATION: University of the South, B.A., *magna cum laude*, 1992; Phi Beta Kappa. Harvard Law School, J.D., 2001.

BAR ADMISSION: New York.

**SHALU RASTOGI** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Rastogi has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *In re News Corp. Shareholder Litigation*; *In re Citigroup Inc. Bond Litigation*; *In re Pfizer Inc. Shareholder Derivative Litigation*; *In re Refco, Inc. Securities Litigation* and *UnitedHealth Group, Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2007, Ms. Rastogi worked as an associate at Pryor Cashman LLP.

EDUCATION: New York University, B.A., *cum laude*, 1992. University of Virginia School of Law, J.D., 1997.

BAR ADMISSION: New York.

**DANIEL RENEHAN** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Renehan has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *Cambridge Place Investment Management Inc. v. Morgan Stanley & Co., Inc., et al.*; *In re MF Global Holdings Limited Securities Litigation*; *In re Citigroup Inc. Bond Litigation*; *In re Pfizer Inc. Shareholder Derivative Litigation*; *In re WellCare Securities Litigation*; *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action)*; *In re RAIT Financial Trust Securities Litigation*; *In re Refco, Inc. Securities Litigation*; *In re Converium Holding AG Securities Litigation*; *Affiliated Computer Services, Inc. Shareholder Derivative Litigation*; *Ohio Public*

*Employees Retirement System, et al. v. Freddie Mac, et al. and In re Symbol Technologies, Inc. Securities Litigation.*

Prior to joining the firm in 2004, Mr. Renehan worked as an associate at Gibbons, Del Deo, Dolan Griffinger & Vecchione, P.C.

EDUCATION: State University of New York, College at Oswego, B.A., 1987. New York University, Graduate School of Arts & Science, M.A., 1991. Brooklyn Law School, J.D., 2000.

BAR ADMISSION: New York.

**NOREEN RHOSEAN SCOTT** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Scott has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *In re JPMorgan Chase & Co. Securities Litigation*; *JPMorgan Mortgage Pass-Through Litigation*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; *In re Schering-Plough Corp./ENHANCE Securities Litigation*; *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*; *In re R&G Financial Corporation Securities Litigation* and *In re HealthSouth Bondholders Litigation*.

Prior to joining the firm in 2008, Ms. Scott was a contract attorney at Milberg LLP.

EDUCATION: Emory University, B.A., 1999. Tulane Law School, J.D., 2002.

BAR ADMISSIONS: Louisiana, New York.

**EMILY STRICKLAND** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Strickland has worked on *General Motors Securities Litigation*; *Town of Davie Police Pension Plan v. CommVault Systems, Inc., et al.* and *In re Bank of New York Mellon Corp. Forex Transactions Litigation*.

Prior to joining the firm in 2014, Ms. Strickland was a contract attorney at Labaton Sucharow and Compliance Counsel for DCM, Inc.

EDUCATION: St. John's College, B.A., 2003. Suffolk University Law School, J.D., 2009.

BAR ADMISSIONS: Massachusetts, New York.

**ANDREW TOLAN** is a senior staff attorney with significant litigation, discovery and trial preparation experience who focuses on discovery matters from the initial stages of electronic discovery through case completion. Among other cases, Mr. Tolan has worked on *In re Biovail Corp. Securities Litigation*; *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *SMART Technologies, Inc. Shareholder Litigation*; *In re Bank of America Securities Litigation*; *In re The Mills Corporation Securities Litigation* and *In re Nortel Networks Corporation Securities Litigation*.

Prior to joining the firm in 2005, Mr. Tolan was an associate at Pomerantz Haudek Block Grossman & Gross LLP.

EDUCATION: New York University, College of Arts & Sciences, B.A., 1987. Brooklyn Law School, J.D., May 1990. New York University, Stern School of Business, M.B.A., Finance, 1997.

BAR ADMISSIONS: New Jersey, New York.

**ALINA TSIRKIN** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Tsirkin has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *Dexia Holdings, Inc. v. JP Morgan*; *Goldman Sachs Mortgage Pass-Through Litigation*; *Merrill Lynch Mortgage Pass-Through Litigation*; *In re The Mills Corporation Securities Litigation* and *In re Openwave Systems Securities Litigation*.

Prior to joining the firm in 2008, Ms. Tsirkin was a contract attorney at Hughes, Hubbard & Reed, LLP.

EDUCATION: New York University, Leonard N. Stern School of Business, B.S., 2003.  
Brooklyn Law School, J.D., 2006.

BAR ADMISSIONS: New Jersey, New York.

**ALLAN TURISSE** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. Turisse has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *In re State Street Corporation Securities Litigation*; *SMART Technologies, Inc. Shareholder Litigation*; *In re Citigroup Inc. Bond Litigation* and *In re Washington Mutual, Inc. Securities Litigation*.

Prior to joining the firm in 2010, Mr. Turisse was an associate at Cullen and Dykman LLP and Baxter & Smith P.C. and a contract attorney at Labaton Sucharow LLP and Milberg LLP.

EDUCATION: Fordham University, B.A., 1994. Brooklyn Law School, J.D., 2000.

BAR ADMISSION: New York.

**MARK VAN DER HARST** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Mr. van der Harst has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *Dexia Holdings, Inc. v. JP Morgan*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; *In re Schering-Plough Corp./ENHANCE Securities Litigation*; *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*; *In re Refco, Inc. Securities Litigation*; *In re Converium Holding AG Securities Litigation* and *Stonington Partners, Inc. v. Dexia Bank Belgium*.

Prior to joining the firm in 2005, Mr. van der Harst was an associate at PricewaterhouseCoopers.

EDUCATION: Leiden University, Faculty of Law, J.D., 1999. University of San Diego School of Law, LL.M., 2004.

BAR ADMISSION: New York.

**CATHERINE VAN KAMPEN** is a senior staff attorney with significant litigation, discovery and trial preparation experience who focuses on discovery matters from the initial stages of electronic discovery through case completion. Among other cases, Ms. van Kampen has worked on *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; *Dexia Holdings, Inc. v. JP Morgan*; *In re Citigroup Inc. Bond Litigation*; *In re Pfizer Inc. Shareholder Derivative Litigation*; *In re WellCare Securities Litigation*; *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action)*; *In re State Street Bank and Trust Co. ERISA Litigation*; *In re Converium Holding AG Securities Litigation*; *In re Monster Worldwide, Inc. Derivative Litigation* and *Stonington Partners, Inc. v. Dexia Bank Belgium*.

Prior to joining the firm in 2005, Ms. van Kampen was corporate counsel at Centric Communications Worldwide.

EDUCATION: Indiana University, B.A., 1988. Seton Hall University, School of Law, J.D., 1998.

BAR ADMISSION: New Jersey.

**DANA VINCENT** focuses on discovery matters, from the initial stages of electronic discovery through depositions. Among other cases, Ms. Vincent has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation*.

Prior to joining the firm in 2013, Ms. Vincent was an Assistant Attorney General at the New York State Office of the Attorney General, and an associate at Katten Muchin Zavis Rosenman LLP and Hunton & Williams LLP.

EDUCATION: Spellman College, B.A., *cum laude*, 1995. New School for Social Research, M.A., 1999. Georgetown University Law Center, J.D., 2002.

BAR ADMISSIONS: New York, U.S. District Court for the Eastern District of New York.

# **Exhibit 4B**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

BANK OF NEW YORK MELLON CORP.  
FOREX TRANSACTIONS LITIGATION

This Document Relates to: 11-CV-09175

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) **CIVIL ACTION NO.**  
) MASTER FILE  
) 12 MD 2335 (LAK)  
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**DECLARATION OF SCOTT SHORR  
IN SUPPORT OF LEAD COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’  
FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF  
STOLL STOLL BERNE LOKTING & SHLACHTER P.C.**

Scott Shorr, declares as follows:

1. I am a managing partner of the law firm of Stoll Stoll Berne Lokting & Shlachter P.C. (“Stoll Berne”), one of the plaintiff securities counsel in the above-captioned action (the “Action”) and was the lead partner for our firm in this Action. I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees in connection with services rendered in the Action, as well as for reimbursement of expenses incurred therein.

2. My firm serves as outside securities counsel for the State of Oregon and has regularly represented Oregon in securities litigation, both individual/opt-out securities cases and class actions, since at least 1999. In that capacity, we have become very familiar with: (a) the personnel at the Oregon Department of Justice and the Oregon State Treasury, which manages the public funds that suffered damages in this case; (b) the documents retained by the Oregon State Treasury in connection with the Oregon Public Employee Retirement Fund and other Oregon public funds; (c) the structure and legal relationships of the various public boards and councils that oversee the Oregon funds; and (d) the outside investment managers, consultants,

custodians and related third-parties that have a role in investing and protecting the Oregon public funds. We were selected for this matter by the Oregon Department of Justice as Special Assistant Attorneys General to team up and work with lead counsel BLB&G (also appointed Special Assistant Attorneys General) in the Action.

3. BLB&G and our firm carefully divided responsibilities in this matter to avoid, as much as reasonably possible, overlapping work and to take advantage of each firm's strengths, location, personnel, and cost efficiencies. As a result and as discussed further below, our firm: (a) took the lead in almost all of the defensive discovery, including reviewing and producing lead plaintiff Oregon's documents and preparing and defending Oregon witnesses at deposition; (b) appeared at and protected the class's interests when Oregon's third-party managers and consultants were deposed regarding the issues in the Action; (c) took the lead in covering almost all of the depositions that were on the West Coast (where our proximity and lower billing rates, discussed further below, saved the class time and expense); and (d) assisted in the massive review of millions of documents (where our staff attorneys and associates were able to save the class money by billing at local Oregon rates for the on-line review of documents).

4. Specifically, Stoll Berne provided the following work to benefit both Oregon, as the lead plaintiff, and the class in the Action:

- A. Responded and objected to Defendants' requests for production of documents to Oregon;
- B. Collected nearly 1.3 million document files from Oregon, searched and culled the document files, and individually reviewed nearly 40,000 documents for privilege and responsiveness prior to production;

- C. Advised the Oregon Department of Justice and Oregon State Treasury on litigation strategy as well as the legal issues, risks, and benefits involved in pursuing the Action. Stoll Berne also consulted and advised Oregon with respect to various motions brought by the parties, including the motion to dismiss, class certification motion and discovery motions;
- D. Researched legal issues in connection with the motion to dismiss and class certification motion;
- E. Drafted sections of the briefing relating to the motion to dismiss and class certification motion after dividing discrete legal issues with BLB&G;
- F. Prepared lead plaintiff Oregon's witnesses for deposition and defended the depositions of six State of Oregon witness, mainly high-ranking current and former staff members of the Oregon State Treasury;
- G. Represented lead plaintiff Oregon and the class's interest in nearly all depositions on the West Coast, including depositions noticed by Bank of New York Mellon in Albuquerque, Los Angeles, San Francisco and Seattle.
- H. Participated in and was securities counsel representative in at least six third party depositions, mainly of outside investment managers and consultants to the State of Oregon;
- I. Reviewed, analyzed, sorted, and coded countless, and likely millions, of pages of documents as part of the team of counsel reviewing the 30 million pages of documents produced in this case;<sup>1</sup>

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<sup>1</sup> Because documents were assigned in "batches" to attorneys, each attorney was assigned a distinct set of documents from a distinct custodian to avoid any overlapping efforts.

- J. Reviewed documents in preparation for depositions both taken and defended by our firm and created deposition memoranda and witness packets used by our firm and other firms in taking and defending depositions;
- K. Prepared for and participated with BLB&G in the mediation in New York before United States District Court Judge Layn Phillips (ret.), and consulted with BLB&G and advised the State of Oregon regarding the same; and
- L. With BLB&G and following the mediation, advised Oregon on settlement issues and the risks and benefits of settlement.

5. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by the attorneys and professional support staff employees of my firm who were involved in this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on the Action after May 21, 2015, the day the term sheet memorializing the agreement in principle to settle the Action was executed, has not been included in this request nor has the time expended on this application for fees and reimbursement of expenses been included.

6. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other class litigation.

7. The hourly rates reflected in Exhibit 1 are based on our standard hourly rates *charged in Portland, Oregon*, which are consistent with the reasonable rates charged by other business litigation firms in Portland. These rates are substantially lower, sometimes by half, than the rates charged in New York by similarly experienced securities and business litigators. We

have not sought to increase our rates to reflect the rates charged in the Southern District of New York where this case was litigated. The use of the State of Oregon's regular securities counsel thus saved the class substantial fees. This was a factor in our discussions with BLB&G in using resources in Oregon, including the use of Stoll Berne's staff attorneys who did document review and the use of Stoll Berne's experienced securities litigation partners and senior associates to defend Oregon, third-party, and West-Coast depositions. If there is any reduction imposed on our Portland, Oregon based rates, this would, in many cases, result in rates that are less than half the rates charged in the Southern District of New York for similar work by similarly experienced securities litigators.

8. As discussed in greater detail in the Declaration of John C. Browne in Support of (A) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, both BLB&G and our firm used staff attorneys to do document review and help attorneys prepare for depositions. Our firm also used associates and other Stoll Berne attorneys for that work. All of Stoll Berne's staff attorneys were, while at the firm, or are, on a continuing basis, employees of the firm who work within our offices at 209 S.W. Oak Street, Portland, Oregon on the same two floors as the other associates, partners, and staff. Similar to BLB&G's practice, Stoll Berne staff attorneys are W-2 employees. Stoll Berne pays their salaries, pays occasional bonuses, and taxes. After a set period of time with the firm, each are eligible for full benefits. All staff attorneys have their own Stoll Berne email addresses. A number of the staff attorneys worked on multiple cases during the pendency of this Action and not solely on this Action. The staff attorneys were supervised on-site by Keil Mueller, the senior associate that was responsible for discovery issues for our firm in this Action. Like BLB&G,

Stoll Berne views these staff attorneys as critical members of the litigation team and highly capable attorneys. All of the staff attorneys have Juris Doctorate degrees, bar membership in Oregon or elsewhere, and nearly every one (except for one recent graduate from the University of Washington School of Law) have prior litigation experience in private or government practice. Among other things, the Stoll Berne staff attorneys reviewed documents to find key evidence in support of the claims; sorted and coded documents according to the key issues in the case; prepared other attorneys to take and defend depositions by preparing witness kits, which included drafting memoranda and locating/attaching key documents for witness preparation or for deposition exhibits; and, met on a regular basis through teleconferences with the other securities counsel and counsel in the customer class cases to discuss the hot documents and the key issues in preparation for depositions and for use at trial. The staff attorneys also found “hot documents” and important evidence that had not been located by other attorneys in the case and which proved significant in deposition examination. One of the staff attorneys, who had the most experience with the documents and issues in the case, also prepared for and attended an out-of-state deposition of a third-party witness in Albuquerque, New Mexico. The staff attorneys are an integral part of our team who provided substantial assistance in proving up key issues relating to Bank of New York’s conduct with respect to its foreign exchange (“FX”) trading. Staff attorneys were vital and played a central role in obtaining very helpful testimony for Oregon at depositions. Our prosecution of the case would not have been possible without these attorneys.

9. The total number of hours reflected in Exhibit 1 from inception through and including May 21, 2015, is 11,052. The total lodestar reflected in Exhibit 1 for that period is \$3,185,996.75, consisting of \$2,994,376.75 for attorneys’ time and \$191,620.00 for paralegal

time. The blended hourly rate for the attorney time submitted by Stoll Berne is just \$297 an hour and for all time, including paralegal time, just \$288 an hour. This is a very cost effective rate for the work provided in a complex securities class action based in the Southern District of New York. The hours reflected in Exhibit 1 are further broken down for each person by various task codes.

10. There were sixteen attorneys and two paralegals from Stoll Berne who worked on this matter. Of the sixteen attorneys, there were: (a) eight who were either partners or associates and (b) eight total staff attorneys. Of those eight partners or associates, there were three attorneys, myself, my partner Keith Dubanevich, and our associate Keil Mueller, who primarily handled the case. The time for these three individuals represents approximately 69% of the time that Stoll Berne partners and associates put into the case. Each of us has substantial experience litigating cases throughout the country and our firm, with myself as arguing counsel, has briefed and argued two consolidated cases before the United States Supreme Court. The resumes for each of the three main attorneys are included in Exhibit 3.

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

12. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$40,313.93 in expenses incurred in connection with the prosecution of this Action from its inception through and including August 31, 2015.

13. The expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:

- (a) Out-of-town travel - airfares are at coach rates, hotel charges per night are capped at \$350 for large cities and \$250 for small cities (the relevant cities and how they are categorized are reflected on Exhibit 2); meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner; and
- (b) Internal Copying - Charged at \$0.10 per page.

With respect to On-Line Research, our firm has a fee-based monthly subscription package with Westlaw that is not based on particular research projects or the amount of time spent on the same. Because we do not always pass these charges onto our clients, we have not done so in this instance.

14. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense receipts, check records and other source materials and are an accurate record of the expenses incurred.

15. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and the main attorneys in my firm who were involved in this Action. Our firm has litigated and taken to trial complex class actions since the 1970s, including securities class actions, consumer class actions and antitrust cases. An extensive list of those actions, including most where we were appointed lead or co-lead plaintiff appears as part of Exhibit 3.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on September 15, 2015.

  
\_\_\_\_\_  
Scott Shorr

EXHIBIT 1

In re Bank of New York Mellon Corp. FOREX Transactions Litigation  
 Master File No. 08 Civ. 9522 (SHS)  
 Relates to 11-CV-09175  
 STOLL STOLL BERNE LOKTING SHLACHTER P.C.  
 TIME REPORT  
 Inception through May 21, 2015

Task Codes:

1. Investigation and Factual Research
2. Pleadings, Briefs and Pre-trial Motions
3. Document Review
4. Depositions (including preparation for depositions)
5. Other Discovery (excluding motions)
6. Motions

7. Experts
8. Class Certification
9. Mediation/Settlement
10. Litigation Strategy and Analysis
11. Court Appearances

Professional / Task Code	01	02	03	04	05	06	07	08	09	10	11	Hours	Billable Rate	Lodestar
<b>PARTNERS</b>														
Keith Dubanevich	0.15	2.95	-	165.40	24.20	0.20	-	19.20	43.80	12.45	-	268.35	450.00	120,757.50
Keith Ketterling	0.60	17.65	-	6.95	2.65	0.80	-	-	1.25	9.90	-	39.80	440.00	17,512.00
Mark Friel	-	-	80.60	-	-	-	-	-	-	-	-	80.60	365.00	29,419.00
Scott Shorr	32.40	59.00	87.10	278.80	119.30	4.70	1.00	54.40	52.70	37.85	-	727.25	395.00	287,263.75
Tim Dejong	-	-	14.25	-	-	-	-	-	-	-	-	14.25	410.00	5,842.50
<b>ASSOCIATES</b>														
Keil Mueller	39.20	48.60	598.60	177.90	254.10	8.10	-	28.90	3.30	23.70	-	1,182.40	300.00	354,720.00
Nadine Gartner	-	-	234.00	-	-	-	-	-	-	-	-	234.00	280.00	65,520.00
Yoona Park	-	-	597.80	17.10	-	-	-	-	-	-	-	614.90	280.00	172,172.00
<b>STAFF ATTORNEYS</b>														
Amy Dachtler	-	-	65.50	-	-	-	-	-	-	-	-	65.50	280.00	18,340.00
Bryson Davis	-	-	2,904.10	169.00	4.50	-	-	-	-	3.70	-	3,081.30	280.00	862,764.00
Ben Pirie	-	-	596.80	-	-	-	-	-	-	-	-	596.80	280.00	167,104.00
Ismail Pekin	-	-	541.90	-	-	-	-	-	-	-	-	541.90	280.00	151,732.00
Joey Katz	-	-	656.80	-	-	-	-	-	-	-	-	656.80	280.00	183,904.00
Jay Sayles	-	-	738.80	-	-	-	-	-	-	-	-	738.80	280.00	206,864.00
Megha Desai	-	-	774.25	26.80	-	-	-	-	-	-	-	801.05	280.00	224,294.00
Nkenge Johnson	-	-	450.60	-	-	-	-	-	-	-	-	450.60	280.00	126,168.00
<b>PARALEGALS</b>														
Angelene Falconer	-	-	2.00	-	25.50	-	-	-	-	-	-	27.50	200.00	5,500.00
Jason Dotts	-	-	637.30	38.60	254.70	-	-	-	-	-	-	930.60	200.00	186,120.00
<b>SUMS</b>	<b>72.35</b>	<b>128.20</b>	<b>8,980.40</b>	<b>880.55</b>	<b>684.95</b>	<b>13.80</b>	<b>1.00</b>	<b>102.50</b>	<b>101.05</b>	<b>87.60</b>	<b>-</b>	<b>11,052.40</b>	<b>-</b>	<b>3,185,996.75</b>

EXHIBIT 2

*In re Bank of New York Mellon Corp. FOREX Transactions Litigation,*

Master File No. 08 Civ. 9522 (SHS)

This Document relates to 11-CV-09175

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

EXPENSE REPORT

Inception through August 31, 2015

<b>CATEGORY</b>	<b>AMOUNT</b>
Telephones/Faxes	290.47
Hand Delivery Charges	1,639.03
Internal Copying	22.00
Outside Copying	59.50
Out of Town Travel*	17,800.48
Court Reporters and Transcripts	20,502.45
<b>TOTAL EXPENSES:</b>	<b>\$40,313.93</b>

\* Out of town travel includes hotels in the following "large" cities capped at \$350 per night: Boston, MA; Los Angeles, CA; New York, NY; and Seattle, WA; and the following "small" city capped at \$250 per night: Richmond, VA; Albuquerque, NM; Santa Fe, NM; and Norfolk, VA.

EXHIBIT 3

*In re Bank of New York Mellon Corp. FOREX Transactions Litigation,*  
Master File No. 08 Civ. 9522 (SHS)  
This Document relates to 11-CV-09175

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.  
FIRM AND ATTORNEY RESUMES

## ABOUT STOLL BERNE

Since its inception in 1978, Stoll Berne has achieved extraordinary results for its clients in class actions and other types of investor, consumer and business litigation. The firm regularly represents clients in jury and court trials in federal and state courts and has earned a reputation as a leading plaintiffs' class action firm in Oregon and elsewhere. The firm has represented investors in numerous securities fraud class actions, represented employees in class actions involving wage and hour claims, and represented consumers in consumer protection class actions and antitrust cases. The firm also has represented clients in class actions involving environmental claims and claims against insurance companies that did not properly reimburse health care providers.

In securities class actions, Stoll Berne has won an \$88 million jury verdict against an investment banking firm in *In re Melridge, Inc. Securities Litigation* (D. Or. 1988) and a \$7.2 million jury verdict against one of the Big Four accounting firms in *Barlean v. Black & Co.* (Mult. County Cir. Ct. 1992). We also have represented clients, most of the time as lead or co-lead counsel, in many other class action securities cases including:

- *Gordon v. Floating Point Systems, Inc.*, (D. Or. 1989)
- *Flecker v. Hollywood Entertainment Corp.*, (D. Or. 1995)
- *In re Flir Systems, Inc. Securities Litigation*, (D. Or. 1995)
- *In re Louisiana-Pacific Corp. Securities Litigation*, (D. Or. 1995)
- *In re Assisted Living Concepts, Inc. Securities Litigation*, (D. Or. 1999)
- *In re Southern Pacific Funding Corp. Securities Litigation*, (D. Or. 2001)
- *Central Laborers Pension Fund v. Merix Corp.*, (D. Or. 2004 )
- *Zucco Partners, LLC v. Digimarc Corp.*, (D. Or. 2004)
- *Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund v. Vestas Wind Systems A/S*, (D. Or. 2011)
- *Louisiana Municipal Employees' Retirement System v. Bank of New York Mellon Corp.*, (S.D.N.Y. 2011)
- *In re JPMorgan Chase & Co. Securities Litigation*, (S.D.N.Y. 2012 )

In addition to its trial successes, securities class action cases where the firm was lead or co-lead counsel resulted in substantial settlements in *Flecker v. Hollywood Entertainment Corp.* -- \$15 million; *In re Louisiana-Pacific Corp. Securities Litigation* -- \$65.1 million; *In re Assisted Living Concepts, Inc. Securities Litigation* -- \$43.5 million; *In re Southern Pacific Funding Corp. Securities Litigation* -- \$19.5 million; and *In re Flir Systems, Inc. Securities Litigation* -- \$5 million.

The firm has represented the State of Oregon in several securities cases including:

- *Oregon Public Employee Retirement Fund v. McKesson HBOC Inc.*, (S.F. County Sup. Court 1999)
- *Oregon Public Employee Retirement Fund v. Marsh & McLennan Companies, Inc.* (Mult. County Cir. Ct. 2005)
- *Oregon Public Employee Retirement Fund v. Merck & Co., Inc.*, (Mult. County Cir. Ct. 2005)
- *Oregon Public Employee Retirement Fund v. American International Group, Inc.* (Mult. County, Or 2008)
- *Oregon College Savings Plan Trust v. Oppenheimer Funds, Inc.* (Marion County Cir. Ct. 2009)
- *Oregon Public Employee Retirement Fund v. Countrywide Financial Corporation*, (Mult. County Cir. Ct. 2011)
- *Industrial Accident Fund v. Countrywide Financial Corporation*, (Mult. County Cir. Ct. 2011)
- *The State of Oregon v. BP P.L.C.*, (Mult. County Cir. Ct. 2012)

Lawyers at the firm are active in the community and have held leadership positions with the Federal Bar Association, Oregon Trial Lawyers Association, Multnomah Bar Association, and Oregon State Bar. The firm donates a fixed percentage of its gross revenues each year to charitable organizations and is one of the largest contributors to the Campaign for Equal Justice, which provides funding for legal services to low-income Oregonians. The firm's lawyers coach high school mock trial teams, donate their time to pro bono legal activities, including representing seniors, abused spouses, indigent clients and migrant workers, and are involved with community organizations such as Self Enhancement, Inc., Cycle Oregon, Stand for Children, CASA, Hands On Portland, and Oregon Food Bank. Stoll Berne attorneys have been consistently recognized by their peers in numerous professional listings, including *Chambers USA: America's Leading Lawyers*, the *Best Lawyers in America*, *Benchmark Litigation Guide*, and *Oregon Super Lawyers*.

## LAWYERS

**Steven C. Berman ~ Shareholder:** Steven's practice emphasizes business, employment and securities litigation. He has authored articles on employment litigation, competition and trade-secret matters, and also authored the chapter on Elections Law and Government Ethics in the Oregon State Bar's *2009 Oregon Legislation Highlights*.

**Andrew Davis ~ Shareholder:** Andy concentrates his practice in the areas of commercial real estate including development, investment and finance. He advises clients in a wide range of commercial real estate transactions and matters, including the purchase and sale, development, investment, leasing, financing, management and ownership of commercial properties. Andy has made a number of presentations about real estate issues to both legal and real estate professional groups and has authored various publications for the Oregon State Bar.

