REDACTED COPY

RESPONSE PACKET
SP-20-0012

Dated: September 18, 2019

Submitted by:

Berger Montague PC

Michael Dell'Angelo
Managing Shareholder
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: (215) 875-3080
Facsimile: (215) 875-4604
Email: mdellangelo@bm.net

RESPONSE SIGNATURE PAGE

Type or Print the following information.

PROSPECTIVE CONTRACTOR'S INFORMATION					
Company:	Berger Montague PC				
Address:	1818 Market Street, Suite 3600				
City:	Philadelphia	State:	PA	Zip Code:	19103
Business Designation:	☐ Individual ☐ Partnership	☐ Sole Proprietorship ☒ Corporation		☐ Public Service Corp ☐ Nonprofit	
Minority and Women-Owned Designation*:	☒ Not Applicable ☐ African American	☐ American Indian ☐ Hispanic American	☐ Asian American ☐ Pacific Islander American	☐ Service-Disabled Veteran ☐ Women-Owned	
	AR Certification #: _____	* See *Minority and Women-Owned Business Policy*			

PROSPECTIVE CONTRACTOR CONTACT INFORMATION *Provide contact information to be used for bid solicitation related matters.*			
Contact Person:	Michael Dell'Angelo	Title:	Managing Shareholder
Phone:	215-875-3080	Alternate Phone:	215-875-3000
Email:	mdellangelo@bm.net		

CONFIRMATION OF REDACTED COPY

☒ YES, a redacted copy of submission documents is enclosed.

☐ NO, a redacted copy of submission documents is not enclosed. I understand a full copy of non-redacted submission documents will be released if requested.

Note: If a redacted copy of the submission documents is not provided with Prospective Contractor's response packet, and neither box is checked, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA). See Bid Solicitation for additional information.

ILLEGAL IMMIGRANT CONFIRMATION

By signing and submitting a response to this *Bid Solicitation*, a Prospective Contractor agrees and certifies that they do not employ or contract with illegal immigrants. If selected, the Prospective Contractor certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.

ISRAEL BOYCOTT RESTRICTION CONFIRMATION

By checking the box below, a Prospective Contractor agrees and certifies that they do not boycott Israel, and if selected, will not boycott Israel during the aggregate term of the contract.

☒ Prospective Contractor does not and will not boycott Israel.

An official authorized to bind the Prospective Contractor to a resultant contract shall sign below.

The signature below signifies agreement that any exception that conflicts with a Requirement of this *Bid Solicitation* **will cause the Prospective Contractor's response to be rejected.**

Authorized Signature: _____ **Title:** Managing Shareholder

Printed/Typed Name: Michael Dell'Angelo **Date:** September 18, 2019

STATE OF ARKANSAS
OFFICE OF STATE PROCUREMENT
1509 West 7th Street, Room 300
Little Rock, Arkansas 72201-4222

ADDENDUM 2

TO: Vendors Addressed
FROM: Brandi Schroeder, Buyer
DATE: September 16, 2019
SUBJECT: SP-20-0012 Legal Services

The following change(s) to the above-referenced IFB have been made as designated below:

X Additional specification(s)
X Change of specification(s)

CHANGE OF SPECIFICATIONS

- Delete 2.4.G. and replace with the following:

  G. Prospective Contractors **shall** have represented a public pension plan either as sole plaintiff or as lead plaintiff in a class action.

  1. Prospective Contractors **shall** have served as lead counsel in at least one (1) securities litigation case that resulted in a settlement or award of at least $100,000,000.

ADDITIONAL SPECIFICATIONS

- Add the following to 2.5.A.

  7. Trial experience in a securities litigation case as lead counsel.

The specifications by virtue of this addendum become a permanent addition to the above referenced RFQ. Failure to return this signed addendum may result in rejection of your proposal.

If you have any questions, please contact Brandi Schroeder at Brandi.Schroeder@dfa.arkansas.gov or (501) 682-4169.

Signature	September 18, 2019 Date
Michael Dell'Angelo Printed Name	Berger Montague PC Prospective Contractor's Name

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SOCIAL SECURITY NUMBER | FEDERAL ID NUMBER | SUBCONTRACTOR: | SUBCONTRACTOR NAME:

TAXPAYER ID #: ---- ---- OR 23 ---- 2015918 ☐ **Yes** ☒ **No**

IS THIS FOR:

TAXPAYER ID NAME: Berger Montague PC ☐ **Goods?** ☒ **Services?** ☐ **Both?**

YOUR LAST NAME: Michael **FIRST NAME:** Dell'Angelo **M.I.:** C.

ADDRESS: 1818 Market Street, Suite 3600

CITY: Philadelphia **STATE:** PA **ZIP CODE:** 19103 --- **COUNTRY:** United States

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS*

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse *is* a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held [senator, representative, name of board/ commission, data entry, etc.]	For How Long?		What is the person(s) name and how are they related to you? [i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

☐ **None of the above applies**

FOR AN ENTITY (BUSINESS)*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held [senator, representative, name of board/commission, data entry, etc.]	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

☒ **None of the above applies**

**NOTE: PLEASE LIST ADDITIONAL DISCLOSURES ON SEPARATE SHEET OF PAPER IF MORE SPACE IS NEEDED*

7/1/98 Rev. 0

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a *state agency* I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

   Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature _____ Title Managing Shareholder Date September 18, 2019

Entity Contact Person Michael Dell'Angelo Title Managing Shareholder Phone No. 215-875-3080

AGENCY USE ONLY

Agency Number _____ Agency Name _____ Agency Contact Person _____ Contact Phone No. _____ Contract or Grant No. _____

FORMS AVAILABLE FROM OFFICE OF DISCLOSURE AND REVIEW (501) 682-5407

**NOTE: PLEASE LIST ADDITIONAL DISCLOSURES ON SEPARATE SHEET OF PAPER IF MORE SPACE IS NEEDED*

EQUAL OPPORTUNITY EMPLOYMENT*

It is Berger Montague policy, as an equal opportunity employer, to recruit, employ, train, promote, compensate, and otherwise treat all qualified applicants and employees without regard to race, ethnicity, color, sex, sexual orientation, gender identity and expression, religion, national origin, ancestry, disability, age, marital status, genetic information, source of income, familial status, domestic or sexual violence victim status, pregnancy, childbirth or related medical condition, or any other classification protected by applicable law. This policy shall be followed by all shareholders and employees of the Firm, including persons having authority to hire, train, promote, transfer, compensate, terminate, or assign work to personnel, or to make such recommendations.

Berger Montague is committed to compliance with all applicable laws providing equal employment opportunities. This commitment applies to all persons involved in Firm operations and prohibits unlawful discrimination by any employee of the Firm, including supervisors and coworkers.

If you believe you have been subjected to or observe any form of unlawful discrimination, submit a written complaint according to the reporting procedure provided in the Non-Harassment policy herein, as soon as possible after the incident. Your complaint should be specific and should include the names of the individuals involved and the names of any witnesses. If you need assistance with your complaint, or if you prefer to make a complaint in person, contact one of the above-mentioned persons. The Firm will immediately undertake an effective, thorough, and objective investigation and attempt to resolve the situation.

Additional details are provided for California-based employees as detailed in the Anti-Harassment, Retaliation and Bullying policy in the California supplement.

The Firm will not retaliate against any employee for filing a complaint and will not knowingly permit retaliation by management employees or your co-workers.

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* *See* www.bergermontague.com

Berger Montague PC's
Response to the State of Arkansas Office of State Procurement
Request for Qualifications for Legal Services
SP-20-0012

Dated: September 18, 2019

Contact Person: Michael Dell'Angelo
Managing Shareholder
Email: mdellangelo@bm.net
Berger Montague PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: (215) 875-3080
Facsimile: (215) 875-4604

MICHAEL DELL'ANGELO / *MANAGING SHAREHOLDER*
d 215.875.3080 **m** 610.608.8766 | mdellangelo@bm.net

September 18, 2019

VIA FEDERAL EXPRESS

Brandi Schroeder
Office of State Procurement
1509 West 7th Street, Room 300
Little Rock, AR 72201-4222

Re: Berger Montague PC's Response to the State of Arkansas Office of State Procurement Request for Qualifications for Legal Services on behalf of the Arkansas Teacher Retirement System, Solicitation No. SP-20-0012

Dear Ms. Schroeder:

On behalf of Berger Montague PC, I am submitting an original and three (3) hard copies along with a flash drive containing four (4) PDFs of the Response Package of my firm's Response to State of Arkansas Office of State Procurement Request for Qualifications for Legal Services on behalf of the Arkansas Teacher Retirement System. I am also submitting one (1) redacted PDF copy on the enclosed flash drive.

I am authorized to submit this response on behalf of Berger Montague PC, which agrees to and complies with all requirements of this RFQ.

We would be honored to represent Arkansas Teacher Retirement System.

Thank you for considering our proposal.

Sincerely,

Michael Dell'Angelo

Enclosures

Kal8953626

DISCLOSURE INFORMATION

- These items will not be scored as part of the response evaluation; however, failure to provide the required items will result in rejection of a Prospective Contractor's response.
- Prospective Contractor may expand the space under each item/question to provide a complete response.

Describe all actual, potential, or appearances of conflicts of interest involving principal or lead attorneys in your law firm that may affect your law firm's representation of ATRS. Provide an explanation. None.
Identify any known relationships, either business or personal, which your law firm or a member of your law firm has with any ATRS Board of Trustee member, investment consultant, investment manager, or key employee of ATRS. If aware of none, state "None." (A list of ATRS Board members, investment consultants, investment managers, and key employees can be provided upon request. A formal conflicts check will be required prior to contracting.) None.
Identify any relationships, either business or personal, which your law firm or a member of your law firm has with a person known to you to have substantial business dealings with ATRS or its affiliates. If aware of none, state "None." None.
Identify any other known conflicts of interest your law firm or a member of your law firm has with any ATRS Board of Trustee member, investment consultant, investment manager, or key employee of ATRS. If aware of none, state "None." None.

FIRM'S SALARY STRUCTURE

- This information will not be scored as part of the response evaluation; however, failure to provide the required items will result in rejection of a Prospective Contractor's response.
- Prospective Contractor may expand the space under each item/question to provide a complete response.

Position	Rate of Pay	Frequency of Pay (i.e. hourly, annually)
Receptionist	[redacted]	[redacted]
Legal Secretaries	[redacted]	
Legal Assistants	[redacted]	[redacted]
Paralegals	[redacted]	[redacted]
Contract Lawyers	[redacted]	[redacted]
Associates	[redacted]	[redacted]
Partners (Shareholders)	[redacted]	[redacted]

REDACTED

INFORMATION FOR EVALUATION

E.1 QUALIFICATIONS AND EXPERIENCE

A. Describe your firm's law firm and law practice, including historical background, number and location of firm offices, number of attorneys, major areas of practice, and national and international jurisdictional experience.

Headquartered in Philadelphia, Pennsylvania, Berger Montague PC ("Berger Montague" or the "Firm") also has offices in Minneapolis, MN; Washington, D.C.; and San Diego, CA. The Firm helped pioneer class action litigation and today, after almost 50 years of experience, is one of the most highly regarded plaintiffs' complex litigation firms in the country. For example, the Firm achieved the largest jury verdict in the history of Colorado ($554 million) on behalf of property owners living near the Rocky Flats nuclear plant and recently negotiated the largest antitrust class action settlement in U.S. history for $6.245 billion against Visa, Mastercard and certain banks. The Firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of securities and antitrust litigation.

In numerous precedent-setting cases, we have played a principal or lead role. Exhibit A (Firm Resume). Berger Montague has a demonstrated track record of trying cases successfully. The Firm's trial prowess, which has twice earned it the prestigious Public Justice Foundation "Trial Lawyer of the Year Award," sets us apart from many of the other firms in the securities litigation plaintiffs' bar. Since 1996, after the passage of the PSLRA, there have been more than 5,200 securities class action lawsuits filed, but fewer than 25 cases during that time have gone to trial and fewer than 16 trials during that period involved post-PSLRA conduct. Our reputation for fighting cases through trial until a verdict is reached—and winning—enables us to achieve greater recoveries in settlement for our clients and the classes we represent.

For example, in *Melridge Securities Litigation*, we were lead counsel in one of the few successful securities class actions to proceed through trial to judgment, where the court entered judgment and approved a jury verdict of $88.2 million (securities fraud) and $239 million (RICO) for the plaintiff class. We were one of the lead trial counsel for the plaintiff class in the *Exxon Valdez Oil Spill* case, where the jury awarded $5 billion in punitive damages (later reduced on appeal; ultimately, with interest, recovery exceeded $1.28 billion). More recently, in 2014, we successfully tried one of the few corporate governance disputes to go through trial to judgment and obtained a $12 million verdict against certain directors of *FLOORgraphics, Inc.* (subsequently reduced to $8 million).

Our Firm was also lead counsel in the *Rocky Flats Nuclear Plant* environmental class action where, after a four-month trial, the jury returned a verdict of $554 million in favor of the plaintiff class. After two trips to the appellate court, on June 23, 2015 the Tenth Circuit Court of Appeals instructed the District Court to "proceed to judgment" on plaintiffs' state law nuisance cause of action. *Cook v. Rockwell Int'l Corp.*, 790 F.3d 1088 (10th Cir. 2015). While further proceedings continued in the case (including a petition before the U.S. Supreme Court for *certiorari* of the Tenth Circuit's 2015 ruling that was filed by defendants, and a cross-

petition for *certiorari* filed by the plaintiff class, both of which were pending), a $375 million settlement was reached on behalf of the plaintiff class and approved by the District Court in April 2017. This extraordinary result for the class after more than 25 years of litigation has received substantial media coverage and garnered the Firm numerous accolades for its litigation, trial and post-trial prowess.

Berger Montague has been at the forefront of securities litigation since its founding in 1970 and has a long record of success. The Firm has achieved many of the largest recoveries in securities litigation since the PSLRA was enacted in 1995—specifically, *Merrill Lynch* ($475 million), *Rite Aid* ($334 million), *Waste Management* ($220 million), *Sunbeam* ($141 million), *IKON* ($111 million), *Medaphis* ($96.5 million), *Fleming Companies* ($94 million), *CIGNA* ($93 million), *Oppenheimer* ($89.5 million), *Xcel Energy* ($80 million) and *Alcatel* ($75 million), as well as many others. The Firm is also particularly proud to have obtained some of the largest securities class action recoveries in terms of percentage per damaged share. For example, in *Alcatel* ($75 million total recovery), *Sotheby's* ($70 million total recovery), *Melridge* ($57.5 million total recovery), *Kinross* ($35,778,371) and *Fifth Third* ($16 million recovery), the recoveries as a percentage of damages were estimated to be, respectively, 56%, 54%, 76%, 100% and 100%. According to a report by *NERA Economic Consulting*, the median post-PSLRA percentage recovery of estimated damages has historically been significantly less than 10%.

The Firm's securities opt-out cases, such as those involving *Citigroup, Lehman, AOL Time Warner, Qwest* and others, routinely include multiple claims under state law which we have successfully pursued on behalf of our institutional investor clients. In *Lehman* and *Qwest*, for example, the Firm achieved recoveries for a state pension fund in opt-out litigation on a net basis after all fees and costs were paid that far exceeded what our clients would have recovered from the related class action litigation.

The Firm currently represents a large state pension fund in securities fraud litigation in Europe. We regularly advise our clients on their litigation and recovery options in litigation and other proceedings outside of the United States.

Unlike those firms that are focused only on the securities litigation claims impacting their clients' portfolios, Berger Montague has leveraged its prowess in complex antitrust and commodities litigation to offer additional services to its securities clients. Specifically, the Firm helped to innovate the representation of public pension fund and public and private institutional investor clients in antitrust and commodities litigation. Financial losses suffered as a result of antitrust and commodities violations are generally not apparent based upon a review of a fund's statements or returns. Most often, losses resulting from such violations are the result of illegal overcharges or underpayments arising from conspiratorial conduct. Thus, for example, if certain banks unlawfully conspire to inflate the prices at which a fund purchases bonds, even if the bonds are profitable, the fund will have lost money in the form of illegal overcharges. Yet, the fund's statements may reflect a profit on the investment without reflecting the illegal overcharge. Berger Montague's holistic approach seeks to identify the broadest range of claims for which its clients may recover losses. This approach has provided the Firm's clients with a

unique benefit by maximizing the recovery of portfolio losses across multiple disciplines often ignored by firms focused only on securities litigation.

Berger Montague presently has 123 employees; 65 are licensed attorneys and 58 are paralegals, legal assistants and other support staff. Berger Montague's Securities Litigation Group has 24 attorneys.

B. Describe your law firm's experience successfully prosecuting securities litigation claims for public pension funds as lead plaintiff. Provide an overview of your law firm's top five (5) recovery awards for a public pension plan, including the year each claim was filed, a summary of the claim, and the outcome of the claim.

The following is a description of our top five recovery awards for a public pension plan:

Merrill Lynch Securities Litigation

Case Number: 07-CV-09633
Settlement Amount: $475 million
Court: United States District Court for the Southern District of New York
We obtained for sole lead plaintiff Ohio State Teachers Retirement System and the class a settlement of $475 million. The $475 million settlement is among the largest recoveries in the history of the PSLRA. The case was especially noteworthy because of the high financial stakes involved and Merrill Lynch's then-declining financial status at the height of the financial crisis in 2009. It was among the earliest of all subprime mortgage-related securities class actions, and involved several difficult obstacles in establishing liability and damages. The $475 million recovery was achieved in less than two years from the filing of the first complaint, and despite the absence of any traditional indicia of fraud such as a financial restatement or the filing of any government regulatory proceedings.

CIGNA Corp Securities Litigation

Case Number: 02-8088
Settlement Amount: $93 million
Court: United States District Court for the Eastern District of Pennsylvania
As co-lead counsel, we represented the Pennsylvania State Employees' Retirement System and obtained a settlement of $93 million for the benefit of bond and stock purchaser classes. The claim was that CIGNA allegedly concealed operational problems which, once publicly revealed, caused the value of CIGNA's securities to decline. The $93 million recovery was obtained despite a lack of any usual indicia of fraud such as a financial restatement, government investigation or insider trading. The case was settled on the eve of trial.

New Jersey v. Qwest Communications International

Case Number: MER-L-3738-02
Settlement Amount: $45 million
Court: New Jersey Superior Court, Mercer County

We represented the pension funds for state employees of the State of New Jersey seeking to recover losses on their investments in Qwest common stock. This opt-out action settled for $45 million, which was many multiples above what New Jersey would have recovered from the related class action. The claim was that Qwest and certain senior officials misstated Qwest's financial results which, in turn, artificially inflated Qwest's stock price.

Pennsylvania Public School Employees' Retirement System v. Time Warner, Inc.

Case Number: July 2003, No. 002103
Settlement Amount: $23 million
Court: Pennsylvania Court of Common Pleas, Philadelphia County
We represented four Commonwealth of Pennsylvania public pension and other funds in securities opt-out litigation filed in Pennsylvania state court. The claims arose out of Time Warner's merger with AOL. The Pennsylvania funds obtained many multiples above what they would have recovered from the related class action. The case was notable for a number of reasons, including that we hosted a massive electronic database not only for Pennsylvania, but also two other state pension systems that had also opted-out of the class action. By pooling our resources, Pennsylvania and the other state opt-out plaintiffs were able to achieve substantial economies.

In re Lehman Brothers Securities and ERISA Litigation

Case Number: 09-md-2017 (LAK)
Settlement Amount: $8.25 million from D&Os; confidential amount from E&Y
Court: United States District Court for the Southern District of New York
We represented the State of New Jersey public pension funds in opt-out litigation against officers and directors of Lehman Brothers Holding, Inc. and Lehman's auditor, Ernst & Young ("E&Y"). The case was originally filed in New Jersey state court and removed and transferred to the Southern District of New York. *See NJ v. Fuld, et al.*, 09 MD 2017 (LAK) (S.D.N.Y.). The case involved alleged misrepresentations in Lehman's financial statements regarding "Repo 105" transactions and other financial reporting. The litigation presented numerous complex issues including bankruptcy; loss causation amid the global financial crisis; accounting and auditing standards; depositions of more than 50 fact witnesses and 10 expert witnesses; summary judgment and *Daubert* briefing; and coordination with a related class action, the New York Attorney General's suit, and SEC proceedings. Our client recovered $8.25 million in a settlement with the D&Os in 2011, and an undisclosed amount from E&Y in 2015. The D&O settlement is particularly notable because it was equivalent to 9% of the entire class action settlement. Our client recovered many multiples of what it would have received had it remained a member of the class.

C. Describe your law firm's experience prosecuting securities litigation cases in the last five (5) years. Provide an overview of the claims that includes the year each claim was filed, a summary of the claim, and the outcome of the claim.

Our experience in prosecuting securities litigation cases in the last five years includes the following:

- *Camille Lamar Roberts Inc., et al. v. Rice Energy, Inc., et al.*, Court of Common Pleas of Allegheny County, No. GD 17-001741. In this class action alleging claims for breach of contract, unjust enrichment and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law on behalf of holders of convertible debentures, Defendants' motions to dismiss the complaint were denied on July 31, 2017 and discovery is almost complete. All of Plaintiffs' claims were sustained.

- *Howell Family Trust DTD 01/27/2004 v. Hollis M. Greenlaw, et al.*, No. 3:18-cv-02864-M (N.D. Tex.). In this derivative action on behalf of nominal defendant United Development Funding Land Opportunity Fund ("LOF"), Plaintiff alleges that LOF was used as part of a Ponzi scheme orchestrated by the controlling entities and persons of the United Development Funding family of funds. Defendants moved to dismiss Plaintiff's complaint on the grounds that Plaintiff failed to allege sufficiently that demand on the General Partner of LOF was futile and that Plaintiff failed to state a claim for breach of fiduciary duty, unjust enrichment and aiding and abetting breach of fiduciary duty. Defendants' motions to dismiss were denied in their entirety on June 10, 2019 and discovery is beginning.

- *In re Fisker Automotive Holdings, Inc. Shareholder Securities*, No. 13-02100-SLR (D. Del.). This action arising under Section 10b and Rule 10b-5 of the 1934 Securities Exchange Act was brought by 18 individual investors as a result of their investment in electric car developer Fisker Automotive Holdings, Inc., which filed for bankruptcy in 2013. All three of Defendants' motions to dismiss were denied and discovery is almost completed. Trial is scheduled in 2020.

- *In re Patriot National, Inc. Sec. Litig.*, No. 1:17-cv-01866-ER (S.D.N.Y.) (preliminary approval on July 22, 2019 of $6.5 million class settlement).

- *In re Wells Fargo & Co. S'holder Derivative Litig.*, No. 16-cv-05541-JST (N.D. Cal.) (participation in nationwide corporate governance litigation regarding Wells Fargo, resulting in a settlement value to Wells Fargo of $320 million).

- *In re CVR Refining, LP Unitholder Litig.*, Consolidated C.A. No. 2019-0062-KSJM (Del. Ch.). This action challenges the procedures relating to a call right that bought out the public unitholders of CVR Refining L.P. Berger

Montague's client was appointed sole lead plaintiff and we were appointed co-lead counsel. Briefing on Defendants' Motions to Dismiss is complete and oral argument took place on July 30, 2019.

D. Describe your law firm's experience providing successful securities monitoring and litigation services for public pension funds in Arkansas, including ATRS. Provide an overview of each claim, including the year each claim was filed, a summary of the claim, and the outcome of the claim.

Our Firm has not provided any securities monitoring or litigation services for public pension funds in Arkansas, including ATRS.

E. Briefly summarize the scope and size of the largest settlement or award obtained in your law firm's capacity as sole lead counsel for a public pension plan.

In *Merrill Lynch Securities Litigation*, Case Number: 07-CV-09633 (S.D.N.Y.), we obtained for sole lead plaintiff Ohio State Teachers Retirement System and the class a settlement of $475 million. *See* discussion in answer to B. above.

F. Provide a resume, biographical sketch, and curriculum vitae for at least ten (10) attorneys employed by your law firm whose focus is in securities litigation and experience. Include each partner, junior partner, and/or associate anticipated to interact with ATRS and represent ATRS through litigation, mediation, and public appearances. Include each attorney's education, experience, and other relevant activities as applicable to the Qualifications under this RFQ.

See Exhibit B (Resumes of Gary E. Cantor, Todd S. Collins, Michael Dell'Angelo, Lawrence Deutsch, Benjamin Galdston, Jon J. Lambiras, Lawrence J. Lederer, Phyllis M. Parker, Barbara A. Podell, Sherrie R. Savett, Amanda R. Trask, Lane L. Vines.)

G. Subject to the consent of clients as required by applicable ethics rules, provide the names and phone numbers of representative clients. Identify specifically any pension plans or other major institutional investors, either private or public, to which your law firm renders or has rendered significant legal services concerning the relevant subject area(s) during the past year.

Mississippi Public Employees' Retirement System (MSPERS)

We currently represent MSPERS in a foreign jurisdiction and perform portfolio monitoring. We began providing services to MSPERS in 2016 and continue through the present. Our contact at MSPERS is:

Donald L. Kilgore, Esq.
Special Assistant Attorney General
State of Mississippi
Office of the Attorney General
550 High Street, Suite 1200
Jackson, MS 39201
Tel.: (601) 359-3908
Email: dkilg@ago.state.ms.us

Pennsylvania State Employees' Retirement System (SERS)

We began providing securities litigation and monitoring services to SERS in 1998 and continue through the present. As co-lead counsel, we represented SERS in the *Cigna* securities litigation in the E.D. Pa., which settled on the eve of trial for $93 million. Our contact at SERS is:

Jeffrey M. McCormick, Esq.
Investment Counsel
Pennsylvania State Employees' Retirement System
30 North 3rd Street, Suite 150
Harrisburg, PA 17101
Tel. (717) 237-0376
Email: jefmccormi@pa.gov

State of New Jersey, Department of Treasury, Division of Investment ("DOI")

We began providing securities litigation and monitoring services to DOI in 2002 and continue through the present. We represented DOI in securities opt-out litigation in *Quest* ($45 million settlement) and *Lehman* ($8.25 million settlement from D&Os and a confidential amount from E&Y). Our contact at DOI is:

Brian F. McDonough, Esq.
Associate General Counsel
State of New Jersey
Department of Law & Public Safety Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
Tel.: (973) 648-2566
Email: brian.mcdonough@dol.lps.state.nj.us

The following is a list of our public pension fund clients:

Public Pension Funds	Number of Years of Service
City of Philadelphia Employees' Retirement System	Since 1997 (Securities and consumer litigation and monitoring)
Pennsylvania State Employees' Retirement System	Since 1998 (Securities litigation and monitoring)
New Jersey Division of Investment/Department of Treasury	Since 2002 (Securities litigation and monitoring)
Pennsylvania Public School Employees' Retirement System	Since 2002 (Securities litigation and monitoring)
Pennsylvania Tobacco Settlement Investment Board	Since 2002 (Securities litigation and monitoring)
Pennsylvania State Workers' Insurance Fund	Since 2002 (Securities litigation and monitoring)
Los Angeles County Employees' Retirement Association	Since 2004 (Securities monitoring)
Ohio State Teachers Retirement System, Ohio Public Highway Employees' Retirement System, Ohio Public Employees' Retirement System, Ohio Fire & Policy Pension Fund	Since 2006 (Securities litigation and monitoring)
Colorado Public Employees' Retirement Association	Since 2007 (Securities monitoring)
New York State Common Retirement Fund	Since 2008 (Securities monitoring)
Montgomery County Employees' Retirement Pension Plan	Since 2016 (Securities monitoring)
Surrey County Council, UK	Since 2016 (Securities monitoring)
Strathclyde Pension Fund, Scotland	Since 2016 (Securities monitoring)
Employees' Retirement System of the Government of the Commonwealth of Puerto Rico	Since 2016 (Securities monitoring)
Public Employees' Retirement System of Mississippi	Since 2016 (Securities litigation and monitoring)
Philadelphia Gas Works Pension Plan	Since 2016 (Securities monitoring)

Public Pension Funds	Number of Years of Service
Pennsylvania Turnpike Commission	Since 2016 (Securities monitoring and Antitrust litigation)
Philadelphia Sinking Fund	Since 2017 (Securities monitoring)
Southeastern Pennsylvania Transportation Authority (SEPTA)	Since 2017 (Securities monitoring)
Lehigh County Public Employees' Retirement System (PA)	Since 2017 (Securities monitoring)
Warwickshire County Council, UK	Since 2017 (Securities monitoring)
Worcestershire County Council Retirement System, UK	Since 2017 (Securities monitoring)
Bucks County Retirement System (PA)	Since 2017 (Securities monitoring)
New Mexico Public Employees' Retirement System, New Mexico Public State Investment Committee, New Mexico Educational Retirement Board	Since 2019 (Securities monitoring)
Providence, Rhode Island Retirement System	Since 2019 (Securities monitoring)
Warwick, Rhode Island Employees' Retirement System	Since 2019 (Securities monitoring)

The following is a list of our other institutional clients:

Private Clients	Number of Years of Service	Client Type
Central Laborers Pension Fund	Since 2017 (Securities monitoring)	Taft-Harley
Sheet Metal Workers Local 19 Pension and Health and Welfare Funds	Since 2016 (Securities monitoring)	Taft-Harley
Insulators and Asbestos Workers Local No. 14 Pension and Health and Welfare Funds	Since 2016 (Securities monitoring)	Taft-Harley
IBEW Local 98 Pension Fund	Since 2016 (Securities monitoring)	Taft-Harley
Steamfitters Local 439 Health and Welfare Fund	Since 2017 (Securities monitoring)	Taft-Harley
Employers and Laborers Local 100 and 397 Health, Welfare and Pension Funds	Since 2017 (Securities monitoring)	Taft-Harley
Operating Engineers Local 520 Health and Welfare Fund	Since 2017 (Securities monitoring)	Taft-Harley
International Longshoreman's Association Local 1291	Since 2017 (Securities monitoring)	Taft-Harley

Private Clients	Number of Years of Service	Client Type
ABC Arbitrage	Since 1998 (Securities litigation and monitoring)	Private Investor
Amalgamated Bank	Since 2006 (Securities monitoring)	Private Investor
Carley Capital Group	Since 1999 (Securities litigation and monitoring)	Private Investor
Citizens Bank	Since 2007 (Securities monitoring)	Private Investor
Dodona I, LLC	Since 2012 (Securities litigation)	Private Investor
Palisade Capital Management	Since 2006 (Securities litigation and monitoring)	Private Investor
Stark Investments (Staro Asset Management)	Since 2000 (Securities litigation and monitoring)	Private Investor

If no clients consent, or if your law firm elects not to request such consent, please so state and describe the representative clients in general terms to support your law firm's qualification and experience to represent ATRS.

H. Describe your law firm's proven in-house U.S. and international bankruptcy knowledge and expertise in ERISA, Internal Revenue Code, fiduciary responsibilities relating to qualified governmental plans.

The Firm has not provided such services to its public pension fund clients in the past, but will endeavor to answer ATRS' questions in-house or consult outside counsel, if necessary.

E.2 RESOURCES AND RELEVANT PRACTICE

A. Briefly summarize resources available to your law firm that give your law firm an advantage in processing securities litigation cases, such as multilingual staff, information technology, office locations, or any other resources.

Berger Montague has extensive resources to facilitate the most comprehensive research, including access to Bloomberg, Thomson Reuters, Verteris, ISS, Vickers and many other subscription sites, as well as professional analysts and private investigators. Our Securities Litigation Department includes CPAs, forensic accountants and experts in loss calculation under FIFO, LIFO and *Dura*.

Berger Montague has employees fluent in French, Spanish, Hebrew and Tagalog. Among other services, our multilingual staff assists in translating documents and communicating with non-English speaking clients.

We have a proprietary in-house E-discovery document management platform that not only encompasses all of the features of commercial services but also provides additional features, including built in analytical tools and the ability to perform predictive coding. Our platform is cost effective compared to commercial products and carries no license fees or limits on the amount of data or number of users. We provide 24 /7 user support in-house at our actual cost.

We use the services of Verteris Corporation ("Verteris"), to the extent requested by our clients, to assist our attorneys in securities monitoring, loss calculations and calculating proofs of claim for all cases in which our clients have suffered a loss. The data processing abilities of Verteris supplement the legal expertise, experience and analysis of our securities litigation attorneys. *See* Exhibit B (Resumes).

Our offices are on the east coast (Philadelphia, PA and Washington, D.C.), the west coast (San Diego, CA) and mid-country (Minneapolis, MN) with attorneys providing expertise in local and regional law and practices.

B. Describe your law firm's in-house resources for both legal and non-legal monitoring and/or evaluation responsibilities. Include which services are outsourced to third parties including data storage and other relevant activities for both domestically and internationally traded securities.

A number of our experienced securities litigation attorneys, including Michael Dell'Angelo, Benjamin Galdston, Barbara A. Podell and Phyllis M. Parker, analyze every newly filed securities case and other information causing stock declines on a daily basis and monitor the portfolios of the Firm's clients to determine if our clients have suffered losses. *See* Exhibit B (Resumes). We supplement the expertise of our attorneys with the electronic services of Verteris to assist us in calculating losses and preparing proofs of claim in order to provide our clients with comprehensive secure, electronic portfolio monitoring.

C. Describe diversity within your law firm and examples of your law firm's efforts to recruit, promote, and retain a diverse workplace.

See Exhibit C, a chart describing the Firm's diversity.

Berger Montague is committed to recruiting, promoting and retaining a diverse workforce of the most experienced and qualified attorneys and staff. The Firm's policy is to a hire, train, promote and compensate qualified applicants and employees without regard to race, ethnicity, color, sex, sexual orientation, gender identity and expression, religion, national origin, ancestry, disability, age, marital status, genetic information, source of income, familial status, domestic or sexual abuse victim status, pregnancy, childbirth or related medical condition, or any other classification protected by applicable law.

D. Describe your law firm's particular knowledge of Arkansas law pertaining to contract requirements, public pension plans, securities law, prudent invest rule, other areas of law that may affect your law firm's representation of ATRS.

While the Firm has not represented Arkansas public entities in the past, we have sufficient legal resources in-house to provide the services requested and are committed to providing the services requested by our clients.

E. Describe the resources your law firm expects ATRS to provide throughout a resultant contract, including staff levels, expected commitment hours, etc.

The commitment required of ATRS staff would vary depending on the role of ATRS in a particular litigation**.** The highest level of staff commitment would be when ATRS is a lead plaintiff or files an individual opt-out case. In those cases, ATRS would direct and/or supervise its litigation and attorneys. We expect that the highest concentration of ATRS staff time would occur in response to document production requests directed to ATRS and deposition(s) of ATRS staff. We are always mindful of the burdens on ATRS staff and commit to reducing those burdens whenever possible.

In class actions where ATRS takes no active role, the burdens on its staff would likely be minimal, primarily amounting to review of the Firm's reports of major developments in the litigation and filing a proof of claim.

F. Discuss any significant changes in the ownership or restructuring of your law firm or lead attorneys in the past three (3) years or if your law firm anticipates significant changes in the future. Provide an explanation of these changes and how these changes will or may affect its representation of ATRS.

If no significant changes have occurred or are anticipated, discuss your firm's current organizational retention policy and succession plan

Over the last three years, Berger Montague underwent a transition in firm leadership that culminated in the elevation of Managing Shareholder Eric L. Cramer to the role of Chairman. During that time, the Firm also elevated shareholder Michael Dell'Angelo to the position of Managing Shareholder.

In August 2018, the Firm moved its headquarters to 1818 Market Street in Philadelphia. In July 2019, the Firm announced the opening of an office in San Diego and the addition of shareholder Benjamin Galdston to enhance and expand our historically strong Securities Litigation Department and head our San Diego office. These changes are an exciting reflection of the Firm's continued growth and success and a transition in leadership from the founding partners to a newer generation of leaders with strategic plans for future growth and to advance the Firm's mission to recover our clients' investment losses.

E.3 MONITORING AND REPORTING

A. Describe how your law firm will conduct ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims) by reviewing the ATRS' portfolio losses on a regular basis, investigating potential claims, preparing detailed reports of findings, and presenting the findings to ATRS.

The Firm uses Verteris to assist us in portfolio monitoring, loss calculations and settlement administration. Our client's custodian bank provides Verteris access to the client's transaction data. Verteris sets up a lead from the custodian bank to load our client's data into Verteris' secure monitoring platform, which will constantly update the data so that it is always current. Verteris will match our client's full trading history to every newly filed case and all settlements and will calculate our client's losses for each case and settlement.

Verteris also provides client extranet to facilitate our clients' immediate review of all current data and loss calculations. Each of our clients has a personal login to a secure Verteris website to view its own data and analyses of its data. A client's secure extranet can only be used to view the client's own data. A client cannot see the sites or data of other clients.

After Berger Montague's team of monitoring attorneys reviews and analyzes Verteris' calculations of our client's losses, we will advise our client about its options—whether to seek appointment as lead plaintiff; whether to file an individual/ opt-out case; whether to take no action other than remaining a member of the class; whether to file a derivative suit on behalf of the company; or any other appropriate options.

B. Describe how your law firm will report on the status of claims and recovery efforts for ATRS, including expected results and timing of payments to ATRS.

Berger Montague would promptly notify ATRS by email and a follow-up phone call of its options in newly filed cases which we believe have merit and in which ATRS suffered losses. In litigation in which ATRS is a lead plaintiff, the Firm would be in regular contact by phone and email with ATRS' designated attorney to advise him or her of developments and to discuss strategy. At the outset of the litigation, we would meet with ATRS' designated attorney to develop a reporting format and schedule so that the ATRS attorney is fully informed of all developments in the litigation, but not unduly burdened by unnecessary communications.

In litigation in which ATRS is a passive member of the class, we would inform ATRS of major developments, such as decisions on a motion to dismiss, class certification, summary judgment and settlement. We would also ensure that ATRS files a timely proof of claim.

The Firm will also provide a quarterly report of all newly filed actions, settlements and ATRS' losses, and any additional metrics which ATRS requests, so that ATRS will have a comprehensive quarterly overview of its status, as well as a continuing, current overview on its secure client extranet site. Therefore, ATRS will receive a quarterly

report containing all metrics it requests and will also be able to login to its secure client extranet to obtain current metrics at its convenience.

It is the practice of our Securities Litigation Department to maintain regular in-person contact with our public pension fund clients by meeting with them at least twice per year at their offices, at their convenience. We look forward to having the opportunity to meet with you in Arkansas to discuss ATRS' matters on a regularly scheduled basis and at your specific request as well.

C. Describe how and how often your law firm will provide periodic reporting to ATRS of its claims and potential claims. Include how your law firm will determine and recommend ATRS' participation as class member, lead plaintiff, or any recommended individual action.

Our Firm provides all legal services required to litigate even the largest and most complex class and non-class actions -- from initial case investigation and evaluation through trial and appeal. We begin with an extensive background investigation. Because we undertake nearly all of our PSLRA cases on a basis completely contingent on the results we achieve, we pay special attention to the claims identification and evaluation processes, routinely weeding out marginal cases. We strive to align our legal services and advice to meet the policy goals of our clients -- meaning, among other things, that we seek to follow their lead, not vice versa. Indeed, we recommend passing on far more securities cases than those for which we recommend litigation.

After computing trading losses under LIFO (last-in, first-out) and FIFO (first-in, first-out), we also use aggregate trading models to estimate class-wide, legally recoverable damages which differ from investment losses. Under the Supreme Court's ruling in *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), recoverable losses are limited to the price decline attributable to disclosure of the alleged previously concealed or misrepresented information. The PSLRA's so-called "look-back" (sometimes, "bounce-back") provision limits loss claims per damaged share to the difference between the price paid and the mean trading price of the security during the 90 day period following the end of the class period. Since factors other than the alleged wrongdoing may cause losses, we also compare relevant indices to the price history of the stock involved and eliminate losses not attributable to fraud. We may also consult with outside accountants and experts, when appropriate, with ATRS' prior approval.

After analyzing losses, we would provide ATRS' staff with a detailed report about each matter, including the essence of the allegations and claims, the likely defenses, the various options and our recommendation. The options ATRS may wish to consider include: (1) initiating litigation or seeking lead plaintiff status in pending class litigation; (2) filing an individual or opt-out action; (3) intervening for a limited purpose; (4) filing a derivative action; or as noted above, or (5) declining an active role if ATRS has only small losses or the filing of any such action would be inconsistent with its policy initiatives. Our reports to ATRS will discuss all of the relevant factors it needs to make an informed decision.

If ATRS holds a substantial number of shares in a particular company and has no intention of selling, we may recommend filing a derivative action to recover for losses due to mismanagement or breach of fiduciary duty. Such actions are sometimes appropriate to preserve the value of a company that may have been hurt by its own directors and officers, and often lead to both monetary recoveries for the corporation and improvements in corporate governance, as we helped our clients achieve in the *FPL Group* and *Ashworth* cases. *See* Exhibit A (Firm Resume).

Finally, if ATRS holds a significant stake in a bankrupt entity, we will monitor and, where necessary or advisable, participate actively in the bankruptcy proceedings. This typically may include preparing and prosecuting proofs of claim; opposing efforts of non-bankrupt defendants to seek to avail themselves of the bankruptcy stay under 18 U.S.C. § 362; monitoring plans of reorganization and disclosure statements and the scope of releases, particularly as to non-debtor defendant parties; and other matters. Our Firm has substantial experience both prosecuting and preserving securities and other claims in the context of bankruptcies, such as, for example, in *Lehman*, where we represented the State of New Jersey, and in cases involving *MF Global*, *Fleming*, *Boston Chicken* and *Drexel Burnham Lambert*. Our familiarity with securities actions within the context of bankruptcy has also led to the Firm's selection, following competitive RFPs, as counsel for trustees of liquidating trusts to bring actions against officers and directors as well as accountants -- *Sunterra* and *U.S. Aggregates* -- and resulted in multi-million dollar recoveries. *See* Exhibit A (Firm Resume).

In addition to the reports described above, ATRS will also receive a comprehensive quarterly report containing all metrics it requests and will be able to login to its secure client extranet to obtain up-to date metrics at its convenience.

D. Describe how your law firm will provide filing of proofs of claim for domestic and international cases for ATRS.

The Firm's experienced securities attorneys, including Michael Dell'Angelo, Benjamin Galdston, Barbara Podell and Phyllis Parker, will work with Verteris and ATRS' custodian bank to ensure the timely filing of all proofs of claim for domestic and international cases. The Firm and Verteris are prepared to handle the entire calculation and filing process or ATRS' custodian bank can be involved to the extent ATRS desires.

E.4 ETHICS, FIDUCIARY, AND PROFESSIONALISM

A. Provide details (and excerpts/samples if available) of articles written by your law firm's in-house attorneys that have been published in legal journals covering at least one (1) of the following subjects:

- **Class action securities litigation;**
- **Securities law;**
- **Public pension plan litigation, ethics, and/or institutional investors.**

Note: Do not include full articles from law firm periodicals and brochures. Excerpts/samples must be included in the response to be considered. Do not refer to outside sources such as websites or other printed or digital media. Items may be submitted on a flash drive and should be clearly labeled and referenced to this evaluation criteria (i.e. "E.4.A. Response").

See Exhibit D, Sherrie R. Savett and Phyllis M. Parker, "*After the Fall—A Plaintiff's Perspective*," submitted to PLI on March 7, 2019 (submitted only on the attached flash drive).

See Exhibit B (Resumes) for additional articles published by the Firm's securities attorneys.

B. Provide details (and excerpts/samples if available) of speaking engagements given by your law firm's in-house attorneys covering at least one (1) of the following subjects:

- **Class action securities litigation;**
- **Securities law;**
- **Public pension plan litigation, ethics, and/or institutional investors.**

Note: Excerpts/samples must be included in the response to be considered. Do not refer to outside sources such as websites or other printed or digital media. Items may be submitted on a flash drive and should be clearly labeled and referenced to this evaluation criteria (i.e. "E.4.B. Response").