**Timothy DeJong ~ Shareholder:** Tim is a litigator emphasizing complex business, securities and intellectual property disputes. Tim has experience in litigation matters involving patent infringement, class actions, violations of state and federal securities statutes, construction defect, insurance coverage and employment-related disputes. Tim is listed in *Best Lawyers in America*, and *The Portland Business Journal* recognized him as among the "Best of the Bar" in the field of intellectual property.

**Keith Dubanevich ~ Shareholder:** Keith concentrates his practice in complex dispute resolution and has represented a wide variety of companies in arbitration and in litigation in more than a dozen different jurisdictions. He has extensive experience handling multi-state antitrust cases, consumer litigation and securities disputes. He was recently Associate Attorney General and Chief of Staff at the Oregon Department of Justice where he managed securities litigation on behalf of the state employee's pension fund, was co-author of amicus briefs in U.S. Supreme Court regarding the Affordable Care Act, and supervised antitrust investigations and prosecutions.

**Mark Friel ~ Shareholder:** Mark is a trial lawyer who litigates cases in federal and state court, and in private and court-mandated arbitrations. Mark's practice focuses on securities litigation, class actions and commercial litigation. He graduated from the University of California, Boalt Hall, in 2000.

**Keith Ketterling ~ Shareholder:** Keith, one of the firm's managing shareholders, represents institutional and individual investors and brokerages in securities and financial fraud litigation and regulatory matters. He also handles matters involving trade secret and noncompetition litigation, and other complex business litigation. Keith brings a unique perspective to his cases, representing financial fraud victims, and in other instances, defending selected clients facing allegations of financial or securities fraud. Keith regularly arbitrates and mediates FINRA and other securities matters. Keith has been recognized in *Oregon Super Lawyers* and *Best Lawyers in America*.

**Steve Larson ~ Shareholder:** Steve is a trial lawyer who handles cases in state and federal courts, as well as before arbitration panels, emphasizing all types of complex business litigation. Steve has experience in class actions, securities litigation, corporate disputes, intellectual property disputes, unfair competition claims, and employment matters. Steve has represented both plaintiffs and defendants. Steve has also appeared before the US Supreme Court, Ninth Circuit Court of Appeals and the Oregon Court of Appeals.

**David Lokting ~ Shareholder:** David heads the firm's extensive business law and real estate practices. David represents clients in a wide range of business and real estate transactions, including forming business organizations (corporations, partnerships and limited liability companies), buying and selling businesses, equity buy-ins and buy-outs (including business "divorces"), development, acquisition, sale and financing of all types of commercial and investment real estate, structuring and completing forward and reverse Section 1031 exchanges, and representing developers and lenders in affordable housing projects.

**Joshua Ross ~ Shareholder:** Josh concentrates on litigation, including complex business and securities issues. Josh received his law degree, *cum laude*, from Northwestern School of Law at Lewis and Clark in 2003. He joined the firm in 2005 after clerking for Hon. Rick Haselton of the Oregon Court of Appeals.

**Rob Shlachter ~ Shareholder:** Rob is a trial lawyer who handles cases in state and federal courts, as well as before arbitration panels, emphasizing all types of complex business litigation. Rob concentrates in intellectual property, unfair competition and commercial litigation. Recently, *The National Law Journal* selected Rob as one of the top ten litigators in Oregon, and *Chambers USA: America's Leading Lawyers* lists Rob as one of the top litigators.

**Scott Shorr ~ Shareholder:** Scott is a trial and appellate attorney who handles a variety of business, securities and class action litigation. Scott practices in state and federal trial court, all appellate courts and before FINRA. Scott has represented clients in complex matters involving securities fraud, executive compensation, unfair trade practices, contract disputes, breach of fiduciary duty and related matters. Scott has appeared before the United States Supreme Court, the Ninth Circuit Court of Appeals, Oregon Supreme Court and Court of Appeals.

**Jennifer Wagner ~ Shareholder:** Jen is a litigation attorney who practices in the areas of complex business, employment, securities, and class action litigation. She graduated first in her class, *magna cum laude*, in 2002 from Northwestern School of Law at Lewis and Clark College.

**Gary Berne ~ Senior Counsel:** Gary represents clients in all types of business cases in federal and state courts. Many of his cases involve securities, shareholder, partnership, antitrust, consumer and employment claims, and class actions. Along with his trial practice, he represents members of the securities industry in regulatory and compliance matters before the Securities and Exchange Commission (S.E.C.), Financial Industry Regulatory Authority (FINRA), and state agencies. Gary has been recognized as a leading business litigation lawyer in Oregon by *Chambers USA: America's Leading Lawyers for Business*, *Best Lawyers in America* and other publications.

**Jacob Gill ~ Of Counsel:** Jake is a litigation and business lawyer who handles litigation in state and federal courts and aids clients in commercial transactions and business organization. Jake attended University of Oregon, graduating as a member of the Order of the Coif, a distinction bestowed on those in the top 10 percent of the class.

**Sandra Kohn ~ Associate:** Sandra is an established attorney in the firm's business and real estate department. Sandra represents clients primarily in real estate and related transactions, including acquisition, sale and financing of commercial real estate, and structuring permanent financing for affordable housing projects.

**Benjamin C. Leedy ~ Associate:** Benjamin is a business and real estate associate. His practice focuses on the areas of commercial real estate acquisitions and dispositions, real estate finance, leasing and real estate development.

**Keil Mueller ~ Associate:** Keil Mueller is a litigation associate whose practice focuses on complex business, securities and financial fraud litigation. He received his law degree, *cum laude*, from the New York University School of Law in 2005.

**Yoona Park ~ Associate:** Yoona Park is an associate who concentrates on complex business litigation, securities law, employment class actions, and employment litigation. She received her law degree, *cum laude*, from Lewis & Clark Law School in 2007.

## Scott A. Shorr ~ Managing Shareholder [sshorr@stollberne.com](mailto:sshorr@stollberne.com)



Scott Shorr, one of the firm's managing shareholders, is a trial and appellate attorney who handles a variety of complex business, securities and class action litigation. Scott was the arguing counsel before the United States Supreme Court in GEICO General Ins. Co. v. Edo and Safeco Ins. Co. of America v. Burr. Scott practices in state and federal trial court, all appellate courts and before the Financial Industry Regulatory Authority (FINRA). Scott has represented both individuals and businesses in complex matters involving securities fraud, executive compensation, unfair trade practices, trade secret litigation, contract disputes, breach of fiduciary duty and other related matters. As an appellate attorney, he has briefed cases at all appellate levels and appeared before the United States Supreme Court, Ninth Circuit Court of Appeals, Oregon Supreme Court, and Oregon Court of Appeals. In addition, Scott has served as an arbitrator in Multnomah County and for FINRA for several years.

Scott is a co-author of the Oregon State Bar's chapters on "Fraud, Misrepresentation, and Unfair Trade Practices" and "Class Actions". He has also written numerous articles and given presentations to other attorneys regarding securities law, litigation and appeals. He has received the highest possible AV rating from a Martindale Hubbell peer review, indicating both ethical and professional excellence. He is also recognized by *Best Lawyers* for appellate, commercial, and securities litigation, and by *Oregon Super Lawyers*. He is listed as a Portland area "local litigation star" in the *Benchmark Litigation Guide*.

### Representative Cases:

#### **Securities Fraud/Misrepresentation:**

Regularly represents the State of Oregon and Oregon Public Employees Retirement Fund as Special Assistant Attorney General in seeking to recover losses to the Fund due to fraud or material misstatements. The firm has assisted the State in recovering over \$30 million for the Fund.

#### **Employment Law/Appeals:**

Argued and won a case before the Ninth Circuit that reversed the district court's conclusion that FedEx ground drivers were independent contractors. Slayman v. FedEx Ground, 765 F.3d 1033 (9<sup>th</sup> Cir. 2014).

#### **Securities Fraud/Misrepresentation:**

Represented the Oregon State Treasurer and the Oregon College Savings Plan against Oppenheimer Funds for Oregon Securities Law violations causing severe and immediate losses to the college savings accounts invested through the Plan. Oregon was the first state to sue for recovery of the losses and the first state to settle and return funds to the Plan. The firm has helped the State return over \$20 million to the College Savings Plan.

#### **Consumer Law / Appeals:**

Represented consumers before the United States Supreme Court in class action claims against insurance companies under the Fair Credit Reporting Act. Established lower recklessness standard for proof of "willful" violations of statute. Safeco Ins. Co. of Amer. v. Burr, 551 U.S. 47 (2007).

#### **Securities / Appeals:**

Worked with Oregon Department of Justice on successful appeal before the Oregon Supreme Court that established securities "fraud on the market" doctrine under Oregon law. State of Oregon v. Marsh & McLennan Companies, Inc., 353 Or. 1 (Or.S.Ct. 2012).

### **Commercial Litigation / Appeals:**

Briefing and arguing counsel in successful appeal before the Oregon Supreme Court that reversed summary judgment and held that Limited Liability Company Manager may have breached fiduciary duties in acting in dual capacities. Synectic Ventures, LLC v. EVI Corp., 363 Or. 62 (Or.S.Ct. 2012).

### **Securities / Appeals:**

Argued and won Oregon Supreme Court case that established the right of derivative shareholders to obtain attorney fees for forcing a corporation to change conduct in response to litigation. Crandon Capital Partners v. Willamette Indus. Inc., 342 Or. 555 (Or. S.Ct. 2007).

### **Securities:**

Represented a local underwriter in an arbitration before the NASD. Two hedge funds claimed that the underwriter made misrepresentations, seeking \$2.5 million in damages. The NASD panel found no wrongdoing and awarded no damages. Spirit Partners v. Paulson Investment Company, Inc., NASD Case Nos. 01-06779, 02-00079.

### **Executive Compensation / Fiduciary Duty:**

Represented a chief executive officer and chairman of a publicly traded company in a case against his former company involving claims for executive compensation and benefits. The case was successfully resolved through settlement.

### **Securities:**

Represented a local broker-dealer in pursuing recovery on a note given to former registered representatives. The NASD panel awarded the broker dealer its full damages. Paulson Investment Company, Inc. v. Almodovar, et al., NASD Case No. 03-03034.

### **Professional Experience:**

- Stoll Berne; associate, 1996-2003; shareholder, 2004-present; managing shareholder, 2011-present
- Hon. Justice Richard L. Unis, Oregon Supreme Court, law clerk, 1995-1996

### **Education:**

- University of California at Berkeley, Boalt Hall, J.D., 1995
- University of Oregon School of Law, second in class, 1992-1993
- Vassar College, A.B. 1990

### **Admitted to Practice:**

- Oregon State Bar, 1996
- United States District Court, Oregon
- United States Court of Appeals, Ninth & Eleventh Circuits
- United States Supreme Court

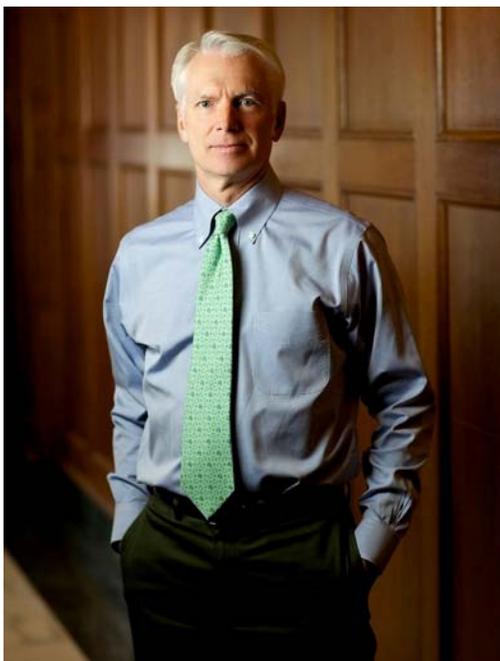
### **Professional Activities:**

- Oregon Law Commission, 2010-present
- Oregon State Bar
  - Appellate Section, Executive Committee, 2003-2009; Chair, 2008
- Oregon Trial Lawyers Association
  - Board of Directors, 2009-present
  - Business Litigation Section Chair, 2004-2005
- FINRA Arbitrator, 2004-2014
- Multnomah County Court Arbitrator, 2006-present
- Joint OTLA-OADC Committee Before the Oregon Court of Appeals, 2009-present
- Oregon Rules of Appellate Procedure Committee, 2012-present

### **Community Activities:**

- American Constitution Society, Oregon Chapter, Board, 2006-present
- City Club of Portland, Member and Committee Person, 2005-present
- Oregon Public Affairs Network, Board of Directors, 2000-2005
- Hands on Portland, Board of Directors, 1994-2004; Chair, 1998-2000

Keith S. Dubanevich ~ Shareholder [kdubanevich@stollberne.com](mailto:kdubanevich@stollberne.com)



Keith Dubanevich is a trial lawyer with over 30 years of experience in more than a dozen different jurisdictions around the country. He focuses his practice on complex dispute resolution and has extensive experience handling multi-state and international antitrust cases, consumer litigation and securities disputes. He was recently Associate Attorney General and Chief of Staff at the Oregon Department of Justice where he led the creation of a civil rights unit, managed securities litigation including multiple cases against financial services companies, was co-author of amicus briefs in the U.S. Supreme Court regarding the Affordable Care Act, and supervised antitrust investigations and prosecutions.

Keith has represented small and large companies including foreign companies in arbitration and litigation in state and federal courts. During his time with the Oregon Department of Justice, Keith was integrally involved with the adoption of legislation that expanded the Unlawful Trade Practices Act and legislation that imposed a mediation requirement prior to non-judicial foreclosures.

**Representative Cases:**

**Antitrust:**

- \* Currently prosecuting a class action case in New Jersey challenging a cable company's unlawful tying of cable services with set top boxes.
- \* Defended Japanese company in multi-district and multi-state litigation alleging price-fixing and market allocation violations in the international parcel tanker shipping market. Lawsuits were filed in numerous state courts, and in foreign countries. No indictments were returned against Keith's client and the civil cases all settled after multiple appeals including an appeal from an order requiring arbitration of the direct purchaser disputes. See *JLM Industries, Inc. v. Stolt-Nielsen S.A.*, 387 F.3d 163 (2d Cir. 2004); *Stolt-Nielsen S.A. v. AnimalFeeds Internat'l Corp.*, 130 S. Ct. 1758 (2010).
- \* Represented domestic shipping company against customer allocation allegations in multi-district litigation consolidated in Puerto Rico.
- \* Successfully defended national hospital chain at trial against exclusive dealing allegations
- \* Obtained multiple summary judgment victories in defense of antitrust allegations arising from hospital medical staff privileges disputes.

**Securities Fraud/Misrepresentation:**

- \* Co-counsel in two securities fraud cases against major financial institutions: *JPMorganChase* and *Bank of New York Mellon*.
- \* Argued *State of Oregon and Oregon Public Employees Retirement Fund vs. Marsh, Inc.* in Oregon Supreme Court in securities suit seeking to recover losses to the Fund due to fraud or material misstatements. Court ruled that reliance could be proven by fraud-on-the-market doctrine.
- \* Represented the Oregon State Treasurer and the Oregon College Savings Plan against Oppenheimer Funds for Oregon Securities Law violations causing severe and immediate losses to the college

savings accounts invested through the Plan. Oregon was the first state to sue for recovery of the losses and the first state to settle and return funds to the Plan. The Plan received over \$20 million in settlement.

\* Supervised outside law firms handling class action securities cases involving billions of dollars in losses.

**Complex Business Litigation:**

Represented product supplier in an exclusive long-term contract dispute. Case settled for over \$20 million shortly before opening statements.

**ERISA:**

\* Representing health insurance plan beneficiaries with autism seeking to compel health insurance company to provide medically necessary care.

\* Represented senior executive who sought severance benefits in arbitration after a merger of two public companies resulted in a substantial change in her responsibilities. The executive obtained a favorable award of severance benefits.

**Real Estate/Breach of Contract:**

\* Represented equity investors in ownership disputes pending in bankruptcy court. The case spawned multiple trials and dissolution of the corporate entity.

\* Represented property developer in long-term lease/sale dispute.

**Professional Experience:**

- Stoll Berne; shareholder, 2012-present
- Oregon Department of Justice; Associate Attorney General and Chief of Staff, March 2012-September 2012; Chief of Staff and Special Counsel, October 2009-March 2012; Special Counsel, January 2009-October 2009
- Garvey Schubert Barer, Portland, Oregon; shareholder, 1998-2008
- Fulbright & Jaworski L.L.P., Houston, Texas; partner, 1992-1998; associate, 1983-1988, 1989-1992
- Hale & Dorr, Boston, Massachusetts; associate, 1988-1989

**Education:**

- Tulane University School of Law, J.D., *cum laude*, 1983
  - Moot Court Board
  - Louisiana Trial Lawyers Award for Outstanding Advocacy
  - Order of Barristers
- Northeastern University, B.S., Public Administration, with high honors, 1980
- A.A. White Dispute Resolution Center, Mediation Certificate, 1997

**Admitted to Practice:**

- Texas State Bar, 1983
- Massachusetts State Bar, 1990 (inactive)
- Oregon State Bar, 1998
- United States Supreme Court
- United States Courts of Appeal for the Second, Fifth and Ninth Circuits
- United States District Courts for the District of Oregon, Western District of Wisconsin, Southern District of Texas, Eastern District of Texas, Northern District of Florida, Southern District of New York, and the District of Connecticut

**Professional Activities:**

- Oregon State Bar
  - Business Litigation Section Executive Committee, 2002-2009; Chair, 2008; Chair-elect, 2007; Treasurer, 2007; Secretary, 2006
- American Bar Association
  - Antitrust and Litigation Sections, Member
- Owen M. Panner American Inn of Court, Master, 1998-present

**Community Activities:**

- Hoyt Arboretum Friends, Board of Directors, 2012-present; President 2013-present

## Keil M. Mueller ~ Associate [kmueller@stollberne.com](mailto:kmueller@stollberne.com)



Keil Mueller is a trial lawyer who represents corporate and individual clients in state and federal court, as well as in arbitration proceedings. Keil's practice emphasizes all aspects of complex business litigation, including shareholder and partnership disputes, securities and financial fraud litigation, contract disputes, and trade secrets litigation.

Keil has successfully represented clients in jury trials and arbitration hearings, and has obtained favorable settlements on behalf of clients in numerous other disputes.

*Oregon Super Lawyers* recognized Keil as a "Rising Star" in 2012, 2013 and 2014. In addition, *Benchmark Litigation* named Keil as a "Future Star" for 2015.

Prior to joining Stoll Berne in 2008, Keil spent several years as a litigation associate in the New York office of Covington & Burling LLP.

### Representative Cases:

#### Jury Trials & Arbitration Hearings:

- Won defense verdict after three-week jury trial on behalf of Eugene-based distributor of medical and safety equipment and supplies against individual who sought up to \$1 million based on alleged partnership between plaintiff and client company relating to operation of company's website.
- Won monetary award and injunctive relief after five-day arbitration hearing on behalf of retail gas station operator in breach of contract claim against gasoline wholesaler with potentially \$5 million or more at stake over remaining life of supply contract between the companies.
- Won favorable verdict and monetary award after two-week jury trial on behalf of former distributor for wrongful termination of distribution agreement.
- Retained less than two months before three-week arbitration hearing to defend franchisor against alleged violation of the Oregon Franchise Act, fraud, breach of contract and related claims. Successfully limited client's exposure and, post-award, negotiated complex settlement agreement which avoided financial ruin for client.

## **Securities & Financial Fraud:**

- Currently represents the State of Oregon as lead plaintiff in securities fraud class action lawsuits against The Bank of New York Mellon and JPMorgan Chase, respectively.
- Obtained \$20 million settlement on behalf of the Oregon College Savings Plan in litigation against Oppenheimer Funds for securities law violations arising out of losses incurred by college savings accounts invested through the Plan. Prior to settlement, obtained an order of remand to state court following Oppenheimer's removal of the case to federal court.
- Obtained \$8 million settlement on behalf of the Oregon Public Employees Retirement Fund (OPERF) in securities fraud litigation against AIG. Prior to settlement, obtained an order of remand to state court after AIG removed to federal court, and subsequently defeated AIG's motion to dismiss OPERF's claims on constitutional and other grounds.

## **Commercial Disputes:**

- Regularly represents clients in shareholder, member, and partnership disputes concerning all types of businesses, including private equity management, law firms, and real estate.
- Represented fitness company in attempted hostile take-over by private investment firm.
- Defended a sports memorabilia manufacturer in federal court against claims of breach of contract, trade libel, and intentional interference with economic relations.
- Represented a sportswear company in litigation against a former employee and a competitor concerning claims for theft of trade secrets and breach of the duty of loyalty.
- Represented a sportswear company in litigation against a supplier who provided defective components.
- Defended the United States Golf Association in action brought by an amateur golfer alleging breach of contract, breach of duty of good faith and fair dealing, and statutory violations arising out of the USGA's decision to rescind the golfer's amateur status. Successfully defeated plaintiff's motion for temporary restraining order and motion for a preliminary injunction, after which plaintiff eventually dismissed his claims with prejudice.
- Represented a technology consulting company in a dispute with the City of Portland arising out of a major software integration and implementation project.

## **Broker/Dealer Claims:**

- Represents, and has obtained favorable settlements on behalf of, individual and institutional investors in actions before the Financial Industry Regulatory Authority (FINRA) against investment advisors, brokers and broker/dealers.
- Represents select investment advisors, brokers and broker/dealers in FINRA actions.
- Obtained favorable settlements on behalf of several registered representatives in disputes with employers and former employers.
- Obtained a settlement on behalf of a national broker/dealer in an action against former brokers and their new employer for violation of non-competition and non-solicitation agreements and theft of trade secrets.

## **Class Actions:**

- Represents drivers for a major multinational delivery company in action seeking class-wide recovery for the company's misclassification of the drivers as independent contractors, rather than employees.
- Represents consumers in several antitrust class actions arising out of price fixing agreements between various automotive parts manufacturers.

## Appellate:

Prepared and submitted to the Oregon Supreme Court an amicus curiae brief on behalf of the Oregon Trial Lawyers Association in *Malan v. Tipton*, 349 Or. 638, 247 P.3d 1223 (2011).

## Professional Experience:

- Stoll Berne; associate, 2008-present
- Covington & Burling LLP New York, New York; associate 2005-2008

## Education:

- New York University School of Law, J.D., *cum laude*, 2005
- Williams College, *magna cum laude*, 1999

## Community Activities:

- Campaign for Equal Justice
  - Associates Committee, 2010-present;
  - Co-Chair, 2014-present
- Community Cycling Center
  - Board of Directors, 2014-present
  - Finance & Sustainability Committee, 2012-present

## Professional Activities:

- Multnomah Bar Association
  - CLE Committee, 2012-2015 (Co-Chair 2014-2015)
  - Court Liaison Committee, 2010-2013 (Chair 2012-2013)
  - Young Lawyers Section, Membership Committee, 2012-2012
- Oregon State Bar
- Oregon Trial Lawyers Association
- American Bar Association
- American Constitution Society

## Admitted to Practice:

- Oregon State Bar, 2008
- United States District Court, Oregon, 2009
- New York State Bar, 2006
- United States District Court, Southern District of New York, 2007
- United States District Court, Eastern District of New York, 2007

# **Exhibit 4C**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

BANK OF NEW YORK MELLON CORP.  
FOREX TRANSACTIONS LITIGATION

This Document Relates to: 11-CV-09175

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) **CIVIL ACTION NO.**  
) MASTER FILE  
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**DECLARATION OF JOSEPH E. WHITE, III  
IN SUPPORT OF LEAD COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’  
FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF  
SAXENA WHITE P.A.**

Joseph E. White, III, declares as follows:

1. I am a Shareholder of the law firm of Saxena White P.A., additional plaintiffs’ counsel in the above-captioned action (the “Action”). I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees in connection with services rendered in the Action, as well as for reimbursement of expenses incurred in connection therewith.

2. My firm, as additional plaintiffs’ counsel, represented additional plaintiffs Laborers’ Local 235 Benefit Fund (“Local 235”) and Pompano Beach General Employees Retirement System (“Pompano GERS”). My firm defended the depositions of Local 235 and Pompano GERS; collected, reviewed and analyzed class-certification related discovery from Local 235 and Pompano GERS; coordinated class certification-related document production with Lead Counsel; and produced documents to defendants. My firm also participated in meet and confers with defendants; performed research on various discovery matters; and drafted discovery

briefs and letters under the direction on Lead Counsel. Finally, my firm performed legal and factual research relating to the pleadings, discovery and class certification facets of the Action, and participated in numerous conferences with Lead Counsel regarding case strategy.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who were involved in this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based 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. Time expended on the Action after May 21, 2015, the day the term sheet memorializing the agreement in principle to settle the Action was executed, has not been included in this request nor has the time expended on this application for fees and reimbursement of expenses been included.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.

5. The total number of hours reflected in Exhibit 1 from inception through and including May 21, 2015, is 1,270.5. The total lodestar reflected in Exhibit 1 for that period is \$636,723.75, consisting of \$609,103.75 for attorneys' time and \$27,620.00 for professional support staff time. The hours reflected in Exhibit 1 are further broken down for each person by various task codes. Based upon my firm's prior experience with the Court, and to ensure that no excessive or duplicative time was submitted, I have voluntarily reduced my firm's hours and lodestar. The hours and lodestar above and in Exhibit 1 represent a 20% reduction of my firm's

hours, with a resulting 17% reduction in lodestar.

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

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$20,545.55 in expenses incurred in connection with the prosecution of this Action from its inception through and including August 31, 2015.

8. The expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:

- (a) Out-of-town travel - airfare is at coach rates, hotel charges per night are capped at \$350 for large cities and \$250 for small cities (the relevant cities and how they are categorized are reflected on Exhibit 2); meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.
- (b) Out-of-Office Meals - Capped at \$25 per person for lunch and \$50 per person for dinner.
- (c) In-Office Working Meals - Capped at \$20 per person for lunch and \$30 per person for dinner.
- (d) Internal Copying - Charged at \$0.10 per page.
- (e) On-Line Research - Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

9. The expenses incurred in this Action are reflected on the books and records of my

firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on September 11, 2015.