See Exhibit B (Resumes) for speaking engagements by the Firm's securities attorneys.

C. Provide details (and excerpts/samples if available) of education provided by your law firm's in- house attorneys to other attorneys covering at least one (1) of the following subjects:

- **Class action securities litigation;**
- **Securities law;**
- **Public pension plan litigation, ethics, and/or institutional investors.**

Note: Excerpts/samples must be included in the response to be considered. Do not refer to outside sources such as websites or other printed or digital media. Items may be submitted on a flash drive and should be clearly labeled and referenced to this evaluation criteria (i.e. "E.4.C. Response").

See Exhibit B (Resumes) for education provided by the Firm's securities attorneys.

D. Discuss whether your law firm, a partner to your law firm, or any lead attorneys proposed to provide services for ATRS have ever had a formal grievance and/or complaint lodged against them pursuant to the applicable disciplinary rules. Provide outcomes of the grievances and/or complaints, explanations, and tell what actions the applicable party has taken to remedy the matter(s).

If no formal grievances or complaints have been lodged against your law firm, a partner to your law firm, or any lead attorneys proposed to provide services for ATRS, discuss practices and/or policies your law firm has in place to avoid such grievance and complaints.

No formal grievances or complaints have been lodged against our Firm, a shareholder or any lead attorneys proposed to provide services for ATRS.

Todd S. Collins, Berger Montague's General Counsel and a Managing Shareholder, has the responsibility for ensuring that the Firm maintains a consistently high standard of professional ethics. Mr. Collins will consult with outside counsel, when appropriate.

E. Discuss whether your law firm, a partner to your law firm, or any lead attorneys proposed to provide services for ATRS have ever been sued for malpractice or any civil or criminal regulatory enforcement action in connection with any type of legal representation, and whether any such attorneys have been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution. Provide outcomes of the suits, explanations, and tell what actions the applicable party has taken to remedy the matter(s).

None.

If no malpractice suits have been filed and/or no civil or criminal regulatory enforcement actions have been taken against your law firm, a partner to your law firm, or any lead attorneys proposed to provide services for ATRS, discuss practices and/or policies your law firm has in place to avoid such actions.

Todd S. Collins, Berger Montague's General Counsel and a Managing Shareholder, has the responsibility for ensuring that the Firm maintains a consistently high standard of professional ethics. Mr. Collins will consult with outside counsel, when appropriate.

F. List any court sanctions for securities litigation representation and any court sanctions or State Bar actions for ethical violations and/or irregular billing practices filed against your law firm. Provide explanations and tell what actions the applicable party has taken to remedy the matter(s).

None.

If no sanctions have been filed against your law firm, discuss practices and/or policies your law firm has in place to avoid such sanctions.

Todd S. Collins, Berger Montague's General Counsel and a Managing Shareholder, has the responsibility for ensuring that the Firm maintains a consistently high standard of professional ethics. Mr. Collins will consult with outside counsel, when appropriate.

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EXHIBIT A

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About Berger Montague

Berger Montague is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or lead role.

The *National Law Journal,* which recognizes a select group of law firms each year that have done "exemplary, cutting-edge work on the plaintiffs' side," has selected Berger Montague in 12 out of 14 years (2003-05, 2007-13, 2015-16) for its "Hot List" of top plaintiffs' oriented litigation firms in the United States. In 2018 and 2019, the *National Law Journal* recognized Berger Montague as "Elite Trial Lawyers" after reviewing more than 300 submissions for this award. The firm has also achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell* and was ranked as a 2019 "Best Law Firm" by *U.S. News - Best Lawyers*.

Currently, the firm consists of 67 lawyers; 23 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

History of the Firm

Berger Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm's complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger Montague has established new law and forged the path for recovery.

The firm has been involved in a series of notable cases, some of them among the most important in the last 50 years of civil litigation. For example, the firm was one of the principal counsel for

plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately $2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980's. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of $5 billion against Exxon, later reduced by the U.S. Supreme Court to $507.5 million. Berger Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of $200 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger Montague was also lead/liaison counsel in the *Three Mile Island Litigation* arising out of a serious nuclear incident.

Additionally, in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a $1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm also played an instrumental role in bringing about a $4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

Practice Areas and Case Profiles

Antitrust

In antitrust litigation, the firm has served as lead, co-lead or co-trial counsel on many of the most significant civil antitrust cases over the last 45 years, including *In re Corrugated Container Antitrust Litigation* (recovery in excess of $366 million), the *Infant Formula* case (recovery of $125 million), the *Brand Name Prescription Drug* price-fixing case (settlement of more than $700 million), the *State of Connecticut Tobacco Litigation* (settlement of $3.6 billion), the *Graphite Electrodes Antitrust Litigation* (settlement of more than $134 million), and the *High-Fructose Corn Syrup Litigation* ($531 million).

> Once again, Berger Montague has been selected by *Chambers and Partners* for its 2019 *Chambers USA* Guide as one of Pennsylvania's top antitrust firms. *Chambers USA 2019* states that Berger Montague's antitrust practice group is "a preeminent force in the Pennsylvania antitrust market, offering expert counsel to clients from a broad range of industries."
>
> The *Legal 500*, a guide to worldwide legal services providers, ranked Berger Montague as a Top-Tier Law Firm for Antitrust: Civil Litigation/Class Actions: Plaintiff in the United States in its 2019 guide and states that Berger Montague's antitrust department "has acted as lead counsel or co-lead counsel in antitrust cases of the utmost complexity and significance since its inception in 1970."

- ***Payment Card Interchange Fee and Merchant Discount Antitrust Litigation:*** Berger Montague served as co-lead counsel for a national class including millions of merchants in the *Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* against Visa, MasterCard and several of the largest banks in the U.S. (*e.g.*, Chase, Bank of America and Citi). The lawsuit alleged that merchants paid excessive fees to accept Visa and MasterCard cards because the payment cards, individually and together with their respective member banks, violated the antitrust laws. The challenged conduct included, *inter alia*, the collective fixing of interchange fees and adoption of rules that hindered any competitive pressure by merchants to reduce those fees. The lawsuit further alleged that defendants maintained their conspiracy even after both Visa and MasterCard changed their corporate forms from joint ventures owned by member banks to publicly-owned corporations following commencement of this litigation. On September 18, 2018, after thirteen years of hard-fought litigation, Visa and MasterCard agreed to pay as much as approximately $6.26 billion, but no less than approximately $5.56 billion, to settle the case. This result is the largest-ever class action settlement of an antitrust case. The settlement received preliminary approval on January 24, 2019.

- ***In re Domestic Drywall Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of a class of direct purchasers of drywall, in a case alleging that the dominant manufacturers of drywall engaged in a conspiracy to fix drywall prices in the U.S. and to abolish the industry's long-standing practice of limiting price increases for the duration of a construction project through "job quotes." Berger Montague represented a class of direct purchasers of drywall from defendants for the period from January 1, 2012 to January 31, 2013. USG Corporation and United States Gypsum Company (collectively, "USG"), New NGC, Inc., Lafarge North America Inc., Eagle Materials, Inc., American Gypsum Company LLC, TIN Inc. d/b/a Temple-Inland Inc., and PABCO Building Products, LLC were named as defendants in this action. On August 20, 2015, the district court granted final approval of two settlements—one with USG and the other with TIN Inc.—totaling $44.5 million. On December 8, 2016, the district court granted final approval of a $21.2 million settlement with Lafarge North America, Inc. On February 18, 2016, the district court denied the motions for summary judgment filed by American Gypsum Company, New NGC, Inc., Lafarge North America, Inc., and PABCO Building Products. On August 23, 2017, the district court granted direct purchaser plaintiffs' motion for class certification. On January 29, 2018, the district court granted preliminary approval of a joint settlement with the remaining defendants, New NGC, Inc., Eagle Materials, Inc., American Gypsum Company LLC, and PABCO Building Products, LLC, for $125 million. The settlement received final approval on July 17, 2018, bringing the total amount of settlements for the class to $190.7 million.

- ***In re Currency Conversion Fee Antitrust Litigation:*** Berger Montague, as one of two co-lead counsel, spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of $336 million was approved in October 2009, with a Final Judgment entered in November 2009. Following the resolution

of eleven appeals, the District Court, on October 5, 2011, directed distribution of the settlement funds to more than 10 million timely filed claimants, among the largest class of claimants in an antitrust consumer class action. A subsequent settlement with American Express increased the settlement amount to $386 million. (MDL No. 1409 (S.D.N.Y)).

- ***In re Marchbanks Truck Service Inc., et al. v. Comdata Network, Inc.:*** Berger Montague was co-lead counsel in this antitrust class action brought on behalf of a class of thousands of Independent Truck Stops. The lawsuit alleged that defendant Comdata Network, Inc. had monopolized the market for specialized Fleet Cards used by long-haul truckers. Comdata imposed anticompetitive provisions in its agreements with Independent Truck Stops that artificially inflated the fees Independents paid when accepting the Comdata's Fleet Card for payment. These contractual provisions, commonly referred to as anti-steering provisions or merchant restraints, barred Independents from taking various competitive steps that could have been used to steer fleets to rival payment cards. The settlement for $130 million and valuable prospective relief was preliminary approved on March 17, 2014, and finally approved on July 14, 2014. In its July 14, 2014 order approving Class Counsel's fee request, entered contemporaneously with its order finally approving the settlement, the Court described this outcome as "substantial, both in absolute terms, and when assessed in light of the risks of establishing liability and damages in this case."

- ***Ross, et al. v. Bank of America (USA) N.A., et al.:*** Berger Montague, as lead counsel for the cardholder classes, obtained final approval of settlements reached with Chase, Bank of America, Capital One and HSBC, on claims that the defendant banks unlawfully acted in concert to require cardholders to arbitrate disputes, including debt collections, and to preclude cardholders from participating in any class actions. The case was brought for injunctive relief only. The settlements remove arbitration clauses nationwide for 3.5 years from the so-called "cardholder agreements" for over 100 million credit card holders. This victory for consumers and small businesses came after nearly five years of hard-fought litigation, including obtaining a decision by the Court of Appeals reversing the order dismissing the case, and will aid consumers and small businesses in their ability to resist unfair and abusive credit card practices. In June 2009, the National Arbitration Forum (or "NAF") was added as a defendant. Berger Montague also reached a settlement with NAF. Under that agreement, NAF ceased administering arbitration proceedings involving business cards for a period of three and one-half (3.5) years, which relief is in addition to the requirements of a Consent Judgment with the State of Minnesota, entered into by the NAF on July 24, 2009.

- ***In re High Fructose Corn Syrup Antitrust Litigation:*** Berger Montague was one of three co-lead counsel in this nationwide class action alleging a conspiracy to allocate volumes and customers and to price-fix among five producers of high fructose corn syrup. After nine years of litigation, including four appeals, the case was settled on the eve of trial for $531 million. (MDL. No. 1087, Master File No. 95-1477 (C.D. Ill.)).

- ***In re Linerboard Antitrust Litigation:*** Berger Montague was one of a small group of court-appointed executive committee members who led this nationwide class action against producers of linerboard. The complaint alleged that the defendants conspired to reduce production of linerboard in order to increase the price of linerboard and corrugated boxes made therefrom. At the close of discovery, the case was settled for more than $200 million. (98 Civ. 5055 and 99-1341 (E.D. Pa.)).

- ***Johnson, et al. v AzHHA, et al.:*** Berger Montague was co-lead counsel in this litigation on behalf of a class of temporary nursing personnel, against the Arizona Hospital and Healthcare Association, and its member hospitals, for agreeing and conspiring to fix the rates and wages for temporary nursing personnel, causing class members to be underpaid. The court approved $24 million in settlements on behalf of this class of nurses. (Case No. 07-1292 (D. Ariz.)).

- ***In re Graphite Electrodes Antitrust Litigation:*** Berger Montague was one of the four co-lead counsel in a nationwide class action price-fixing case. The case settled for in excess of $134 million and over 100% of claimed damages. (02 Civ. 99-482 (E.D. Pa.)).

- ***In re Catfish Antitrust Litig. Action***: The firm was co-trial counsel in this action which settled with the last defendant a week before trial, for total settlements approximating $27 million. (No. 2:92CV073-D-O, MDL No. 928 (N.D. Miss.)).

- ***In re Carbon Dioxide Antitrust Litigation:*** The firm was co-trial counsel in this antitrust class action which settled with the last defendant days prior to trial, for total settlements approximating $53 million, plus injunctive relief. (MDL No. 940 (M.D. Fla.)).

- ***In re Infant Formula Antitrust Litigation*****:** The firm served as co-lead counsel in an antitrust class action where settlement was achieved two days prior to trial, bringing the total settlement proceeds to $125 million. (MDL No. 878 (N.D. Fla.)).

- ***Red Eagle Resources Corp., Inc., v. Baker Hughes, Inc.:*** The firm was a member of the plaintiffs' executive committee in this antitrust class action which yielded a settlement of $52.5 million. (C.A. No. H-91-627 (S.D. Tex.)).

- ***In re Corrugated Container Antitrust Litigation:*** The firm, led by H. Laddie Montague, was co-trial counsel in an antitrust class action which yielded a settlement of $366 million, plus interest, following trial. (MDL No. 310 (S.D. Tex.)).

- ***Bogosian v. Gulf Oil Corp.:*** With Berger Montague as sole lead counsel, this landmark action on behalf of a national class of more than 100,000 gasoline dealers against 13 major oil companies led to settlements of over $35 million plus equitable relief on the eve of trial. (No. 71-1137 (E.D. Pa.)).

- ***In re Master Key Antitrust Litigation:*** The firm served as co-lead counsel in an antitrust class action that yielded a settlement of $21 million during trial. (MDL No. 45 (D. Conn.)).

The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic competition, having achieved over $1 billion in settlements in such cases over the past decade, including:

- ***King Drug Co. v. Cephalon, Inc.:*** Berger Montague played a major role (serving on the executive committee) in this antitrust class action on behalf of direct purchasers of generic versions of the prescription drug Provigil (modafinil). After nine years of hard-fought litigation, the court approved a $512 million partial settlement, the largest settlement ever for a case alleging delayed generic competition. (Case No. 2:06-cv-01797 (E.D. Pa.)). The case is continuing against one defendant.

- ***In re Asacol Antitrust Litigation:*** The firm served as class counsel for direct purchasers of Asacol HS and Delzicol that alleged that defendants participated in a scheme to block generic competition for the ulcerative colitis drug Asacol. The case settled for $15 million. (Case No. 15-cv-12730-DJC (D. Mass.)).

- ***In re Celebrex (Celecoxib) Antitrust Litigation***: The firm represented a class of direct purchasers of brand and generic Celebrex (celecoxib) in an action alleging that Pfizer, in violation of the Sherman Act, improperly obtained a patent for Celebrex from the U.S. Patent and Trademark Office in a scheme to unlawfully extend patent protection and delay market entry of generic versions of Celebrex. The case settled for $94 million. (Case No. 14-cv-00361 (E.D. VA.)).

- ***In re K-Dur Antitrust Litigation:*** Berger Montague served as co-lead counsel for the class in this long-running antitrust litigation. Berger Montague litigated the case before the Court of Appeals and won a precedent-setting victory, and continued the fight before the Supreme Court. On remand, the case settled for $60.2 million. (Case No. 01-1652 (D.N.J.)).

- ***In re Aggrenox Antitrust Litigation:*** Berger Montague represented a class of direct purchasers of Aggrenox in in an action alleging that defendants delayed the availability of less expensive generic Aggrenox through, inter alia, unlawful reverse payment agreements. The case settled for $146 million. (Case No. 14-02516 (D. Conn.)).

- ***In re Solodyn Antitrust Litigation:*** Berger Montague serves as co-lead counsel representing a class of direct purchasers of brand and generic Solodyn (extended-release minocycline hydrochloride tablets) alleging that defendants entered into agreements not to compete in the market for extended-release minocycline hydrochloride tablets in violation of the Sherman Act. The case settled for a total of more than $76 million. (Case No. 14-MD-2503-DJC (D. Mass.)).

- ***In re Prandin Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel and recovered $19 million on behalf of direct purchasers of the diabetes medication Prandin. (Case No. 2:10-cv-12141 (E.D. Mich.)).

- ***Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co.:*** Berger Montague was appointed as co-lead counsel in a case challenging Warner Chilcott's alleged anticompetitive practices with respect to the branded drug Doryx. The case settled for $15 million. (Case No. 2:12-cv-03824 (E.D. Pa.)).

- ***In re Neurontin Antitrust Litigation:*** Berger Montague served as part of a small group of firms challenging the maintenance of a monopoly relating to the pain medication Neurontin. The case settled for $190 million. (Case No. 02-1830 (D.N.J.)).

- ***In re Skelaxin Antitrust Litigation:*** Berger Montague was among a small group of firms litigating on behalf of direct purchasers of the drug Skelaxin. The case settled for $73 million. (Case No. 2:12-cv-83 / 1:12-md-02343) (E.D. Tenn.)).

- ***In re Wellbutrin XL Antitrust Litigation:*** Berger Montague served as co-lead counsel for a class of direct purchasers of the antidepressant Wellbutrin XL. A settlement of $37.5 million was reached with Valeant Pharmaceuticals (formerly Biovail), one of two defendants in the case. (Case No. 08-cv-2431 (E.D. Pa.)).

- ***Rochester Drug Co-Operative, Inc. v. Braintree Labs., Inc.*:** Berger Montague, appointed as co-lead counsel, prosecuted this case on behalf of direct purchasers alleging sham litigation led to the delay of generic forms of the brand drug Miralax. The case settled for $17.25 million. (Case No. 07-142 (D. Del.)).

- ***In re Oxycontin Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of direct purchasers of the prescription drug Oxycontin. The case settled in 2011 for $16 million. (Case No. 1:04-md-01603 (S.D.N.Y)).

- ***Meijer, Inc., et al. v. Abbott Laboratories:*** Berger Montague served as co-lead counsel in a class action on behalf of pharmaceutical wholesalers and pharmacies charging Abbott Laboratories with illegally maintaining monopoly power and overcharging purchasers in violation of the federal antitrust laws. Plaintiffs alleged that Abbott had used its monopoly with respect to its anti-HIV medicine Norvir (ritonavir) to protect its monopoly power for another highly profitable Abbott HIV drug, Kaletra. This antitrust class action settled for $52 million after four days of a jury trial in federal court in Oakland, California. (Case No. 07-5985 (N.D. Cal.)).

- ***In re Nifedipine Antitrust Litigation:*** Berger Montague played a major role (serving on the executive committee) in this antitrust class action on behalf of direct purchasers of generic versions of the anti-hypertension drug Adalat (nifedipine). After eight years of hard-fought litigation, the court approved a total of $35 million in settlements. (Case No. 1:03-223 (D.D.C.)).

- ***In re DDAVP Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel in a case that charged defendants with using sham litigation and a

fraudulently obtained patent to delay the entry of generic versions of the prescription drug DDAVP. Berger Montague achieved a $20.25 million settlement only after winning a precedent-setting victory before the United States Court of Appeals for the Second Circuit that ruled that direct purchasers had standing to recover overcharges arising from a patent-holder's misuse of an allegedly fraudulently obtained patent. (Case No. 05-2237 (S.D.N.Y.)).

- ***In re Terazosin Antitrust Litigation:*** Berger Montague was one of a small group of counsel in a case alleging that Abbott Laboratories was paying its competitors to refrain from introducing less expensive generic versions of Hytrin. The case settled for $74.5 million. (Case No. 99-MDL-1317 (S.D. Fla.)).

- ***In re Remeron Antitrust Litigation:*** Berger Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Remeron. The case settled for $75 million. (2:02-CV-02007-FSH (D. N.J.)).

- ***In re Tricor Antitrust Litigation:*** Berger Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Tricor. The case settled for $250 million. (No. 05-340 (D. Del.)).

- ***In re Relafen Antitrust Litigation:*** Berger Montague was one of a small group of firms who prepared for the trial of this nationwide class action against GlaxoSmithKline, which was alleged to have used fraudulently-procured patents to block competitors from marketing less-expensive generic versions of its popular nonsteroidal anti-inflammatory drug, Relafen (nabumetone). Just before trial, the case was settled for $175 million. (No. 01-12239-WGY (D. Mass.)).

- ***In re Cardizem CD Antitrust Litigation:*** Berger Montague served on the executive committee of firms appointed to represent the class of direct purchasers of Cardizem CD. The suit charged that Aventis (the brand-name drug manufacturer of Cardizem CD) entered into an illegal agreement to pay Andrx (the maker of a generic substitute to Cardizem CD) millions of dollars to delay the entry of the less expensive generic product. On November 26, 2002, the district court approved a final settlement against both defendants for $110 million. (No. 99-MD-1278, MDL No. 1278 (E.D. Mich.)).

- ***In re Buspirone Antitrust Litigation:*** The firm served on the court-appointed steering committee in this class action, representing a class of primarily pharmaceutical wholesalers and resellers. The Buspirone class action alleged that pharmaceutical manufacturer BMS engaged in a pattern of illegal conduct surrounding its popular anti-anxiety medication, Buspar, by paying a competitor to refrain from marketing a generic version of Buspar, improperly listing a patent with the FDA, and wrongfully prosecuting patent infringement actions against generic competitors to Buspar. On April 11, 2003, the Court approved a $220 million settlement. (MDL No. 1410 (S.D.N.Y.)).

- ***North Shore Hematology-Oncology Assoc., Inc. v. Bristol-Myers Squibb Co.:*** The firm was one of several prosecuting an action complaining of Bristol Myers's use of invalid patents to block competitors from marketing more affordable generic versions of its life-saving cancer drug, Platinol (cisplatin). The case settled for $50 million. (No. 1:04CV248 (EGS) (D.D.C.)).

Commercial Litigation

Berger Montague helps business clients achieve extraordinary successes in a wide variety of complex commercial litigation matters. Our attorneys appear regularly on behalf of clients in high stakes federal and state court commercial litigation across the United States. We work with our clients to develop a comprehensive and detailed litigation plan, and then organize, allocate and deploy whatever resources are necessary to successfully prosecute or defend the case.

- ***Erie Power Technologies, Inc. v. Aalborg Industries A/S, et al.:*** Berger Montague represented a trustee in bankruptcy against officers and directors and the former corporate parent and obtained a very favorable confidential settlement. (No. 04-282E (W.D. Pa.)).

- ***Moglia v. Harris et al.:*** Berger Montague represented a liquidating trustee against the officers of U.S. Aggregates, Inc. and obtained a settlement of $4 million. (No. C 04 2663 (CW) (N.D. Cal.)).

- ***Gray v. Gessow et al.:*** The firm represented a litigation trust and brought two actions, one against the officers and directors of Sunterra Inc. an insolvent company, and the second against Sunterra's accountants, Arthur Andersen and obtained an aggregate settlement of $4.5 million. (Case No. MJG 02-CV-1853 (D. Md.) and No. 6:02-CV-633-ORL-28JGG (M.D. Fla.)).

- ***Fitz, Inc. v. Ralph Wilson Plastics Co.*:** The firm served as sole lead counsel and obtained, after 7 years of litigation, in 2000 a settlement whereby fabricator class members could obtain full recoveries for their losses resulting from defendants' defective contact adhesives. (No. 1-94-CV-06017 (D.N.J.)).

- ***Provident American Corp. and Provident Indemnity Life Insurance Company v. The Loewen Group Inc. and Loewen Group International Inc.:*** Berger Montague settled this individual claim, alleging a 10-year oral contract (despite six subsequent writings attempting to reduce terms to writing, each with materially different terms added, all of which were not signed), for a combined payment in cash and stock of the defendant, of $30 Million. (No. 92-1964 (E.D. Pa.)).

- ***Marilou Whitney (Estate of Cornelius Vanderbilt Whitney) v. Turner/Time Warner:*** Berger Montague settled this individual claim for a confidential amount, seeking interpretation of the distribution agreement for the movie, *Gone with the Wind* and

undistributed profits for the years 1993-1997, with forward changes in accounting and distribution.

- ***American Hotel Holdings Co., et. al v. Ocean Hospitalities, Inc., et. al.:*** Berger Montague defended against a claim for approximately $16 million and imposition of a constructive trust, arising out of the purchase of the Latham Hotel in Philadelphia. Berger Montague settled the case for less than the cost of the trial that was avoided. (June Term, 1997, No. 2144 (Pa. Ct. Com. Pl., Phila. Cty.))

- ***Creative Dimensions and Management, Inc. v. Thomas Group, Inc.:*** Berger Montague defended this case against a claim for $30 million for breach of contract. The jury rendered a verdict in favor of Berger Montague's client on the claim (i.e., $0), and a verdict for the full amount of Berger Montague's client on the counterclaim against the plaintiff. (No. 96-6318 (E.D. Pa.)).

- ***Robert S. Spencer, et al. v. The Arden Group, Inc., et al.*:** Berger Montague represented an owner of limited partnership interests in several commercial real estate partnerships in a lawsuit against the partnerships' general partner. The terms of the settlement are subject to a confidentiality agreement. (Aug. Term, 2007, No. 02066 (Pa. Ct. Com. Pl., Phila. Cty. - Commerce Program)).

- ***Forbes v. GMH:*** Berger Montague represented a private real estate developer/investor who sold a valuable apartment complex to GMH for cash and publicly-held securities. The case which claimed securities fraud in connection with the transaction settled for a confidential sum which represented a significant portion of the losses experienced. (No. 07-cv-00979 (E.D. Pa.)).

Commodities & Financial Instruments

Berger Montague ranks among the country's preeminent firms for managing and trying complex Commodities & Financial Instruments related cases on behalf of individuals and as class actions. The Firm's commodities clients include individual hedge and speculation traders, hedge funds, energy firms, investment funds, and precious metals clients.

- **In re Peregrine Financial Group Customer Litigation:** Berger Montague served as co-lead counsel in a class action which helped deliver settlements worth more than $75 million on behalf of former customers of Peregrine Financial Group, Inc., in litigation against U.S. Bank, N.A., and JPMorgan Chase Bank, N.A., arising from Peregrine's collapse in July 2012. The lawsuit alleges that both banks breached legal duties by allowing Peregrine's owner to withdraw and put millions of dollars in customer funds to non-customer use. (No. 1:12-cv-5546)

- ***In re MF Global Holdings Ltd. Investment Litigation*:** Berger Montague is one of two co-lead counsel that represented thousands of commodities account holders who fell victim to the alleged massive theft and misappropriation of client funds at the former major global commodities brokerage firm MF Global. Berger Montague reached a variety of

settlements, including with JPMorgan Chase Bank, the MF Global SIPA Trustee, and the CME Group, that collectively helped to return approximately $1.6 billion to the class. Ultimately, class members received more than 100% of the funds allegedly misappropriated by MF Global even after all fees and expenses. (No. 11-cv-07866 (S.D.N.Y.).

- ***In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*:** Berger Montague is one of two co-lead counsel representing traders of traders of gold-based derivative contracts, physical gold, and gold-based securities against The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank AG, HSBC Bank plc, Société Générale and the London Gold Market Fixing Limited. Plaintiffs allege that the defendants, members of the London Gold Market Fixing Limited, which sets an important benchmark price for gold, conspired to manipulate this benchmark for their collective benefit. (1:14-md-02548 (S.D.N.Y.)).

- ***In re Libor-Based Financial Instruments Antitrust Litigation*:** Berger Montague represents investors who transacted in Eurodollar futures contracts and options on futures contracts on the Chicago Mercantile Exchange ("CME") between August 2007 and May 2010. The lawsuit alleges that the defendant banks knowingly and intentionally understated their true borrowing costs. By doing so, the defendant banks caused Libor to be calculated or suppressed at artificially low rates. The defendants' alleged manipulation of Libor allowed their banks to pay artificially low interest rates to purchasers of Libor-based financial instruments thereby harming investors in futures, swaps, and other Libor-based derivative products. On February 28, 2018, the Court denied Plaintiff's motion for class certification. That decision is on appeal which is pending. (No. 1:11-md-02262-NRB (S.D.N.Y.)).

- ***Brown, et al. v. Kinross Gold, U.S.A., et al.*:** Berger Montague was one of two co-lead counsel in this action alleging that a leading gold mining company illegally forced out preferred shareholders. The action resulted in a settlement of $29.25 million in cash and $6.5 million in other consideration (approximately 100% of damages and accrued dividends after fees and costs). (No. 02-cv-00605 (D.N.V.)).

Consumer Protection

Berger Montague's Consumer Protection Group protects consumers when they are injured by false or misleading advertising, defective products, data privacy breaches, and various other unfair trade practices. Consumers too often suffer the brunt of corporate wrongdoing, particularly in the area of false or misleading advertising, defective products, and data or privacy breaches.

- ***In re Public Records Fair Credit Reporting Act Litigation*:** Berger Montague is class counsel in three class action settlements involving how the big three credit bureaus, Experian, TransUnion, and Equifax, report public records, including tax liens and civil judgments. The settlements provide groundbreaking injunctive relief valued at over $100 billion and provide streamlined a streamlined process for consumers to receive uncapped monetary payments for claims related to inaccurate reporting of public records.

- ***In re: CertainTeed Fiber Cement Siding Litigation***, MDL No. 2270 (E.D. Pa.). The firm, as one of two Co-Lead Counsel firms obtained a settlement of more than $103 million in this multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class.

- ***Countrywide Predatory Lending Enforcement Action:*** Berger Montague advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against *Countrywide* (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some $8.6 billion.

- ***In re Experian Data Breach Litigation:*** Berger Montague served on the Executive Committee of this class action lawsuit that arose from a 2015 data breach at Experian in which computer hackers stole personal information including Social Security numbers and other sensitive personal information for approximately 15 million consumers. The settlement is valued at over $170 million. It consisted of $22 million for a non-reversionary cash Settlement Fund; $11.7 million for Experian's remedial measures implemented in connection with the lawsuit; and two years of free credit monitoring and identity theft insurance. The aggregate value of credit monitoring claimed by class members during the claims submission process exceeded $138 million, based on a $19.99 per month retail value of the service.

- ***In re Pet Foods Product Liability Litigation***: The firm served as one of plaintiffs' co-lead counsel in this multidistrict class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. The case settled for $24 million. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover. (1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.)).

- ***In re TJX Companies Retail Security Breach Litigation***: The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over $200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of $390 per person based on the retail cost for this service), reimbursement of actual identity theft losses, and reimbursement of driver's license replacement costs. Class members whose credit and debit card numbers were at risk were entitled to cash of $15-$30 or store vouchers of $30-$60. (No. 1:07-cv-10162-WGY, (D. Mass.)).

- ***In Re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation:*** The firm served on the Executive Committee of this multidistrict litigation and obtained a

settlement of cash and injunctive relief for a class of 130 million credit card holders whose credit card information was stolen by computer hackers. The breach was the largest known theft of credit card information in history. (No. 4:09-MD-2046 (S.D. Tex. 2009)).

- ***In re: Countrywide Financial Corp. Customer Data Security Breach Litigation***: The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rogue employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief. The settlement was approved by the court in 2010. (3:08-md-01998-TBR (W.D. Ky. 2008)).

- ***In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation*:** The firm served on the plaintiffs' steering committee and obtained an $11.1 million settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam. (MDL No. 1643 (E.D. La.)).

- ***Vadino, et al. v. American Home Products Corporation, et al.:*** The firm filed a class complaint different from that filed by any other of the filing firms in the New Jersey State Court "Fen Phen" class action, and the class sought in the firm's complaint was ultimately certified. It was the only case anywhere in the country to include a claim for medical monitoring. In the midst of trial, the New Jersey case was folded into a national settlement which occurred as the trial was ongoing, and which was structured to include a medical monitoring component worth in excess of $1 billion. (Case Code No. 240 (N.J. Super. Ct.)).

- ***Parker v. American Isuzu Motors, Inc.*:** The firm served as sole lead counsel and obtained a settlement whereby class members recovered up to $500 each for economic damages resulting from accidents caused by faulty brakes. (Sept. Term 2003, No. 3476 (Pa. Ct. Com. Pl., Phila. Cty.)).

- ***Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc*.:** The firm served as co-lead counsel in litigation brought on behalf of a nationwide class alleging that defendants failed to disclose that its vehicles contained defectively designed timing belt tensioners and associated parts and that defendants misrepresented the appropriate service interval for replacement of the timing belt tensioner system. After extensive discovery, a settlement was reached. (Docket No. ATL-1461-03 (N.J. Sup. Ct. 2007)).

- ***Burgo v. Volkswagen of America, Inc. d/b/a Audi of America, Inc*.:** The firm served as co-lead counsel in litigation brought on behalf of a nationwide class against premised on defendants' defective tires that were prone to bubbles and bulges. Counsel completed extensive discovery and class certification briefing. A settlement was reached while the decision on class certification was pending. The settlement consisted of remedies

including total or partial reimbursement for snow tires, free inspection/replacement of tires for those who experienced sidewall bubbles, blisters, or bulges, and remedies for those class members who incurred other costs related to the tires' defects. (Docket No. HUD-L-2392-01 (N.J. Sup. Ct. 2001)).

- ***Crawford v. Philadelphia Hotel Operating Co.*:** The firm served as co-lead counsel and obtained a settlement whereby persons who contracted food poisoning at a business convention recovered $1,500 each. (March Term, 2004, No. 000070 (Pa. Ct. Com. Pl., Phila. Cty.)).

- ***Block v. McDonald's Corporation*:** The firm served as co-lead counsel and obtained a settlement of $12.5 million with McDonald's stemming from its failure to disclose the use of beef fat in its french fries. (No. 01-CH-9137 (Ill. Cir. Ct., Cook Cty.)).

Corporate Governance and Shareholder Rights

Berger Montague protects the interests of individual and institutional investors in shareholder derivative actions in state and federal courts across the United States. Our attorneys help individual and institutional investors reform poor corporate governance, as well as represent them in litigation against directors of a company for violating their fiduciary duty or provide guidance on shareholder rights.

- ***Emil Rossdeutscher and Dennis Kelly v. Viacom:*** The firm, as lead counsel, obtained a settlement resulting in a fund of $14.25 million for the class. (C.A. No. 98C-03-091 (JEB) (Del. Super. Ct.)).

- **Fox v. Riverview Realty Partners, f/k/a Prime Group Realty Trust, et al.:** The firm, as lead counsel, obtained a settlement resulting in a fund of $8.25 million for the class.

Employee Benefits & ERISA

Berger Montague represents employees who have claims under the federal Employee Retirement Income Security Act. We litigate cases on behalf of employees whose 401(k) and pension investments have suffered losses as a result of the breach of fiduciary duties by plan administrators and the companies they represent. Berger Montague has recovered hundreds of millions of dollars in lost retirement benefits for American workers and retirees, and also gained favorable changes to their retirement plans.

- ***In re Unisys Corp. Retiree Medical Benefits:*** The firm, as co-lead counsel, handled the presentation of over 70 witnesses, 30 depositions, and over 700 trial exhibits in this action that has resulted in partial settlements in 1990 of over $110 million for retirees whose health benefits were terminated. (MDL No. 969 (E.D. Pa.)).

- ***Local 56 U.F.C.W. v. Campbell Soup Co.*:** The firm represented a class of retired Campbell Soup employees in an ERISA class action to preserve and restore retiree

medical benefits. A settlement yielded benefits to the class valued at $114.5 million. (No. 93-MC-276 (SSB) (D.N.J.)).

- ***Rose v. Cooney*:** No. 5:92-CV-208 (D. Conn.) The firm, acting as lead counsel, obtained more than $29 million in cash and payment guarantees from Xerox Corporation to resolve claims of breach of fiduciary duty for plan investments in interest contracts issued by Executive Life Insurance Company.

- ***In re Masters, Mates & Pilots Pension Plan and IRAP Litig.:*** No. 85 Civ. 9545 (VLB) (S.D.N.Y) The firm, as co-lead counsel, participated in lengthy litigation with the U.S. Department of Labor to recover losses to retirement plans resulting from imprudent and prohibited investments; settlements in excess of $20 million, which fully recovered lost principal, were obtained to resolve claims of fiduciary breaches in selecting and monitoring investment managers and investments.

- ***In re Lucent Technologies, Inc. ERISA Litigation*:** No. 01-CV-3491 (D.N.J.) The firm served as co-lead counsel in this class action on behalf of participants and beneficiaries of the Lucent defined contribution plans who invested in Lucent stock, and secured a settlement providing injunctive relief and for the payment of $69 million.

- ***Diebold v. Northern Trust Investments, N.A.*:** 1:09-cv-01934 (N.D. Ill.) As co-lead counsel in this ERISA breach of fiduciary duty case, the firm secured a $36 million settlement on behalf of participants in retirement plans who participated in Northern Trust's securities lending program. Plaintiffs alleged that defendants breached their ERISA fiduciary duties by failing to manage properly two collateral pools that held cash collateral received from the securities lending program. The settlement represented a recovery of more than 25% of alleged class member losses.

- ***In re SPX Corporation ERISA Litigation*:** No. 3:04-cv-192 (W.D.N.C.) The firm recovered 90% of the estimated losses 401(k) plan participants who invested in the SPX stock fund claimed they suffered as a result of defendants' breaches of their ERISA fiduciary duties caused them.

- ***In re Nortel Networks ERISA Litigation*:** Civil Action No. 01-cv-1855 (MD Tenn.) The firm represented a class of former workers of the bankrupt telecommunications company of mismanaging their employee stock fund in violation of their fiduciary duties. The case settled for $21.5 million.

- ***Glass Dimensions, Inc. v. State Street Bank & Trust Co.*:** 1:10-cv-10588-DPW (D. Mass). The firm served as co-lead counsel in this ERISA case that alleged that defendants breached their fiduciary duties to the retirement plans it managed by taking unreasonable compensation for managing the securities lending program in which the plans participated. After the court certified a class of the plans that participated in the securities lending

program at issue, the case settled for $10 million on behalf of 1,500 retirement plans that invested in defendants' collective investment funds.

- ***In re Eastman Kodak ERISA Litigation*:** Master File No. 6:12-cv-06051-DGL (W.D.N.Y.) The firm served as class counsel in this ERISA breach of fiduciary duty class action which alleged that defendants breached their fiduciary duties to Kodak retirement plan participants by allowing plan investments in Kodak common stock. The case settled for $9.7 million.

- ***Lequita Dennard v. Transamerica Corp. et al*.:** Civil Action No. 1:15-cv-00030-EJM (N.D. Iowa). The firm served as counsel to plan participants who alleged that they suffered losses when plan fiduciaries failed to act solely in participants' interests, as ERISA requires, when they selected, removed and monitored plan investment options. The case settled for structural changes to the plan and $3.8 million monetary payment to the class.

Employment & Unpaid Wages

The Berger Montague Employment & Unpaid Wages Department works tirelessly to safeguard the rights of employees, and devotes all of their energies to helping the firm's clients achieve their goals. Our attorneys' understanding of federal and state wage and hour laws, federal and state civil rights and discrimination laws, ERISA, the WARN Act, laws protecting whistleblowers, such as federal and state False Claims Acts, and other employment laws, allows us to develop creative strategies to vindicate our clients' rights and help them secure the compensation to which they are entitled.

Berger Montague is at the forefront of class action litigation, seeking remedies for employees under the Fair Labor Standards Act, state wage and hour law, breach of contract, unjust enrichment, and other state common law causes of action.

Berger Montague's Employment & Unpaid Wages Group, which is co-chaired by Managing Shareholder Shanon Carson and Shareholder Sarah Schalman-Bergen, is repeatedly recognized for outstanding success in effectively representing its clients. In 2015, The National Law Journal selected Berger Montague as the top plaintiffs' law firm in the Employment Law category at the Elite Trial Lawyers awards ceremony. Portfolio Media, which publishes Law360, also recognized Berger Montague as one of the eight Top Employment Plaintiffs' Firms in 2009.

Representative cases include the following:

- ***Fenley v. Wood Group Mustang, Inc*:** The firm served as lead counsel and obtained a settlement of $6.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-326 (S.D. Ohio)).

- ***Sanders v. The CJS Solutions Group, LLC*:** The firm served as co-lead counsel and obtained a settlement of $3.24 million on behalf of a class of IT healthcare consultants who allegedly did not receive overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 17-3809 (S.D.N.Y.)).

- ***Gundrum v.* Cleveland Integrity Services, Inc..:** The firm served as lead counsel and obtained a settlement of $4.5 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 4:17-cv-55 (N.D. Okl.)).

- ***Fenley v.* Applied Consultants, Inc.:** The firm served as lead counsel and obtained a settlement of $9.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-259 (W.D. Pa.)).

- ***Acevedo v. Brightview Landscapes, LLC*:** The firm served as co-lead counsel and obtained a settlement of $6.95 million on behalf of a class of landscaping crew members who allegedly did not receive proper overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 3:13-cv-02529 (M.D. Pa.)).

- ***Jantz v. Social Security Administration:*** The firm served as co-lead counsel and obtained a settlement on behalf of employees with targeted disabilities ("TDEs") alleged that SSA discriminated against TDEs by denying them promotional and other career advancement opportunities. The settlement was reached after more than ten years of litigation, and the Class withstood challenges to class certification on four separate occasions. The settlement includes a monetary fund of $9.98 million and an unprecedented package of extensive programmatic changes valued at approximately $20 million. EEOC No. 531-2006-00276X (2015).

- ***Ciamillo v. Baker Hughes, Incorporated:*** The firm served as lead counsel and obtained a settlement of $5 million on behalf of a class of oil and gas workers who allegedly did not receive any overtime compensation for working hours in excess of 40 per week. (Civil Action No. 14-cv-81 (D. Alaska)).

- ***Employees Committed for Justice v. Eastman Kodak Company:*** The firm served as co-lead counsel and obtained a settlement of $21.4 million on behalf of a nationwide class of African American employees of Kodak alleging a pattern and practice of racial discrimination (pending final approval). A significant opinion issued in the case is *Employees Committed For Justice v. Eastman Kodak Co.*, 407 F. Supp. 2d 423 (W.D.N.Y. 2005) (denying Kodak's motion to dismiss). No. 6:04-cv-06098 (W.D.N.Y.)).

- ***Salcido v. Cargill Meat Solutions Corp.:*** The firm served as co-lead counsel and obtained a settlement of $7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during

their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history. (Civil Action Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.)).

- ***Miller v. Hygrade Food Products, Inc.:*** The firm served as lead counsel and obtained a settlement of $3.5 million on behalf of a group of African American employees of Sara Lee Foods Corp. to resolve charges of racial discrimination and retaliation at its Ball Park Franks plant. (No. 99-1087 (E.D. Pa.)).

- ***Chabrier v. Wilmington Finance, Inc.:*** The firm served as co-lead counsel and obtained a settlement of $2,925,000 on behalf of loan officers who worked in four offices to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class). (No. 06-4176 (E.D. Pa.)).

- ***Bonnette v. Rochester Gas & Electric Co.:*** The firm served as co-lead counsel and obtained a settlement of $2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment. (No. 07-6635 (W.D.N.Y.)).

- ***Confidential*.** The firm served as lead counsel and obtained a settlement of $6 million on behalf of a group of African American employees of a Fortune 100 company to resolve claims of racial discrimination, as well as injunctive relief which included significant changes to the Company's employment practices (settled out of court while charges of discrimination were pending with the U.S. Equal Employment Opportunity Commission).

Environment & Public Health

Berger Montague lawyers are trailblazers in the fields of environmental class action litigation and mass torts. Our attorneys have earned their reputation in the fields of environmental litigation and mass torts by successfully prosecuting some of the largest, most well-known cases of our time. Our Environment & Public Health Group also prosecutes significant claims for personal injury, commercial losses, property damage, and environmental response costs. In 2016 Berger Montague was named an Elite Trial Lawyer Finalist in special litigation (environmental) by The National Law Journal.