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Joseph E. White, III

EXHIBIT 1

In re Bank of New York Mellon Corp. FOREX Transactions Litigation  
 Master File No. 08 Civ. 9522 (SHS)  
 Relates to 11-CV-09175  
 SAXENA WHITE P.A.  
 TIME REPORT  
 Inception through May 21, 2015

Task Codes:

- 1. Investigation and Factual Research
- 2. Pleadings, Briefs and Pre-trial Motions
- 3. Document Review
- 4. Depositions (including preparation for depositions)
- 5. Other Discovery (excluding motions)
- 6. Motions

- 7. Experts
- 8. Class Certification
- 9. Mediation/Settlement
- 10. Litigation Strategy and Analysis
- 11. Court Appearances

Professional / Task Code	01	02	03	04	05	06	07	08	09	10	11	Hours	Billable Rate	Lodestar
<b>SHAREHOLDERS</b>														
Maya Saxena				47.25	19.25					10.00		76.50	\$ 750.00	57,375.00
Joseph E. White, III		9.00	5.75	3.25	37.75	10.00		5.50		18.00		89.25	\$ 750.00	66,937.50
<b>DIRECTORS</b>														
Lester R. Hooker		15.75		1.25	50.00	1.00				0.25		68.25	\$ 595.00	40,608.75
<b>ASSOCIATES</b>														
Brandon T. Grzandziel			287.00	115.75	69.50	78.50		17.00		21.00		588.75	\$ 495.00	291,431.25
Kathryn Weidner			86.50	112.50	90.25	3.00		19.00				311.25	\$ 445.00	138,506.25
Dianne Anderson					10.25			26.75				37.00	\$ 385.00	14,245.00
<b>PARALEGALS</b>														
Stefanie Leverette		3.00		10.00	12.50							25.50	\$ 250.00	6,375.00
Gilda De La Cruz					1.50							1.50	\$ 250.00	375.00
Michelle Hernandez					10.25							10.25	\$ 250.00	2,562.50
Kara King					1.25							1.25	\$ 250.00	312.50
<b>FINANCIAL ANALYST</b>														
Marc Grobler								24.00		37.00		61.00	\$ 295.00	17,995.00
<b>SUMS</b>	-	27.75	379.25	290.00	302.50	92.50	-	92.25	-	86.25	-	1,270.50		636,723.75

EXHIBIT 2

***In re Bank of New York Mellon Corp. FOREX Transactions Litigation,***

Master File No. 08 Civ. 9522 (SHS)

This Document relates to 11-CV-09175

SAXENA WHITE P.A.

EXPENSE REPORT

Inception through August 31, 2015

<b>CATEGORY</b>	<b>AMOUNT</b>
On-Line Legal Research	\$3,661.57
Document Management/Litigation Support	\$7,402.14
Telephones/Faxes	\$33.76
Postage & Express Mail	\$857.83
Local Transportation	\$36.00
Outside Copying	\$102.00
Out of Town Travel*	\$5,316.06
Working Meals	\$1,337.29
Court Reporters and Transcripts	\$1,798.90
<b>TOTAL EXPENSES:</b>	<b>\$20,545.55</b>

\* Out of town travel includes hotels in the following "large" cities capped at \$350 per night: New York.

EXHIBIT 3  
[FIRM RESUME AND BIOGRAPHIES]

# SAXENA WHITE



"A highly experienced group of lawyers with national reputations in large securities class actions..."

*– United States District Court Judge Alan S. Gold*

## FIRM RESUME

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Boca Center, 5200 Town Center Circle, Suite 601, Boca Raton, FL 33486  
ph 561.394.3399 fax 561.394.3382 [www.saxenawhite.com](http://www.saxenawhite.com)

Saxena White P.A. was founded in 2006 by Maya Saxena and Joseph White. After spending many years at one of the country's largest class action law firms, we wanted to do business a different way. Our goal in forming the firm was to become big enough to handle prominent and complex litigation while remaining small enough to offer each client responsive, ethical and personalized service.

Today our firm's capabilities rival those of our largest competitors. We obtain victories against major corporations represented by the nation's top defense firms. We represent some of the largest pension funds in major securities fraud cases and have recovered almost two billion dollars on behalf of injured investors. We have succeeded in improving how corporations do business by requiring the implementation of significant corporate governance reforms. We have formed long-lasting relationships with our clients who know we are only a phone call away. However, the most important attribute of the firm, and the key to its continued success, is the people. Saxena White was built upon the quality, integrity and camaraderie of its people — attributes that continue to be its greatest legacy.

#### *What Makes us Different?*

- We are proud to be the only certified minority and female-owned firm in the securities litigation business representing institutional investors and have an ongoing commitment to diversity.*
- We take a selective approach to litigation, recommending only a few fraud cases per year and litigating them aggressively.*
- The securities fraud cases in which we have served as lead counsel are rarely dismissed due to our careful selection criteria.*
- We offer tailored portfolio monitoring services to our clients that reflect their individual philosophies toward litigation.*
- We emphasize community outreach and welcome opportunities to support our clients in their communities.*

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## RECENT RECOVERIES

### *In re Jefferies Group, Inc. Shareholders Litigation*

Saxena White served as co-lead counsel in a class action involving breach of fiduciary duty claims against the board of directors of Jefferies Group, Inc., in connection with that company's merger with Leucadia National Corporation. In 2012, Jefferies entered into a merger agreement with Leucadia, a holding company which owned 28% of Jefferies and whose founders served on Jefferies' board. Leucadia's founders had a longstanding personal and professional relationship with Jefferies CEO, Richard Handler, which included lucrative joint ventures, personal investment advice and support, numerous financing transactions, and off-market stock purchases. As Leucadia's founders neared retirement, Handler recognized an opportunity to merge his company with Leucadia and serve as CEO of the much larger, combined company. Negotiating in secret for months before informing the independent board members, Handler and Leucadia's founders structured a deal that greatly benefitted Leucadia, to the detriment of Jefferies shareholders.

After aggressively litigating this case for almost two years and defeating the defendants' motion to dismiss and motion for summary judgment, the plaintiffs ultimately negotiated a settlement which required Leucadia to pay \$70 million to class members, an outstanding result for former Jefferies shareholders.

### *City Pension Fund for Firefighters and Police Officers in the City of Miami Beach v. Aracruz Celulose S.A., et al.*

One of our firm's areas of expertise is litigating cases against foreign corporations. We recently obtained a significant victory against a Brazilian corporation, Aracruz Celulose. Accomplishing what no other law firm has ever done, Saxena White successfully served process on all three individual executives under the Inter-American Convention on Letters Rogatory. Our efforts included working closely with a Brazilian law firm to defeat the defendants' challenges to service in both the Brazilian trial and appellate courts.

After defeating three motions to dismiss filed by the foreign defendants, Saxena White began the massive and highly technical discovery process. Because the vast majority of the documents were in Portuguese, we hired native Brazilian attorneys to analyze and translate the tens of thousands of documents that were produced. These documents were also incredibly complex, dealing with five dozen separate financial derivative instruments. Simply valuing one instrument required approximately 50,000 calculations. We consulted closely with highly-respected industry and academic experts to gain an unprecedented understanding of the workings of these instruments and how they were valued.

In the end, our hard work paid off. Saxena White successfully negotiated a \$37.5 million settlement against Aracruz and its executives. This represents up to 50% of maximum provable damages – an outstanding result compared to the average national recovery of just 2.2% in cases of this magnitude.

### *In re Bank of America Securities, Derivative and ERISA Litigation*

This derivative case arose out of Bank of America's acquisition of Merrill Lynch during the height of the financial crisis in late 2008. After successfully defending the complaint's core allegations against multiple motions to dismiss, Saxena White embarked on an extensive discovery process that included 31 depositions of senior BofA and Merrill executives and their attorneys, the review and analysis of 3 million pages of documents from BofA, Merrill and

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multiple third parties, and close consultation with nationally recognized financial and economic experts.

On January 11, 2013, the Court approved the Settlement, which includes a \$62.5 million cash component and fundamental corporate governance reforms. The cash component alone ranks this Settlement among the top 10 derivative settlements approved by federal courts. The extensive corporate governance reforms include the creation of a Board-level committee tasked with special oversight of mergers and acquisitions, which is aimed at preventing the alleged deficiencies surrounding the Merrill Lynch acquisition. The corporate governance reforms also include other components, including revisions to committee charters and director education requirements, which caused one noted scholar to observe that BofA is now at the forefront of corporate governance practices.

### ***In re Lehman Brothers Equity/Debt Securities Litigation***

After conducting an extensive investigation into Lehman and its executives, Saxena White was the first firm to file a complaint alleging violations of the federal securities laws. Subsequent events, including the largest bankruptcy filing in U.S. history, interjected unique challenges to prosecuting this case – not the least of which was that because Lehman itself was in bankruptcy, damaged shareholders could not recover damages from it.

Despite these formidable obstacles, we continued to prosecute the case. Our efforts paid off. In the spring of 2012, the Court approved a \$90 million partial settlement with Lehman's senior executives and directors, and a \$426 million settlement with several dozen underwriters of its securities. After nearly two more years of hard-fought litigation, we reached a \$99 million settlement with E&Y, Lehman's outside auditor, which was approved in the spring of 2014. The \$99 million settlement ranks among the largest ever obtained from an outside auditor and is an outstanding recovery for damaged shareholders.

### ***FindWhat Investor Group v. FindWhat.com***

Saxena White also has significant appellate experience. In this Eleventh Circuit appeal, we won a precedent-setting opinion with the court holding that corporations and their executives who make fraudulent statements that prevent artificial inflation in a company's stock price from dissipating are just as liable under the securities laws as those whose fraudulent statements introduce artificial inflation into the stock price in the first place. The Eleventh Circuit rejected the defendants' position that the mere repetition of lies already transmitted to the market cannot damage investors. "We decline to erect a per se rule," wrote the court, that "once a market is already misinformed about a particular truth, corporations are free to knowingly and intentionally reinforce material misconceptions by repeating falsehoods with impunity."

The Eleventh Circuit's opinion is a significant win for aggrieved investors. It is the first such ruling from any of the Courts of Appeals in the nation, and will help defrauded investors seeking to recover damages due to fraud.

### ***Central Laborers' Pension Fund v. Sirva***

Saxena White served as sole lead counsel, in Central Laborer's v. SIRVA Litig. (04-CV-4644), which was litigated in the Northern District of Illinois (SIRVA is the parent company of North American Van Lines). After 2 1/2 years of hard-fought litigation, an extensive investigation which involved conducting nearly 120 witness interviews, and the review of approximately 2.7 million documents produced by Defendants, a two day mediation was conducted at which we were able to reach a global \$53.3 million dollar settlement on behalf of the proposed shareholder class. In addition, Saxena White conducted a comprehensive review of SIRVA's corporate governance procedures

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in an effort to ensure that securities fraud and accounting violations were less likely to occur at the Company in the future. This careful and comprehensive review, which was spearheaded in conjunction with retained corporate governance experts, confirmed that SIRVA had made great strides in improving its governance standards over the course of our lawsuit. This was especially true in the area of its internal controls, which was a primary concern. The company formally recognized, in writing, that the lawsuit was one of the main reasons that it reformed its governance standards, which confirmed that Saxena White was the key catalyst compelling SIRVA to recognize the need to change the way it does business.

In addition, Saxena White was able to obtain even more governance improvements by convincing the Board to discard their plurality (also known as “cumulative”) standard for the election of their directors in favor of a modified majority standard (also known as the “Pfizer model”). This important change gives every SIRVA shareholder a greater voice, as well as improving director accountability, by forcing directors who do not receive a majority of the votes to tender their resignation for the Board’s consideration. Furthermore, SIRVA also agreed to strengthen its requirements regarding director attendance at shareholder meetings, which created more director accountability and increased shareholder input. Importantly, judges are unable to order these types of governance changes – it was only the negotiation and litigation pressure that we imposed upon the Company that allowed these changes to be implemented.

### ***In Re Sadia S.A. Securities Litigation***

Sadia was a Brazilian company specializing in poultry and frozen goods that exported a majority of its products. Like Aracruz, it engaged in wildly speculative currency hedging while telling investors that its hedges were conservative and used to protect against sudden changes in currency fluctuation. The Plaintiffs filed a securities fraud complaint against Sadia and its senior executives and board members alleging violations of the federal securities laws. Because the individual Defendants in this case were also citizens of Brazil, they also had to be served pursuant to the Inter-American Convention on Letters Rogatory. We were successful in serving the individuals, once again accomplishing what few other law firms have been able to do.

We prevailed on the motion to dismiss and on the motion for class certification. Discovery was greatly complicated by the fact that the vast majority of the documents were in Portuguese, and that the Court had no subpoena power to force witnesses to appear for deposition. In spite of this, we hired attorneys fluent in Portuguese to help us with the review, and we were able to depose one of the Company’s executives. After 3 mediations over the course of 8 months, we were able to reach a \$27 million cash settlement with the Defendants.

### ***In Re Cox Radio, Inc. Shareholders Litigation***

Saxena White represented a Florida Police Pension Plan in an action against Cox Radio. The Pension Plan alleged that the initial price offered to public shareholders in the tender offer was unfair and did not properly value the assets of Cox Radio. After considerable discovery and expedited motion practice, we were instrumental in raising the price of the deal by nearly 30%, creating nearly \$18 million in additional value for all public shareholders, including the Pension Plan. We also obtained the issuance of additional meaningful disclosures regarding the valuation process used in the deal.

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*In re Clear Channel Outdoor Holdings, Inc. Derivative Litigation*

On March 23, 2012, Saxena White, on behalf of an institutional investor client, filed a derivative action on behalf of nominal defendant Clear Channel Outdoor Holdings (“Outdoor” or the “Company”) against certain of the Company’s current and former directors; its majority stockholder, Clear Channel Communications, Inc. (“Clear Channel”); and other entities with respect to a 2009 agreement between the Company and Clear Channel. The derivative action brought forth claims that Outdoor’s directors breached their fiduciary duties by approving a \$1 billion unsecured loan on highly unfavorable terms to Clear Channel. In response to the claims brought forth in the derivative action, the Company’s Board of Directors established a Special Litigation Committee (the “SLC”) and empowered it to investigate the matters and claims raised in the action.

After an extensive evaluation and investigation of the derivative claims, the SLC initiated discussions with certain of the Defendants to explore the prospects of settlement. The SLC also initiated discussions with Plaintiffs in order to explore the prospects of settling the derivative action. After several months of working with the SLC, the parties to the derivative action reached an agreement in principle to resolve of the action on terms that will provide substantial and meaningful benefits to the Company and its shareholders, including an agreement that would provide a dividend to shareholders in the amount of \$200 million, as well as additional corporate governance reforms. The settlement agreement acknowledges that Plaintiffs’ involvement in the settlement negotiations was a factor in achieving the benefits received by Outdoor and its shareholders as a result of the settlement.

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## ATTORNEYS

### MAYA S. SAXENA

Maya Saxena, co-founder of the firm, has been practicing exclusively in the securities litigation area for over seventeen years, representing institutional investors in shareholder actions involving breaches of fiduciary duty and violations of the federal securities laws. She is a frequent speaker at educational forums involving public pension funds and advises public and multi-employer pension funds on how to address fraud-related investment losses.

Ms. Saxena has been instrumental in recovering hundreds of millions of dollars for defrauded shareholders including cases against Sirva Inc. (\$53.3 million recovery), Helen of Troy (\$4.5 million settlement), and Sunbeam (settled with Arthur Andersen LLP for \$110 million - one of the largest settlements ever with an accounting firm - and a \$15 million personal contribution from former CEO Al Dunlap).

Prior to forming Saxena White, Ms. Saxena served as the Managing Partner of the Florida office of one of the nation's largest securities litigation firms, successfully directing numerous high profile securities cases. Ms. Saxena gained valuable trial experience before entering private practice while employed as an Assistant Attorney General in Ft. Lauderdale, Florida. During her time as an Assistant Attorney General, Ms. Saxena represented the State of Florida in civil cases at the appellate and trial level and prepared amicus curiae briefs in support of state policies at issue in state and federal courts. In addition, Ms. Saxena represented the Florida Highway Patrol and other law enforcement agencies in civil forfeiture trials.

Ms. Saxena graduated from Syracuse University *summa cum laude* in 1993 with a dual degree in policy studies and economics, and graduated from Pepperdine University School of Law in 1996.

She is a member of the Florida Bar, and is admitted to practice before the U.S. District Courts for the Southern, Northern and Middle Districts of Florida, as well as the Fifth and Eleventh Circuit Courts of Appeal. Ms. Saxena was recently recognized in the *South Florida Business Journal's* "Best of the Bar" as one of the top lawyers in South Florida, and has been recognized as a Super Lawyer five years in a row.

### JOSEPH E. WHITE III

Joseph E. White, III, co-founder of Saxena White, has represented shareholders as lead counsel in major securities fraud class actions and merger litigation nationwide. He has represented lead and representative plaintiffs in front-page cases, including actions against Bank of America, Lehman Brothers and Washington Mutual. He has successfully settled cases yielding over one billion dollars against numerous publicly traded companies. Mr. White has developed an expertise in litigating precedent setting cases against foreign publicly traded companies, and recently settled two cases involving Brazilian corporations: *In re Sadia Inc. Sec. Litig.*, (\$27 million) and *In re Aracruz Cellulose Sec. Litig.*, (\$37.5 million). Mr. White has also helped achieve meaningful corporate governance and monetary recoveries for shareholders in merger related and derivative lawsuits. Most recently, in *In re Clear Channel Outdoor Holdings Der. Litig.*, Mr. White's efforts obtained repayment of a \$200 million loan from Outdoor's parent which was then paid as a special dividend to Outdoor shareholders.

Mr. White regularly lectures on topics of interest to pension trustees, and advises municipal, state, and international institutional investors on instituting effective systems to monitor and prosecute securities and related litigation.

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Mr. White earned an undergraduate degree in Political Science from Tufts University before obtaining his Juris Doctor from Suffolk University School of Law. Mr. White is a member of the bar of the Commonwealth of Massachusetts, the State of Florida, and the State of New York, as well as the United States District Courts for the Southern, Middle and Northern Districts of Florida, the Southern District of New York, and the District of Massachusetts. Mr. White is also a member of the United States Supreme Court and the United States Circuit Courts of Appeal for the First, Second and Eleventh Circuits.

## JONATHAN M. STEIN

Jonathan Stein serves as Senior Counsel at Saxena White where he is involved in all aspects of complex litigation, including shareholder class and derivative actions, consumer fraud and commercial litigation. A substantial portion of Mr. Stein's practice is dedicated to the representation of public shareholders of companies whose shares are acquired through management buyouts, leveraged buyouts, mergers, acquisitions, tender offers and other change-of-control transactions.

Mr. Stein has been successful in restructuring many transactions and recovering millions of dollars in additional value for shareholders. For example, he was co-lead counsel in *In re Jefferies Group, Inc. Shareholders Litigation*, No. 8059-CB (Del. Ch.), where after defeating a summary judgment motion, the case settled for \$70 million. He was also co-lead counsel in *In re UnitedGlobalCom Shareholders Litigation*, No. 1012-N (Del. Ch.), where on the eve of trial, the case settled for \$25 million in additional compensation for the UnitedGlobalCom shareholders. Finally, Mr. Stein was also counsel for the plaintiff in *Charter Township of Clinton Police and Fire Ret. Sys. v. OSI Rest. Partners, Inc., et al.*, 06-CA-010348 (Fla. 13th Cir. Ct.), where as part of the settlement, the defendants provided the public shareholders with additional material information about the transaction, helping the shareholders hold out for an additional \$68 million in consideration for their shares.

Mr. Stein has also been successful in prosecuting consumer fraud class actions. For instance, Mr. Stein was Class Counsel in *Gemelas v. The Dannon Co., Inc.*, 1:08-cv-00236 (N.D. Ohio), which resulted in the largest food-related class action settlement ever, wherein Dannon agreed to make certain changes to the labels for Activia® and DanActive® and agreed to pay up to \$45 million dollars to reimburse consumers for their purchases of the products. He was also co-lead counsel in *Smith v. Wm. Wrigley, Jr. Co.*, 09-60646-Civ-Cohn/Seltzer (S.D. Fla.), which settled in the spring of 2010, which caused Wrigley to establish a settlement fund of up to \$7 million to reimburse consumers for their Eclipse® gum purchases and to remove the misleading "germ killing" message from the product label and in advertising.

Prior to joining Saxena White, Mr. Stein began his practice of law in Fort Lauderdale as a prosecutor in the State Attorney's Office for the 17th Judicial Circuit of Florida, handling numerous jury trials. Before concentrating his practice in class action litigation, he practiced as a litigator fighting insurance fraud with one of Florida's largest law firms. Mr. Stein also previously ran his own class action firm and was a partner with the largest class action firm in the country.

Mr. Stein earned a degree in Business Administration from the University of Florida, where he concentrated his studies in Finance. While at Florida, he was selected to join the honor society of Omicron Delta Epsilon, recognizing outstanding achievement in Economics. Mr. Stein earned his Juris Doctor degree from Nova Southeastern University, where he was the recipient of the American Jurisprudence Book Award in Federal Civil Procedure and served as Chief Justice of the Student Honor Court.

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Mr. Stein is licensed to practice law in the state courts of Florida, as well as in the Supreme Court of the United States, the Circuit Courts of Appeal for the Eleventh and Third Circuits, and the United States District Courts for the Northern, Southern and Middle Districts of Florida and the District of Colorado. In addition to these courts and jurisdictions, Mr. Stein regularly works on cases with local counsel throughout the country. Mr. Stein has been or is a member of the Association of Trial Lawyers of America, the American Bar Association, the Palm Beach County Bar Association and the South Palm Beach County Bar Association.

## RHONDA CAVAGNARO

Rhonda Cavagnaro is Special Counsel to Saxena White and a member of the firm's Institutional Outreach group. She brings extensive expertise in many areas of employee benefits and pension administration with nearly two decades of public fund experience. Ms. Cavagnaro frequently speaks at industry conferences to further trustee education on fiduciary issues facing institutional investors.

Ms. Cavagnaro began her legal career as an Assistant District Attorney in New York City, where she was instrumental in creating the office's General Crimes Unit, covering major crimes. While an ADA, Ms. Cavagnaro gained valuable trial experience and prosecuted hundreds of misdemeanor and felony cases.

Ms. Cavagnaro started her career serving public pensions as Assistant General Counsel at the New York City Employees' Retirement System (NYCERS). She then went on to become the first General Counsel to the New York City Police Pension Fund in February 2002, where she worked for over 11 years, providing advice to the Board of Trustees and to the 140 member staff with respect to benefits administration, fiduciary issues, employment issues, legislation and transactional matters. Ms. Cavagnaro last served as the Assistant CEO for the Santa Barbara County Employee's Retirement System (SBCERS), where under the general direction of the CEO and Board of Trustees, she oversaw the day to day operations of the System.

Ms. Cavagnaro graduated with a B.A. in Political Science and History from the University of Rochester, in Rochester, New York and earned her J.D. from the California Western School of Law in San Diego, California. She is a member of the New York and New Jersey State Bars and is admitted in the Southern and Eastern Districts of New York, and is a current member of the National Association of Public Pension Attorneys (NAPPA).

## LESTER R. HOOKER

Lester R. Hooker, Saxena White's Manager of Case Origination, is involved in all of the firm's practice areas, including securities fraud class action litigation and shareholder derivative actions, as well as merger & acquisition lawsuits and consumer class actions. Through his securities litigation practice, Mr. Hooker has obtained significant monetary recoveries and important corporate governance reforms on behalf of institutional and individual investors nationwide.

During his tenure at Saxena White, Mr. Hooker has served as a member of the litigation teams that successfully prosecuted securities fraud class actions such as *Central Laborers' Pension Fund v. Sirva, Inc.* (\$53.3 million settlement), *City Pension Fund for Firefighters and Police Officers in the City of Miami Beach v. Aracruz Celulose S.A., et al.* (\$37.5 million settlement), and *In re Sadia, Inc. Securities Litigation* (\$27 million settlement). Mr. Hooker is part of the litigation teams that are currently prosecuting prominent securities fraud class actions such as *In re Wilmington Trust Securities Litigation and Fernandez v. Knight Capital Group, Inc., et al.* Mr. Hooker has also represented lead and representative plaintiffs in major cases arising out of the global financial crisis, including

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actions against Bank of America, Lehman Brothers and Washington Mutual.

Mr. Hooker received a Bachelor of Arts degree with a major in English from the University of California at Berkeley. He earned his Juris Doctor from the University of San Diego School of Law, where he was awarded the Dean's Outstanding Scholar Scholarship. Mr. Hooker received his Master's degree in Business Administration with an emphasis in International Business from the University of San Diego School of Business, where he was awarded the Ahlers Center International Graduate Studies Scholarship.

Mr. Hooker is a member of the State Bars of California and Florida, and is admitted to practice law in the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Southern, Middle and Northern Districts of Florida, and the Western District of Michigan. Mr. Hooker is also admitted to practice law in the United States Courts of Appeal for the Ninth and the Eleventh Circuits.

## BRANDON GRZANDZIEL

Brandon Grzandziel focuses his practice on representing institutional investors in class action securities fraud and complex shareholder derivative cases. He is currently a member of the teams prosecuting cases against Wilmington Trust, Knight Capital, CenturyLink, and the Bank of New York Mellon.

Recently, Mr. Grzandziel has been a member of the teams securing significant recoveries for investors in *City Pension Fund v. Aracruz Celulose S.A.* (\$37.5 million recovery against a foreign defendant), *In re Bank of America* (\$62.5 million settlement, which ranks among the top ten derivative settlements approved by the federal courts); and *In re Sadia, S.A. Securities Litigation* (\$27 million settlement against foreign defendants). Mr. Grzandziel also has extensive appellate experience. As a member of the appellate team in *FindWhat Investor Group v. FindWhat.com*, he successfully secured important new precedent for the protection of investors.

Mr. Grzandziel earned his Bachelor of Arts from Wake Forest University, where he graduated with Honors in 2005. In 2008, he received his Juris Doctor from the University of Miami School of Law. While at the University of Miami, Mr. Grzandziel was Executive Editor of the University of Miami Business Law Review. His article, "A New Argument for Fair Use Under the Digital Millennium Copyright Act," was published in the Spring/Summer 2008 issue.

Mr. Grzandziel is a member of the Florida Bar, the United States District Courts for the Southern and Middle Districts of Florida, and the United States Court of Appeals for the Second Circuit.

## ADAM WARDEN

Adam Warden focuses his practice on merger and acquisition litigation, shareholder derivative actions, and consumer class actions. During his tenure at Saxena White, Mr. Warden has served as member of the litigation team on *In re Jefferies Group, Inc. Shareholders Litigation* (Del. Ch.), a case involving conflicts of interest arising from the merger of an investment bank and a holding company. The Jefferies case ultimately settled for \$70 million, one of the largest settlements in the history of the Delaware Court of Chancery. He was also part of the litigation team on *In re Lender Processing Services, Inc., Shareholder Litigation* (Fla.), where the defendants agreed to provide shareholders with significant corporate governance reforms and additional financial disclosures related to a proposed merger, which allowed the shareholders to make a more fully informed vote on the transaction. Mr. Warden also served on the litigation team in *In re Sunoco Inc. (Penn.)*, where the defendants agreed to provide the public shareholders of Sunoco with additional material information about the proposed sale of the company,

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along with \$100,000 in outplacement assistance services to local employees laid off within one year of the merger.