- ***Cook v. Rockwell International Corporation:*** In February 2006, the firm won a $554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium or other toxins from the former Rocky Flats nuclear weapons site northwest of Denver, Colorado. Judgment in the case was entered by the court in June 2008 which, with interest, totaled $926 million. Recognizing this tremendous achievement, the Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award for 2009 on Merrill G. Davidoff, David F. Sorensen, and the entire trial team for their "long and hard-fought" victory against "formidable corporate and government defendants." (No. 90-cv-

00181-JLK (D. Colo.)). The jury verdict in that case was vacated on appeal in 2010, but on a second trip to the Tenth Circuit, Plaintiffs secured a victory in 2015, with the case then being sent back to the district court. A $375 million settlement was reached in May 2016, and final approval by the district court was obtained in April 2017.

- ***In re Exxon Valdez Oil Spill Litigation*:** On September 16, 1994, a jury trial of several months duration resulted in a record punitive damages award of $5 billion against the Exxon defendants as a consequence of one of the largest oil spills in U.S. history. The award was reduced to $507.5 million pursuant to a Supreme Court decision. David Berger was co-chair of the plaintiffs' discovery committee (appointed by both the federal and state courts). Harold Berger served as a member of the organizing case management committee. H. Laddie Montague was specifically appointed by the federal court as one of the four designated trial counsel. Both Mr. Montague and Peter Kahana shared (with the entire trial team) the 1995 "Trial Lawyer of the Year Award" given by the Trial Lawyers for Public Justice. (No. A89-0095-CVCHRH (D. Alaska)).

- ***In re Ashland Oil Spill Litigation*:** The firm led by Harold Berger served as co-lead counsel and obtained a $30 million settlement for damages resulting from a very large oil spill. (Master File No. M-14670 (W.D. Pa.)).

- ***State of Connecticut Tobacco Litigation:*** Berger Montague was one of three firms to represent the State of Connecticut in a separate action in state court against the tobacco companies. The case was litigated separate from the coordinated nationwide actions. Although eventually Connecticut joined the national settlement, its counsel's contributions were recognized by being awarded the fifth largest award among the states from the fifty states' Strategic Contribution Fund.

- ***In re School Asbestos Litigation*:** As co-lead counsel, the firm successfully litigated a case in which a nationwide class of elementary and secondary schools and school districts suffering property damage as a result of asbestos in their buildings were provided relief. Pursuant to an approved settlement, the class received in excess of $70 million in cash and $145 million in discounts toward replacement building materials. (No. 83-0268 (E.D. Pa.)).

- ***Drayton v. Pilgrim's Pride Corp.:*** The firm served as counsel in a consolidation of wrongful death and other catastrophic injury cases brought against two manufacturers of turkey products, arising out of a 2002 outbreak of Listeria Monocytogenes in the Northeastern United States, which resulted in the recall of over 32 million pounds of turkey – the second largest meat recall in U.S. history at that time. A significant opinion issued in the case is *Drayton v. Pilgrim's Pride Corp.*, 472 F. Supp. 2d 638 (E.D. Pa. 2006) (denying the defendants' motions for summary judgment and applying the alternative liability doctrine). All of the cases settled on confidential terms in 2006. (No. 03-2334 (E.D. Pa.)).

- ***In re SEPTA 30th Street Subway/Elevated Crash Class Action:*** Berger Montague represented a class of 220 persons asserting injury in a subway crash. Despite a statutory cap of $1 million on damages recovery from the public carrier, and despite a finding of sole fault of the public carrier in the investigation by the National Highway Transit Safety Administration, Berger Montague was able to recover an aggregate of $3.03 million for the class. (1990 Master File No. 0001 (Pa. Ct. Com. Pls., Phila. Cty.)).

- ***In re Three Mile Island Litigation:*** As lead/liaison counsel, the firm successfully litigated the case and reached a settlement in 1981 of $25 million in favor of individuals, corporations and other entities suffering property damage as a result of the nuclear incident involved. (C.A. No. 79-0432 (M.D. Pa.)).

- ***In Re Louisville Explosions Litigation:*** This case was one of the earliest examples of a class action trial of an environmental class action. It redressed damage to private property owners and employees resulting from a February 13, 1981 sewer explosion which was one of the largest explosion mishaps in U.S. history. In February, 1984 the matter went to trial, and after the plaintiffs' case and the denial of motions for direct verdict the litigation settled for net payments to the class members of 100% to 300% or more of direct monetary damages, depending on their zone's distance from the streets that exploded. Claimants lined up near the claims office for blocks to file claims. Mr. Davidoff was lead counsel and lead trial counsel. (No. CV 81-0080, W.D. Ky.).

Insurance Fraud

When insurance companies and affiliated financial services entities engage in fraudulent, deceptive or unfair practices, Berger Montague helps injured parties recover their losses. We focus on fraudulent, deceptive and unfair business practices across all lines of insurance and financial products and services sold by insurers and their affiliates, which include annuities, securities and other investment vehicles.

- ***Spencer v. Hartford Financial Services Group, Inc.:*** The firm, together with co-counsel, prosecuted this national class action against The Hartford Financial Services Group, Inc. and its affiliates in the United States District Court for the District of Connecticut (*Spencer v. Hartford Financial Services Group, Inc.*, Case No. 05-cv-1681) on behalf of approximately 22,000 claimants, each of whom entered into structured settlements with Hartford property and casualty insurers to settle personal injury and workers' compensation claims. To fund these structured settlements, the Hartford property and casualty insurers purchased annuities from their affiliate, Hartford Life. By purchasing the annuity from Hartford Life, The Hartford companies allegedly were able to retain up to 15% of the structured amount of the settlement in the form of undisclosed costs, commissions and profit - all of which was concealed from the settling claimants. On March 10, 2009, the U.S. District Court certified for trial claims on behalf of two national subclasses for civil RICO and fraud (256 F.R.D. 284 (D. Conn. 2009)). On October 14, 2009, the Second Circuit Court of Appeals denied The Hartford's petition for interlocutory

appeal under Federal Rule of Civil Procedure 23(f).On September 21, 2010, the U.S. District Court entered judgment granting final approval of a $72.5 million cash settlement.

- ***Nationwide Mutual Insurance Company v. O'Dell:*** The firm, together with co-counsel, prosecuted this class action against Nationwide Mutual Insurance Company in West Virginia Circuit Court, Roane County (*Nationwide Mutual Insurance Company v. O'Dell*, Case No. 00-C-37), on behalf of current and former West Virginia automobile insurance policyholders, which arose out of Nationwide's failure, dating back to 1993, to offer policyholders the ability to purchase statutorily-required optional levels of underinsured ("UIM") and uninsured ("UM") motorist coverage in accordance with West Virginia Code 33-6-31. The court certified a trial class seeking monetary damages, alleging that the failure to offer these optional levels of coverage, and the failure to provide increased first party benefits to personal injury claimants, breached Nationwide's insurance policies and its duty of good faith and fair dealing, and violated the West Virginia Unfair Trade Practices Act. On June 25, 2009, the court issued final approval of a settlement that provided a minimum estimated value of $75 million to Nationwide auto policyholders and their passengers who were injured in an accident or who suffered property damage.

Predatory Lending and Borrowers' Rights

Berger Montague's attorneys fight vigorously to protect the rights of borrowers when they are injured by the practices of banks and other financial institutions that lend money or service borrowers' loans. Berger Montague has successfully obtained multi-million dollar class action settlements for nationwide classes of borrowers against banks and financial institutions and works tirelessly to protect the rights of borrowers suffering from these and other deceptive and unfair lending practices.

- ***Coonan v. Citibank, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Citibank and its affiliates in the United States District Court for the Northern District of New York concerning alleged kickbacks Citibank received in connection with its force-placed insurance programs. The firm obtained a settlement of $122 million on behalf of a class of hundreds of thousands of borrowers.

- ***Arnett v. Bank of America, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the District of Oregon concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of $31 million on behalf of a class of hundreds of thousands of borrowers.

- ***Clements v. JPMorgan Chase Bank, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against JPMorgan Chase and its affiliates in the United States District Court for the Northern District of California concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of $22,125,000 on behalf of a class of thousands of borrowers.

- ***Holmes v. Bank of America, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the Western District of North Carolina concerning alleged kickbacks received in connection with its force-placed wind insurance program. The firm obtained a settlement of $5.05 million on behalf of a class of thousands of borrowers.

Securities & Investor Protection

In the area of securities litigation, the firm has represented public institutional investors – such as the retirement funds for the States of Pennsylvania, Connecticut, New Hampshire, New Jersey, Louisiana and Ohio, as well as the City of Philadelphia and numerous individual investors and private institutional investors. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon, in which jury verdicts of $88.2 million and a RICO judgment of $239 million were obtained. Berger Montague has served as lead or co-lead counsel in numerous other major securities class action cases where substantial settlements were achieved on behalf of investors.

- ***In re Merrill Lynch Securities Litigation:*** Berger Montague, as co-lead counsel, obtained a recovery of $475 million for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (No. 07-cv-09633 (S.D.N.Y.)).

- ***In re Sotheby's Holding, Inc. Securities Litigation*:** The firm, as lead counsel, obtained a $70 million settlement, of which $30 million was contributed, personally, by an individual defendant. (No. 00-cv-1041 (DLC) (S.D.N.Y.)).

- ***In re: Oppenheimer Rochester Funds Group Securities Litigation:*** The firm, as co-lead counsel, obtained a $89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc. (No. 09-md-02063-JLK (D. Col.)).

- ***In re KLA Tencor Securities Litigation:*** The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).

- ***Ginsburg v. Philadelphia Stock Exchange, Inc., et al.:*** The firm represented certain shareholders of the Philadelphia Stock Exchange in the Delaware Court of Chancery and obtained a settlement valued in excess of $99 million settlement. (C.A. No. 2202-CC (Del. Ch.)).

- ***In re Sepracor Inc. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of $52.5 million for the benefit of bond and stock purchaser classes. (No. 02-cv-12235-MEL (D. Mass.)).

- ***In re CIGNA Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of $93 million for the benefit of the class. (Master File No. 2:02-cv-8088 (E.D. Pa.)).

- ***In re Fleming Companies, Inc. Securities Litigation:*** The firm, as lead counsel, obtained a class settlement of $94 million for the benefit of the class. (No. 5-03-MD-1530 (TJW) (E.D. Tex.)).

- ***In re Xcel Energy Inc. Securities, Derivative & "ERISA" Litigation:*** The firm, as co-lead counsel in the ***securities*** actions, obtained a cash settlement of $80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (No. 02-cv-2677 (DSD/FLN) (D. Minn.)).

- ***In re NetBank, Inc. Securities Litigation:*** The firm served as lead counsel in this certified class action on behalf of the former common shareholders of NetBank, Inc. The $12.5 million settlement, which occurred after class certification proceedings and substantial discovery, is particularly noteworthy because it is one of the few successful securities fraud class actions litigated against a subprime lender and bank in the wake of the financial crisis. (No. 07-cv-2298-TCB (N.D. Ga.)).

- ***Brown v. Kinross Gold U.S.A. Inc.:*** The firm represented lead plaintiffs as co-lead counsel and obtained $29.25 million cash settlement and an additional $6,528,371 in dividends for a gross settlement value of $35,778,371. (No. 02-cv-0605 (D. Nev.)) All class members recovered 100% of their damages after fees and expenses.

- ***In re Campbell Soup Co. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of $35 million for the benefit of the class. (No. 00-cv-152 (JEI) (D.N.J.)).

- ***In re Premiere Technologies, Inc. Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement of over $20 million in combination of cash and common stock. (No.1:98-cv-1804-JOF (N.D. Ga.)).

- ***In re PSINet, Inc., Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of $17.83 million on behalf of investors. (No. 00-cv-1850-A (E.D. Va.)).

- ***In re Safety-Kleen Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement in the amount of $45 million against Safety-Kleen's outside accounting firm and certain of the Company's officers and directors. The final settlement was obtained 2 business days before the trial was to commence. (No. 3:00-cv-736-17 (D.S.C.)).

- ***The City Of Hialeah Employees' Retirement System v. Toll Brothers, Inc.:*** The firm, as co-lead counsel, obtained a class settlement of $25 million against Home Builder Toll Brothers, Inc. (No. 07-cv-1513 (E.D. Pa.)).

- ***In re Rite Aid Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained settlements totaling $334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (No. 99-cv-1349 (E.D. Pa.)).

- ***In re Sunbeam Inc. Securities Litigation:*** As co-lead counsel and designated lead trial counsel (by Mr. Davidoff), the firm obtained a settlement on behalf of investors of $142 million in the action against Sunbeam's outside accounting firm and Sunbeam's officers. (No. 98-cv-8258 (S.D. Fla.)).

- ***In re Waste Management, Inc. Securities Litigation:*** In 1999, the firm, as co-lead counsel, obtained a class settlement for investors of $220 million cash which included a settlement against Waste Management's outside accountants. (No. 97-cv-7709 (N.D. Ill.)).

- ***In re IKON Office Solutions Inc. Securities Litigation:*** The firm, serving as both co-lead and liaison counsel, obtained a cash settlement of $111 million in an action on behalf of investors against IKON and certain of its officers. (MDL Dkt. No. 1318 (E.D. Pa.)).

- ***In re Melridge Securities Litigation:*** The firm served as lead counsel and co-lead trial counsel for a class of purchasers of Melridge common stock and convertible debentures. A four-month jury trial yielded a verdict in plaintiffs' favor for $88.2 million, and judgment was entered on RICO claims against certain defendants for $239 million. The court approved settlements totaling $57.5 million. (No. 87-cv-1426 FR (D. Ore.)).

- ***Aldridge v. A.T. Cross Corp.*:** The firm represented a class of investors in a securities fraud class action against A.T. Cross, and won a significant victory in the U.S. Court of Appeals for the First Circuit when that Court reversed the dismissal of the complaint and lessened the pleading standard for such cases in the First Circuit, holding that it would not require plaintiffs in a shareholder suit to submit proof of financial restatement in order to prove revenue inflation. *See Aldridge v. A.T. Cross Corp.*, 284 F.3d 72 (1st Cir. 2002). The case ultimately settled for $1.5 million. (C.A. No. 00-203 ML (D.R.I.)).

- ***Silver v. UICI:*** The firm, as co-lead counsel, obtained a settlement resulting in a fund of $16 million for the class. (No. 3:99-cv-2860-L (N.D. Tex.)).

- ***In re Alcatel Alsthom Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).

- ***Walco Investments, Inc. et al. v. Kenneth Thenen, et al. (Premium Sales):*** The firm, as a member of the plaintiffs' steering committee, obtained settlements of $141 million for investors victimized by a Ponzi scheme. Reported at: 881 F. Supp. 1576 (S.D. Fla. 1995); 168 F.R.D. 315 (S.D. Fla. 1996); 947 F. Supp. 491 (S.D. Fla. 1996)).

- ***In re The Drexel Burnham Lambert Group, Inc.:*** The firm was appointed co-counsel for a mandatory non-opt-out class consisting of all claimants who had filed billions of dollars in securities litigation-related proofs of claim against The Drexel Burnham Lambert Group, Inc. and/or its subsidiaries. Settlements in excess of $2.0 billion were approved in August 1991 and became effective upon consummation of Drexel's Plan of Reorganization on April 30, 1992. (No. 90-cv-6954 (MP), Chapter 11, Case No. 90 B 10421 (FGC), Jointly Administered, reported at, *inter alia*, 960 F.2d 285 (2d Cir. 1992), *cert. dismissed*, 506 U.S. 1088 (1993) ("Drexel I") and 995 F.2d 1138 (2d Cir. 1993) ("Drexel II")).

- ***In re Michael Milken and Associates Securities Litigation:*** As court-appointed liaison counsel, the firm was one of four lead counsel who structured the $1.3 billion "global" settlement of all claims pending against Michael R. Milken, over 200 present and former officers and directors of Drexel Burnham Lambert, and more than 350 Drexel/Milken-related entities. (MDL Dkt. No. 924, M21-62-MP (S.D.N.Y.)).

- ***RJR Nabisco Securities Litigation:*** The firm represented individuals who sold RJR Nabisco securities prior to the announcement of a corporate change of control. This securities case settled for $72 million. (No. 88-cv-7905 MBM (S.D.N.Y.)).

- ***Qwest Securities Action:*** The firm represented New Jersey in an opt-out case against Qwest and certain officers, which was settled for $45 million. (C.A. No. L-3838-02 (Superior Court New Jersey, Law Division)).

Whistleblower, *Qui Tam*, and False Claims Act

Berger Montague has represented whistleblowers in matters involving healthcare fraud, defense contracting fraud, IRS fraud, securities fraud, and commodities fraud, helping to return more than $1.1 billion to federal and state governments. In return, whistleblower clients retaining Berger Montague to represent them in state and federal courts have received more than $100 million in rewards. Berger Montague's time-tested approach in Whistleblower/Qui Tam representation involves cultivating close, productive attorney-client relationships with the maximum degree of confidentiality for our clients.

Judicial Praise for Berger Montague Attorneys

Berger Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

Antitrust

From **Judge Brian M. Cogan**, of the U.S. District Court of the Eastern District of New York:

> "This is a substantial recovery that has the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs' lawyers in this case who were running it."

Transcript of June 24, 2019 Fairness Hearing, *In re Dental Supplies Antitrust Litigation*, No. 16-cv-696 (E.D.N.Y.).

From **Judge Michael M. Baylson**, of the U.S. District Court of the Eastern District of Pennsylvania:

> "[C]ounsel…for direct action plaintiffs have done an outstanding job here with representing the class, and I thought your briefing was always very on point. I thought the presentation of the very contentious issues on the class action motion was very well done, it was very well briefed, it was well argued."

Transcript of the June 28, 2018 Hearing in ***In re Domestic Drywall Antitrust Litigation***, No. MD-13-2437 at 11:6-11.

From **Judge Madeline Cox Arleo,** of the U.S. District Court for the District of New Jersey praising the efforts of all counsel:

> "I just want to thank you for an outstanding presentation. I don't say that lightly . . . it's not lost on me at all when lawyers come very, very prepared. And really, your clients should be very proud to have such fine lawyering. I don't see lawyering like this every day in the federal courts, and I am very grateful. And I appreciate the time and the effort you put in, not only to the merits, but the respect you've shown for each other, the respect you've shown for the Court, the staff, and the time constraints. And as I tell my law clerks all the time, good lawyers don't fight, good lawyers advocate. And I really appreciate that more than I can express."

Transcript of the September 9 to 11, 2015 Daubert Hearing in ***Castro v. Sanofi Pasteur***, No. 11-cv-07178 (D.N.J.) at 658:14-659:4.

From **Judge William H. Pauley, III**, of the U.S. District Court of the Southern District of New York:

> "Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression."
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> * * *
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> "Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues …. The law firms of Berger Montague and Coughlin Stoia were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

In re Currency Conversion Fee Antitrust Litigation, 263 F.R.D. 110, 129 (2009).

From **Judge Faith S. Hochberg,** of the United States District court for the District of New Jersey:

> "[W]e sitting here don't always get to see such fine lawyering, and it's really wonderful for me both to have tough issues and smart lawyers … I want to congratulate all of you for the really hard work you put into this, the way you presented the issues, … On behalf of the entire federal judiciary I want to thank you for the kind of lawyering we wish everybody would do."

In re Remeron Antitrust Litig., Civ. No. 02-2007 (Nov. 2, 2005).

From U.S. District **Judge Jan DuBois**, of the U.S. District Court of the Eastern District of Pennsylvania:

> "[T]he size of the settlements in absolute terms and expressed as a percentage of total damages evidence a high level of skill by petitioners … The Court has repeatedly stated that the lawyering in the case at every stage was superb, and does so again."

In Re Linerboard Antitrust Litig., 2004 WL 1221350, at *5-*6 (E.D. Pa. 2004).

From **Judge Nancy G. Edmunds**, of the U.S. District Court of the Eastern District of Michigan:

> "[T]his represents an excellent settlement for the Class and reflects the outstanding effort on the part of highly experienced, skilled, and hard working Class Counsel….[T]heir efforts were not only successful, but were highly organized and efficient in addressing numerous complex issues raised in this litigation[.]"

In re Cardizem CD Antitrust Litig., MDL No. 1278 (E.D. Mich., Nov. 26, 2002).

From **Judge Charles P. Kocoras,** of the U.S. District Court for the Northern District of Illinois:

> "The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . . There is no question that the results achieved by class counsel were extraordinary [.]"

Regarding the work of Berger Montague in achieving more than $700 million in settlements with some of the defendants in ***In Re Brand Name Prescription Drugs Antitrust Litigation***, 2000 U.S. Dist. LEXIS 1734, at *3-*6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte,** of the U.S. District Court for the District of Maryland:

> "The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs' counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded."

Settlement Approval Hearing, Oct. 28, 1994, in ***Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.***, CA No. PJM-92-3624 (D. Md.).

From **Judge Donald W. Van Artsdalen,** of the U.S. District Court for the Eastern District of Pennsylvania:

> "As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs' counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and

> suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure."

Bogosian v. Gulf Oil Corp., 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Krupansky**, who had been elevated to the Sixth Circuit Court of Appeals:

> Finally, the court unhesitatingly concludes that the quality of the representation rendered by counsel was uniformly high. The attorneys involved in this litigation are extremely experienced and skilled in their prosecution of antitrust litigation and other complex actions. Their services have been rendered in an efficient and expeditious manner, but have nevertheless been productive of highly favorable result.

In re Art Materials Antitrust Litigation, 1984 CCH Trade Cases ¶65,815 (N.D. Ohio 1983).

From **Judge Joseph Blumenfeld,** of the U.S. District Court for the District of Connecticut:

> "The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions."

In re Master Key Antitrust Litigation, 1977 U.S. Dist. LEXIS 12948, at *35 (Nov. 4, 1977).

Securities & Investor Protection

From **Judge Jed Rakoff** of the U.S. District Court for the Southern District of New York:

> Court stated that lead counsel had made "very full and well-crafted" and "excellent submissions"; that there was a "very fine job done by plaintiffs' counsel in this case"; and that this was "surely a very good result under all the facts and circumstances."

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y., July 27, 2009).

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive."

In re CIGNA Corp. Sec. Litig., 2007 U.S. Dist. LEXIS 51089, at *17-*18 (E.D. Pa. July 13, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The quality of lawyering on both sides, but I am going to stress now on the plaintiffs' side, simply has not been exceeded in any case, and we have had some marvelous counsel appear before us and make superb arguments, but they really don't come any better than Mrs. Savett… [A]nd the arguments we had on the motion to dismiss [Mrs. Savett argued the motion], both sides were fabulous, but plaintiffs' counsel were as good as they come."

In re U.S. Bioscience Secs. Litig., No. 92-0678 (E.D. Pa. April 4, 1994).

From **Judge Wayne Andersen** of the U.S. District Court for the Northern District of Illinois:

> "[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases…in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here…I would say this has been the best representation that I have seen."

In re: Waste Management, Inc. Secs. Litig., No. 97-C 7709 (N.D. Ill. 1999).

From **Chancellor William Chandler, III** of the Delaware Chancery Court:

> "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case. And I think that's a testimony – Mr. Valihura correctly says that's what they are supposed to do. I recognize that; that is their job, and they were doing it professionally."

Ginsburg v. Philadelphia Stock Exchange, Inc., No. 2202 (Del. Ch., Oct. 22, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "Thanks to the nimble class counsel, this sum, which once included securities worth $149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel

first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received $145,754,922.00. The class also received $14,435,104 in interest on the Notes."

"Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over $1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here."

In re Rite Aid Corp. Securities Litigation, 269 F. Supp. 2d 603, 605, n.1, 611 (E.D. Pa. 2003).

From **Judge Helen J. Frye**, United States District Judge for the U.S. District Court for the District of Oregon:

"In order to bring about this result [partial settlements then totaling $54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District."

* * *

"Throughout the course of their representation, the attorneys at Berger Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence."

In Re Melridge, Inc. Securities Litigation, No. CV 87-1426-FR (D. Ore. April 15, 1996).

From **Judge Marvin Katz** of the U.S. District Court for the Eastern District of Pennsylvania:

"[T]he co-lead attorneys have extensive experience in large class actions, experience that has enabled this case to proceed efficiently and professionally even under short deadlines and the pressure of handling thousands of documents in a large multi-district action... These counsel have also acted vigorously in their clients' interests...."

* * *

"The management of the case was also of extremely high quality.... [C]lass counsel is of high caliber and has extensive experience in similar class action litigation.... The

> submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines."

Commenting on class counsel, where the firm served as both co-lead and liaison counsel in ***In re Ikon Office Solutions, Inc. Securities Litigation***, 194 F.R.D. 166, 177, 195 (E.D. Pa. 2000).

From **Judge William K. Thomas,** Senior District Judge for the United States District Court for the Northern District of Ohio:

> "In the proceedings it has presided over, this court has become directly familiar with the specialized, highly competent, and effective quality of the legal services performed by Merrill G. Davidoff, Esq. and Martin I. Twersky, Esq. of Berger Montague...."
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> * * *
>
> "Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich."

Commenting in ***In re Revco Securities Litigation***, Case No. 1:89CV0593, Order (N.D. Oh. September 14, 1993).

Civil/Human Rights Cases

From **Deputy Treasury Secretary Stuart E. Eizenstat**:

> "We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them.... For this dedication and commitment to the victims, we should always be grateful to these lawyers."

In his remarks at the July 17, 2000, signing ceremony for the international agreements which established the German Foundation to act as a funding vehicle for the payment of claims to Holocaust survivors.

Insurance Litigation

From **Judge Janet C. Hall**, of the U.S. District Court of the District of Connecticut:

> Noting the "very significant risk in pursuing this action" given its uniqueness in that "there was no prior investigation to rely on in establishing the facts or a legal basis for the case….[and] no other prior or even now similar case involving parties like these plaintiffs and a party like these defendants." Further, "the quality of the representation provided to the plaintiffs ... in this case has been consistently excellent…. [T]he defendant[s] ... mounted throughout the course of the five years the case pended, an extremely vigorous defense…. [B]ut for counsel's outstanding work in this case and substantial effort over five years, no member of the class would have recovered a penny…. [I]t was an extremely complex and substantial class ... case ... [with an] outstanding result."

Regarding the work of Berger Montague attorneys Peter R. Kahana and Steven L. Bloch, among other co-class counsel, in *Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.,* in the Order approving the $72.5 million final settlement of this action, dated September 21, 2010 (No. 3:05-cv-1681, D. Conn.).

Customer/Broker Arbitrations

From **Robert E. Conner**, Public Arbitrator with the National Association of Securities Dealers, Inc.:

> "[H]aving participated over the last 17 years in 400 arbitrations and trials in various settings, ... the professionalism and the detail and generally the civility of everyone involved has been not just a cause for commentary at the end of these proceedings but between ourselves [the arbitration panel] during the course of them, and ... the detail and the intellectual rigor that went into the documents was fully reflective of the effort that was made in general. I wanted to make that known to everyone and to express my particular respect and admiration."

About the efforts of Berger Montague shareholders Merrill G. Davidoff and Eric L. Cramer, who achieved a $1.1 million award for their client, in ***Steinman v. LMP Hedge Fund, et al.***, NASD Case No. 98-04152, at Closing Argument, June 13, 2000.

Employment & Unpaid Wages

From **Judge Timothy R. Rice**, United States Magistrate Judge for the U.S. District Court for the Eastern District of Pennsylvania:

> Describing Berger Montague as "some of the finest legal representation in the nation," who are "ethical, talented, and motivated to help hard working men and women."

Regarding the work of Berger Montague attorneys Sarah R. Schalman-Bergen and Camille F. Rodriguez in ***Gonzalez v. Veritas Consultant Group, LLC, d/b/a Moravia Health Network***, No. 2:17-cv-1319-TR (E.D. Pa. March 13, 2019).

From **Judge Malachy E. Mannion**, United States District Judge for the U.S. District Court for the Middle District of Pennsylvania:

> "At the final approval hearing, class counsel reiterated in detail the arguments set forth in the named plaintiffs' briefing. … The court lauded the parties for their extensive work in reaching a settlement the court deemed fair and reasonable.
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> * * *
>
> "The court is confident that [class counsel] are highly skilled in FLSA collective and hybrid actions, as seen by their dealings with the court and the results achieved in both negotiating and handling the settlement to date."

Acevedo v. Brightview Landscapes, LLC, No. 3:13-cv-2529, 2017 WL 4354809 (M.D. Pa. Oct. 2, 2017).

From **Judge Joseph F. Bataillon**, United States District Judge for the U.S. District Court for the District of Nebraska:

> [P]laintiffs' counsel succeeded in vindicating important rights. … The court is familiar with "donning and doffing" cases and based on the court's experience, defendant meat packing companies' litigation conduct generally reflects "what can only be described as a deeply-entrenched resistance to changing their compensation practices to comply with the requirements of FLSA." (citation omitted). Plaintiffs' counsel perform a recognized public service in prosecuting these actions as a 'private Attorney General' to protect the rights of underrepresented workers.
>
> The plaintiffs have demonstrated that counsel's services have benefitted the class. … The fundamental policies of the FLSA were vindicated and the rights of the workers were protected.

Regarding the work of Berger Montague among other co-counsel in ***Morales v. Farmland Foods****, Inc.*, No. 8:08-cv-504, 2013 WL 1704722 (D. Neb. Apr. 18, 2013).

From **Judge Jonathan W. Feldman**, United States Magistrate Judge for the U.S. District Court for the Western District of New York:

> "The nature of the instant application obliges the Court to make this point clear: In my fifteen years on the bench, no case has been litigated with more skill, tenacity and legal professionalism than this case. The clients, corporate and individual, should be proud of the manner in which their legal interests were brought before and presented to the Court by their lawyers and law firms."
>
> and
>
> "…the Court would be remiss if it did not commend class counsel and all those who worked for firms representing the thousands of current and former employees of Kodak for the outstanding job they did in representing the interests of their clients. For the last several years, lead counsel responsibilities were shared by Shanon Carson …. Their legal work in an extraordinarily complex case was exemplary, their tireless commitment to seeking justice for their clients was unparalleled and their conduct as officers of the court was beyond reproach."

Employees Committed For Justice v. Eastman Kodak, (W.D.N.Y. 2010) ($21.4 million settlement).

Other

From **Stephen M. Feiler, Ph.D.,** Director of Judicial Education, Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, Mechanicsburg, PA *on behalf of the Common Pleas Court Judges (trial judges) of Pennsylvania*:

> "On behalf of the Supreme Court of Pennsylvania and AOPC's Judicial Education Department, thank you for your extraordinary commitment to the *Dealing with Complexities in Civil Litigation* symposia. We appreciate the considerable time you spent preparing and delivering this important course across the state. It is no surprise to me that the judges rated this among the best programs they have attended in recent years."

About the efforts of Berger Montague attorneys Merrill G. Davidoff, Peter Nordberg and David F. Sorensen in planning and presenting a CLE Program to trial judges in the Commonwealth of Pennsylvania.

Founding Partner

David Berger - *1912-2007*

David Berger was the founder and the Chairman of Berger Montague. He received his A.B. *cum laude* in 1932 and his LL.B. *cum laude* in 1936, both from the University of Pennsylvania. He was a member of The Order of the Coif and was an editor of the *University of Pennsylvania Law Review*. He had a distinguished scholastic career including being Assistant to Professor Francis

H. Bohlen and Dr. William Draper Lewis, Director of the American Law Institute, participating in the drafting of the first Restatement of Torts. He also served as a Special Assistant Dean of the University of Pennsylvania Law School. He was a member of the Board of Overseers of the Law School and Associate Trustee of the University of Pennsylvania. In honor of his many contributions, the Law School established the David Berger Chair of Law for the Improvement of the Administration of Justice.

David Berger was a law clerk for the Pennsylvania Supreme Court. He served as a deputy assistant to Director of Enemy Alien Identification Program of the United States Justice Department during World War II.

Thereafter he was appointed Lt.j.g. in the U.S. Naval Reserve and he served in the South Pacific aboard three aircraft carriers during World War II. He was a survivor of the sinking of the U.S.S. Hornet in the Battle of Santa Cruz, October 26, 1942. After the sinking of the Hornet, Admiral Halsey appointed him a member of his personal staff when the Admiral became Commander of the South Pacific. Mr. Berger was ultimately promoted to Commander. He was awarded the Silver Star and Presidential Unit Citation.

After World War II, he was a law clerk in the United States Court of Appeals. The United States Supreme Court appointed David Berger a member of the committee to draft the Federal Rules of Evidence, the basic evidentiary rules employed in federal courts throughout the United States. David Berger was a fellow of the American College of Trial Lawyers, the International Society of Barristers, and the International Academy of Trial Lawyers, of which he was a former Dean. He was a Life Member of the Judicial Conference of the Third Circuit and the American Law Institute.

A former Chancellor (President) of the Philadelphia Bar Association, he served on numerous committees of the American Bar Association and was a lecturer and author on various legal subjects, particularly in the areas of antitrust, securities litigation, and evidence.

David Berger served as a member of President John F. Kennedy's committee which designed high speed rail lines between Washington and Boston. He drafted and activated legislation in the Congress of the United States which resulted in the use of federal funds to assure the continuance of freight and passenger lines throughout the United States. When the merger of the Pennsylvania Railroad and the New York Central Railroad, which created the Penn Central Transportation Company, crashed into Chapter 11, David Berger was counsel for Penn Central and a proponent of its reorganization. Through this work, Mr. Berger ensured the survival of the major railroads in the Northeastern section of the United States including Penn Central, New Jersey Central, and others.

Mr. Berger's private practice included clients in London, Paris, Dusseldorf, as well as in Philadelphia, Washington, New York City, Florida, and other parts of the United States. David Berger instituted the first class action in the antitrust field, and for over 30 years he and the Berger firm were lead counsel and/or co-lead counsel in countless class actions brought to successful conclusions, including antitrust, securities, toxic tort and other cases. He served as one of the

chief counsel in the litigation surrounding the demise of Drexel Burnham Lambert, in which over $2.6 billion was recovered for various violations of the securities laws during the 1980s. The recoveries benefitted such federal entities as the FDIC and RTC, as well as thousands of victimized investors.

In addition, Mr. Berger was principal counsel in a case regarding the Three Mile Island accident near Harrisburg, Pennsylvania, achieving the first legal recovery of millions of dollars for economic harm caused by the nation's most serious nuclear accident. As part of the award in the case, David Berger established a committee of internationally renowned scientists to determine the effects on human beings of emissions of low level radiation.

In addition, as lead counsel in *In re Asbestos School Litigation*, he brought about settlement of this long and vigorously fought action spanning over 13 years for an amount in excess of $200 million.

David Berger was active in Democratic politics. President Clinton appointed David Berger a member of the United States Holocaust Memorial Council, in which capacity he served from 1994-2004. In addition to his having served for seven years as the chief legal officer of Philadelphia, he was a candidate for District Attorney of Philadelphia, and was a Carter delegate in the Convention which nominated President Carter.

Over his lengthy career David Berger was prominent in a great many philanthropic and charitable enterprises some of which are as follows: He was the Chairman of the David Berger Foundation and a long time honorary member of the National Commission of the Anti-Defamation League. He was on the Board of the Jewish Federation of Philadelphia and, at his last place of residence, Palm Beach, as Honorary Chairman of the American Heart Association, Trustee of the American Cancer Society, a member of the Board of Directors of the American Red Cross, and active in the Jewish Federation of Palm Beach County.

David Berger's principal hobby was tennis, a sport in which he competed for over 60 years. He was a member of the Board of Directors of the International Tennis Hall of Fame and other related organizations for assisting young people in tennis on a world-wide basis.

Firm Chair

Eric L. Cramer – Chairman

Mr. Cramer is Firm Chairman and Co-Chair of the Firm's antitrust department. He has a national practice in the field of complex litigation, primarily in the area of antitrust class actions. He is currently co-lead counsel in multiple significant antitrust class actions across the country in a variety of industries and is responsible for winning numerous significant settlements for his clients totaling well over $2 billion. Most recently, he has focused on representing workers claiming that anticompetitive practices have suppressed their pay, including cases on behalf of mixed-martial-arts fighters and chicken growers.

In 2018, he was named Philadelphia antitrust "Lawyer of the Year" by *Best Lawyers*, and in 2017, he won the American Antitrust Institute's Antitrust Enforcement Award for Outstanding Antitrust Litigation Achievement in Private Law Practice for his work in *Castro v. Sanofi Pasteur Inc.*, No. 11-cv-07178 (D.N.J.). He has also identified as a top tier antitrust lawyer by *Chambers & Partners* in Pennsylvania and nationally. *Chambers* observed that Mr. Cramer is "really a tremendous advocate in the courtroom, with a very good mind and presence." He has been highlighted annually since 2011 by *The Legal 500* as one of the country's top lawyers in the field of complex antitrust litigation, and repeatedly deemed one of the "Best Lawyers in America," including in 2018. In 2014 and 2018, Mr. Cramer was selected by *Philadelphia Magazine* as one of the top 100 lawyers in Philadelphia.

Mr. Cramer is also a frequent speaker at antitrust and litigation related conferences. He was the only Plaintiffs' lawyer selected to serve on the American Bar Association's Antitrust Section Transition Report Task Force delivered to the incoming Obama Administration in 2012. He is a Senior Fellow and Vice President of the Board of Directors of the American Antitrust Institute; a past President of COSAL (Committee to Support the Antitrust Laws), a leading industry group; a member of the Advisory Board of the Institute of Consumer Antitrust Studies of the Loyola University Chicago School of Law; and a member of the Board of Directors of Public Justice, a national public interest law firm.

He has written widely in the fields of class certification and antitrust law. Among other writings, Mr. Cramer has co-authored *Antitrust, Class Certification, and the Politics of Procedure*, 17 George Mason Law Review 4 (2010), which was cited by both the First Circuit in *In re Nexium Antitrust Litig*., 777 F.3d 9, 27 (1st Cir. 2015), *quoting* Davis & Cramer, 17 Geo. Mason L. Rev. 969, 984-85 (2010), and the Third Circuit in *Behrend v. Comcast Corp*., 655 F.3d 182, 200, n.10 (3d Cir. 2011), *rev'd on other grounds*, 133 S. Ct. 1426 (2013). He has also co-written a number of other pieces, including: *Of Vulnerable Monopolists?: Questionable Innovation in the Standard for Class Certification in Antitrust Cases*, 41 Rutgers Law Journal 355 (2009-2010); *A Questionable New Standard for Class Certification in Antitrust Cases*, published in the ABA's Antitrust Magazine, Vol. 26, No. 1 (Fall 2011); a Chapter of American Antitrust Institute's Private International Enforcement Handbook (2010), entitled "*Who May Pursue a Private Claim*?"; and, a chapter of the American Bar Association's Pharmaceutical Industry Handbook (July 2009), entitled "Assessing Market Power in the Prescription Pharmaceutical Industry."

Mr. Cramer is a *summa cum laude* graduate of Princeton University (1989), where he was elected to *Phi Beta Kappa*. He graduated *cum laude* from Harvard Law School with a J.D. in 1993.

Managing Shareholders

Sherrie R. Savett – Chair *Emeritus* & Managing Shareholder

Sherrie R. Savett, Chair *Emeritus* of the Firm, Co-Chair of the Securities Litigation Department and *Qui Tam*/False Claims Act Department, and member of the Firm's Management Committee, has practiced in the areas of securities litigation and class actions since 1975.

Ms. Savett serves or has served as lead or co-lead counsel or as a member of the executive committee in a large number of important securities and consumer class actions in federal and state courts across the country, including:

- ***In re Alcatel Alsthom Securities Litigation*:** The Firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.));
- ***In re CIGNA Corp. Securities Litigation*:** The Firm, as co-lead counsel, obtained a settlement of $93 million for the benefit of the class. (Master File No. 2:02-cv-8088 (E.D. Pa.));
- ***In re Fleming Companies, Inc. Securities Litigation*:** The Firm, as lead counsel, obtained a class settlement of $94 million for the benefit of the class. (No. 5-03-MD-1530 (TJW) (E.D. Tex.));
- ***In re KLA Tencor Securities Litigation*:** The Firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.));
- ***Medaphis/Deloitte & Touche*** (class settlement of $96.5 million) (No. 1:96-CV-2088-FMH (N.D. GA));
- ***In re Rite Aid Corp. Securities Litigation*:** The Firm, as co-lead counsel, obtained settlements totaling $334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (No. 99-cv-1349) (E.D. Pa.));
- ***In re Sotheby's Holding, Inc. Securities Litigation:*** The Firm, as lead counsel, obtained a $70 million settlement, of which $30 million was contributed, personally, by an individual defendant (No. 00-cv-1041 (DLC) (S.D.N.Y.));
- ***In re Waste Management, Inc. Securities Litigation:*** In 1999, the Firm, as co-lead counsel, obtained a class settlement for investors of $220 million cash, which included a settlement against Waste Management's outside accountants. (No. 97-cv-7709 (N.D. Ill.)); and
- ***In re Xcel Inc. Securities, Derivative & "ERISA" Litigation***: The Firm, as co-lead counsel in the securities actions, obtained a cash settlement of $80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (No. 02-cv-2677 (DSD/FLN) (D. Minn.)).

Ms. Savett has helped establish several significant precedents. Among them is the holding (the first ever in a federal appellate court) that municipalities are subject to the anti-fraud provisions of SEC Rule 10b-5 under § 10(b) of the Securities Exchange Act of 1934, and that municipalities that issue bonds are not acting as an arm of the state and therefore are not entitled to immunity from suit in the federal courts under the Eleventh Amendment. *Sonnenfeld v. City and County of Denver*, 100 F.3d 744 (10th Cir. 1996).

In the *U.S. Bioscience* securities class action, a biotechnology case where critical discovery was needed from the federal Food and Drug Administration, the court ruled that the FDA may not automatically assert its administrative privilege to block a subpoena and may be subject to

discovery depending on the facts of the case. *In re U.S. Bioscience Secur. Litig.*, 150 F.R.D. 80 (E.D. Pa. 1993).

In the *CIGNA Corp. Securities Litigation*, the Court denied defendants' motion for summary judgment, holding that a plaintiff has a right to recover for losses on shares held at the time of a corrective disclosure and his gains on a stock should not offset his losses in determining legally recoverable damages. *In re CIGNA Corp. Securities Litigation*, 459 F. Supp. 2d 338 (E.D. Pa. 2006).

Additionally, Ms. Savett has become increasingly well-known in the area of consumer litigation, achieving a groundbreaking $24 million settlement in 2008 in the *Menu Foods* case brought by pet owners against manufacturers of allegedly contaminated pet food. *(In re Pet Food Products Liability Litigation*, MDL Docket No. 1850 (D.N.J. 2007). In the data breach area, she was co-lead counsel in *In re TJX Retail Securities Breach Litigation*, MDL Docket No. 1838 (D.Mass), the first very large data breach case where hackers stole personal information from 45 million consumers. The settlement, which became the template for future data breach cases, consisted of providing identity theft insurance to those whose social security or driver's license numbers were stolen, a cash fund for actual damages and time spent mitigating the situation, and injunctive relief.

In the past decade, she has also actively worked in the False Claims Act arena. She was part of the team that litigated over more than a decade and settled the Average Wholesale Price *qui tam* cases, which collectively settled for more than $1 billion.

Ms. Savett speaks and writes frequently on securities litigation, consumer class actions and False Claims Act litigation. She has lectured at the University of Pennsylvania Law School, the Wharton School of the University of Pennsylvania and at the Stanford Law School on prosecuting shareholder class actions and on False Claims Act Litigation. She is frequently invited to present and serve as a panelist in American Bar Association, American Law Institute/American Bar Association and Practicing Law Institute (PLI) conferences on securities class action litigation and the use of class actions in consumer litigation. She has been a presenter and panelist at PLI's Securities Litigation and Enforcement Institute annually from 1995 to 2010. She has also spoken at major institutional investor and insurance industry conferences, and DRI – the Voice of the Defense Bar. In February 2009, she was a member of a six-person panel who presented an analysis of the current state of securities litigation before more than 1,000 underwriters and insurance executives at the PLUS (Professional Liability Underwriting Society) Conference in New York City. She has presented at the Cyber-Risk Conference in 2009, as well as the PLUS Conference in Chicago on November 16, 2009 on the subject of litigation involving security breaches and theft of personal information.