Mr. Warden earned his Bachelor of Arts degree from Emory University in 2001 with a double major in Political Science and Psychology. He received his Juris Doctor from the University Of Miami School of Law in 2004. During law school, Mr. Warden served as the Articles Editor of the *University of Miami International and Comparative Law Review*. His article, "The Battle in Seattle and Beyond: A Brief History of the Antiglobalization Movement" was published in the Review's Winter 2004 issue.

Mr. Warden is a member of the Florida Bar and the District of Columbia Bar. He is admitted to the United States District Courts for the Southern, Middle, and Northern Districts of Florida.

## KATHRYN WEIDNER

Kathryn Weidner is currently a member of the team prosecuting *In re Wilmington Trust Securities Litigation*. She has a strong background in e-discovery, providing project management and litigation support services to national organizations and fortune 500 companies for large-scale corporate litigations, mergers, and acquisitions. Prior to joining Saxena White, Ms. Weidner developed valuable litigation skills as a full-time Certified Legal Intern for the Department of Homeland Security.

Ms. Weidner earned a Bachelor of Business Administration degree from the University of Miami in 2003, with a major in Political Science. During college, she studied abroad at Oxford University, England as part of an Honors program for law and politics. Ms. Weidner received her Juris Doctor from Nova Southeastern University in 2006, where she graduated cum laude with a concentration in International Law. While at Nova, her outstanding course work regularly earned Dean's List and Provost Honor Roll, and she was honored with CALI Book Awards for Secured Transactions and Business Planning Law. Upon graduation, Ms. Weidner was the recipient of the Larry Kalevitch Scholarship Award for exhibiting the most promise in Business and Bankruptcy law.

Ms. Weidner is a member of the Florida Bar, and the United States District Courts for the Southern and Northern Districts of Florida.

## DIANNE ANDERSON

Ms. Anderson is currently a member of the litigation teams prosecuting significant securities fraud class actions, such as *In re Wilmington Trust Securities Litigation* and *Fernandez v. Knight Capital Group, Inc., et al.* Before joining Saxena White, Ms. Anderson was a legal intern for Jack in the Box, Inc. and Alliant Insurance Services, Inc. She worked extensively with their in-house departments, assisting in a variety of corporate, employment, and government regulation matters. Ms. Anderson was an intern for Jewish Family Service of San Diego and Housing Opportunities Collaborative, two San Diego pro bono legal organizations. Additionally, she served as a Legal Intern for the San Diego City Attorney's Office with their Advisory Division, Public Works Section.

Ms. Anderson graduated from the University of California, San Diego in 2008, where she received a Bachelor of Arts degree, majoring in Political Science with a minor in Law and Society. In 2012, she received her Juris Doctor degree from the University of San Diego School of Law. While attending law school, Ms. Anderson earned various scholarships and awards, including the San Diego La Raza Lawyers Association Scholarship and Frank E. and Dimitra F. Rogozienski Scholarship for outstanding academic performance in business law courses. Her outstanding law school academic achievements culminated in two CALI Excellence for the Future Awards for receiving the top

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grade in her Fall 2011 International Sports Law and Entertainment Law classes. Ms. Anderson is an alumna of Phi Delta Phi, the international legal honor society and oldest legal organization in continuous existence in the United States.

Ms. Anderson is a member of the Florida and California State Bars. She is admitted to practice before the United States District Courts for the Southern and Northern Districts of Florida and the Northern, Central, Southern, and Eastern Districts of California.

## **TYLER A. MAMONE**

Prior to joining Saxena White, Tyler Mamone gained valuable experience working as a Judicial Extern for the Honorable Benita Y. Pearson, United States District Judge for the Northern District of Ohio, and as an intern for the Federal Deposit Insurance Corporation (“FDIC”) Legal Division, Litigation and Resolutions Branch. During his time with the FDIC, he worked closely with FDIC and Department of Justice attorneys on the management of claims and settlements regarding failed financial institutions.

Mr. Mamone graduated from the University of Toledo in 2011, where he received a Bachelor of Arts degree in History. He received his Juris Doctor from the University of Toledo College of Law in 2014. During law school, Mr. Mamone served as an Associate Member and Articles Editor of the University of Toledo Law Review. His article, “No Simple Compromise: Reconciling Duty and Discretion Under Colorado River Abstention in Claims for Mixed Relief” was published in the Winter 2014 issue. Mr. Mamone also served as a teaching assistant and research assistant, and received the top grade in State and Local Government Law and Taxation and Constitutional Law II.

Mr. Mamone is a member of the Florida Bar and is admitted to practice before the United States District Courts for the Northern and Southern Districts of Florida.

## **WILLIAM IRVINE**

Mr. Irvine graduated from Brigham Young University’s Marriott School of Management in 2007 with a Bachelor of Science in Business Management, Emphasis in Corporate Finance. At BYU, he interned for Global Financial Advisors where he assisted with the development of corporate valuation models and market screening processes. Mr. Irvine was also responsible for the fundamental analysis of potential distressed investment opportunities and reporting his findings to upper management. His education and experience helped him obtain employment at Goldman Sachs and Morgan Stanley.

At Goldman Sachs, Mr. Irvine worked in Private Wealth Management Operations on the Products and Pricing Team. His primary responsibilities included providing pricing support for over the counter derivatives and assisting with the accounting reconciliation of external hedge funds. Later, Mr. Irvine joined Morgan Stanley as a margin analyst monitoring the firm’s leveraged brokerage accounts. His duties included advising complex risk managers and financial advisors concerning day-trading regulations and margin trading requirements on a daily basis.

In 2014, Mr. Irvine received his Juris Doctor from the University Of Miami School Of Law, where he excelled in the areas of business and tax. At Miami, he participated in two internships and was elected to serve as President of the J. Reuben Clark Law Society by his fellow students, an organization devoted to the ethical practice of law. In the summer of 2012, Mr. Irvine was approached by the founder of Precise Advisory Group, Jill Pilgrim, to assist her with researching Brazilian sports law. They co-authored an article on the subject entitled, “The Sports

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Court System in Brazil.” Later, Mr. Irvine was selected to intern at the University of Miami’s Investor Rights Clinic where he represented under-served investors in securities arbitration claims by drafting claims and participating in settlement negotiations. He was also asked to give a lesson on derivative investing to the clinic and to provide a presentation on investor awareness at Miami-Dade Community College.

Mr. Irvine’s past experiences include serving as a United States Marine in Operation Iraqi Freedom and volunteering as a religious missionary for two years in Sao Paulo, Brazil. He is fluent in Portuguese and is a member of the Florida Bar.

## **DENISE BRYAN**

With over twenty years of overall professional experience, Ms. Bryan began her legal career in New York at Prudential Securities. While at Prudential Securities, she reviewed claims alleging fraudulent practices and determined settlements in accordance with the guidelines of the Limited Partnership Settlement Fund as established by the Securities and Exchange Commission.

Ms. Bryan gained experience in the insurance industry as an attorney in the Environmental Claims Department of American International Group, and as an underwriter focusing on Professional Liability coverage for financial institutions including banks, insurance companies, and broker dealers. She was an Assistant Vice President at Marsh Inc. in New York and Chicago, where she was an insurance broker focused on providing Professional Liability coverage to fortune 500 companies.

Ms. Bryan has been working in the area of e-discovery since 2007. She supervised teams of attorneys conducting large scale document reviews at a consulting group specializing in providing litigation support services to national and international companies.

Ms. Bryan is a member of the New York Bar.

## **TONIA SIBBLIES**

Ms. Sibblies’ legal experience is mainly in the areas of immigration and foreclosure law. Upon graduation from law school, she served as an Immigration Fellow and later a volunteer at the Legal Aid Society of Broward County, representing victims of domestic violence and violent crimes. She also served as a Staff Attorney at Legal Aid, representing mortgagors in residential foreclosure cases. Before joining Saxena White, Ms. Sibblies had transitioned to working with private firms, representing mortgagees in residential foreclosure cases.

Ms. Sibblies graduated cum laude from the Honors Program at the University of Tampa (“UT”) in 2008. She received a Bachelor of Science degree, having majored in International Business and Management, and minored in English and Spanish. In addition to her Bachelor’s degree, Ms. Sibblies received a Certificate of International Studies. While at UT, she was a recipient of several scholarships, including the Presidential Scholarship and the Morris White Pre-Law Prize. Ms. Sibblies was also a regular on both the UT and National Dean’s Lists.

Ms. Sibblies received a Juris Doctor and Certificate in International and Comparative Law from the University of Florida in 2012. During law school, she made the Dean’s List as well as competed regionally on the Black Law Students Association’s Moot Court Team. Ms. Sibblies held office in a number of organizations, including the Caribbean Law Student Association, of which she was President.

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Ms. Sibblies is a member of the Florida Bar and is admitted to practice in the United States District Court for the Southern District of Florida.

## JILL MILLER

Jill Miller began her legal career as an associate in the real estate practice division of a major New Jersey law firm where she concentrated her practice on residential and commercial real estate transactions and development. She also dedicated a significant portion of her practice to casino licensing and compliance.

After relocating to Florida, Ms. Miller became an associate at Ruden McClosky in Fort Lauderdale where she represented major developers of residential and commercial condominiums and single family home communities throughout the South Florida area. During her time at the firm, she was responsible for drafting offering documents and other documents required for association operations. Ms. Miller counseled association boards of directors in daily developer and association-related issues. Likewise, she handled transactions related to the development and sale of various projects during her 11 years at the firm.

Ms. Miller has most recently gained experience in e-discovery. She has worked for legal consulting groups and South Florida area law firms where she was responsible for analyzing contracts, corporate and financial documents, and preparing pre-trial discovery documentation for class action and other complex litigation in the areas of software technology, securities fraud, and patent infringement. For the past several years, Ms. Miller has volunteered her time as a Guardian ad Litem, protecting the rights of abused and neglected children in Broward County, Florida.

Ms. Miller received her law degree from Hofstra University in New York where she was the Articles Editor of the International Property Investment Journal. She also interned at the United States Federal Court, Eastern District of New York during her third year of law school.

Ms. Miller is a member of the Florida Bar.

## SEAN KELLY

Sean Kelly's experience prior to joining Saxena White includes commercial litigation and real estate litigation. In addition to practicing law, he is a licensed Real Estate Sales Associate in the state of Florida.

Mr. Kelly graduated from the University of Florida in 2009 with a Bachelor of Science degree in Accounting. In 2012, he received his Juris Doctor from the University of Miami School of Law where he actively participated in the University of Miami's Litigation Skills Program. Additionally, he served as Treasurer of Phi Delta Phi, the international legal honor society and oldest legal organization in continuous existence in the United States. During law school, Mr. Kelly gained valuable professional experience while studying abroad in London, Amsterdam, and Paris.

Mr. Kelly is a member of the Florida Bar.

## MICHELLE ABREU

Prior to joining Saxena White, Ms. Abreu had her own firm in Miami, Florida, where she practiced Family Law. She began her career as an attorney at a South Florida personal injury law firm. Ms. Abreu has extensive knowledge and experience in the area of e-discovery.

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Ms. Abreu graduated with Honors from the University of Miami in 2006, where she received a Bachelor in Arts with a major in Political Science and a minor in Philosophy. In 2011, she received her Juris Doctor from Western Michigan University Thomas M. Cooley Law School in Lansing, Michigan. During law school, Ms. Abreu served as Secretary for both the Hispanic Latino Law Society and the Alternative Dispute Resolution Board. Further, she earned the Certificate of Merit Award for her outstanding academic performance in her Family Law course. Following law school, Ms. Abreu gained valuable experience working as a summer Judicial Extern for the late Honorable Judge Julio Jimenez in the Criminal Division of the Circuit Court for the Eleventh Judicial District of Florida.

Ms. Abreu is a member of the Florida Bar, and is admitted to practice before the United States District Court for the Southern District of Florida. She is also a member of the Cuban American Bar Association, the Weston Bar Association, and the Miami Dade Bar Association.

## CHRISTINE SCIARRINO

Christine Sciarrino's legal practice has focused primarily in early resolution of matters with an objective toward achieving optimum results for litigating parties through superb pre-trial preparation and informed decision making. She has extensive experience in many areas of complex civil litigation, including consumer fraud in security lending proceedings and cases involving disasters caused by hurricanes, fires, floods, and structural roof collapse. As an experienced practitioner and dedicated writer for plaintiffs who have been wronged by financial institutions and other entities, Ms. Sciarrino has most recently dedicated her expertise to working exclusively on bank fraud and security lending class action suits.

Ms. Sciarrino graduated from Florida Atlantic University in 1988, where she received a Bachelor of Arts degree with a major in History. In 1992, she received her Juris Doctor from the St. Thomas University School of Law. Ms. Sciarrino also earned a Masters of Fine Arts in Creative Writing at Florida Atlantic University in 2004.

Ms. Sciarrino is a member of the Florida Bar and a Florida Supreme Court Certified Family Mediator.

## PROFESSIONALS

### MARC GROBLER

*Director of Case Analysis*

Marc Grobler joined Saxena White as the Director of Case Analysis in 2012. Prior to joining the firm, he served as the Senior Business Analyst in the New York office of a leading securities class action law firm and has worked within the securities litigation industry for over ten years. Mr. Grobler plays a key role in new case development including performing in-depth investigations into potential securities fraud class actions, derivative, and other corporate governance related actions. By using a broad spectrum of financial and legal industry research tools, Mr. Grobler analyzes information that helps support the theories behind our litigation efforts. Mr. Grobler is also responsible for protecting the financial interests of our clients by managing the firm's client portfolio monitoring services and performing complex loss and damage calculations.

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Mr. Grobler graduated *cum laude* from Tulane University's A.B. Freeman School of Business in 1997, with a concentration in Accounting. With fifteen years of overall professional financial experience, Mr. Grobler started his career in New York at PricewaterhouseCoopers performing audit within the Financial Services Group (audit clients included Prudential Financial and Wasserstein Perella). Prior to entering the securities litigation industry, Mr. Grobler worked within the asset management group at Goldman Sachs where he was responsible for the financial reporting of a group of billion dollar fund-of-fund investments. Mr. Grobler also previously worked at UBS Warburg as a Financial Analyst in the investment banking division that focused on financial institutions such as banks, asset managers, insurance and start-up financial technology companies.

## **STEFANIE LEVERETTE**

### *Manager of Client Services*

Stefanie Leverette is Saxena White's Manager of Client Services. In this role, she manages the firm's client outreach and developmental programs. She also oversees the Firm's portfolio monitoring program services to institutional clients, the majority of which are public pension funds, state retirement systems and Taft-Hartley Funds. Since joining Saxena White in 2008, Ms. Leverette has coordinated the Firm's presence at industry conferences attended by representatives of various institutional clients throughout the United States. In addition, Ms. Leverette is responsible for the timely dissemination of all reports, notifications and all new cases and class action settlements that may have an impact to an investment portfolio. Ms. Leverette's main role is acting as the liaison between institutional clients and the Firm.

Ms. Leverette earned her undergraduate degree in Business Administration with a focus on Management from the University of Central Florida, and her Master's in Business Administration with a focus on International Business at Florida Atlantic University.

## **CHUCK JEROLOMAN**

### *Client Services*

Prior to joining Saxena White, Chuck Jeroloman served as a police officer for the Delray Beach Police Department for 23 years. During his tenure he was a homicide/robbery detective, street level narcotics investigator, field training officer and a member of the S.W.A.T. and Terrorists Task Force. He served on the Delray Beach Police and Fire Pension Board for 14 years and as chairman during his last five years. Mr. Jeroloman was also a member of the Delray Fire and Police VEBA Board. He has spoken at many national pension conferences and has authored several articles about pension benefits and issues.

Mr. Jeroloman served 23 years as the president and union representative for the Police Benevolent Association (P.B.A.) and Fraternal Order of Police. Before his years with the Delray Beach Police Department, Mr. Jeroloman spent five years as a deputy sheriff with the Rockland County Sheriff's Department. He was a member of Joint Terrorists Task Force with the F.B.I., N.Y.P.D. and Rockland County Sheriff's Department and union treasurer for the P.B.A. Mr. Jeroloman is currently a state director for Fallen, a national non-profit organization which raises money for families of police officers who have died in the line of duty.

Mr. Jeroloman earned his Associate Degree in Criminal Justice. He was an associate scout with the Anaheim Angels and Texas Rangers, and volunteered as a youth baseball coach through high school levels. Mr. Jeroloman also served as a director vice president for the Okeehelie Athletic Association.

# **Exhibit 5**

*In re Bank of New York Mellon Corp. FOREX Transactions Litigation,*  
Master File No. 08 Civ. 9522 (SHS)  
This Document Relates to 11-CV-09175

**SUMMARY OF TASKS PERFORMED BY  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP  
ATTORNEYS AND SUPPORT STAFF**

**PARTNERS**

**Max Berger** (229.00 hours): Mr. Berger was actively involved in developing litigation strategy and had primary responsibility for the mediation and settlement process.

**John C. Browne** (1,576.25 hours): Following Steven Singer's departure from the Firm in February 2014, Mr. Browne oversaw the litigation on a day-to-day basis. Among other things, Mr. Browne: (i) participated in developing the litigation strategy; (ii) communicated regularly with Lead Plaintiff; (iii) consulted with experts regarding loss causation and damages issues; (iv) deposed key witnesses for Plaintiffs and defended the depositions of certain of Lead Plaintiff Oregon's representatives; (v) defended the deposition of Lead Plaintiff's expert; (vi) participated in drafting Lead Plaintiff's mediation submissions; (vii) played a significant role in the January 2015 mediation and subsequent settlement negotiations; and (viii) assumed primary responsibility for Lead Plaintiff's oppositions to Defendants' multiple motions to compel, objections to Magistrate Judge Cott's order denying Defendants' motion to compel, Lead Plaintiff's motion to de-designate certain documents as confidential and Lead Plaintiff's motion for class certification.

**Gerald Silk** (164.0 hours): Mr. Silk analyzed Lead Plaintiff's claims, was involved in drafting Oregon's lead plaintiff submissions and was one of the attorneys who communicated regularly with Lead Plaintiff. Mr. Silk also participated in developing the Firm's litigation strategy.

**Steven Singer** (321.75 hours): Mr. Singer, a former partner at the Firm, was involved in the drafting of the Consolidated Class Action Complaint and was initially responsible for the day-to-day management of the litigation. Mr. Singer also played a substantial role in preparing Lead Plaintiff's submissions in opposition to Defendants' motions to dismiss.

**SENIOR COUNSEL**

**Jeremy Robinson** (2,160.50 hours): Mr. Robinson played a significant role in all aspects of discovery, including, among other things: (i) efforts to resolve discovery

disputes with Defendants; (ii) supervising the review and analysis of documents produced by Defendants and non-parties; (iii) taking the depositions of a number of key witnesses in the Action; and (iv) defending the depositions of certain of Lead Plaintiff Oregon's representatives. Mr. Robinson was also involved in the retention, preparation and use of consultants and experts, as well as the drafting of Lead Plaintiff's oppositions to Defendants' multiple motions to compel, objections to Magistrate Judge Cott's order denying Defendants' motion to compel, Lead Plaintiff's motion to de-designate certain documents as confidential and Lead Plaintiff's motion for class certification. In addition, Mr. Robinson drafted portions of Lead Plaintiff's mediation submissions, attended the meditation, and assisted with the drafting and editing of the papers submitted in support of the Settlement.

### **OF COUNSEL**

**Kurt Hunciker** (1,848.00 hours): Mr. Hunciker was extensively involved in discovery and issues related to class certification. Among other things, Mr. Hunciker deposed witnesses, conducted detailed analyses pertaining to damages and loss causation, and had primarily responsibility for drafting comprehensive and lengthy responses to Defendants' two sets of contention interrogatories. He was also involved in the drafting and legal analysis related to Lead Plaintiff's motion to de-designate certain of BNYM's documents as confidential and to Lead Plaintiff's motion for class certification.

### **ASSOCIATES**

**Abe Alexander** (785.50 hours): Mr. Alexander was heavily involved in researching the factual and legal bases of Lead Plaintiff's claims against BNYM and the drafting of the Consolidated Class Action Complaint. He also worked on Lead Plaintiff's opposition to Defendants' motion to dismiss and the related submissions, which included detailed and complex legal research. In addition, Mr. Alexander was involved in deposition discovery and participated in the drafting of Lead Plaintiff's brief in support of lifting the PSLRA discovery stay.

**Evan Berkow** (1,121.00 hours): Mr. Berkow was extensively involved in discovery. In this regard, he assisted in drafting the protocol for electronic discovery, oversaw the team of attorneys reviewing documents, drafted document requests and initial disclosures, and participated in offensive and defensive depositions. He was also involved in the drafting of key discovery motions, including Lead Plaintiff's brief in support of lifting the PSLRA discovery stay, Lead Plaintiff's opposition to defendants' motion to compel and Lead Plaintiff's response to defendants' objection to Magistrate Judge Cott's discovery order.

**Michael Blatchley** (68.50 hours): Mr. Blatchley, who is a member of the Firm's new matters group, was involved in the initial factual investigation and legal analysis of the claims against BNYM. He also drafted the initial complaint in this litigation.

**Laura Gundersheim** (1,057.50 hours): Ms. Gundersheim was involved in many aspects of the litigation, including, among other things: (i) factual and legal research for the Consolidated Class Action Complaint; (ii) the drafting of Lead Plaintiff's submissions in opposition to Defendants' motions to dismiss; (iii) all aspects of discovery, including drafting discovery requests, reviewing drafts of proposed discovery protocols, supervising the review and analysis of documents produced by Defendants and third parties, attempts to resolve discovery disputes with Defendants, and (iv) the drafting of key discovery motions, such as Lead Plaintiff's opposition to Defendants' motion to compel and Lead Plaintiff's response to Defendants' objection to Magistrate Judge Cott's discovery order. Furthermore, Ms. Gundersheim participated in the preparation for and defense of Defendants' depositions of Plaintiffs' representatives.

**Katherine Stefanou** (892.25 hours): Ms. Stefanou was involved in many aspects of the litigation, including, among other things: (i) the drafting of the electronic discovery protocols; (ii) overseeing the team of attorneys reviewing and analyzing documents; (iii) the drafting of document requests and Lead Plaintiff's initial disclosures; (iv) preparing for and attending both offensive and defensive depositions; and (v) drafting key discovery motions, including Lead Plaintiff's opposition to Defendants' motion to compel, Lead Plaintiff's response to Defendants' objection to Magistrate Judge Cott's discovery order, Lead Plaintiff's motion to de-designate documents BNYM marked as confidential, and Lead Plaintiff's motion for class certification.

### **STAFF ATTORNEYS**

**Evan Ambrose** (1,120.00 hours): Mr. Ambrose was primarily involved in fact discovery, including review and analysis of electronically-produced documents and the preparation of memoranda and reports related to such evidence. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions and researched various issues, including BNYM's relationships with third-party entities.

**Andrew Boruch** (2,368.75 hours): Mr. Boruch was primarily involved in fact discovery, including review and analysis of electronically-produced documents and the preparation of memoranda and reports related to such evidence. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and researched various issues, including matters relating to class certification. Among other projects, Mr. Boruch was a member of a team that researched and drafted responses to contention interrogatories.

**Erin Burke** (1,557.75 hours): Ms. Burke was primarily involved in fact discovery, including review and analysis of electronically-produced documents and the preparation of memoranda and reports related thereto. She also analyzed testimony

from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared numerous witness kits for depositions.

**Alexa Butler** (1,197.25 hours): Ms. Butler was primarily involved in fact discovery, including review and analysis of electronically-produced documents and the preparation of memoranda and reports related to such evidence. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and researched various issues. In addition, Ms. Butler was a member of a team that researched and gathered evidence regarding Defendants' allegedly false public statements.

**Ryan Candee** (3,189.75 hours): Mr. Candee was primarily involved in fact discovery, including review and analysis of electronically-produced documents and the preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for numerous depositions, conducted research regarding class certification, and second-chaired depositions. Mr. Candee led a team that researched and drafted responses to Defendants' contention interrogatories.

**Christopher Clarkin** (3,905.50 hours): Mr. Clarkin was primarily involved in fact discovery, including review and analysis of electronically-produced documents and the preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and researched various issues, including market efficiency and best execution. In addition, Mr. Clarkin was part of the initial discovery team that gathered evidence regarding Defendants' allegedly false and misleading statements and researched Defendants' claims of privilege.

**Reiko Cyr** (3,360.25 hours): Ms. Cyr was primarily involved in fact discovery, including review and analysis of electronically-produced documents and the preparation of memoranda and reports related thereto. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and researched various issues. Ms. Cyr analyzed Defendants' claims of privilege and researched and drafted a memorandum detailing BNYM's practices regarding its determination of FX execution rates.

**George Doumas** (3,443.00 hours): Mr. Doumas was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared numerous witness kits for depositions, analyzed claims of privilege, and researched various issues, including Defendants' FX Operating Committee, standing instructions, and personnel assessments. In addition, Mr.

Doumas was a member of the team that researched and drafted responses to Defendants' contention interrogatories.

**Cheryl Gandy** (1,048.00 hours): Ms. Gandy was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. She also analyzed testimony from relevant witnesses, attended regular and periodic meetings with other attorneys and prepared witness kits for depositions.

**Cynthia Gill** (3,992.50 hours): Ms. Gill was primarily involved in fact discovery, including the analysis of electronically-produced documents and preparation of memoranda and reports related thereto. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared numerous witness kits for depositions. In addition, Ms. Gill assisted in preparing responses to interrogatories and researching various issues, including best execution.

**Addison Golladay** (1,559.25 hours): Mr. Golladay was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. He also participated in numerous other tasks, including collecting and evaluating evidence regarding the underwriters, analyzing testimony from relevant witnesses, attending regular and periodic meetings with other attorneys, preparing witness kits for depositions, and researching various issues including best execution. In addition, Mr. Golladay was a member of the initial discovery team that gathered evidence regarding BNYM's Board of Directors and the various board committees.

**Daniel Gruttadaro** (1,734.50 hours): Mr. Gruttadaro was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and researched various issues, including executive compensation. In addition, Mr. Gruttadaro was a member of the team that researched and drafted responses to Defendants' contention interrogatories.

**Jared Hoffman** (2,044.50 hours): Mr. Hoffman was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also assessed potential deponents, participated in regular and periodic meetings with other attorneys, analyzed testimony from relevant witnesses, prepared witness kits for depositions, and researched various issues, including the validity of Defendants' answers to the Consolidated Class Action Complaint. In addition, Mr. Hoffman was part of the initial discovery team that gathered evidence regarding Defendants' allegedly false and misleading statements.

**Lawrence Hosmer** (3,640.00 hours): Mr. Hosmer was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, conducted research, and worked on class certification. In addition, Mr. Hosmer was a member of the team that researched and drafted responses to Defendants' contention interrogatories.

**Stephen Imundo** (4,396.25 hours): Mr. Imundo was co-leader of the staff attorney team throughout the discovery process. He oversaw, and participated in, the review and analysis of electronically-produced documents and the preparation of memoranda and reports related thereto. He also organized and participated in regular and periodic meetings with other attorneys, assisted in the design of the discovery protocols, coordinated work flow with co-counsel and counsel from related litigation, including the federal and state government actions, in order to avoid duplication of effort, analyzed testimony from relevant witnesses, prepared witness kits for depositions, assessed potential deponents, and researched numerous issues.

**Stavros Katsetos** (1,504.00 hours): Mr. Katsetos was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and researched various issues. In addition, Mr. Katsetos was a member of a team that researched and gathered evidence regarding Defendants' allegedly false and misleading public statements.

**Jed Koslow** (3,078.50 hours): Mr. Koslow was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared witness kits for depositions. In addition, Mr. Koslow researched various issues, and was part of a team that reviewed and assessed the Defendants' redactions based on claims of privilege.

**Arthur Lee** (2,822.50 hours): Mr. Lee was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared numerous witness kits for depositions. In addition, Mr. Lee was a member of the team that researched and drafted responses to Defendants' contention interrogatories.

**Laura Lefkowitz** (3039.50 hours): Ms. Lefkowitz was primarily involved in fact discovery, including the analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. She also analyzed

testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared numerous witness kits for depositions. In addition, Ms. Lefkowitz assisted in preparing responses to interrogatories and researching various issues, including the analysis of best execution.

**Andrew McGoey** (3,845.00 hours): Mr. McGoey was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared numerous witness kits for depositions. In addition, Mr. McGoey also conducted research into various issues, including BNYM's internal pricing instructions and fiduciary obligations.

**Joanne McLaren** (1,440.75 hours): Ms. McLaren was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared witness kits for depositions. In addition, Ms. McLaren researched potential deponents and was part of a team that gathered evidence to counter Defendants' denials of allegations contained in the Consolidated Class Action Complaint.

**Rebecca Molk** (1,388.00 hours): Ms. Molk was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared witness kits for depositions. In addition, Ms. Molk was part of a team that reviewed and analyzed the propriety of Defendants' redactions for privilege.

**Jon Noble** (3,547.50 hours): Mr. Noble was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and researched various issues, including those related to BNYM's Board of Directors and its various committees. In addition, Mr. Noble was part of the initial discovery team that developed search terms for requests for the production of documents, and identified key witnesses and potential deponents.

**Jeff Powell** (3,367.50 hours): Mr. Powell was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared witness kits for depositions. In addition, Mr. Powell was part of a team that researched and gathered evidence to counter

Defendants' denials of allegations contained in the Consolidated Class Action Complaint.

**Shalu Rastogi** (3,032.50 hours): Ms. Rastogi was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared witness kits for depositions. In addition, Ms. Rastogi was part of the initial discovery team that gathered evidence to determine potential deponents.

**Daniel Renehan** (2,925.00 hours): Mr. Renehan was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and analyzed the propriety of redactions for privilege. In addition, Mr. Renehan was a member of a team that researched and gathered evidence regarding Defendants' allegedly false and misleading public statements.

**Noreen Rhosean Scott** (1,815.50 hours): Ms. Scott was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared witness kits for depositions. In addition, Ms. Scott researched various issues, including BNYM's changes to its FX pricing models.

**Emily Strickland** (1,596.25 hours): Ms. Strickland was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared witness kits for depositions. In addition, Ms. Strickland researched various issues, including different methodologies used to analyze FX trades.

**Andrew Tolan** (4,768.00 hours): Mr. Tolan was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and researched a variety of issues. In addition, Mr. Tolan: (i) was part of the initial discovery team that analyzed related litigation, proposed potential deponents and identified gaps in Defendants' productions; (ii) was a member of the team that researched and drafted responses to contention interrogatories; and (iii) was part of the team researching and collecting evidence related to allegedly false statements.

**Alina Tsirkin** (1,171.25 hours): Ms. Tsirkin was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related to such evidence. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, and prepared witness kits for depositions. In addition, Ms. Tsirkin was part of the initial discovery team that analyzed complaints from related litigation.

**Allan Turisse** (3,361.75 hours): Mr. Turisse was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, assessed the value of potential deponents, prepared witness kits for depositions, and researched various issues. In addition, Mr. Turisse was a member of the team that researched and drafted responses to Defendants' contention interrogatories.

**Mark van der Harst** (3,844.00 hours): Mr. van der Harst was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. He also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, and researched various issues.

**Catherine van Kampen** (4,913.50 hours): Ms. van Kampen was co-leader of the staff attorney team. She oversaw, and participated in, the review and analysis of electronically-produced documents and the creation of reports related to such evidence. She also organized and participated in regular and periodic meetings with other attorneys, coordinated work flow with co-counsel and counsel from related litigation, including the federal and state government actions, in order to avoid duplication of effort, was part of the team that designed discovery protocols, analyzed testimony from relevant witnesses, prepared witness kits for depositions, assessed potential deponents, and researched numerous issues.

**Dana Vincent** (3,458.50 hours): Ms. Vincent was primarily involved in fact discovery, including review and analysis of electronically-produced documents and preparation of memoranda and reports related thereto. She also analyzed testimony from relevant witnesses, participated in regular and periodic meetings with other attorneys, prepared numerous witness kits for depositions, and researched various issues, including standing instruction pricing coordination. In addition, Ms. Vincent was part of a team that assessed the propriety of Defendants' redactions based on privilege.

## **SUPPORT STAFF**

**Babatunde Pedro** (72.50 hours): Mr. Pedro, a member of the Firm's litigation support staff, provided assistance to the attorneys with respect to various electronic discovery issues. He was also responsible for processing Lead Plaintiff's documents for production to Defendants and for maintaining an internal database that contained Lead Plaintiff's document productions.

**Ricia Augusty** (1,384.75 hours): Ms. Augusty, one of the Firm's case managers, provided support and assistance to the attorneys in their factual investigation by gathering documents and information requested by the attorneys. She was also responsible for maintaining physical and electronic case materials (including discovery), assisting with Court filings, and cite checking briefs and other filings. In addition, Ms. Augusty assisted attorneys preparing for depositions by organizing and making copies of potential exhibits.

**Jose Echegaray** (138.50 hours): Mr. Echegaray, one of the Firm's paralegals, provided assistance to attorneys preparing for deposition by organizing and making copies of the exhibits. He also assisted with Court filings and in reviewing those filings to ensure proper citation.

**Nyema Taylor** (1,248.25 hours): Ms. Taylor, one of the Firm's paralegals, was responsible for providing support and assistance to the attorneys in their factual investigation of Lead Plaintiff's claims by gathering documents and information requested by the attorneys. She also assisted with Court filings and in reviewing those filings to ensure proper citation. In addition, Ms. Taylor was responsible for monitoring news related to BNYM and the Action, as well as the dockets of related cases.

# **Exhibit 6**

## ALL PSLRA CASES WITH RECOVERIES FROM \$130 TO \$230 MILLION

Case Name	Settlement Amount (in millions)	Multiplier
<i>In re Comverse Tech., Inc. Sec. Litig.</i> , No. 06-1825, 2010 WL 2653354, at *6 (E.D.N.Y. June 23, 2010)	\$225	2.78
<i>In re Waste Management, Inc. Sec. Litig.</i> , No. 97 C 7709, 1999 WL 967012, at *3 (N.D. Ill. Oct. 18, 1999) (" <i>Waste Management I</i> ")	\$220	5.4
<i>In re Merck &amp; Co., Inc. Vytarin/Zetia Sec. Litig.</i> , No. 08-2177 (DMC)(JAD), 2013 WL 5505744, at *3, *46, *51 (D.N.J. Oct. 1, 2013)	\$215	1.3
<i>In re Sears, Roebuck &amp; Co. Sec. Litig.</i> , No. 02-7527, slip op. at 7 (N.D. Ill. Jan. 8, 2007), ECF No. 289	\$215	2
<i>In re Washington Mut., Inc. Sec. Litig.</i> , No. 2:08-md-1919 MJP, 2011 WL 8190466, at *1 (W.D. Wash. Nov. 4, 2011)	\$208.5	1.1
<i>In re The Mills Corp. Sec. Litig.</i> , 265 F.R.D. 246, 266 (E.D. Va. 2009)	\$202.8	1.3
<i>Silverman v. Motorola, Inc.</i> , No. 07 C 4507, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012), <i>aff'd</i> , 739 F.3d 956, 958-59 (7th Cir. 2013)	\$200	3.2
<i>In re CMS Energy Sec. Litig.</i> , No. 02-cv-72004, 2007 U.S. Dist. LEXIS 96786, at *14 (E.D. Mich. Sept. 6, 2007)	\$200	2.61
<i>In re WellCare Health Plans, Inc. Sec. Litig.</i> , No. 07-1940, slip op. at 2 (M.D. Fla. May 4, 2011), ECF No. 278	\$200	2.12
<i>In re AremisSoft Corp. Sec. Litig.</i> , 210 F.R.D. 109, 130-35 (D.N.J. 2002)	\$194	4.3
<i>In re Motorola Sec. Litig.</i> , No. 03-287, slip op. at 9 (N.D. Ill. Sept. 7, 2007), ECF No. 531-2	\$190	1.83
<i>In re Bristol-Myers Squibb Sec. Litig.</i> , No. 00-1990 (SRC), slip op. at 2 (D.N.J. May 11, 2006), ECF No. 367, <i>aff'd</i> 2007 WL 2153284 (3d Cir. 2007) (unpublished)	\$185	1
<i>In re Broadcom Corp. Class Action Litig.</i> , No. 06-05036, slip op. at 1 (C.D. Cal. Aug. 11, 2010), ECF No. 355; <i>In re Broadcom Corp. Class Action Litig.</i> , No. 06-05036, slip op. at 1 (C.D. Cal. Dec. 4, 2012), ECF No. 454.	\$173.5	1.5
<i>In re Maxim Integrated Prods. Inc. Sec. Litig.</i> , No. 08-832, slip op. at 2 (N.D. Cal. Nov. 1, 2010), ECF No. 312	\$173	3.07
<i>In re Fannie Mae 2008 Sec. Litig.</i> , No. 1:08-cv-07831, slip op. at 2 (S.D.N.Y. Mar. 3, 2015), ECF No. 552	\$170	0.84
<i>In re Juniper Networks, Inc. Sec. Litig.</i> , No. 06-4327, slip op. at 1-2 (N.D. Cal. Aug. 31, 2010), ECF No. 623	\$169.5	0.88
<i>In re Nat'l City Corp. Sec., Derivative &amp; ERISA Litig.</i> No. 1:08-nc-70004, slip op. at 12 (N.D. Ohio Mar. 20, 2012), ECF No. 80	\$168	2.86

## ALL PSLRA CASES WITH RECOVERIES FROM \$130 TO \$230 MILLION

Case Name	Settlement Amount (in millions)	Multiplier
<i>In re Schering-Plough Corp. Sec. Litig.</i> , No. 01-829, 2009 WL 5218066, at *5-*6 (D.N.J. Dec. 31, 2009)	\$165	1.5
<i>Alaska Elec. Pension Fund v. Pharmacia Corp.</i> , No. 03-1519 (AET), slip op. at 4 (D.N.J. Jan. 30, 2013), ECF No. 405	\$164	1.67
<i>In re Dollar General Corp. Sec. Litig.</i> , No. 3:01-0388, slip op. at 16 (M.D. Tenn. May 24, 2002), ECF No. 209	\$162	N/A
<i>In re Brocade Sec. Litig.</i> , No. 05-2042, slip op. at 13 (N.D. Cal. Jan. 26, 2009), ECF No. 496	\$160	3.5
<i>In re MicroStrategy, Inc. Sec. Litig.</i> , 172 F. Supp. 2d 778, 790 (E.D. Va. 2001)	\$154	2.6
<i>In re Federal Nat'l Mortg. Ass'n Sec., Derivative &amp; ERISA Litig.</i> , 4 F. Supp. 3d 94, 112-13 n.20 (D.D.C. 2013)	\$153	0.31
<i>In re Satyam Computer Svc. Sec. Litig.</i> , No. 09-MD-2027, slip op. at 2 (S.D.N.Y. Sept. 13, 2011), ECF No. 365	\$150.5	2.18
<i>In re AT&amp;T Wireless Tracking Stock Sec. Litig.</i> , No. 00-8754, slip op. (S.D.N.Y. Jan. 29, 2007), ECF No. 82	\$150	N/A
<i>In re Broadcom Corp. Sec. Litig.</i> , No. 01-275, 2005 U.S. Dist. LEXIS 41993, at *14 (C.D. Cal. Sept. 14, 2005)	\$150	1.64
<i>In re Merrill Lynch &amp; Co., Inc. Sec., Derivative &amp; ERISA Litig.</i> , No. 07-cv-9633, slip op. at 2-3 (S.D.N.Y. Dec. 2, 2009), ECF No. 326 (bondholder action)	\$150	2.3
<i>Schwartz v. TXU Corp.</i> , No. 02-2243, 2005 WL 3148350, at *24-*34 (N.D. Tex. Nov. 8, 2005)	\$149.75	N/A
<i>In re Charter Comms. Sec. Litig.</i> , No. 02-cv-01186, 2005 WL 4045741, at *12-22 (E.D. Mo. June 30, 2005)	\$146.3	5.61
<i>In re Apollo Grp. Inc. Sec. Litig.</i> , No. 04-2147, 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012)	\$145	1.74
<i>In re Sunbeam Sec. Litig.</i> , 176 F. Supp. 2d 1323 (S.D. Fla. 2001); No. 98-08258, slip op. at 3 (S.D. Fla. Aug. 5, 2002), ECF No. 897; & slip op. at 11 (S.D. Fla. Aug. 9, 2002), ECF No. 907	\$141	1.28
<i>In re Biovail Corp. Sec. Litig.</i> , No. 03-8917, slip op. at 2 (S.D.N.Y. Aug. 8, 2008), ECF No. 277	\$138	0.65
<i>Carpenters Health &amp; Welfare Fund. v. Coca-Cola Co.</i> , 587 F. Supp. 2d 1266, 1272 (N.D. Ga. 2008)	\$137.5	1.24
<i>In re Electronic Data Sys. Corp. Sec. Litig.</i> , No. 03-110, slip op. at 2 (E.D. Tex. Mar. 7, 2006), ECF No. 292	\$137.5	1.01
<i>In re Informix Corp. Sec. Litig.</i> , No. C 97-1289 CRB, 1999 U.S. Dist. LEXIS 23579, at *6 (N.D. Cal. Nov. 23, 1999)	\$136.5	N/A
<i>In re Computer Assocs. Class Action Sec. Litig.</i> , Nos. 98 Civ. 4839 (TCP), 02-CV-1226 (TCP), 2003 WL 25770761, at *4 (E.D.N.Y. Dec. 8, 2003)	\$133.5	N/A

## ALL PSLRA CASES WITH RECOVERIES FROM \$130 TO \$230 MILLION

Case Name	Settlement Amount (in millions)	Multiplier
<i>In re Merrill Lynch &amp; Co., Inc. Research Reports Sec. Litig.</i> , No. 246 F.R.D. 156, 178 (S.D.N.Y. Sept. 5, 2007)	\$133	1.98
<i>Bennett v. Sprint Nextel Corp.</i> , Case No. 2:09-cv-02122, slip op. at 2 (D. Kan. Aug. 12, 2015)	\$131	0.72
<i>In re Royal Dutch/Shell Transp. Sec. Litig.</i> , No. 04-374 (JAP), 2008 WL 9447623, at *26 (D.N.J. Dec. 9, 2008)	\$130.3	1
<b>AVERAGES:</b>	<b>\$167</b>	<b>2.03</b>

# **Exhibit 7**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

ALASKA ELECTRICAL PENSION  
FUND, et al., On Behalf of Themselves  
and All Others Similarly Situated,

Plaintiffs,

vs.

PHARMACIA CORPORATION, et al.,

Defendants.

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No. 03-1519 (AET)  
(Consolidated)

CLASS ACTION

ORDER AWARDING PLAINTIFFS'  
COUNSEL'S ATTORNEYS' FEES  
AND EXPENSES

DATE: January 30, 2013

TIME: 10:00 a.m.

CTRM: The Honorable  
Anne E. Thompson

RECEIVED

JAN 30 2013

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH CLERK

THIS MATTER having come before the Court on January 30, 2013, on the motion of Lead Counsel for an award of attorneys' fees and expenses; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the Litigation to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated as of October 5, 2012 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. Class Counsel are entitled to a fee paid out of the common fund created for the benefit of the Class. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits when a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is proper. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Third Circuit expressly recognizes that a percentage-of-the-fund is the preferred method of determining fees in a common fund case. *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 n.39 (3d. Cir. 1995). Moreover, the Private Securities Litigation Reform Act of 1995 ("PSLRA") embodies a clear

policy preference for awarding fees through the percentage-of-the-fund method. *See In re Cendant Sec. Litig.*, 404 F.3d 178, 188 n.7 (3d Cir. 2005).

4. Lead Counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Amount, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Amount, plus expenses of \$3,439,536.90, plus any interest on said amounts at the same rate as earned on the Settlement Amount. The Court finds the amount of the fees and expenses to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Amount is consistent with awards made in similar cases and in accordance with guidance provided by the Third Circuit.

7. The Court further finds that the amount of fees awarded is fair and reasonable when cross checked under the lodestar/multiplier method, given the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Class.

8. The awarded fees and expenses shall be allocated among Plaintiffs' counsel by Lead Counsel in a manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Litigation.

9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). In evaluating the *Gunter* factors, the Court finds that:

(a) Class Counsel expended considerable effort and resources over the course of the Litigation researching, investigating, and prosecuting Lead Plaintiffs' claims. The services provided by Class Counsel were efficient and highly successful, resulting in an outstanding recovery for the Class without the substantial expense, risk, and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *See, e.g., In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at \*31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). This case was not aided by any governmental investigation. Despite the novelty and difficulty of the issues raised, Class Counsel secured a very good result for the Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Class Counsel's representation of the Class supports the requested fee. Class Counsel demonstrated

that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Class Counsel's diligent efforts on behalf of the Class, as well as their skill and reputations, Class Counsel were able to negotiate a very favorable result for the Class. Class Counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Litigation to a successful conclusion are a significant indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by Lead Plaintiffs' attorneys. The ability of Class Counsel to obtain such a favorable settlement for the Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.

(d) The requested fee of 27.5% of the Settlement Amount is within the range normally awarded in cases of this nature.

(e) Plaintiffs' counsel's total lodestar is \$27,071,101.50. A 27.5% fee represents a multiplier of 1.67 to their aggregate lodestar.

10. The awarded attorneys' fees and expenses, and any interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund pursuant to the

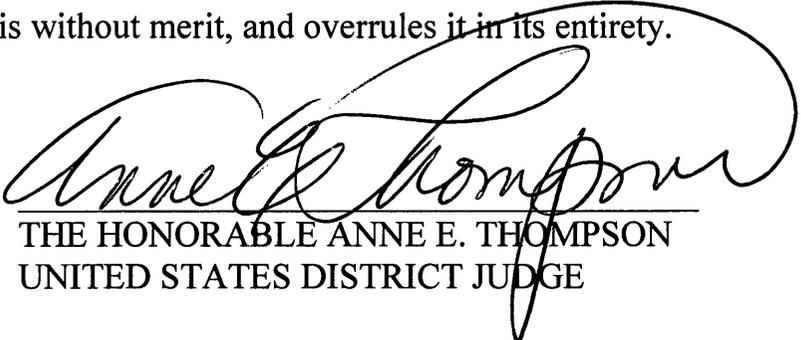
terms, conditions and obligations of the Stipulation, and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

11. The Court finds that, pursuant to 15 U.S.C. §78u-4(a)(4), an award of reasonable costs and expenses (including lost wages) to Lead Plaintiffs in connection with their representation of the Class is appropriate. Lead Plaintiffs Alaska Electrical Pension Fund, PACE Industry Union-Management Pension Fund and New England Health Care Employees Pension Fund, are hereby awarded \$6,608.92, \$15,941.98 and \$10,500.00, respectively.

12. The Court has considered the objection to the fee award submitted by William T. Zorn, and finds that it is without merit, and overrules it in its entirety.

IT IS SO ORDERED.

DATED: 1/30/13

  
THE HONORABLE ANNE E. THOMPSON  
UNITED STATES DISTRICT JUDGE

# **Exhibit 8**



THIS MATTER having come before the Court on July 18, 2011, on the motion of Lead Plaintiffs' counsel for an award of attorneys' fees and expenses incurred in the Action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the Action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated March 7, 2011.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.

3. Counsel for the Lead Plaintiffs are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

4. Lead Plaintiffs' counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Fund, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case, and concludes that the percentage of the benefit is the proper method for awarding attorneys' fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Fund, plus interest at the same rate as earned on the Settlement Fund. The Court finds the fee award to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Fund is consistent with awards made in similar cases.

7. Said fees shall be allocated among plaintiffs' counsel by Co-Lead Counsel in manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action.

8. The Court hereby awards expenses in an aggregate amount of \$285,072.62, plus interest.

9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set forth in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In evaluating the *Goldberger* factors, the Court finds that:

(a) Counsel for Lead Plaintiffs expended considerable effort and resources over the course of the Action researching, investigating and prosecuting Lead Plaintiffs' claims. Lead Plaintiffs' counsel have represented that they have reviewed tens of thousands of pages of documents, interviewed witnesses and opposed legally and factually complex motions to dismiss. The parties also engaged in settlement negotiations that lasted several months. The services provided by Lead Plaintiffs' counsel were efficient and highly successful, resulting in an outstanding recovery for the Settlement Class without the substantial expense, risk and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at \*31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more

difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Despite the novelty and difficulty of the issues raised, and the procedural posture of the case, Lead Plaintiffs' counsel secured an excellent result for the Settlement Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Lead Plaintiffs' counsel's representation of the Settlement Class supports the requested fee. Lead Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Lead Plaintiffs' counsel's diligent efforts on behalf of the Settlement Class, as well as their skill and reputations, Lead Plaintiffs' counsel were able to negotiate a very favorable result for the Settlement Class. Lead Plaintiffs' counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Action to a successful conclusion against the Defendants are the best indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers from a prominent firm. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of Lead Plaintiffs' counsel to obtain such a favorable settlement for the Settlement Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.

(d) The requested fee of 27.5% of the settlement is within the range normally awarded in cases of this nature.

(e) Public policy supports the requested fee, because the private attorney general role is “vital to the continued enforcement and effectiveness of the Securities Acts.” *Taft v. Ackermans*, No. 02 Civ. 7951(PKL), 2007 U.S. Dist. LEXIS 9144, at \*33 (S.D.N.Y. Jan. 31, 2007) (citation omitted).

(f) Lead Plaintiffs’ counsel’s total lodestar is \$4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002), the requested fee is reasonable.

10. The awarded attorneys’ fees and expenses, and interest earned thereon, shall be paid to Co-Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

Dated: New York, NY

18 July, 2011

  
\_\_\_\_\_  
THE HONORABLE VICTOR MARRERO  
UNITED STATES DISTRICT JUDGE



CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, I submitted the foregoing to orders and judgments@nysd.uscourts.gov and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 11, 2011.

s/ Ellen Gusikoff Stewart  
\_\_\_\_\_  
ELLEN GUSIKOFF STEWART

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# **Exhibit 9**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**STANDARD IRON WORKS,  
on behalf of itself and all others  
similarly situated,**

**Plaintiff,**

**v.**

Civil Action No. 08-CV-5214

**ARCELORMITTAL;  
ARCELORMITTAL USA, INC.;  
UNITED STATES STEEL CORPORATION;  
NUCOR CORPORATION;  
GERDAU AMERISTEEL CORPORATION;  
STEEL DYNAMICS, INC.;  
AK STEEL HOLDING CORPORATION;  
COMMERCIAL METALS, INC.,**

**Defendants.**

**DECLARATION OF GEOFFREY P. MILLER**

I, GEOFFREY P. MILLER, declare under penalty of perjury as follows:

1. I am over 18 years of age, I am competent to make this declaration, and I have personal knowledge of the matters and facts recited herein.

**Scope of Retention**

2. I have been retained to analyze the requested attorneys' fee award in light of empirical data on market rates and awards in similar cases.

### **Qualifications**

3. I am the Stuyvesant P. Comfort Professor of Law at the New York University Law School. I am a *magna cum laude* graduate of Princeton University and a 1978 graduate of the Columbia Law School where I was Editor-in-Chief of the Law Review. I served as a law clerk to the Honorable Carl McGowan of the United States Court of Appeals for the District of Columbia Circuit and to the Honorable Byron R. White, Associate Justice of the United States Supreme Court. I was an attorney-adviser at the Office of Legal Counsel in the United States Department of Justice from 1980-1982. After practicing civil litigation with a Washington D.C. law firm, I joined the faculty of the University of Chicago Law School in 1983, where I served as Kirkland & Ellis Professor and Associate Dean. I moved to New York University in 1995. A copy of my resume is attached as Appendix A.

4. I am a founder, board member and former co-president of the Society for Empirical Legal Studies, an organization of researchers in the fields of law, economics, sociology, psychology, business, and political science whose work examines the statistical and empirical bases of legal rules. I am a 2011 inductee into the American Academy of Arts and Sciences and am one of HeinOnline Law Journal Library's top-100 most cited authors all time.<sup>1</sup> A recent empirical study of scholarly influence lists me as one of the top 50 most relevant law professors in the United States.<sup>2</sup>

5. I have written extensively over the years on issues relating to attorneys' fees, particularly in class action cases. My articles with Professor Macey on class action litigation

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<sup>1</sup> See <http://www.heinonline.org/HOL/MostCitedAuthors?collection=journals>.