Most recently, in April 2019, she spoke as a panelist at PLI's Securities Litigation 2019: From Investigation to Trial program. Her panel was titled "Commencement of a Civil Action: Filing the Complaint, Preparing the Motion to Dismiss, Coordinating Multiple Securities Litigation Actions." Ms. Savett also co-authored an article for the program that was published in PLI's *Corporate Law and Practice Court Handbook Series*. The article is titled "After the Fall—A Plaintiff's Perspective."

In 2015 and 2016, she served as a panelist in American Law Institute programs held in New York City called “Securities and Shareholder Litigation: Cutting-Edge Developments, Planning and Strategy.” Ms. Savett also spoke at the 2013 ABA Litigation Section Annual Conference in Chicago on two panels. One program on securities litigation was entitled “The Good, The Bad, and The Ugly: Ethical Issues in Class Action Settlements and Opt Outs.” The other program focused on consumer class actions in the real estate area and was entitled “The Foreclosure Crisis Puzzle: Navigating the Changing Landscape of Foreclosure.”

In May 2007, Ms. Savett spoke in Rome, Italy at the conference presented by the Litigation Committee of the Dispute Resolution Section of the International Bar Association and the Section of International Law of the American Bar Association on class certification. Ms. Savett participated in a mock hearing before a United States Court on whether to certify a worldwide class action that includes large numbers of European class members.

Ms. Savett has written numerous articles on securities and complex litigation issues in professional publications, including:

- "After the Fall – A Plaintiff's Perspective," with Phyllis M. Parker, *PLI Corporate Law and Practice Course Handbook Series No. B-2475*, pg. 73-105, April 2019
- “Plaintiffs’ Vision of Securities Litigation: Current Trends and Strategies,” 1762 *PLL* October 2009
- “Primary Liability of ‘Secondary’ Actors Under the PSLRA,” I *Securities Litigation Report*, (Glasser) November 2004
- “Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective,” 1442 *PLI! Corp.13*, September – October 2004
- “Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective,” SJ084 ALI-ABA 399, May 13-14, 2004
- “The ‘Indispensable Tool’ of Shareholder Suits,” *Directors & Boards*, Vol. 28, February 18, 2004
- “Plaintiffs Perspective on How to Obtain Class Certification in Federal Court in a Non-Federal Question Case,” 679 *PLI*, August 2002
- “Hurdles in Securities Class Actions: The Impact of Sarbanes-Oxley From a Plaintiffs Perspective,” 9 *Securities Litigation and Regulation Reporter* (Andrews), December 23, 2003
- “Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective,” SG091 ALI-ABA, May 2-3, 2002
- “Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective,” SF86 ALI-ABA 1023, May 10, 2001
- “Greetings From the Plaintiffs’ Class Action Bar: We’ll be Watching,” SE082 ALI-ABA739, May 11, 2000
- “Preventing Financial Fraud,” B0-00E3 *PLJB0-00E3* April – May 1999
- “Shareholders Class Actions in the Post Reform Act Era,” SD79 ALI-ABA 893, April 30, 1999

- "What to Plead and How to Plead the Defendant's State of Mind in a Federal Securities Class Action," with Arthur Stock, *PLI*, ALI/ABA 7239, November 1998
- "The Merits Matter Most: Observations on a Changing Landscape Under the Private Securities Litigation Reform Act of 1995," 39 *Arizona Law Review* 525, 1997
- "Everything David Needs to Know to Battle Goliath," ABA Tort & Insurance Practice Section, The Brief, Vol. 20, No.3, Spring 1991
- "The Derivative Action: An Important Shareholder Vehicle for Insuring Corporate Accountability in Jeopardy," *PLIH4-0528*, September 1, 1987
- "Prosecution of Derivative Actions: A Plaintiffs Perspective," *PLIH4-5003*, September 1, 1986

Ms. Savett is widely recognized as a leading litigator and a top female leader in the profession by local and national legal rating organizations.

In 2019, *The Legal Intelligencer* named Ms. Savett a "Distinguished Leader," and in 2018 she was named to the *Philadelphia Business Journal*'s 2018 Best of the Bar: Philadelphia's Top Lawyers.

The Legal Intelligencer and *Pennsylvania Law Weekly* named her one of the "56 Women Leaders in the Profession" in 2004.

In 2003-2005, 2007-2013, and 2015-2016, Berger Montague was named to the *National Law Journal's* "Hot List" of 12-20 law firms nationally "who specialize in plaintiffs' side litigation and have excelled in their achievements." The Firm is on the *National Law Journal*'s "Hall of Fame," and Ms. Savett's achievements were mentioned in many of these awards.

Ms. Savett was named a "Pennsylvania Top 50 Female Super Lawyer" and/or a "Pennsylvania Super Lawyer" from 2004 through 2018 by *Philadelphia Magazine* after an extensive nomination and polling process among Pennsylvania lawyers.

In 2006 and 2007, she was named one of the "500 Leading Litigators" and "500 Leading Plaintiffs' Litigators" in the United States by *Lawdragon*. In 2008, Ms. Savett was named as one of the "500 Leading Lawyers in America." Also in 2008, she was named one of 25 "Women of the Year" in Pennsylvania by *The Legal Intelligencer* and *Pennsylvania Law Weekly,* which stated on May 19, 2008 in the *Women in the Profession* in *The Legal Intelligencer* that she "has been a prominent figure nationally in securities class actions for years, and some of her recent cases have only raised her stature." In June 2008, Ms. Savett was named by *Lawdragon* as one of the "100 Lawyers You Need to Know in Securities Litigation."

Unquestionably, it is because of Ms. Savett, who for decades has been in the top leadership of the Firm, that the Firm has a remarkably high proportion of women lawyers and shareholders. At this time, 23 of the Firm's 66 lawyers (34.8%) are women, and 11 of the Firm's 33 shareholders (33.3%) are women. This percentage of women shareholders far exceeds the 23.4% of representation of women among partners in 45 American cities, and far exceeds the 19.8% of

women among partners in Philadelphia law firms, according to the National Association of Law Placement.

Ms. Savett has aggressively sought to hire women, without regard to age or whether they are "right out of law school." Several of the women who have children are able to continue working at the Firm because Ms. Savett has instituted a policy of flexible work time and fosters an atmosphere of cooperation, teamwork and mutual respect. As a result, the women attorneys stay on and have long and productive careers while still maintaining a balanced life. Ms. Savett has a personal understanding of the challenges and satisfactions that women experience in practicing law while raising a family. Ms. Savett has three children and five grandchildren. One of her daughters and her daughter-in-law are lawyers.

Ms. Savett has taught those around her more than good lawyering. She places great emphasis in her own life on devotion to family, community service and involvement in charitable organizations. She teaches others by her example and her obvious interest in their efforts and achievements.

Ms. Savett is a well-known leader of the Philadelphia legal, business, cultural and Jewish community. She is an exemplary citizen who spends endless hours of her after-work time helping others in the community.

From 2011 – 2014, Ms. Savett served as President and Board Chair of the Jewish Federation of Greater Philadelphia (JFGP), a community of over 215,000 Jewish people. She is only the third woman to serve as the President, the top lay leader of the Federation, in the 117 years of its existence.

Ms. Savett also serves on the Board of the National Liberty Museum, The National Museum of American Jewish History, and the local and national boards of American Associates of Ben Gurion University of the Negev. She had as Chairperson of the Southeastern Pennsylvania State of Israel Bonds Campaign and has served as a member of the National Cabinet of State of Israel Bonds. In 2005, Ms. Savett received The Spirit of Jerusalem Medallion, the State of Israel Bonds' highest honor.

Ms. Savett has used her positions of leadership in the community to identify and help promote women as volunteer leaders. Ms. Savett has selected a few worthy causes to which she tirelessly dedicates herself. According to leaders of The Jewish Federation of Greater Philadelphia, Ms. Savett is viewed by many woman in the philanthropic world as a role model.

Ms. Savett earned her J.D. from the University of Pennsylvania Law School and a B.A. *summa cum laude* from the University of Pennsylvania. She is a member of Phi Beta Kappa.

Ms. Savett has three married children, three grandsons, and two granddaughters. She enjoys tennis, biking, physical training, travel, and collecting art, especially glass and sculpture.

Merrill G. Davidoff – Chair *Emeritus* & Managing Shareholder

Merrill G. Davidoff is Chairman *Emeritus* and a Managing Shareholder, in addition to his continuing work as Co-Chairman of the Antitrust Department with Mr. Montague and Chairman of the Environmental Group. Mr. Davidoff has litigated and tried a wide range of antitrust, commodities, securities and environmental class actions.

In *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409, Mr. Davidoff was co-lead counsel in class actions that resulted in settlements of $386 million.

In a long-running environmental class action on behalf of property owners whose land was contaminated by plutonium from a neighboring nuclear weapons facility (Rocky Flats near Denver, Colorado), Mr. Davidoff served as lead counsel and lead trial counsel in a 2005-2006 trial that resulted in a $554 million jury verdict, third largest of 2006. In 2009 the Rocky Flats trial team, led by Mr. Davidoff, received the prestigious Public Justice Award for "Trial Lawyer of the Year." A 2010 decision by the 10th Circuit Court of Appeals reversed the judgment that had been won in the district court, but Berger Montague persevered and sought entry of judgment under alternative state law grounds. After losing this battle in the district court, plaintiffs appealed to the 10th Circuit again, and, after an appeal argued by Mr. Davidoff, the Court of Appeals (by then-judge, now Justice, Neil Gorsuch) reversed and held that plaintiffs could proceed on state law nuisance grounds. Just before competing petitions for certiorari were to be decided by the Supreme Court, a settlement of $375 million was announced in May 2016. The settlement received final approval on April 28, 2017.

Mr. Davidoff also concentrates his practice in representation for commodities futures and options traders as well as derivatives matters. He was co-lead counsel for the customer class in *In re MF Global Holdings Limited Investment Litigation*, which settled for well over a billion dollars and resulted in the recovery and return of 100% of lost customer funds after MF Global's October 31, 2011 collapse.

Mr. Davidoff has represented diverse clients, including many companies, sports organizations, trading firms and governmental entities. In the *Qwest* securities litigation, Mr. Davidoff represented New Jersey, securing a $45 million "opt-out" settlement, and also represented New Jersey in "opt-out" litigation against the former public accounting firm for Lehman Brothers Inc.

Mr. Davidoff served as co-lead and trial counsel for a plaintiff class in the first mass tort class action trial in a federal court which resulted in a precedent-setting settlement for class members, *In re Louisville Explosions Litigation*. In the Canadian Radio-Television and Telecommunications Commission ("CRTC") Decisions (Challenge Communications, Ltd. v. Bell Canada), Mr. Davidoff was lead counsel for Applicant (plaintiff) in three evidentiary hearings before the CRTC. The hearings resulted in the first precedent-breaking Bell Canada's monopoly over the telecommunications equipment which was connected to its telephone network. He was lead counsel in the *Revco Securities Litigation*, an innovative "junk bond" class action, which settled for $36 million. Mr. Davidoff was lead plaintiffs' counsel and lead trial counsel in *In re Melridge Securities Litigation* tried to jury verdicts for $88 million (securities fraud) and $240 million (RICO).

He was co-lead counsel for the class in *In re Graphite Electrodes Antitrust Litigation*, an international price-fixing case which yielded settlements ranging from 18% to 32% of the plaintiffs' and class' purchases from the defendants (aggregate settlements totaled $134 million). He was one of co-lead counsel in the *Ikon Securities Litigation*, in which a settlement of $111 million was obtained. He was co-lead counsel and designated lead trial counsel in the *In Re Sunbeam Securities Litigation*, where settlements of $142 million were reached. One of his areas of concentration is representation in commodities futures and options matters, and expertise in derivatives. He has represented market-makers on the Philadelphia Stock Exchange, where he owned a member firm in the 1990s, as well as broker-dealers and market-makers on other exchanges.

H. Laddie Montague Jr. - Chair *Emeritus* & Managing Shareholder

H. Laddie Montague Jr. is a member of the Firm's Executive Committee, having joined the Firm's predecessor David Berger, P.A., at its inception in 1970. Mr. Montague was Chairman of the Firm from 2003 to 2016. Mr. Montague is now Chairman *Emeritus* and a Managing Shareholder, in addition to his continuing work as Co-Chairman of the Firm's Antitrust Department.

In addition to being one of the courtroom trial counsel for plaintiffs in the mandatory punitive damage class action in the *Exxon Valdez Oil Spill Litigation*, Mr. Montague has served as lead or co-lead counsel in many class actions, including, among others, *High Fructose Corn Syrup Antitrust Litigation* (2006), *In re Infant Formula Antitrust Litigation* (1993) and *Bogosian v. Gulf Oil Corp.* (1984), a nationwide class action against thirteen major oil companies. Mr. Montague was co-lead counsel for the State of Connecticut in its litigation against the tobacco industry. He is currently co-lead counsel in several pending class actions. In addition to the *Exxon Valdez Oil Spill Litigation*, he has tried several complex and protracted cases to the jury, including three class actions: *In re Master Key Antitrust Litigation* (1977), *In re Corrugated Container Antitrust Litigation* (1980) and *In re Brand Name Prescription Drugs Antitrust Litigation*, M.D.L. (1997-1998). For his work as trial counsel in the *Exxon Valdez Oil Spill Litigation*, Mr. Montague shared the Trial Lawyers for Public Justice 1995 Trial Lawyer of the Year Award.

Mr. Montague has been repeatedly singled out by *Chambers USA: America's Leading Lawyers for Business* as one of the top antitrust attorneys in the Commonwealth of Pennsylvania. He is lauded for his stewardship of the Firm's antitrust department, referred to as "the dean of the Bar," stating that his peers in the legal profession hold him in the "highest regard," and explicitly praised for, among other things, his "fair minded[ness]." He also is or has been listed in *Lawdragon, An International Who's Who of Competition Lawyers*, and *The Legal 500: United States (Litigation)*. He has repeatedly been selected by *Philadelphia Magazine* as one of the top 100 lawyers in Pennsylvania. Mr. Montague has also been one of the only two inductees in the American Antitrust Institute's inaugural Private Antitrust Enforcement Hall of Fame.

He has been invited and made a presentation at the Organization for Economic Cooperation and Development (Paris, 2006); the European Commission and International Bar Association Seminar (Brussels, 2007); the Canadian Bar Association, Competition Section (Ottawa, 2008); and the 2010 Competition Law & Policy Forum (Ontario).

Mr. Montague is a graduate of the University of Pennsylvania (B.A. 1960) and the Dickinson School of Law (L.L.B. 1963), where he was a member of the Board of Editors of the Dickinson Law Review. He is the former Chairman of the Board of Trustees of the Dickinson School of Law of Penn State University and current Chairman of the Dickinson Law Association.

Daniel Berger – Managing Shareholder

Daniel Berger graduated with honors from Princeton University and Columbia Law School, where he was a Harlan Fiske Stone academic scholar. He is a senior member and Managing Shareholder. Over the last two decades, he has been involved in complicated commercial litigation including class action securities, antitrust, consumer protection and bankruptcy cases. In addition, he has prosecuted important environmental, mass tort and civil rights cases during this period. He has led the Firm's practice involving improprieties in the marketing of prescription drugs and the abuse of marketing exclusivities in the pharmaceutical industry, including handling landmark cases involving the suppression of generic competition in the pharmaceutical industry. For this work, he has been recognized by the *Law 360* publication as a "titan" of the plaintiffs' Bar ("Titan of the Plaintiffs Bar: Daniel Berger" *Law 360*, September 23, 2014).

In the civil rights area, he has been counsel in informed consent cases involving biomedical research and human experimentation by federal and state governmental entities. He also leads the firm's representation of states and other public bodies and agencies.

Mr. Berger has frequently represented public institutional investors in securities litigation, including representing the state pension funds of Pennsylvania, Ohio and New Jersey in both individual and class action litigation. He also represents Pennsylvania and New Jersey on important environmental litigation involving contamination of groundwater by gasoline manufacturers and marketers.

Mr. Berger has a background in the study of economics, having done graduate level work in applied microeconomics and macroeconomic theory, the business cycle, and economic history. He has published law review articles in the *Yale Law Journal*, the *Duke University Journal of Law and Contemporary Problems*, the *University of San Francisco Law Review* and the *New York Law School Law Review*. Mr. Berger is also an author and journalist who has been published in *The Nation* magazine, reviewed books for *The Philadelphia Inquirer* and authored a number of political blogs, including in *The Huffington Post* and the Roosevelt Institute's *New Deal 2.0*. He has also appeared on MSNBC as a political commentator.

Mr. Berger has been active in city government in Philadelphia and was a member of the Mayor's Cultural Advisory Council, advising the Mayor of Philadelphia on arts policy, and the Philadelphia Cultural Fund, which was responsible for all City grants to arts organizations. Mr. Berger was also a member of the Pennsylvania Humanities Council, one of the State organizations through which the NEA makes grants. Mr. Berger also serves on the board of the Wilma Theater, Philadelphia's pre-eminent theater for new plays and playwrights.

Shanon J. Carson – Managing Shareholder

Shanon J. Carson is a Managing Shareholder of the Firm. He Co-Chairs the Employment & Unpaid Wages, Consumer Protection, Defective Products, and Defective Drugs and Medical Devices Departments and is a member of the Firm's Commercial Litigation, Employee Benefits & ERISA, Environment & Public Health, Insurance Fraud, Predatory Lending and Borrowers' Rights, and Technology, Privacy & Data Breach Departments.

Mr. Carson has achieved the highest peer-review rating, "AV," in Martindale-Hubbell, and has received honors and awards from numerous publications. In 2009, Mr. Carson was selected as one of 30 "Lawyers on the Fast Track" in Pennsylvania under the age of 40. In both 2015 and 2016, Mr. Carson was selected as one of the top 100 lawyers in Pennsylvania, as reported by Thomson Reuters. In 2018, Mr. Carson was named to the *Philadelphia Business Journal*'s "2018 Best of the Bar: Philadelphia's Top Lawyers."

Mr. Carson is often retained to represent plaintiffs in employment cases, wage and hour cases for minimum wage violations and unpaid overtime, ERISA cases, consumer cases, insurance cases, construction cases, automobile defect cases, defective drug and medical device cases, product liability cases, breach of contract cases, invasion of privacy cases, false advertising cases, excessive fee cases, and cases involving the violation of state and federal statutes. Mr. Carson represents plaintiffs in all types of litigation including class actions, collective actions, multiple plaintiff litigations, and single plaintiff litigation. Mr. Carson is regularly appointed by federal courts to serve as lead counsel and on executive committees in class actions and mass torts.

Mr. Carson is frequently asked to speak at continuing legal education seminars and other engagements and is active in nonprofit and professional organizations. Mr. Carson currently serves on the Board of Directors of the Philadelphia Trial Lawyers Association (PTLA) and as a Co-Chair of the PTLA Class Action/Mass Tort Committee. Mr. Carson is also a member of the American Association for Justice, the American Bar Foundation, Litigation Counsel of America, the National Trial Lawyers - Top 100, and the Pennsylvania Association for Justice.

While attending the Dickinson School of Law of the Pennsylvania State University, Mr. Carson was senior editor of the Dickinson Law Review and clerked for a U.S. District Court Judge. Mr. Carson currently serves on the Board of Trustees of the Dickinson School of Law of the Pennsylvania State University.

Todd S. Collins – Managing Shareholder

Todd S. Collins is a graduate of the University of Pennsylvania (B.A. 1973) and the University of Pennsylvania Law School (J.D. 1978), where he won the 1978 Henry C. Laughlin Prize for Legal Ethics. He is a member of the Pennsylvania and Delaware Bars. Since joining the Firm in 1982, following litigation and corporate experience in Wilmington, Delaware, and Philadelphia, he has concentrated on complex class litigation, including cases on behalf of securities purchasers, shareholders, trust beneficiaries, and retirement plan participants and beneficiaries.

Mr. Collins has served as lead counsel or co-lead counsel in numerous cases that have achieved significant benefits on behalf of the Class. These cases include: *In re AMF Bowling Securities Litigation* (S.D.N.Y.) ($20 million recovery, principally against investment banks, where defendants asserted that Class suffered no damages); *In re Aero Systems, Inc. Securities Litigation* (S.D. Fla.) (settlement equal to 90 percent or more of Class members' estimated damages); *Price v. Wilmington Trust Co.* (Del. Ch.) (in litigation against bank trustee for breach of fiduciary duty, settlement equal to 70% of the losses of the Class of trust beneficiaries); *In re Telematics International, Inc. Securities Litigation* (S.D. Fla.) (settlements achieved, after extensive litigation, following 11th Circuit reversal of dismissal below); *In re Ex-Cell-O Securities Litigation* (E.D. Mich.); *In re Sequoia Systems, Inc.* (D. Mass.); *In re Sapiens International, Inc. Securities Litigation* (S.D.N.Y.); *In re Datastream Securities Litigation* (D.S.C.); *Copland v. Tolson* (Pa. Common Pleas) (on eve of trial, in case against corporate principals for breach of fiduciary duty, settlement reached that represented 65% or more of claimants' losses, with settlement funded entirely from individual defendants' personal funds); and *In re IKON Office Solutions, Inc. Securities Litigation* (E.D. Pa.). In *IKON*, where Mr. Collins was co-lead counsel as well as the chief spokesman for plaintiffs and the Class before the Court, plaintiffs' counsel created a fund of $111 million for the benefit of the Class.