<sup>2</sup> John Yoo & James Cleith Phillips, The Cite Stuff: Inventing a Better Law Faculty Relevance Measure, UC Berkeley Public Law Research Paper No. 2140944 (September 3, 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2140944](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2140944).

have been cited as authority by courts across the United States.<sup>3</sup> My empirical studies on class action cases, co-authored with Professor Theodore Eisenberg of Cornell University, are a leading authority on that topic.<sup>4</sup>

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<sup>3</sup> *Eubank v. Pella Corporation*, 753 F.3d 718 (7<sup>th</sup> Cir. 2014); *In re Processed Egg Products Antitrust Litigation*, 2012 WL 2885924 (E.D.Pa. 2012); *Louisiana Municipal Police Employees' Retirement System v. Pyott*, --- A.3d ---, 2012 WL 2087205 (Del.Ch. 2012); *Forsythe v. ESC Fund Management Co.*, 2012 WL 1655538 ( Del.Ch. 2012); *Creative Montessori Learning Centers v. Ashford Gear LLC*, 662 F.3d 913, (7<sup>th</sup> Cir. 2011); *In re Sauer-Danfoss Inc. Shareholders Litigation*, 2011 WL 2519210 (Del.Ch. 2011); *Thorogood v. Sears, Roebuck and Co.*, 627 F.3d 289 (7<sup>th</sup> Cir. 2010); *Ehrheart v. Verizon Wireless*, 609 F.3d 590 (3<sup>rd</sup> Cir. 2010); *In re Revlon, Inc. Shareholders Litigation*, 990 A.2d 940 (Del.Ch. 2010); *Lubin v. Farmers Group, Inc.*, 2009 WL 3682602 (Tex.App. 2009); *Westgate Ford Truck Sales, Inc. v. Ford Motor Co.*, 2007 WL 2269471 (Ohio App. 2007); *Acosta v. Trans Union, LLC*, 243 F.R.D. 377 (C.D.Cal. 2007); *Amalgamated Bank v. Yost*, 2005 WL 226117 (E.D.Pa. 2005); *Official Committee of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548 (3<sup>rd</sup> Cir. 2003); *Fruchter v. Florida Progress Corp.*, 2002 WL 1558220, (Fl. App. 2002); *In re Microstrategy, Inc.*, 172 F.Supp.2d 778 (E.D.Va. 2001); *In re Cendant Corp. Litigation*, 264 F.3d 201 (3<sup>rd</sup> Cir. 2001); *Scardelletti v. Debarr*, 265 F.3d 195 (4<sup>th</sup> Cir. 2001); *In re Auction Houses Antitrust Litigation*, 197 F.R.D. 71 (S.D.N.Y. 2000); *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 97 Cal.Rptr.2d 797 (2000); *AUSA Life Ins. Co. v. Ernst and Young*, 206 F.3d 202 (2<sup>nd</sup> Cir. 2000); *Davis v. Carl Cannon Chevrolet-Olds, Inc.*, 182 F.3d 792 (11<sup>th</sup> Cir. 1999); *In re Baan Co. Securities Litigation*, 186 F.R.D. 214 D.D.C. 1999); *In re Quantum Health Resources, Inc.*, 962 F.Supp. 1254 (C.D. Cal. 1999); *Strong v. BellSouth Telecommunications, Inc.*, 173 F.R.D. 167 (W.D.La. 1997); *Howard v. Globe Life Ins. Co.*, 973 F.Supp. 1412 (N.D.Fla. 1996); *Kamilewicz v. Bank of Boston Corp.*, 100 F.3d 1348 (7<sup>th</sup> Cir. 1996); *In re Asbestos Litigation*, 90 F.3d 963 (5<sup>th</sup> Cir. 1996); *General Motors Corp. v. Bloyed*, 916 S.W.2d 949 (Tex. 1996); *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill.2d 235, 659 N.E.2d 909, 213 Ill.Dec. 563 (1995); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litigation*, 56 F.3d 295 (1<sup>st</sup> Cir. 1995); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768 (3<sup>rd</sup> Cir. 1995); *BTZ, Inc. v. Great Northern Nekoosa Corp.*, 47 F.3d 463 (1<sup>st</sup> Cir. 1995); *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304 (3<sup>rd</sup> Cir. 1993); *In re Oracle Securities Litigation*, 829 F.Supp. 1176 (N.D. Ca. 1993); *Gottlieb v. Wiles*, 150 F.R.D. 174 (D.Colo. 1993); *Durr v. Intercounty Title Co. of Illinois*, 826 F.Supp. 259 (N.D.Ill. 1993); *qad. inc. v. ALN Associates, Inc.*, 807 F.Supp. 465 (N.D.Ill. 1992); *Wesley v. General Motors Acceptance Corp.*, 1992 WL 57948 (N.D.Ill. 1992); *In re Verifone Securities Litigation*, 784 F.Supp. 1471 (N.D.Cal. 1992); *Davis v. Coopers & Lybrand*, 1991 WL 154460 (N.D.Ill. 1991).

<sup>4</sup> *See Chesemore v. Alliance Holdings, Inc.*, 2014 WL 4415919 (W.D. Wis. 2014); *In re Celexa and Lexapro Marketing and Sales Practices Litigation*, 2014 WL 4446464 (D.Mass. 2014); *In re Colgate-Palmolive Co. Erisa Litigation*, --- F.Supp.2d --- 2014 WL 3292415 (S.D.N.Y. 2014); *Eubank v. Pella Corporation*, 753 F.3d 718 (7<sup>th</sup> Cir. 2014); *Haggart v. United States*, 116 Fed.Cl. 131, 2014 WL 2112179 (Ct. Cl. 2014); *Scovil v. FedEx Ground Package System, Inc.*, U2014 WL 1057079 (D.Me. 2014); *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076 (7<sup>th</sup> Cir. 2013); *Richardson v. L'Oreal USA, Inc.*, --- F.Supp.2d ---, 2013 WL 5941486 (D.D.C. 2013); *Swift v. Direct Buy, Inc.*, 2013 WL 5770633 (N.D.Ind. 2013); *Singleton v. Domino's Pizza, LLC*, --- F.Supp.2d ---, 2013 WL 5506027 (D.Md. 2013); *In re Schering-Plough Corp. Enhance Securities Litigation*, 2013 WL 5505744 (D.N.J. 2013); *In re Vioxx Products Liability Litigation*, 2013 WL 5295707 (E.D.La. 2013); *Evans v. TIN, Inc.*, 2013 WL 4501061 (E.D.La. 2013) (“The data sets in the empirical study conducted by Professors Eisenberg and Miller are commonly used by district courts in this circuit”); *Silverman v. Motorola Solutions, Inc.*, --- Fed.Appx. ---, 2013 WL 4082893 (7<sup>th</sup> Cir. 2013); *City of Pontiac General Employees' Retirement System v. Lockheed Martin Corp.* --- F.Supp.2d ---, 2013 WL 3796658 (S.D.N.Y. 2013); *Gortat v. Capala Bros.*, --- F.Supp.2d ---, 2013 WL 2566622 (E.D.N.Y. 2013); *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387 (E.D.Tenn. 2013); *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (Or. 2013); *Heekin v. Anthem, Inc.*, 2012 WL 5878032 (S.D.Ind. 2012); *Espenscheid v. DirectSat USA, LLC*, 688 F.3d 872, 877 (7<sup>th</sup> Cir. 2012); *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7<sup>th</sup> Cir. 2011); *Allapattah Servs., Inc. v. Exxon Corp.*, 362 F.3d 739, 760 (11<sup>th</sup> Cir. 2004) (Judges Tjoflat and Birch, dissenting from denial of en banc review); *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (2013); *In re Amaranth Natural Gas Commodities Litig.*, No. 07-6377, 2012 U.S. Dist. LEXIS 82599,

6. I have participated in class action litigation, both as an attorney and more recently as an expert consultant and expert witness, on issues such as class counsel fees and the value of settlements.

7. I am being compensated for my services in this matter on an hourly basis at my usual billing rate of \$750 per hour.

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at \*7 n.12 (S.D.N.Y. June 11, 2012); *Board of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09-686, 2012 U.S. Dist. LEXIS 79418, at \*5 n.12 (S.D.N.Y. June 7, 2012); *Lane v. Page*, No. 06-1071, 2012 U.S. Dist. LEXIS 74273, at \*161 (D.N.M. May 22, 2012); *Silverman v. Motorola, Inc.*, No. 07-4507, 2012 U.S. Dist. LEXIS 63477, at \*15 (N.D. Ill. May 7, 2012); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, MDL No. 09-2046, 2012 U.S. Dist. LEXIS 37326, at \*94, \*116 (S.D. Tex. Mar. 20, 2012) (“The tables included in the [Eisenberg and Miller] study are good indicators of what the market would pay for class counsel’s services because the tables show what attorneys have been paid in similar cases, and thus what class counsel could have expected when they decided to invest their resources in this case.”); *Walsh v. Popular, Inc.*, No. 09-1552, 2012 U.S. Dist. LEXIS 32991, at \*24 (D.P.R. Mar. 12, 2012); *Am. Int’l Group, Inc. v. Ace Ina Holdings, Inc.*, No. 07-2898, 2012 U.S. Dist. LEXIS 25265, at \*59 (N.D. Ill. Feb. 28, 2012); *Ebbert v. Nassau County*, 05-5445, 2011 U.S. Dist. LEXIS 150080, at \*41 (E.D.N.Y. Dec. 22, 2011); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1336 n.4 (S.D. Fla. 2011); *Latorraca v. Centennial Techs., Inc.*, No. 97-10304, 2011 U.S. Dist. LEXIS 135435, at \*11 (D. Mass. Nov. 22, 2011); *In re Ky. Grilled Chicken Coupon Mktg. & Sales Litig.*, 2011 WL 5599129 (N.D. Ill. Nov. 16, 2011); *Pavlik v. FDIC*, No. 10-816, 2011 U.S. Dist. LEXIS 126016, at \*11 (N.D. Ill. Nov. 1, 2011); *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 461 (D.P.R. 2011); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011); *In re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 652 (E.D. La. 2010); *Velez v. Novartis Pharms Corp.*, 04-09194, 2010 U.S. Dist. LEXIS 125945, at \*60-61 (S.D.N.Y. Nov. 30, 2010); *Braud v. Transport Serv. Co. of Illinois*, No. 05-1898, 2010 U.S. Dist. LEXIS 93433, at \*27-30 (E.D. La. Aug. 17, 2010); *In re Lawnmower Engine Horsepower Mktg. & Sales Prac. Litig.*, 733 F. Supp. 2d 997, 1013 (E.D. Wis. 2010); *Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 675 (N.D. Tex. 2010); *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 541 (N.Y. Sup. Ct. 2010); *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010); *In re Marsh Erisa Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010); *Strawn v. Farmers Ins. Co.*, 226 P.3d 86, 99 (Or. Ct. App. 2010); *Hall v. Children’s Place Retail Stores, Inc.*, 669 F. Supp. 2d 399, 403 n.35 (S.D.N.Y. 2009); *In re Trans Union Corp. Privacy Litig.*, No. 00-4729, 2009 U.S. Dist. LEXIS 116934, at \*22-25, \*39 (N.D. Ill. Dec. 9, 2009); *Loudermilk Serv., Inc. v. Marathon Petroleum Co. LLC*, 623 F. Supp. 2d 713, 724 (S.D. W.Va. 2009) (“Because the Eisenberg and Miller study was a far more comprehensive analysis of similar cases than this Court could hope to achieve in a reasonable time, the Court accepts their results as a benchmark on which to judge a reasonable fee in this case.”); *Rodriguez v. West Publ’g Co.*, 563 F.3d 948, 958 (9th Cir. 2009); *In re OCA, Inc. Sec. and Deriv. Litig.*, No. 05-2165, 2009 U.S. Dist. LEXIS 19210, at \*63-66 (E.D. La. Mar. 2, 2009); *In re Enron Corp. Secs., Deriv. & ERISA Litig.*, 586 F. Supp. 2d 732, 800 (S.D. Tex. 2008); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 755 n.2 (S.D. Ohio 2007); *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 269 (D.N.H. 2007); *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 388 (C.D. Cal. 2007); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 853, 862-64, 866, 870 (E.D. La. 2007) (“[T]he Court will look to Eisenberg and Miller’s data sets to determine an average percentage for cases of similar magnitude”); *Silberblatt v. Morgan Stanley*, 524 F. Supp. 2d 425, 435 n.6 (S.D.N.Y. 2007); *Fireside Bank v. Superior Court*, 155 P.3d 268, 281 n.7 (Cal. 2007); *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 38, 42 (D.N.H. 2006); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1209, 1211 (S.D. Fla. 2006); *In re Educ. Testing Serv. Praxis Principles of Learning and Teaching Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 629-32 (E.D. La. 2006); *Hicks v. Morgan Stanley*, No. 01-10071, 2005 U.S. Dist. LEXIS 24890, at \*25 (S.D.N.Y. Oct. 24, 2005); *In re Lupron Mktg. and Sales Prac. Litig.*, 01-10861, 2005 U.S. Dist. LEXIS 17456, at \*18 (D. Mass. Aug. 17, 2005); *In re HPL Techs., Inc. Sec. Litig.*, 366 F.Supp.2d 912, 914 (N.D. Cal. 2005); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 80-81 (D. Mass. 2005); *In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 286 (D. Mass. 2004).

### **Materials Relied Upon**

8. I have reviewed an extensive compilation of materials from this case, including the documents described in Appendix B to this declaration. I have discussed the matter with plaintiffs' counsel, reviewed numerous cases dealing with attorneys' fees in class action settlements, and evaluated the statistical reports and analyses surveying class action legal fee awards set forth in Appendix C to this declaration.

### **Summary of Opinion**

9. It is my opinion that the requested fee award of 33.3% of the settlement fund is comfortably within the range of common outcomes, and reasonable in light of prevailing market rates, as informed by data on fee awards in cases in this Circuit and across the country.

### **Background**

10. The Complaint alleges that Defendant steel companies conspired to fix the price of steel products by engaging in coordinated reductions in output, thus driving supply down and increasing prices.

11. Defendants moved to dismiss on the ground that the complaint failed to set forth plausible allegations of an antitrust conspiracy as required under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

12. In June 2009 this Court denied the motion to dismiss, finding that the complaint sufficiently alleged facts plausibly suggesting an agreement to curtail production.

13. The Court bifurcated discovery and ordered the parties to focus on class certification discovery first. The Court then imposed a "test case" procedure where certain types of discovery could be sought from only two of the eight defendants in the first instance. After

plaintiffs satisfied the Court that the “test case” discovery had yielded fruit, then they were allowed to pursue class certification discovery against the remaining defendants.

14. Plaintiffs moved for class certification. Defendants vigorously opposed the motion and moved to exclude the testimony of two of Plaintiffs’ experts.

15. In March and April 2014 this Court held three days of hearings on Plaintiffs’ motion for class certification.

### **The Settlements**

16. Meanwhile, Plaintiffs began to negotiate settlements with individual Defendants. Those negotiations were hard-fought and adversarial.

17. In the Spring of 2014, Plaintiffs’ Counsel achieved “icebreaker” settlements with Commercial Metals Company, AK Steel Holding Corporation, and Gerdau Ameristeel Corporation. Soon thereafter, a larger defendant, ArcelorMittal, also settled, followed by United States Steel Corporation. The following table summarizes the settlements:

**Table 1: Settlements Now Before the Court**

Defendant(s)	Date of Agreement	Amount
Commercial Metals Company	March 2014	\$3,999,999
AK Steel Holding Corporation	April 2014	\$5,800,000
Gerdau Ameristeel Corporation	April 2014	\$6,100,000
ArcelorMittal S.A. and ArcelorMittal USA LLC	May 2014	\$90,000,000
United States Steel Corporation	July 2014	\$58,000,000
Total		\$163,899,999

18. Notably, these all-cash settlements do not allow for any reversion of unclaimed funds to the Defendants. Rather, the settlement amounts will be distributed pro rata to class members who file valid claims. Thus, the full pecuniary benefits of this settlement will accrue for the benefit of class members.

19. In addition to obtaining monetary relief for class members, these settlements require the Settling Defendants to assist Plaintiffs' Counsel in their prosecution of this case against the remaining Defendants by producing evidence relating to the merits, authenticating documents, and making certain witnesses available for interviews and depositions.

20. This Court has given preliminary approval to the Settlements and scheduled a final fairness hearing.

### **The Fee Request**

21. Plaintiffs' Counsel seeks a fee award equal to one-third (33.3%) of the settlement funds.

### **Analysis**

22. I recognize that it is the Court's responsibility to determine an appropriate counsel fee and that the role of an expert is necessarily limited. I offer the following opinions in the hope they may provide information that can assist the Court in carrying out this task.

23. Effective enforcement of the antitrust laws is essential to a market economy. Without legal protections for competition, diligently and vigorously enforced both by government and the private sector, producers would take unfair advantage of customers and the price system would fail to serve its fundamental purpose of facilitating the efficient distribution of goods and services. Accordingly, there is a strong public interest in incentivizing capable attorneys to act as "private attorneys-general" in policing against illegal anticompetitive behavior. In my opinion it is appropriate to take these public policies into account when evaluating Plaintiff Counsel's fee request.

24. Courts in this Circuit employ two methodologies to evaluate fee requests in class action settlements: the percentage-of-recovery method, which compares the fee request with the

benefit recovered for the class, and the lodestar method, which determines counsel's reasonable hours and hourly rate and adjusts this figure by a "multiplier" to account for special features of the litigation, most importantly the risk assumed by class counsel. In either case, the goal of the analysis is to mimic the rate that would be paid by the market for similar services. See *Americana Art China Co., Inc. v. Foxfire Printing and Packaging, Inc.* 743 F.3d 343, 346 (7<sup>th</sup> Cir. 2014). I will review counsel's fee request using both methodologies, beginning first with the percentage method.

25. In performing this analysis, I draw on empirical evidence on fee awards in settled class action cases. These data provide objective information about prevailing market norms and standards and are employed by courts around the country when evaluating fee petitions in class action cases. See *In re Heartland Payment Systems, Inc. Customer Data Sec. Breach Litigation*, 851 F.Supp.2d 1040, 1080 (S.D.Tex. 2012) (Rosenthal, J.).

#### **Percentage Method**

26. The percentage method is an excellent approach for calculating a counsel fee in cases where the benefit to class members can reasonably be quantified. Advantages of the percentage method include the following:

(a) It is consistent with private market arrangements for contingent fee litigation, which nearly always employ a percentage rather than a lodestar methodology.

(b) It is easy to calculate and does not require courts to don a "green visor" and make a painstaking audit of counsel's hours and hourly rate.

(c) It aligns counsel's incentives with those of the clients by giving attorneys a direct pecuniary interest in the outcome of the case that is precisely parallel to the interest of the clients.

(d) It encourages counsel to engage in efficient litigation tactics and discourages

excessive expenditures of attorney time.

27. Research on percentage fees in class action settlements, published in the late 1990s, identified basic patterns that remain valid today. A 1996 study by the National Economic Research Associates examined average and median fee awards for settled securities fraud cases. Average awards fell within a narrow range, from a low of 30.73% in the Fifth Circuit to a high of 32.78% in the Fourth Circuit. The average fee in the Seventh Circuit was 31.83% — very close to the 33.3% sought in the present case.

**Table 2: Plaintiffs' Attorneys Fees by Federal Circuit: NERA Data**

<b>Circuit</b>	<b>Number of Settlements</b>	<b>Average Attorney Fee as a Percentage of Settlement</b>
D.C.	2	31.67
First	26	30.99
Second	69	31.48
Third	58	32.00
Fourth	12	32.78
Fifth	26	30.73
Sixth	13	31.00
Seventh	18	31.83
Eighth	12	32.47
Ninth	155	32.57
Tenth	13	32.13
Eleventh	29	29.92
Total	433	31.84

Source: Denise N. Martin, Vinita M. Juneja, Todd S. Foster, and Frederick C. Dunbar, Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions? Table 12b (1996).

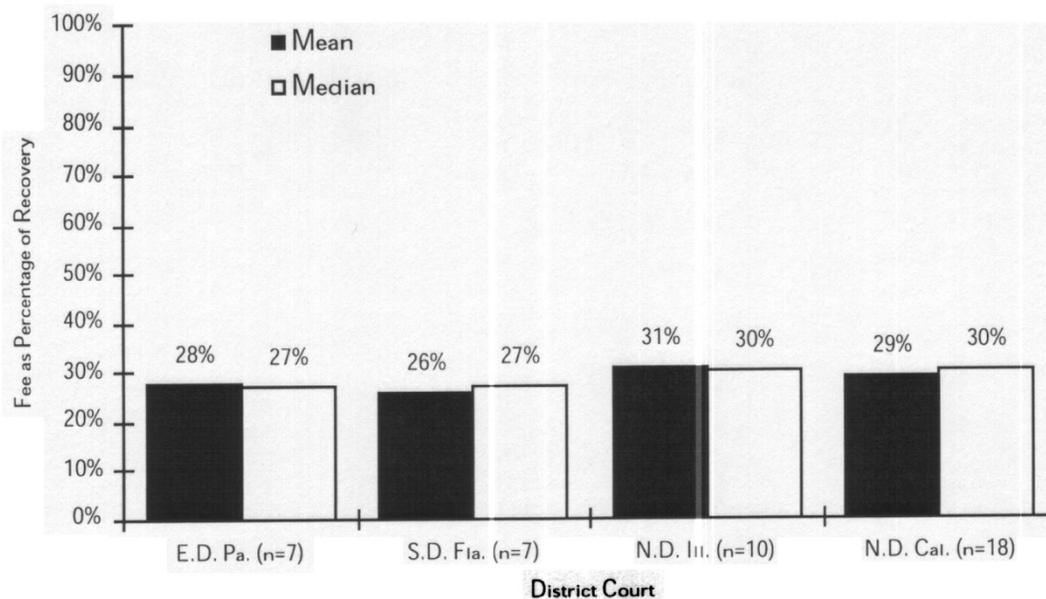
28. Researchers affiliated with NERA updated the 1996 study in 1999. The 1999 NERA update shows that, exclusive of expenses, attorneys' fee awards in securities class actions continued to cluster at between 31-33% of the common fund recovery. Table 3 shows this:

**Table 3: Fee Awards in Settled Securities Class Actions 1991-1999: NERA Data**

	1991	1992	1993	1994	1995	1996	1997	1998	Jun-99
Number of Settlements	48	79	90	101	104	104	98	80	29
Average Fee as a Percentage of Average Settlement	33%	27%	24%	34%	33%	31%	32%	31%	33%

Source: Todd S. Foster, Denise N. Martin, Vinita M. Juneja, Frederick C. Dunbar, Trends in Securities Litigation and the Impact of PSLRA, Figure 12 (June 1999).

29. A 1996 Federal Judicial Center study examined all class actions terminated in four federal district courts between July 1, 1992 and June 30, 1994. Thomas E. Willging, et al., *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules 4* (1996). Median fee awards ranged from 27% to 30%, and most awards were between 20% and 40% of the monetary settlement. Fee awards clustered at around 30 percent in all types of class action litigation in the four federal district courts, including the Northern District of Illinois (where the highest mean fees were reported):

**Table 4: Percentage Fees in Four Federal District Courts****Figure 72: Mean and Median Fee-Recovery Rates in Certified Cases Using Percentage of Recovery Method and Providing Net Monetary Distribution to Class**

Note: "Net monetary distribution" is net of attorneys' fees and administrative expenses.

Source: Thomas E. Willging, Laural L. Hooper & Robert J. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules 151 (1996)

30. During the decade of the 2000s, researchers expanded their investigations to include substantially larger data sets. The basic findings were entirely consistent with the studies described above. One large-scale study covering a ten year period in courts around the country is found in the March-April 2003 edition of *Class Action Reports* (CAR). The following table reports the CAR data broken down by type of case:

**Table 5: Fee-Award Percent Summary by Case Category**

<b>Category</b>	<b>Mean Fee %</b>	<b>Median Fee %</b>	<b>Number</b>
Antitrust	26.8	28.4	31
Consumer	24.3	25.0	48
Civil rights	23.5	25.5	4
Derivative	33.3	33.3	1
Employment	25.5	25.7	17
Environmental	30.5	30.5	2
Government regulation	29.7	29.7	1
Labor/wage/pension	22.9	26.4	30
Mass tort	17.6	17.0	8
Securities	27.9	30.0	483
Taxpayer	3.5	3.5	1
Utilities	20.3	20.3	2
Social welfare/entitlements	16.9	16.9	2
Total	27.0	30.0	630

Sources: Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 *Journal of Empirical Legal Studies* 51(2004), analyzing data from Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr., Attorney Fee Awards in Common Fund Class Actions, 24 *Class Action Rep.* 169 (2003).

This table discloses that the mean fee across the range of cases in the study was 27.0% and the median fee was 30.0%.

31. During the decade of the 2000s academic researchers also published analyses of large-scale data sets of class action attorneys' fees. Eisenberg and Miller studied fees in all published class action settlements between 1993 and 2008. They found that the mean percentage

fee in federal cases was 24% and the median fee was 25%.<sup>5</sup>

32. Eisenberg and Miller's data were broad, in the sense that they covered all reported cases over a fifteen year period. Fitzpatrick, in contrast, examined all federal class action settlements in 2006-2007, including non-reported as well as reported cases. He found that the mean attorneys' fee was 25.7% and the median fee was 25.0%.<sup>6</sup>

33. I recently updated the Eisenberg-Miller study of attorneys' fees in class action settlements for the years 2009-2013, inclusive, analyzing 458 cases where the percentage fee could be determined. This study discloses that the mean fee award was 27% and the median was 29%. For courts in the Seventh Circuit, the mean fee award was 29% and the median was 31%:

**Table 6: Plaintiffs' Attorneys Fees by Federal Circuit: 2009-2013**

Circuit	Mean	Median	Number of Cases
1st	.23	.23	8
2nd	.28	.30	116
3rd	.27	.29	46
4th	.29	.32	22
5th	.26	.28	12
6th	.26	.26	23
7th	.29	.31	14
8th	.25	.25	20
9th	.27	.28	144
10th	.24	.25	18
11th	.22	.22	14
D.C.	.30	.33	6
Federal	.27	.26	6
Total	.27	.29	449

Source: Westlaw, LexisNexis, PACER

<sup>5</sup> Theodore Eisenberg and Geoffrey Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008, 7 Journal of Empirical Legal Studies 248, 259 table 4 (2010).

<sup>6</sup> Brian Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 J. Empirical L. Stud. 811 (2010).

34. To summarize the data, most class action fee awards range between 20% and 40% of the class recovery, with average/median fees clustering between 25-30% nationwide and the most recent data indicating average/median fees of approximately 30% in the Seventh Circuit.

35. It is the very nature of averages, of course, that some values will be above the mean and some will be below, and several features of the present case militate in favor of a one third fee that slightly exceeds the average fee award. This was not an average case. It was complicated, risky, did not settle early, and counsel invested more than fifty thousand hours and five million dollars over six years before achieving these settlements. A one third fee is fully warranted in these circumstances.

36. First, the extent of counsel's risk is an important factor explaining variation in percentage fee awards. Eisenberg and Miller find in a survey of all published class action settlements between 1993 and 2008 that high-risk cases generated higher fees than low-risk cases in 80% of the case categories they examined.<sup>7</sup> Regression analysis revealed that high-risk cases were significantly associated with higher fee awards as a percentage of the recovery in every specification of the model.

37. Counsel in this litigation undertook significantly more risk than in many class action cases. For example:

(a) Unlike many antitrust class actions, this case did not grow out of a government investigation or government enforcement proceeding. Counsel had to investigate the case and develop legal and factual theories of recovery from the ground up.

(b) It is in the nature of an antitrust conspiracy that the conduct occurs in the shadows. Sophisticated parties are careful to disguise their illegal activities, hide their tracks,

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<sup>7</sup> Theodore Eisenberg and Geoffrey Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008, 7 Journal of Empirical Legal Studies 248, 265 Table 8 (2010).

and develop benign explanations for potential acts of misconduct that do come to light. The secrecy of the Defendants' actions thus created a risk that Plaintiffs' Counsel would never be able to establish facts sufficient to prove their allegations, even if an antitrust conspiracy in fact occurred.

(c) This case was costly, both in terms of Counsel's hours and in expenses for expert witnesses and other services. This is due in part to the evolving standard for certifying a Rule 23(b)(3) class. Counsel reasonably chose to commission several million dollars worth of econometric modeling and other expert evidence as one way to demonstrate commonality and predominance. Given the scope of the case and uncertainty about the legal standard, counsel acted prudently in my opinion. Counsel incurred all these expenses in advance, with no assurance of repayment at the end of the day.

(d) Defendants argued that the allegations in the complaint did not support the "plausible" inference of conspiracy required by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). They advanced numerous arguments to the effect that it would have been impossible to implement a supply-restriction conspiracy given the nature of the steel industry, and they painted the complaint as fundamentally flawed. Though Plaintiffs prevailed (and continue to prevail) over such arguments, when undertaking the case there surely was a risk of a less favorable outcome.

(e) Discovery also posed significant risks for Plaintiffs' Counsel. Cases of this nature are necessarily costly and time-consuming, and the costs and risks were amplified here by the number of defendants (eight), the volume of documents produced (over 3.5 million pages to date), the length of the class certification schedule, and the risks borne by Plaintiffs in connection with Defendants' proposal to bifurcate (and hence substantially limit) discovery in advance of

class certification.

(f) Further, although the Court's "test case" approach to discovery served a valuable purpose, it created even further risks and costs for Class Counsel. It lengthened the discovery period, and therefore extended the time to resolution. And it imposed a hurdle because if Class Counsel could not persuade the Court that they had found useful evidence in the files of the executives of the two sampled Defendants, they might not be permitted to look at the files of the executives of the other Defendants.

(g) Class certification was an important risk factor. Plaintiffs alleged an industry-wide conspiracy involving multiple Defendants and steel products. Defendants argued that Plaintiffs' claims involved a plethora of individual issues that made the case unmanageable on a class basis. Defendants further challenged the adequacy and typicality of the named plaintiffs, insisted that the class was not ascertainable, and argued that, given the substantial size of some individual claims, class treatment was not superior to other available means for resolving the controversy. Defendants also filed a *Daubert* challenge to two of Plaintiffs' experts and proffered the testimony of respected experts of their own. Although in my opinion Plaintiffs' arguments in favor of class certification were persuasive, Defendants and their capable counsel argued the issues well.

(h) Finally, this is not a case where class counsel settled for a substantial amount after incurring only a small number of hours. This matter has been pending for more than six years, far longer than the usual class action case, and discovery was exceptionally complex. The burden of litigating this case is evident in the hours expended on the matter so far – more than 53,000 – as well as counsel's lodestar (number of hours times hourly rates) of more than \$27.7 million. The economies of scale that cause courts to reduce the percentage fee in some large

cases were not present here.

38. Given these risks, as well as the other *ex ante* risks of litigation on the merits (summary judgment, *Daubert*, trial, appeal, etc.), a fee percentage on the high end of the usual range is in my opinion warranted.

39. Nor is it appropriate, in my opinion, to reduce the percentage fee award based on the size of the settlement fund. Some courts and commentators have opined that the percentage of recovery should decline as settlements get larger so as to avoid awarding potential windfall fees. Others have noted that reducing percentage fees as cases become large creates undesirable incentives for class counsel, including incentives not to push for the largest possible settlement and also to potentially settle earlier in the life of the case. The empirical data yield ambiguous results regarding whether and in what cases courts reduce fee awards based on settlement size,<sup>8</sup> and the Seventh Circuit, for its part, has held that district courts should avoid imposing a “megafund” rule under which percentage fee awards are necessarily reduced in big cases. *In re Synthroid Marketing Litig.*, 264 F.3d 712 (7<sup>th</sup> Cir. 2001) (rejecting percentage cap on fees in “megafund” cases because class counsel should be awarded market rates).

40. Regardless of the wisdom of scaling fees in certain large cases (*e.g.*, where the government did the heavy lifting and/or class counsel bore little risk and settled early), a one third fee is fully justified here for the reasons explained above – where Class Counsel developed the claims from the ground up, bore the risk, invested more than thirty million dollars in

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<sup>8</sup> The NERA study mentioned above found virtually no difference in percentage fees as between large and small settlements. See Denise N. Martin, Vinita M. Juneja, Todd S. Foster, and Frederick C. Dunbar, Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions? Table 9 (1996). Other studies find that average percentage fee awards tend to fall as recoveries rise. See Brian Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 *Journal of Empirical Legal Studies* 811, table 10 (2010); Theodore Eisenberg and Geoffrey Miller, Attorneys’ Fees and Expenses in Class Action Settlements: 1993-2008, 7 *Journal of Empirical Legal Studies* 248, 265 table 7 (2010). My update on fee awards through 2013 yields similar results.

professional time and expenses, and obtained a favorable all-cash settlement fund for the class. A one third percentage fee – which is only slightly higher than the average class action fee award and is consistent with many fee awards in similar antitrust litigation – is in my opinion reasonable and appropriate under the circumstances.

### **Lodestar Method**

41. I now consider the fee request using the lodestar methodology, which is appropriate as a cross-check to the calculation of a reasonable attorneys' fee using the percentage method. The lodestar analysis proceeds in three steps: (a) determining the reasonable number of hours; (b) determining the reasonable hourly rate; and (c) determining the lodestar multiplier.

### **Hours**

42. I am informed by counsel that plaintiffs' firms expended 53,343 hours in conducting this litigation.

43. While I have not attempted to audit counsel's activities at the level of evaluating the appropriate time or staffing levels for particular tasks, I have considered the reported hours in light of the circumstances of this case and in comparison with other class action settlements.

44. This case was unusually demanding on attorney time. To prove the claim of a covert agreement to fix prices, counsel needed to engage in a searching investigation of the Defendants' conduct – not only discovering and analyzing actions and comments made in meetings with other Defendants, but also probing into the available internal communications within each of the Defendant firms. The analysis was made all the more challenging by the fact that Defendants took pains to disguise possible evidence of anticompetitive behavior and sought to provide a plausible cover for potentially wrongful conduct.

45. It was only through the persistent efforts of counsel that the factual record of this

case could be advanced to the point where a settlement could be informed by reasonable information about the Defendants' conduct and the impact of that conduct on market prices. In light of these circumstances, it is my judgment that the hours expended by counsel were reasonable.

46. I have also considered the allocation of work and responsibility in this case. Counsel's records reflect an appropriate allocation of responsibility as between senior and junior attorneys, with a view towards litigating this case in an efficient and effective manner.

#### **Hourly Rates**

47. I now turn to an evaluation of the appropriate hourly rates. These rates are determined, under the lodestar analysis, by comparing counsel's rates with those of attorneys in the relevant market who possess similar background, experience and qualifications. In my judgment the relevant market is the market for trial attorneys practicing in the field of complex litigation.

48. In evaluating the reasonableness of counsel's hourly rates, I have examined the lodestar statement of co-lead counsel Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC. This firm reports current hourly rates ranging from \$600-\$1,100 per hour for partners working on the case. Fewer than 30 hours were billed by the most expensive senior partner. The bulk of the partner work was done by experienced partners billing at lesser rates. Associate rates range from \$395-\$525/hour. Paralegals are billed at \$180-\$250 per hour. I am informed that the Kellogg Huber firm has a substantial practice of serving clients on a billable hour basis and that these are the same rates it charges its paying clients.

49. I have also examined the lodestar statement of co-lead counsel Fine, Kaplan and Black, R.P.C. This firm reports current hourly rates ranging from \$425-\$750 per hour for

attorneys. Fewer than 8% of the firm's hours in the case were billed by the firm's most expensive senior partners. The bulk of the work was done by experienced partners and senior associates billing at lesser rates. Senior paralegals are billed at \$250 per hour. I am informed that the Fine Kaplan firm also serves clients on a billable hour basis and that these are the same rates it charges those paying clients.

50. A variety of sources of information are available to evaluate the reasonableness of these rates. Publicly available data records billing rates for defense firms involved in the present case. In *In re Dynegy Holdings, LLC, et al., Debtors*, No. 11-38111 (CGM), a bankruptcy case, Sidley & Austin reported billing rates of \$625-\$1,050 and \$340-\$950 for non-partners. A recent survey of law firm billing rates disclosed median partner rates of \$960 for Cleary Gottlieb and \$900 for Cadwalader, Wickersham & Taft.<sup>9</sup>

51. On the plaintiffs' side, comparable billing rates can be gleaned from a review of awards in prior class action settlements in securities and shareholders derivative litigation. The following table reports on hourly rates approved in cases in the Southern District of New York. Although these data are not comprehensive or systematically compiled, I believe they reflect reasonable market rates for qualified plaintiffs' counsel in class action cases nationwide:

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<sup>9</sup> Amy Kolz, "Bankruptcy Rates Top \$1,000 Mark In 2008-09." Weblog. The Am Law Daily, 12 Dec 2000, available at <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202436371636>.

**Table 7: Plaintiffs' Class Action Attorney Billing Rates**

<b>Case Name</b>	<b>Plaintiff Firm</b>	<b>Citation</b>	<b>Non-Partner Attorneys' Fee Range</b>	<b>Partners' Fee Range</b>
<i>In re Bear Stearns Companies, Inc. Securities, Derivative and ERISA Litig.</i> , No. 08-cv-2793 (RWS)	Berman DeValerio	(S.D.N.Y.) (Aug. 2012) (Dkt. No. 302-4)	\$275 - \$780	\$595 - \$780
<i>In re Bear Stearns Companies, Inc. Securities, Derivative and ERISA Litig.</i> , No. 08-cv-2793 (RWS)	Labaton Sucharow LLP	(S.D.N.Y.) (Aug. 2012) (Dkt. No. 302-5)	\$275 - \$700	\$725 - \$975
<i>Board of Trustees of the AFTRA Retirement Fund, et al., v. JPMorgan Chase Bank, N.A.</i> , No. 1:09-cv-00686 (SAS)(DCF)	Kessler Topaz Meltzer & Check LLP	(S.D.N.Y.) (May 2012) (Dkt. No. 187-1)	\$275 - \$575	\$625 - \$735
<i>In re Wachovia Equity Securities Litigation</i> , No. 08 Civ. 6171 (RJS)	Kirby McInerney LLP	(S.D.N.Y.) (Apr. 2012) (Dkt. No. 106-5)	\$280 - \$600	\$600 - \$800
<i>In re Lehman Brothers Securities and Erisa Litigation</i> , No. 1:08-cv-05523 (LAK)(GWG)	Bernstein Litowitz & Grossman LLP	(S.D.N.Y.) (Mar. 2012) (Dkt. No. 343-12)	\$310 - \$675	\$650 - \$975
<i>In re Lehman Brothers Securities and Erisa Litigation</i> , No. 1:08-cv-05523 (LAK)(GWG)	Kessler Topaz Meltzer & Check LLP	(S.D.N.Y.) (Mar. 2012) (Dkt. No. 343-13)	\$275 - \$500	\$600 - \$725
<i>In re Lehman Brothers Securities and Erisa Litigation</i> , No. 1:08-cv-05523 (LAK)(GWG)	Labaton Sucharow	(S.D.N.Y.) (Mar. 2012) (Dkt. No. 343-17)	\$275 - \$650	\$750 - \$975
<i>Rubin v. MF Global, Ltd., et al.</i> , No. 08 Civ. 2233 (VM)	Barrack Rodos & Bacine	(S.D.N.Y.) (Nov. 2011) (Dkt. No. 198)	\$335 - \$455	\$560 - \$740
<i>Rubin v. MF Global, Ltd., et al.</i> , No. 08 Civ. 2233 (VM)	Cohen Milstein Sellers & Toll PLLC	(S.D.N.Y.) (Nov. 2011) (Dkt. No. 198)	\$230 - \$615	\$700 - \$795
<i>In re Wachovia Preferred Sec. and Bond/Notes Litigation</i> , No. 09 Civ. 6351 (RJS)	Bernstein Litowitz Berger & Grossman LLP	(S.D.N.Y.) (Oct. 2011) (Dkt. No. 148-7)	\$340 - \$675	\$650 - \$975

<i>In re Wachovia Preferred Sec. and Bond/Notes Litigation</i> , No. 09 Civ. 6351 (RJS)	Kessler Topaz Meltzer & Check, LLP	(S.D.N.Y.) (Oct. 2011) (Dkt. No. 148-8)	\$375 - \$550	\$600 - \$725
<i>In re Wachovia Preferred Sec. and Bond/Notes Litigation</i> , No. 09 Civ. 6351 (RJS)	Robbins Geller Rudman & Dowd LLP	(S.D.N.Y.) (Oct. 2011) (Dkt. No. 148-9)	\$265 - \$640	\$565 - \$775
<i>Cornwell et al. v. Credit Suisse Group et al.</i> , No. 08 Civ. 03758 (VM)	Robbins Geller Rudman & Dowd LLP	(S.D.N.Y.) (July 2011) (Dkt. No. 117)	\$360 - \$670	\$565 - \$795
<i>Lapin v. Goldman Sachs &amp; Co.</i> , No. 04 Civ. 2236 (RJS)	Kirby McInerney LLP	(S.D.N.Y.) (Nov. 2010) (Dkt. No. 129)	\$275 - \$600	\$600 - \$900
<i>Lapin v. Goldman Sachs &amp; Co.</i> , No. 04 Civ. 2236 (RJS)	Glancy Binkow & Goldberg LLP	(S.D.N.Y.) (Nov. 2010) (Dkt. No. 129)	\$325 - \$575	\$625 - \$725
<i>In re MBIA, Inc., Sec. Litigation</i> , No. 08 Civ. 0264 (KMK)	Bernstein Litowitz Berger & Grossman LLP	(S.D.N.Y.) (Dec. 2011) (Dkt. No. 92)	\$375 - \$675	\$700 - \$975
<i>In re Refco, Inc. Securities Litigation</i> , No. 05 Civ. 08626 (JSR)	Grant & Eisenhofer P.A.	(S.D.N.Y.) (Sept. 2010) (Dkt. No. 738-5)	\$250 - \$620	\$650 - \$845
<i>In re Merrill Lynch &amp; Co. Inc., Securities, Derivatives and ERISA Litigation</i> , No. 07-cv-09633 (LBS)(AJP)(DFE)	Kaplan Fox & Kilsheimer LLP	(S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-4)	\$255 - \$500	\$550 - \$775
<i>In re Merrill Lynch &amp; Co. Inc., Securities, Derivatives and ERISA Litigation</i> , No. 07-cv-09633(LBS)(AJP)(DFE)	Barrack, Rodos & Bacine	(S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-5)	\$290 - \$450	\$525 - \$695
<i>In re Merrill Lynch &amp; Co. Inc., Securities, Derivatives and ERISA Litigation</i> , No. 07-cv-09633(LBS)(AJP)(DFE)	Berger & Montague, P.C.	(S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-6)	\$295 - \$440	\$460 - \$725
<i>In re Merrill Lynch &amp; Co. Inc., Securities, Derivatives and ERISA Litigation</i> , No. 07-cv-09633(LBS)(AJP)(DFE)	Pomerantz Haudek Grossman & Gross LLP	(S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-7)	\$385 - \$550	\$525 - \$830
<i>In re Merrill Lynch &amp; Co.</i>	Murray, Frank Sailer	(S.D.N.Y.) (Jun.	\$350 - \$550	

<i>Inc., Securities, Derivatives and ERISA Litigation, No. 07-cv-09633(LBS)(AJP)(DFE)</i>	LLP	2009) (Dkt. No. 246-8)		\$675 - \$750
<i>In re Telik, Inc. Securities Litigation, No. 07 Civ. 04819 (CM)</i>	Bernstein Liebhard & Lifshitz, LLP	(S.D.N.Y.) (Aug. 2008) (Dkt. No. 72)	\$350 - \$550	\$700 - \$750

Sources: Westlaw, LexisNexis

52. Based on this analysis, it is my opinion that the requested lodestar is within the range of reason when judged in the light of lodestar fees awarded in similar cases.

### Multiplier

53. I now turn to an evaluation of an appropriate risk multiplier. Using counsel's reported lodestar of \$27,690,030.10,<sup>10</sup> the multiplier associated with the fee request is 1.97. The question is whether this multiplier is appropriate under the circumstances.

54. It is obvious that a multiplier is required if counsel are to have adequate incentives to bring litigation of this sort. The question is what the multiplier should be.

55. Substantial multipliers are commonly observed in federal antitrust class actions. See, e.g., *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, \*2 (E.D. Tenn. June 30, 2014) (awarding multiplier of between 2.1 and 2.5) (collecting cases); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 750 (E.D. Pa. 2013) ("multiples ranging from one to four are frequently awarded" and support 2.99 multiplier award); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 1365900, \*8 (N.D. Cal. April 3, 2013) (awarding multiplier of 2.4-2.6); *In re Prescription Drugs Antitrust Litig.*, 2000 WL 204112 (N.D. Ill. Feb. 10, 2000) (2.06 multiplier); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) ("multipliers of between 3 and 4.5 have become common").

<sup>10</sup> This lodestar estimate is based on current as opposed to historical hourly rates – an appropriate means for adjusting for the substantial loss of the time value of money in this action, which has been ongoing for more than six years. See *Smith v. Village of Maywood*, 17 F.3d 219, 221 (7<sup>th</sup> Cir. 1994).

56. Information about class action multipliers is contained in Eisenberg and Miller's study of attorneys' fees in all publicly reported class action cases from 1993 to 2008. As shown in the following table, the mean multiplier across all federal circuits was 1.81 and the mean for the Seventh Circuit was 1.85:

**Table 8: Multipliers Awarded in Class Action Settlements, 1993-2008**

<b>Circuit</b>	<b>Mean Multiplier</b>	<b>Number of Cases</b>
1 <sup>st</sup>	2.10	15
2 <sup>nd</sup>	1.58	97
3 <sup>rd</sup>	2.01	87
4 <sup>th</sup>	2.43	7
5 <sup>th</sup>	2.07	15
6 <sup>th</sup>	1.97	22
7 <sup>th</sup>	1.85	16
8 <sup>th</sup>	1.20	14
9 <sup>th</sup>	1.54	50
10 <sup>th</sup>	1.91	14
11 <sup>th</sup>	1.19	19
D.C.	2.23	11
Federal	1.54	1
Total	1.81	368

Source: Theodore Eisenberg and Geoffrey Miller, Attorney Fees and Expenses in Class Action Settlements: 1993-2008, 7 Journal of Empirical Legal Studies 248, 272 Table 14 (2010).

57. My update on this study for the years 2009-2013, inclusive, found that the mean lodestar for the data set as a whole was 1.51; for the Seventh Circuit, it was 1.76:

**Table 9: Multipliers Awarded in Class Action Settlements, 2009-2013**

<b>Circuit</b>	<b>Mean Multiplier</b>	<b>Number of Cases</b>
1 <sup>st</sup>	2.52	5
2 <sup>nd</sup>	1.95	74
3 <sup>rd</sup>	1.45	76
4 <sup>th</sup>	1.40	11
5 <sup>th</sup>	1.75	6
6 <sup>th</sup>	1.23	14
7 <sup>th</sup>	1.76	7
8 <sup>th</sup>	1.56	16
9 <sup>th</sup>	1.30	93
10 <sup>th</sup>	1.23	8
11 <sup>th</sup>	0.57	4
D.C.	2.30	2
Federal	1.04	2
Total	1.51	318

Source: Westlaw, LexisNexis, PACER

58. Empirical research discloses a significant positive relationship between multiplier and the class recovery: multipliers get larger as settlement size increases. The relationship between multiplier and recovery is set forth in the following table, from Eisenberg and Miller's study of all reported class action settlements between 1993 and 2008:<sup>11</sup>

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<sup>11</sup> Theodore Eisenberg and Geoffrey Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008, 7 Journal of Empirical Legal Studies 248 (2010).

**Table 10: Multipliers Awarded in Class Action Settlements by Class Recovery, 1993-2008**

<b>Recovery (\$ millions)</b>	<b>Mean</b>	<b>Median</b>	<b>Number of Cases</b>
<=1.1	0.88	0.74	33
>1.1 <=2.8	0.95	0.77	40
>2.8 <=5.3	1.44	1.25	32
>5.3 <=8.7	1.59	1.25	34
>8.7 <=14.3	1.49	1.45	37
>14.3 <=22.8	1.68	1.51	38
>22.8 <=38.3	1.83	1.44	33
>38.3 <=69.6	1.98	1.75	38
>69.6 <=175.5	2.70	2.09	43
>175.5	3.18	2.60	40

Source: Theodore Eisenberg and Geoffrey Miller, Attorney Fees and Expenses in Class Action Settlements: 1993-2008, 7 Journal of Empirical Legal Studies 248, 274 Table 15 (2010)

For cases such as the present litigation, with recoveries in the range of \$69.6 million to \$175.5 million, the mean multiplier was 2.70 – well above the mean of 1.81 observed for cases generally in this data set and also well above the 1.97 sought in the present action.

59. My follow-up study of all class action settlements in published cases from 2009 to 2013 confirms that multiplier awards rise with class recovery:

**Table 11: Multipliers Awarded in Class Action Settlements by Class Recovery, 2009-2013**

<b>Class recovery (millions)</b>	<b>Number of cases</b>	<b>Mean</b>	<b>Median</b>
.03-.40	30	0.86	0.66
.40-.85	29	0.81	0.76
.85-1.9	29	1.38	1.21
1.9-3.0	29	1.22	1.05
3.0-5.0	29	1.34	1.00
5.0-8.5	29	1.52	1.13
8.5-16.5	29	1.78	1.66
16.5-27.5	29	1.39	1.18
27.5-88.9	29	2.29	1.79
> 88.9	29	2.51	1.50

Sources: LexisNexis, Westlaw, PACER

For cases such as the present litigation with recoveries in excess of \$88.9 million, the mean multiplier was 2.51 – again higher than the 1.97 multiplier sought in this action.

60. Eisenberg and Miller’s 2008 study also reveals that lodestar multipliers are significantly higher in antitrust class actions than in other types of class action. As shown in the following table, the mean multiplier in antitrust cases was 2.24 as compared with a mean of 1.81 for class actions generally:

**Table 12: Multipliers Awarded in Class Action Settlements, 1993-2008, by Case Type**

<b>Case Category</b>	<b>Mean Multiplier</b>	<b>Number of Cases</b>
Antitrust	2.24	38
Civil Rights	1.99	11
Consumer	1.82	60
Corporate	1.94	7
Employment	1.24	21
ERISA	1.58	29
Securities	1.75	177
Tort	1.83	11
Other	2.35	14
Total	1.81	368

Source: Theodore Eisenberg and Geoffrey Miller, Attorney Fees and Expenses in Class Action Settlements: 1993-2008, 7 Journal of Empirical Legal Studies 248, 272 Table 14 (2010).

61. It is evident that the requested 1.97 multiplier here is consistent with, and in fact below, multipliers awarded in similar cases. Accordingly, it is my opinion that judged in light of similar cases, the fee request is appropriate when analyzed under the lodestar method.

**CONCLUSION**

Based on the empirical evidence, it is my opinion that the requested fee award of 33.3% of the settlement fund is comfortably within the range of common outcomes, and reasonable in light of prevailing market rates, as informed by data on fee awards in cases in this Circuit and across the country.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 1st day of October, 2014, at New York, New York.

A handwritten signature in black ink, appearing to read 'G. Miller', written over a horizontal line.

Geoffrey P. Miller

# **Exhibit 10**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

STANDARD IRON WORKS, on behalf of  
itself and all others similarly situated,

Plaintiffs,

v.

ARCELORMITTAL; ARCELORMITTAL  
USA, INC.; UNITED STATES STEEL  
CORPORATION; NUCOR  
CORPORATION; GERDAU  
AMERISTEEL CORPORATION; STEEL  
DYNAMICS, INC.; AK STEEL HOLDING  
CORPORATION; SSAB SWEDISH  
STEEL CORPORATION; COMMERCIAL  
METALS, INC.,

Defendants.

Case No. 08 C 5214

Judge James B. Zagel

**ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION  
EXPENSES TO CLASS COUNSEL FROM THE COMMON SETTLEMENT FUNDS,  
AND APPROVING PLAN OF ALLOCATION AND DISTRIBUTION**

The Court, having considered Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses and the Memorandum of Law and exhibits in support thereof (Dkt. No. 519); having held hearings on October 17, 2014 and October 21, 2014 concerning final settlement approval, attorneys' fees and other related issues; and having considered all of the submissions and arguments with respect thereto, pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure it is hereby ORDERED, ADJUDGED AND DECREED that Class Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses is GRANTED as follows:

1. Settlement Class Counsel have moved for attorneys' fees and reimbursement of litigation expenses out of the total common settlement funds in this litigation. As a result of the Settlements with ArcelorMittal and U. S. Steel, and prior settlements with Defendants Commercial Metals, AK Steel, and Gerdau Ameristeel, Class Counsel has secured a total common fund recovery of \$163.9 million for the benefit of the Settlement Class.

2. After two appropriate notices to the Settlement Class of their intention to seek up to one-third of the total common settlement fund as attorneys' fees and to seek reimbursement of litigation expenses, and after a third notice to the Class providing a third opportunity to object to Class Counsel's motion for attorneys' fees after that motion was filed, and upon consideration of the motion and all related submissions and argument, and the response of the Settlement Class thereto; now therefore pursuant to Rules 23(h) and 54(d) of the Federal Rules of Civil Procedure, this Court awards Settlement Class Counsel 33% of the total Settlement Fund (*i.e.*, 33% of the sum of all five settlements obtained to date) as a fair and reasonable attorneys' fee.

3. The Court finds that a 33% fee comports with the prevailing market rate for legal services of similar quality in similar cases. The Court rests this conclusion on, *inter alia*, data provided by Class Counsel concerning market rates; the Court's consideration of fee awards in similar complex litigation, including many recent antitrust class actions in which 33% fees were awarded for similar work; the nature and complexity of this particular litigation; the substantial risks of non-recovery borne by Class Counsel in prosecuting this matter on a purely contingent basis while advancing all litigation costs; the amount and quality of Class Counsel's work; and the results obtained on behalf of the Class.

4. Class Counsel initiated and developed this case with no assistance from any prior government investigation or prosecution, and handled the matter effectively and without

compensation through more than six years of hard-fought litigation. The issues were risky and difficult, and Class Counsel's ultimate success in recovering \$163.9 million for the Class—payable promptly in cash—supports the requested fee award.

5. A lodestar “cross check” further supports a 33% fee award. Class Counsel devoted more than \$27.7 million in professional time at current billing rates (or approximately \$23.6 million at historical rates) to litigating this case. The work involved, *inter alia*, extensive pre-complaint investigation; motion to dismiss and case management briefing; litigating numerous discovery issues with all eight Defendants; reviewing over 3.5 million pages of documents produced in class certification discovery; collecting, reviewing and producing documents from the five class representatives; preparing for and taking the depositions of defendants' expert and lay witnesses; preparing for and defending the depositions of the class representatives; preparing for and conducting a 3-day class certification hearing and numerous other hearings, arguments and conferences over the past six years; preparing thousands of pages of class certification, *Daubert* and expert submissions; and much more. All of this work led directly to the creation of the common Settlement Fund.

6. The Court finds that Class Counsel performed their work reasonably and efficiently, that their billing rates are appropriate and consistent with market rates for attorneys of similar skill doing similar work, and that the lodestar totals are reasonable.

7. Based on current billing rates, the requested lodestar “multiplier” is approximately 1.97, which the Court finds is well within the range of reasonable multipliers awarded in similar contingent cases. The requested multiplier is further supported by the fact that Class Counsel bore all the risk of litigating this complex case (including millions of dollars in litigation expenses) with no guarantee of reimbursement. Having shouldered these risks, and

having achieved outstanding results for the Class, Class Counsel have earned their requested multiplier.

8. The reaction of the Class supports the requested fee award. The Settlement Class in this case includes approximately 5,300 direct purchasers, many of which are sophisticated business entities. The absence of objections indicates that the fee is fair and reasonable and consistent with prevailing market rates.

9. The Court directs that Co-Lead Counsel allocate the fee award among co-counsel in a reasonable manner consistent with Co-Lead Counsel's assessment of each firm's contribution to the prosecution of the case.

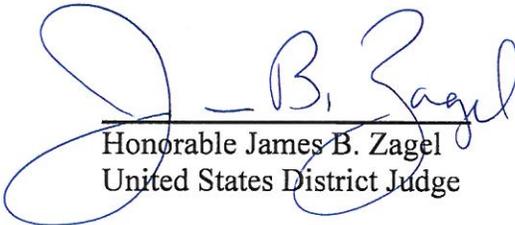
10. Class Counsel also requests reimbursement for \$406,850.08 in expenses they have advanced in the prosecution of this lawsuit. The Court grants that request and finds the expenses to be fair and reasonably incurred to achieve the benefits to the Settlement Class obtained in the Settlement, as well as the continued litigation of this Action against non-settling Defendants.

11. After deducting Court-approved attorneys' fees and expenses (including the previously approved costs of notice and settlement administration), the balance of the common settlement funds shall be distributed to Class members in accordance with Plaintiffs' proposed Plan of Allocation and Distribution, attached hereto as Exhibit 1. The Court finds that the Plan of Allocation and Distribution is fair, reasonable and adequate, and the Court therefore approves the proposed Plan of Allocation and Distribution as submitted. After final approval of the Settlements and entry of this order awarding attorneys' fees and expenses, the claims administrator (Garden City Group) will mail pre-printed claim forms to all Class members identified as direct purchasers in Defendants' transaction data. The pre-printed claim forms shall be in a format substantially similar to the proposed claim form contained in Exhibit 1. Class members will be asked to verify the accuracy of certain purchase information on the pre-printed claim forms and return those forms to the

claims administrator, and they will be given an opportunity to submit additional or corrective information if they wish. Following expiration of the deadline for the return of claim forms, and after consideration of any supplemental information submitted by Class members, the claims administrator will calculate each claiming Class member's *pro rata* share of the Settlement Funds, net of then-due and estimated future settlement administration costs. Class Counsel will supervise the claims process, and Class Counsel will file a motion to update the Court on the claims process and to request approval of the final schedule of distributions prior to any checks being mailed to the Class.

WHEREFORE the Court grants an attorneys' fee award of 33% of the total common settlement funds (*i.e.*, 33% of \$163.9 million, or a total fee of \$54,087,000), authorizes Co-Lead Counsel to allocate the fee award among co-counsel at Co-Lead Counsel's discretion, awards Class Counsel reimbursement of their requested "out of pocket" litigation costs and expenses from the Settlement funds in the amount of \$406,850.08 (in addition to the reimbursement of \$5,064,908.97 in litigation expenses approved in connection with the earlier Settlements), and approves the proposed Plan of Allocation and Distribution for the Settlement funds.

SO ORDERED this the 22<sup>nd</sup> day of October, 2014.

  
Honorable James B. Zagel  
United States District Judge

# **Exhibit 11**

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Co-Lead Counsel

Additional Counsel for Erie

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

18 \_\_\_\_\_ )  
19 )  
20 **In re: BROCADE SECURITIES** )  
21 **LITIGATION** )  
22 )  
23 )  
24 )  
25 )  
26 \_\_\_\_\_ )

Consolidated Case No.: 3:05-CV-02042-CRB

**FINAL ORDER AND JUDGMENT**

1 WHEREAS, a consolidated class action is pending in this Court captioned: *In re: Brocade*  
2 *Securities Litigation*, Consolidated Case No. 3:05-CV-02042-CRB (the “Action”);

3 WHEREAS, the Court previously certified the Class (as defined herein) in this Action by  
4 Order dated October 12, 2007, over the opposition of defendants Brocade Communications Systems,  
5 Inc. (“Brocade” or the “Company”) and Gregory Reyes, Antonio Canova, Larry Sonsini, Seth  
6 Neiman, and Neal Dempsey (collectively, “Individual Defendants”);

7 WHEREAS, on November 18, 2008, the Court preliminarily certified the same Class for  
8 purposes of effectuating the settlement among Lead Plaintiff and Class Representative, Arkansas  
9 Public Employees Retirement System (“APERs”), and Class Representative, Erie County Public  
10 Employees Retirement System (“ERIE”) (together, “Class Representatives”), and KPMG LLP  
11 (“KPMG” and, collectively with Brocade and the Individual Defendants, “Defendants”);

12 WHEREAS, pursuant to Federal Rule of Civil Procedure 23(e), this matter came before the  
13 Court for hearing pursuant to the Preliminary Approval of Settlement Agreement Order dated  
14 November 18, 2008 (the “Notice Order”), on the application of the parties for approval of a  
15 proposed settlement of the Action (the “Settlement”) set forth in the following stipulations: (i) a  
16 Modified Stipulation and Agreement of Settlement dated January 14, 2009 entered into among Class  
17 Representatives, on behalf of themselves and the Class, Brocade and the Individual Defendants (the  
18 “Brocade Stipulation”), and (ii) a Stipulation and Agreement of Settlement dated October 23, 2008  
19 entered into among Class Representatives, on behalf of themselves and the Class, and KPMG (the  
20 “KPMG Stipulation,” and together with the Brocade Stipulation, the “Stipulations”);

21 WHEREAS, due and adequate notice has been given to the Class as required in the Notice  
22 Order; and

23 WHEREAS, the Court has considered all papers filed and proceedings had herein and  
24 otherwise is fully informed in the premises and good cause appearing therefor;

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:  
26



1 KPMG. Specifically, this Court finds that: (a) the Class is so numerous that joinder of all members  
2 is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the  
3 Class Representatives are typical of the claims of the Class; (d) Class Representatives and their  
4 counsel have fairly and adequately protected the interests of the Class; (e) the questions of law and  
5 fact common to members of the Class predominate over any questions affecting only individual  
6 members of the Class; and (f) a class action is superior to other available methods for the fair and  
7 efficient adjudication of the controversy considering: (i) the interests of the Class Members in  
8 individually controlling the prosecution of the separate actions, (ii) the extent and nature of any  
9 litigation concerning the controversy already commenced by members of the Class, (iii) the  
10 desirability or undesirability of continuing the litigation of the claims asserted in this Action, and  
11 (iv) the difficulties likely to be encountered in the management of this Action as a class action.

12 5. Accordingly, the Action is hereby certified as a class action pursuant to Fed. R. Civ.  
13 P. 23(a) and 23(b)(3) for purposes of effectuating the Settlement with KPMG on behalf of the same  
14 Class previously certified in this Action, which consists of: all persons and entities who purchased  
15 or otherwise acquired Brocade common stock between May 18, 2000 and May 15, 2005, inclusive,  
16 and who were damaged thereby (the “Class”). Excluded from the Class are: (a) Defendants; (b) all  
17 officers, directors, and partners of any Defendant and of any Defendant’s partnerships, subsidiaries,  
18 or affiliates at all relevant times; (c) members of the immediate family of any of the foregoing  
19 excluded parties; (d) the legal representatives, heirs, successors, and assigns of any of the foregoing  
20 excluded parties; and (e) any entity in which any of the foregoing excluded parties has or had a  
21 controlling interest at all relevant times. Also excluded from the Class are any putative members  
22 of the Class who excluded themselves by timely requesting exclusion in accordance with the  
23 requirements set forth in the Notice, as listed on Exhibit 1 annexed hereto.

24 6. The Settlement, and all transactions preparatory or incident thereto, is found to be  
25 fair, reasonable, adequate, and in the best interests of the Class, and is hereby approved. The  
26 Parties are hereby authorized and directed to comply with and to consummate the Settlement in

1 accordance with the Stipulations, and the Clerk of this Court is directed to enter and docket this  
2 Judgment in the Action.

3 7. The Action and all claims included therein, as well as all of the Settled Claims  
4 (defined in the Stipulations and in Paragraph 8(c) below) are dismissed with prejudice as to Class  
5 Representatives and all other members of the Class, and as against each and all of the Released  
6 Parties (defined in the Stipulations and in Paragraph 8(a) below). The Parties are to bear their own  
7 costs, except as otherwise provided in the Stipulations.

8 8. As used in this Judgment, the terms “Released Parties,” “Related Parties,” “Settled  
9 Claims,” “Settled Defendants’ Claims,” and “Unknown Claims” shall have the meanings set forth  
10 below:

11 (a) “Released Parties” means Defendants and, as applicable, each of their Related Parties  
12 as defined below.

13 (b) “Related Parties” means each of Defendants’ past or present directors, officers,  
14 employees, partners, principals, members, insurers, co-insurers, re-insurers, controlling shareholders,  
15 attorneys, advisors, accountants, auditors, personal or legal representatives, predecessors, successors,  
16 parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities,  
17 any entity in which a Defendant has a controlling interest, any member of any Individual  
18 Defendant’s immediate family, or any trust of which any Individual Defendant is the settlor or which  
19 is for the benefit of any member of an Individual Defendant’s immediate family.

20 (c) “Settled Claims” means and includes any and all claims, debts, demands,  
21 controversies, obligations, losses, rights or causes of action or liabilities of any kind or nature  
22 whatsoever (including, but not limited to, any claims for damages (whether compensatory, special,  
23 incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief,  
24 rescission or rescissionary damages, interest, attorneys’ fees, expert or consulting fees, costs,  
25 expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state,  
26 local, statutory or common law or any other law, rule or regulation, whether fixed or contingent,

1 accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured,  
2 whether class or individual in nature, including both known claims and Unknown Claims (defined  
3 herein) that: (i) have been asserted in this Action by Class Representatives on behalf of the Class  
4 and its Class Members against any of the Released Parties, or (ii) have been or could have been  
5 asserted in any forum by Class Representatives, Class Members or any of them against any of the  
6 Released Parties, which arise out of, relate to or are based upon the allegations, transactions, facts,  
7 matters, occurrences, representations or omissions involved, set forth, or referred to in the Complaint  
8 and/or the Amended Complaint. Settled Claims shall also include any claims, debts, demands,  
9 controversies, obligations, losses, rights or causes of action that Class Representatives, Class  
10 Members or any of them may have against the Released Parties or any of them which involve or  
11 relate in any way to the defense of the Action or the Settlement of the Action. Notwithstanding the  
12 foregoing, Settled Claims shall not include: (i) any claims to enforce the Settlement, including,  
13 without limitation, any of the terms of the Stipulations, the Notice Order, this Judgment or any other  
14 orders issued by the Court in connection with the Settlement; (ii) any claims asserted by Persons  
15 who exclude themselves from the Class by timely requesting exclusion in accordance with the  
16 requirements set forth in the Notice; (iii) any claims, rights or causes of action that have been or  
17 could have been asserted in the Derivative Actions and/or the Company Action (as defined in the  
18 Brocade Stipulation); or (iv) any and all claims that have been asserted under the Securities Act of  
19 1933 and the Securities Exchange Act of 1934, or any other laws, for the allegedly wrongful conduct  
20 complained of in *In re Brocade Communications Systems, Inc. Initial Public Offering Securities*  
21 *Litigation*, 01 CV 6613 (SAS)(BSJ), as coordinated for pretrial purposes in *In re Initial Public*  
22 *Offering Securities Litigation*, Master File No. 21 MC 92 (SAS), pending in the United States  
23 District Court for the Southern District of New York.

24 (d) “Settled Defendants’ Claims” means and includes any and all claims, debts, demands,  
25 controversies, obligations, losses, costs, rights or causes of action or liabilities of any kind or nature  
26 whatsoever (including, but not limited to, any claims for damages (whether compensatory, special,  
27

1 incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief,  
2 rescission or rescissionary damages, interest, attorneys' fees, expert or consulting fees, costs,  
3 expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state,  
4 local, statutory or common law or any other law, rule or regulation, whether fixed or contingent,  
5 accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured,  
6 including both known claims and Unknown Claims, that have been or could have been asserted in  
7 the Action or any forum by the Released Parties against any of the Class Representatives, Plaintiffs'  
8 Counsel, Class Members or their attorneys, which arise out of or relate in any way to the institution,  
9 prosecution, or settlement of the Action. Notwithstanding the foregoing, Settled Defendants' Claims  
10 shall not include any claims to enforce the Settlement, including, without limitation, any of the terms  
11 of the Stipulations, the Notice Order, this Judgment or any other orders issued by the Court in  
12 connection with the Settlement .

13 (e) "Unknown Claims" means any and all claims that any Class Representative or Class  
14 Member does not know or suspect to exist and any and all claims that any Defendant does not know  
15 or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if  
16 known by him, her or it, might have affected his, her or its settlement with and release of, as  
17 applicable, the Released Parties, Class Representatives, and Class Members, or might have affected  
18 his, her or its decision to object or not to object to this Settlement. The Class Representatives, Class  
19 Members, Defendants and each of them have acknowledged and agreed that he, she or it may  
20 hereafter discover facts in addition to or different from those which he, she or it now knows or  
21 believes to be true with respect to the subject matter of the Settled Claims and/or the Settled  
22 Defendants' Claims. Nevertheless, with respect to any and all Settled Claims and Settled  
23 Defendants' Claims, the Parties to the Stipulations have stipulated and agreed that, upon the  
24 Effective Date, they shall expressly waive and each of the Class Members shall be deemed to have,  
25 and by operation of the Judgment shall have, waived all provisions, rights and benefits of California  
26 Civil Code § 1542 and all provisions rights and benefits conferred by any law of any state or

1 territory of the United States, or principle of common law, which is similar, comparable or  
2 equivalent to California Civil Code § 1542. California Civil Code § 1542 provides:

3 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
4 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
5 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**  
6 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**  
7 **OR HER SETTLEMENT WITH THE DEBTOR.**

8 The Parties to the Stipulations have expressly acknowledged and agreed, and the Class Members  
9 shall be deemed to have, and by operation of the Judgment shall have acknowledged and agreed, that  
10 the waiver and release of Unknown Claims constituting Settled Claims and/or Settled Defendants’  
11 Claims was separately bargained for and a material element of the Settlement.

12 9. (a) In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for  
13 contribution arising out of any Settled Claim (i) by any person against Brocade or the Individual  
14 Defendants, and (ii) by Brocade or the Individual Defendants against any person, other than claims  
15 for contribution that Brocade and/or the Special Litigation Committee (as defined in the Brocade  
16 Stipulation) have asserted or may assert against the Individual Defendants, the Related Parties or  
17 any of them, are hereby permanently barred and discharged. In accordance with 15 U.S.C. § 78u-  
18 4(f)(7)(A), any and all claims for contribution arising out of any Settled Claim (i) by any person  
19 against KPMG, and (ii) by KPMG against any person, other than a person whose liability has been  
20 extinguished by the KPMG Settlement, are hereby permanently barred and discharged. This  
21 paragraph 9(a) shall be referred to herein as the “Bar Order.”

22 (b) Notwithstanding the Bar Order or any other provision or paragraph in this  
23 Judgment or 15 U.S.C. § 78u-4(f)(7)(A) to the contrary, the Individual Defendants have  
24 acknowledged and agreed, and the Court finds, that the Individual Defendants are “person[s]  
25 whose liability has been extinguished” by the Brocade Stipulation within the meaning of 15 U.S.C.  
26 § 78u-4(f)(7)(A)(ii). Further, the Court finds that the Individual Defendants have knowingly and  
27 expressly waived the right to assert the Bar Order or 15 U.S.C. § 78u-4(f)(7)(A) as a defense to  
28 any claims for contribution that Brocade and/or the Special Litigation Committee have asserted

1 or may assert against them in connection with the defense and Settlement of the Action or any  
2 related litigation arising from the transactions and occurrences that form the basis of the Action;  
3 provided, however, that the Individual Defendants and their Related Parties, and each of them,  
4 shall retain the right to defend against any such claims for contribution on other grounds,  
5 including, without limitation: (i) that he or she is not at fault for the conduct giving rise to the  
6 Settlement; (ii) that his or her proportional fault is less than asserted by Brocade and/or the Special  
7 Litigation Committee; (iii) that Brocade is legally and/or contractually obligated to indemnify him  
8 or her for some or all of the Settlement Amount and/or that he or she is not required to reimburse  
9 or repay Brocade for that indemnified amount; and (iv) that the Settlement Amount is greater than  
10 warranted under all of the circumstances. Further, Brocade and the Special Litigation Committee  
11 have agreed that they will not argue or otherwise assert in any forum or proceeding that (i) by  
12 entering into the Brocade Stipulation the Individual Defendants acquiesced in the Settlement  
13 Amount or waived in any way their arguments challenging the Settlement Amount as excessive,  
14 and (ii) the Bar Order in any way affects or impairs the existing rights of the Individual Defendants  
15 to obtain indemnification and advancement of fees incurred in connection with Settled Claims or  
16 any other claim asserted against them. The Individual Defendants have agreed that they will not  
17 argue or otherwise assert in any forum or proceeding that, by entering into the Brocade  
18 Stipulation, Brocade or the Special Litigation Committee in any way compromised or otherwise  
19 affected its/their right to seek to limit or extinguish any purported obligation to indemnify or  
20 advance fees to the Individual Defendants and their Related Parties or to seek to recover any of  
21 the fees or expenses that Brocade has advanced or may advance on behalf of or for the benefit of  
22 the Individual Defendants and/or their Related Parties.

23 10. Upon the Effective Date, Class Representatives and all Class Members on behalf  
24 of themselves, their personal representatives, heirs, executors, administrators, trustees, successors  
25 and assigns: (a) shall have fully, finally and forever released, relinquished and discharged each and  
26 every one of the Settled Claims against the Released Parties, whether or not any such Class Member

1 or Class Representative executes or delivers a Proof of Claim and Release form (“Proof of Claim”);  
2 and (b) shall be deemed to have covenanted not to sue on, and shall forever be barred from suing  
3 on, instituting, prosecuting, continuing, maintaining or asserting in any forum, either directly or  
4 indirectly, on their own behalf or on behalf of any class or other person, any Settled Claim against  
5 any of the Released Parties.

6 11. Upon the Effective Date, each of the Defendants, on behalf of themselves and their  
7 Related Parties: (a) shall have fully, finally and forever released, relinquished and discharged each  
8 and every one of the Settled Defendants’ Claims; and (b) shall be deemed to have covenanted not  
9 to sue on, and shall forever be barred from suing on, instituting, prosecuting, continuing, maintaining  
10 or asserting in any forum, either directly or indirectly, on their own behalf or on behalf of any class  
11 or other person, any Settled Defendants’ Claim against Class Representatives, Class Members and  
12 their respective counsel, or any of them.

13 12. Notwithstanding ¶¶ 9-11 herein, nothing in this Judgment shall bar any action or  
14 claim by any of the Parties or the Released Parties to enforce or effectuate the terms of the  
15 Stipulations or this Judgment.

16 13. This Judgment and the Stipulations, including any provisions contained in the  
17 Stipulations, any negotiations, statements, or proceedings in connection therewith, or any action  
18 undertaken pursuant thereto:

19 (a) shall not be offered or received against any Released Party as evidence of or  
20 construed as or deemed to be evidence of any presumption, concession, or admission by the  
21 Released Parties with respect to the truth of any fact alleged by any of the plaintiffs or the validity  
22 of any claim that has been or could have been asserted in the Action or in any litigation, or the  
23 deficiency of any defense that has been or could have been asserted in the Action or in any litigation,  
24 or of any liability, negligence, fault, or wrongdoing of any Released Party;

25 (b) shall not be offered or received against any Released Party as evidence of a  
26 presumption, concession or admission of any fault, misrepresentation or omission with respect to

1 any statement or written document approved or made by any Released Party;

2 (c) shall not be offered or received against any Released Party as evidence of a  
3 presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing  
4 in any civil, criminal or administrative action or proceeding, other than such proceedings as may be  
5 necessary to effectuate the provisions of the Stipulations; provided, however, that the Released  
6 Parties may offer or refer to the Stipulations to effectuate the terms of the Stipulations, including the  
7 releases and other liability protection granted them hereunder, and may file the Stipulations and/or  
8 this Judgment in any action that may be brought against them (other than one that has been or may  
9 be brought by Brocade and/or the Special Litigation Committee) in order to support a defense or  
10 counterclaim based on principles of res judicata, collateral estoppel, full faith and credit, release,  
11 good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue  
12 preclusion or similar defense or counterclaim;

13 (d) shall not be construed against any Released Party as an admission or concession that  
14 the consideration to be given hereunder represents the amount that could be or would have been  
15 recovered after trial; and

16 (e) shall not be construed as or received in evidence as an admission, concession or  
17 presumption against the Class Representatives or any of the Class Members that any of their claims  
18 are without merit, or that any defenses asserted by Defendants have any merit, or that damages  
19 recoverable under the Action would not have exceeded the Settlement Amount.

20 14. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel  
21 and the Claims Administrator are directed to administer the Settlement in accordance with the terms  
22 and provisions of the Stipulations.

23 15. The Court finds that all Parties and their counsel have complied with each  
24 requirement of the PSLRA and Rules 11 and 37 of the Federal Rules of Civil Procedure as to all  
25 proceedings herein and that Class Representatives and Plaintiffs' Counsel at all times acted in the  
26 best interests of the Class and had a good faith basis to bring, maintain and prosecute this Action as

1 to each Defendant in accordance with the PSLRA and Federal Rule of Civil Procedure 11.

2 16. Only those Class Members who submit valid and timely Proofs of Claim shall be  
3 entitled to receive a distribution from the Net Settlement Fund. The Proof of Claim to be executed  
4 by the Class Members shall further release all Settled Claims against the Released Parties. All Class  
5 Members shall be bound by all of the terms of the Stipulations and this Judgment, including the  
6 releases set forth herein, whether or not they submit a valid and timely Proof of Claim, and shall be  
7 barred from bringing any action against any of the Released Parties concerning the Settled Claims.

8 17. No Class Member shall have any claim against Plaintiffs' Counsel, the Claims  
9 Administrator, or other agent designated by Plaintiffs' Counsel based on the distributions made  
10 substantially in accordance with the Settlement and Plan of Allocation as approved by the Court and  
11 further orders of the Court.

12 18. No Class Member shall have any claim against the Defendants, Defendants' counsel,  
13 or any of the Released Parties with respect to: (a) any act, omission or determination of Plaintiffs'  
14 Counsel, the Escrow Agent or the Claims Administrator, or any of their respective designees or  
15 agents, in connection with the administration of the Settlement or otherwise; (b) the management,  
16 investment or distribution of the Gross Settlement Fund and/or the Net Settlement Fund; (c) the Plan  
17 of Allocation; (d) the determination, administration, calculation or payment of claims asserted  
18 against the Gross Settlement Fund and/or the Net Settlement Fund; (e) the administration of the  
19 Escrow Account; (f) any losses suffered by, or fluctuations in the value of, the Gross Settlement  
20 Fund and/or the Net Settlement Fund; or (g) the payment or withholding of any Taxes, expenses  
21 and/or costs incurred in connection with the taxation of the Gross Settlement Fund and/or the Net  
22 Settlement Fund or the filing of any tax returns.

23 19. Any order approving or modifying the Plan of Allocation set forth in the Notice, or  
24 the application by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses  
25 or any request of Class Representatives for reimbursement of reasonable costs and expenses shall  
26 not disturb or affect the Finality of this Judgment, the Stipulations or the Settlement contained



1 (e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a  
2 significant risk that the Class Representatives and the Class may have recovered less or nothing from  
3 the Defendants;

4 (f) Plaintiffs' Counsel have advanced in excess of the requested \$986,039 in  
5 costs and expenses to fund the litigation of this Action; and

6 (g) The amount of attorneys' fees awarded and expenses reimbursed from the  
7 Gross Settlement Fund are fair and reasonable under all of the circumstances and consistent with  
8 awards in similar cases.

9 22. No Class Member filed an objection to the terms of the settlement or the fee  
10 application. Two objections were filed by former defendants who are not Class Members. Those  
11 objections have been withdrawn and are no longer before the Court. All other objections, if any, are  
12 hereby denied.

13 23. Without affecting the Finality of this Judgment in any way, the Court reserves  
14 exclusive and continuing jurisdiction over the Action, the Class Representatives, the Class, and the  
15 Released Parties for purposes of: (a) supervising the implementation, enforcement, construction, and  
16 interpretation of the Stipulations, the Plan of Allocation, and this Judgment; (b) hearing and  
17 determining any application by Plaintiffs' Counsel for an award of attorneys' fees, costs, and  
18 expenses and/or reimbursement to the Class Representatives, if such determinations were not made  
19 at the Fairness Hearing; and (c) supervising the distribution of the Gross Settlement Fund and/or the  
20 Net Settlement Fund.

21 24. In the event that the Settlement is terminated or does not become Final in  
22 accordance with the terms of the Stipulations for any reason whatsoever, or in the event that the  
23 Gross Settlement Fund, or any portion thereof, is returned to Brocade or KPMG, then this Judgment  
24 shall be rendered null and void and shall be vacated to the extent provided by and in accordance with  
25 the Stipulations and, in such event, all orders entered and releases delivered in connection herewith  
26 shall be null and void to the extent provided by and in accordance with the Stipulations.

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25. In the event that, prior to the Effective Date, Class Representatives or Brocade institutes any legal action against the other to enforce any provision of the Brocade Stipulation or this Judgment or to declare rights or obligations thereunder, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any such action. Neither KPMG nor the Individual Defendants shall have any obligation under this paragraph.

26. There is no reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SIGNED January 26, 2009.



**THE HONORABLE CHARLES R. BREYER**  
**UNITED STATES DISTRICT JUDGE**

# **Exhibit 12**



(less expenses), together with the interest earned thereon for the same period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among plaintiffs' counsel by Lead Counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel subject to the terms, conditions and obligations of the Stipulation and in particular ¶¶ 22-24 thereof, which terms, conditions and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: Feb. 5, 2004

  
THE HONORABLE KENT A. JORDAN  
UNITED STATES DISTRICT JUDGE

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