In addition, Mr. Collins has served as lead or co-lead counsel in several of the leading cases asserting the ERISA rights of 401(k) plan participants. Mr. Collins has served as co-lead counsel in *In re Lucent Technologies, Inc. ERISA Litigation* (D.N.J.); *In re Nortel Networks Corp. ERISA Litigation* (M.D. Tenn.); *In re SPX Corporation ERISA Litigation* (W.D. N.C.); and *King v. Wal-Mart Stores, Inc.* (D. Nev.). In *Lucent*, Mr. Collins and his team achieved a settlement consisting of $69 million for the benefit of plan participants, as well as substantial injunctive relief with respect to the operation of the 401(k) plans.

Mr. Collins is at the forefront of litigation designed to achieve meaningful corporate governance reform. Recently, he brought to a successful conclusion two landmark cases in which corporate therapeutics are at the core of the relief obtained. In *Oorbeek v. FPL Group, Inc.* (S.D. Fla.), a corporate derivative action brought on behalf of the shareholders of FPL Group, plaintiffs challenged excessive "change of control" payments made to top executives. In the settlement, plaintiffs recovered not only a substantial cash amount but also a range of improvements in FPL's corporate governance structure intended to promote the independence of the outside directors.

Similarly, in *Ashworth Securities Litigation* (S.D. Cal.), a Section 10(b) fraud case, in which Mr. Collins was co-lead counsel, plaintiffs again have been successful in recovering millions of dollars and also securing important governance changes. In this case, the changes focused on strengthening the accounting function and improving revenue recognition practices.

In corporate acquisition cases, Mr. Collins has served as co-lead counsel in cases such as *In re Portec Rail Products, Inc. Shareholders Litig.* (C.P. Allegheny County, Pennsylvania) (tender offer enjoined), *Silberman v. USANA Health Sciences, Inc. et, al.* (D. Utah) (offer enjoined on plaintiffs' motion).

Michael C. Dell'Angelo – Managing Shareholder

Michael Dell'Angelo is a Managing Shareholder in the Antitrust, Commercial Litigation, Commodities & Financial Instruments practice groups and Co-Chair of the Securities department. He serves as co-lead counsel in a variety of complex antitrust cases, including *Le, et al. v. Zuffa, LLC*, No. 15-1045 (D. Nev.) (alleging the Ultimate Fighting Championship ("UFC") obtained illegal monopoly power of the market for Mixed Martial Arts promotions and suppressed the compensation of MMA fighters).

Mr. Dell'Angelo is responsible for winning numerous significant settlements for his clients and class members. Most recently, as co-lead counsel, Mr. Dell'Angelo recently helped to reach settlements totaling more than $190 million in the multidistrict litigation *In re Domestic Drywall Antitrust Litig.*, No. 13-md-2437 (E.D. Pa.). There, in granting final approval to the last settlement, the court observed about Mr. Dell'Angelo and his colleagues that "Plaintiffs' counsel are experienced antitrust lawyers who have been working in this field of law for many years and have brought with them a sophisticated and highly professional approach to gathering persuasive evidence on the topic of price-fixing." *In re Domestic Drywall Antitrust Litig.*, No. 13-md-2437, 2018 WL 3439454, at *18 (E.D. Pa. July 17, 2018). "[I]t bears repeating," the court emphasized, "that the result attained is directly attributable to having highly skilled and experienced lawyers represent the class in these cases." Id.

Mr. Dell'Angelo also serves as co-lead counsel or class counsel in numerous cases alleging price-fixing or other wrongdoing affecting a variety of financial instruments, including *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litig.*, 1:14-MD-2548-VEC (S.D.N.Y); *In re Platinum and Palladium Antitrust Litig.*, No. 14-cv-09391-GHW (S.D.N.Y.); *Contant, et al. v. Bank of America Corp., et al.*, 1:17-cv-03139-LGS (S.D.N.Y.); *In re Libor-Based Financial Instruments Antitrust Litig.*, No. 11-md-2262 (S.D.N.Y.); *Alaska Elec. Pension Fund, et al. v. Bank of Am. Corp., et al.*, No. 14 Civ. 7126-JMF (S.D.N.Y.); *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (S.D.N.Y.); and *In re London Silver Fixing, Ltd. Antitrust Litig.*, No. 14-md-2573 (S.D.N.Y.).

The National Law Journal recently featured Mr. Dell'Angelo in its profile of Berger Montague for a special annual report entitled "Plaintiffs' Hot List." *The National Law Journal*'s Hot List identifies the top plaintiff practices in the country. The Hot List profile focused on Mr. Dell'Angelo's role in the MF Global litigation (*In re MF Global Holding Ltd. Inv. Litig.*, No. 12-MD-2338-VM (S.D.N.Y.)). In *MF Global*, Mr. Dell'Angelo represented former commodity account holders seeking to recover approximately $1.6 billion of secured customer funds after the highly publicized collapse of MF Global, a major commodities brokerage. At the outset of this high-risk litigation, the odds appeared grim: MF Global had declared bankruptcy, leaving the corporate officers, a bank, and a commodity exchange as the only prospect for the recovery of class's misappropriated funds. Nonetheless, four years later, a result few would have believed possible was achieved. Through a series of settlements, the former commodity account holders recovered more than 100 percent of their missing funds, totaling over $1.6 billion.

Mr. Dell'Angelo has been recognized consistently as a Pennsylvania Super Lawyer, a distinction conferred upon him annually since 2007. He is regularly invited to speak at Continuing Legal Education (CLE) and other seminars and conferences, both locally and abroad. In response to his recent CLE, "How to Deal with the Rambo Litigator," Mr. Dell'Angelo was singled out as "One of the best CLE speakers [attendees] have had the pleasure to see."

David F. Sorensen – Managing Shareholder

David Sorensen is a Managing Shareholder and Co-Chair of the Firm's antitrust department. He graduated from Duke University (A.B. 1983) and Yale Law School (J.D. 1989), and clerked for the Hon. Norma L. Shapiro (E.D. Pa.). He concentrates his practice on antitrust and environmental class actions.

Mr. Sorensen co-tried *Cook v. Rockwell Int'l Corp.*, No. 90-181 (D. Colo.) and received, along with the entire trial team, the "Trial Lawyer of the Year" award in 2009 from the Public Justice Foundation for their work on the case, which resulted in a jury verdict of $554 million in February 2006, after a four-month trial, on behalf of thousands of property owners near the former Rocky Flats nuclear weapons plant located outside Denver, Colorado. The jury verdict was then the largest in Colorado history, and was the first time a jury has awarded damages to property owners living near one of the nation's nuclear weapons sites. In 2008, after extensive post-trial motions, the District Court entered a $926 million judgment for the plaintiffs. The jury verdict in the case was vacated on appeal in 2010. In 2015, on a second trip to the Tenth Circuit Court of Appeals, Plaintiffs secured a victory with the case being sent back to the district court. In 2016, the parties reached a $375 million settlement, which received final approval in 2017.

Mr. Sorensen played a major role in the Firm's representation of the State of Connecticut in *State of Connecticut v. Philip Morris, Inc., et al.*, in which Connecticut recovered approximately $3.6 billion (excluding interest) from certain manufacturers of tobacco products. And he served as co-lead class counsel in *Johnson v. AzHHA, et al.*, No. 07-1292 (D. Ariz.), representing a class of temporary nursing personnel who had been underpaid because of an alleged conspiracy among Arizona hospitals. The case settled for $24 million.

Mr. Sorensen also has played a leading role in numerous antitrust cases representing direct purchasers of prescription drugs. Many of these cases have alleged that pharmaceutical manufacturers have wrongfully kept less expensive generic drugs off the market, in violation of the antitrust laws. Many of these cases have resulted in substantial cash settlements, including *King Drug Co. v. Cephalon, Inc.*, (E.D. Pa.) ($512 million partial settlement - largest ever for a case alleging delayed generic competition); *In re: Aggrenox Antitrust Litigation* ($146 million settlement); *In re: K-Dur Antitrust Litigation* ($60.2 million); *In re: Prandin Direct Purchaser Antitrust Litigation* ($19 million); *In re: Doryx Antitrust Litigation* ($15 million); *In re: Skelaxin Antitrust Litigation* ($73 million); *In re: Wellbutrin XL Antitrust Litigation* ($37.50 million); *In re: Oxycontin Antitrust Litigation* ($16 million); *In re: DDAVP Direct Purchaser Antitrust Litigation* ($20.25 million settlement following precedent-setting victory in the Second Circuit, which Mr. Sorensen argued, see 585 F.3d 677 (2d Cir. 2009)); *In re: Nifedipine Antitrust Litigation* ($35 million); *In re: Terazosin Hydrochloride Antitrust Litigation*, MDL 1317 (S.D. Fla.) ($74.5 million);

and *In re: Remeron Antitrust Litigation* ($75 million). Mr. Sorensen is serving as co-lead counsel or on the executive committee of numerous similar, pending cases.

In 2017, the American Antitrust Institute presented its Antitrust Enforcement Award to Mr. Sorensen and others for their work on the *K-Dur* case.

Shareholders

Glen L. Abramson – Shareholder

Glen L. Abramson is a Shareholder in the Philadelphia office. He concentrates his practice on complex consumer protection, product defects, and financial services litigation, and representing public and private institutional investors in securities fraud class actions and commercial litigation.

Mr. Abramson has served as co-lead counsel in numerous successful consumer protection and securities fraud class actions, including:

Casey v. Citibank, N.A., No. 5:12-cv-00820 (N.D.N.Y.). As Co-Lead Counsel, Mr. Abramson obtained a settlement valued at $110 million in this consolidated class action on behalf of nationwide classes of borrowers whose mortgage loans were serviced by Citibank or CitiMortgage and who were force-placed with hazard, flood or wind insurance.

In re Oppenheimer Rochester Funds Group Securities Litigation, No. 09-md-02063-JLK-KMT (D. Colo.). As Co-Lead Counsel, Mr. Abramson represented shareholders in Oppenheimer municipal bond funds in connection with losses suffered during the financial crisis of 2008. The case settled in 2014 for $89.5 million.

In re Tremont, Securities Law, State Law, and Insurance Litig., No. 1:08-cv-11117-TPG. Mr. Abramson represented insurance policyholders who lost money in connection with the Madoff Ponzi scheme. The combined cases were settled for more than $100 million.

In re Mutual Fund Investment Litig., No. 04-md-15861-CCB. As Co-Lead Counsel, Mr. Abramson represented shareholders of various mutual fund families who lost money as the result of market timing in mutual funds. Mr. Abramson was lead counsel for Scudder/Deutsche Bank mutual fund shareholders and helped orchestrate combined settlements of more than $14 million.

In re Fleming Companies, Inc. Sec. Litig., No. 03-md-1530 (E.D. Tex.). As Co-Lead Counsel, Mr. Abramson represented shareholders of Fleming Companies, Inc. in connection with losses suffered as a result of securities fraud by Fleming and its auditors and underwriters. The case resulted in a $93.5 million settlement.

Prior to joining Berger Montague, Mr. Abramson practiced at Dechert LLP in Philadelphia, where he handled complex commercial litigation, product liability, intellectual property, and civil rights disputes. While at Dechert, Mr. Abramson co-chaired a civil rights trial in federal court that led to a six-figure verdict. Mr. Abramson also spent three years as a professional equities trader.

Mr. Abramson is a graduate of Cornell University (B.A. *with distinction* 1993) and Harvard Law School (*cum laude* 1996). He is a past member of the Harvard Legal Aid Bureau and is a member of Cornell University's Phi Beta Kappa honors society.

Gary E. Cantor – Shareholder

Gary E. Cantor is a Shareholder in the Philadelphia office. He concentrates his practice on securities and commercial litigation and derivatives valuations.

Mr. Cantor served as co-lead counsel in *Steiner v. Phillips, et al. (Southmark Securities)*, Consolidated C.A. No. 3-89-1387-X (N.D. Tex.), (class settlement of $82.5 million), and *In re Kenbee Limited Partnerships Litigation*, Civil Action No. 91-2174 (GEB), (class settlement involving 119 separate limited partnerships resulting in cash settlement, oversight of partnership governance and debt restructuring (with as much as $100 million in wrap mortgage reductions)). Mr. Cantor also represented plaintiffs in numerous commodity cases.

In recent years, Mr. Cantor played a leadership role in *In re Oppenheimer Rochester Funds Group Securities Litigation* ($89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc.), No. 09-md-02063-JLK (D. Col.); *In re KLA-Tencor Corp. Securities Litigation*, Master File No. C-06-04065-CRB (N.D. Cal.) ($65 million class settlement); *In re Sepracor Inc. Securities Litigation*, Civil Action no. 02-12235-MEL (D. Mass.) ($52.5 million settlement.); *In re Sotheby's Holding, Inc. Securities Litigation*, No. 00 Civ. 1041 (DLC) (S.D.N.Y.) ($70 million class settlement). He was also actively involved in the *Merrill Lynch Securities Litigation* (class settlement of $475 million) and *Waste Management Securities Litigation* (class settlement of $220 million).

For over 20 years, Mr. Cantor also has concentrated on securities valuations and the preparation of event or damage studies or the supervision of outside damage experts for many of the firm's cases involving stocks, bonds, derivatives, and commodities. Mr. Cantor's work in this regard has focused on statistical analysis of securities trading patterns and pricing for determining materiality, loss causation and damages as well as aggregate trading models to determine class-wide damages.

Mr. Cantor was a member of the Moot Court Board at University of Pennsylvania Law School where he authored a comment on computer-generated evidence in the University of Pennsylvania Law Review. He graduated from Rutgers College with the highest distinction in economics and was a member of Phi Beta Kappa.

Joy P. Clairmont – Shareholder

Joy Clairmont is a Shareholder in the Whistleblower, *Qui Tam* & False Claims Act Group, which has recovered more than $3 billion for federal and state governments, as well as over $500 million for the firm's whistleblower clients. Ms. Clairmont also has experience practicing in the area of securities fraud litigation.

Ms. Clairmont has been investigating and litigating whistleblower cases for over fifteen years and has successfully represented whistleblower clients in federal and state courts throughout the United States. On behalf of her whistleblower clients, Ms. Clairmont has pursued fraud cases involving a diverse array of companies: behavioral health facilities, a national retail pharmacy chain, a research institution, pharmaceutical manufacturers, skilled nursing facilities, a national dental chain, mortgage lenders, hospitals and medical device manufacturers.

Most notably, Ms. Clairmont has participated in several significant and groundbreaking cases involving fraudulent drug pricing:

> ***United States ex rel. Streck v. AstraZeneca, LP, et al.*, C.A. No. 08-5135 (E.D. Pa.):** a Medicaid rebate fraud case which settled in 2015 for a total of $55.5 million against three pharmaceutical manufacturers, AstraZeneca, Cephalon, and Biogen. The case alleged that the defendants did not properly account for millions of dollars of payments to wholesalers for drug distribution and other services. As a result, the defendants underpaid the government in rebates owed under the Medicaid Drug Rebate Program.
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> ***United States ex rel. Kieff and LaCorte v. Wyeth and Pfizer, Inc.*, Nos. 03-12366 and 06-11724-DPW (D. Mass.):** a Medicaid rebate fraud case involving Wyeth's acid-reflux drug, Protonix, which settled for $784.6 million in April 2016.
>
> ***"AWP"* Cases:** a series of cases in federal and state courts against many of the largest pharmaceutical manufacturers, including Bristol-Myers Squibb, Boehringer Ingelheim, and GlaxoSmithKline, for defrauding the government through false and inflated price reports for their drugs, which resulted in more than $2 billion in recoveries for the government.

Earlier in her career, Ms. Clairmont gained experience litigating securities fraud class actions including, most notably, *In Re Sunbeam Securities Litigation*, a class action which led to the recovery of over $142 million for the class of plaintiffs in 2002.

Ms. Clairmont graduated in 1995 with a B.A. *cum laude* from George Washington University and in 1998 with a J.D. from George Washington University Law School.

Caitlin Goldwater Coslett – Shareholder

Caitlin Coslett concentrates her practice on complex litigation, including antitrust, environmental, and mass tort litigation. Since joining the Firm, she has worked on a variety of matters, including *Cook v. Rockwell International Corp.* (mass tort), and antitrust class actions such as *CRT Antitrust Litigation*, *In re Domestic Drywall Antitrust Litigation*, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, *Steel Antitrust Litigation*, and *In re Urethane [Polyether Polyols] Antitrust Litigation*.

Ms. Coslett also represents classes of direct purchasers of pharmaceutical drugs who allege that pharmaceutical manufacturers have violated the federal antitrust laws by wrongfully keeping less expensive generic drugs off the market, including in *In re Lidoderm Antitrust Litigation*, *In re*

Skelaxin (Metaxalone) Antitrust Litigation, and *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*.

Ms. Coslett graduated *magna cum laude* from Haverford College with a B.S. in mathematics and economics and graduated cum laude from the New York University School of Law. At NYU School of Law, Ms. Coslett was a Lederman/Milbank Fellow in Law and Economics and an articles selection editor for the NYU Review of Law and Social Change. Ms. Coslett was formerly one of the top 75 rated female chess players in the U.S.

Andrew C. Curley – Shareholder
Andrew C. Curley is a Shareholder in the Antitrust practice group. He concentrates his practice in the area of complex antitrust litigation.

Mr. Curley served as Co-Lead Class Counsel on behalf of a class of independent truck stops and other retail merchants in *Marchbanks Truck Service, Inc. v. Comdata Network, Inc.*, Case No. 07-1078 (E.D. Pa.). The *Marchbanks* litigation settled in January 2014 for $130 million and significant prospective relief in the form of, among other things, meaningful and enforceable commitments by the largest over-the-road trucker fleet card issuer in the United States to modify or not to enforce those portions of its merchant services agreements that plaintiffs challenged as anticompetitive, and that an expert economist has determined to be worth an additional $260 million to $491 million (bringing the total value of the settlement to between $390 and $621 million).

Mr. Curley is also involved in a number of antitrust cases representing direct purchasers of prescription drugs. These cases have alleged that pharmaceutical manufacturers have wrongfully kept less expensive generic drugs off the market, in violation of the antitrust laws. Those cases include: *In re Solodyn Antitrust Litig.*, 14 MD 2503 (D. Mass.) ($76 million settlements); and *In re Aggrenox Antitrust Litig.*, No. 3:14-md-02516 (D. Conn.) ($146 million settlement); *In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 12-MD-2343 (E.D. Tenn.) ($73 million settlement); *In re Wellbutrin XL Antitrust Litig.*, No. 08-2431 (E.D. Pa.) ($37.5 million settlement with one of two defendants); *In re Opana ER Antitrust Litig.*, No. 14-cv-10150 (N.D. Ill.) and *In re Niaspan Antitrust Litig.*, No. 12-MD-2460 (E.D. Pa.).

Prior to joining the Firm, Mr. Curley practiced in the litigation department of a large Philadelphia law firm where he represented clients in a variety of industries in complex commercial litigation in both state and federal court.

Lawrence Deutsch – Shareholder
Mr. Deutsch has been involved in numerous major shareholder class action cases. He served as lead counsel in the Delaware Chancery Court on behalf of shareholders in a corporate governance litigation concerning the rights and valuation of their shareholdings. Defendants in the case were the Philadelphia Stock Exchange, the Exchange's Board of Trustees, and six major Wall Street investment firms. The case settled for $99 million and also included significant corporate governance provisions. Chancellor Chandler, when approving the settlement allocation

and fee awards on July 2, 2008, complimented counsel's effort and results, stating, "Counsel, again, I want to thank you for your extraordinary efforts in obtaining this result for the class." The Chancellor had previously described the intensity of the litigation when he had approved the settlement, "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong like they have gone at it in this case."

Mr. Deutsch was one of principal trial counsel for plaintiffs in *Fred Potok v. Floorgraphics, Inc., et al.* (Phila Co. CCP 080200944 and Phila Co. CCP 090303768) resulting in an $8 million judgment against the directors and officers of the company for breach of fiduciary duty.

Over his 25 years working in securities litigation, Mr. Deutsch has been a lead attorney on many substantial matters. Mr. Deutsch served as one of lead counsel in the *In Re Sunbeam Securities Litigation* class action concerning "Chainsaw" Al Dunlap (recovery of over $142 million for the class in 2002). As counsel on behalf of the City of Philadelphia he served on the Executive Committee for the securities litigation regarding *Frank A. Dusek, et al. v. Mattel Inc., et al.* (recovery of $122 million for the class in 2006).

Mr. Deutsch served as lead counsel for a class of investors in Scudder/Deutsche Bank mutual funds in the nationwide *Mutual Funds Market Timing* cases. Mr. Deutsch served on the Plaintiffs' Omnibus Steering Committee for the consortium of all cases. These cases recovered over $300 million in 2010 for mutual fund purchasers and holders against various participants in widespread schemes to "market time" and late trade mutual funds, including $14 million recovered for Scudder/Deutsche Bank mutual fund shareholders.

Mr. Deutsch has been court-appointed Lead or a primary attorney in numerous complex litigation cases: *NECA-IBEW Pension Trust Fund, et al. v. Precision Castparts Corp., et al.* (Civil Case No. 3:16-cv-01756-YY); *Fox et al. v. Prime Group Realty Trust, et al.* United States District Court Northern District of Illinois (Civil Case No. 1:12-cv-09350) ($8.25 million settlement pending); served as court-appointed lead counsel in *In Re Inergy LP Unitholder Litigation* (Del. Ch. No. 5816-VCP) ($8 million settlement).

Mr. Deutsch served on a team of lead counsel in *In Re: CertainTeed Fiber Cement Siding Litigation*, E.D.Pa. MDL NO. 11-2270 ($103.9 million settlement); *Tim George v. Uponor, Inc., et al.*, United States District Court, District of Minnesota, Case No. 12-CV-249 (ADM/JJK) ($21 million settlement); *Batista, et al. v. Nissan North America, Inc.*, United States District Court, Southern District of Florida, Miami Division, Case No 1;14-cv-24728 (settlement valued at $65,335,970.00).

In addition to his litigation work, Mr. Deutsch has been a member of the Firm's Executive Committee and also manages the Firm's paralegals. He has also regularly represented indigent parties through the Bar Association's VIP Program, including the Bar's highly acclaimed representation of homeowners facing mortgage foreclosure.

Prior to joining the Firm, Mr. Deutsch served in the Peace Corps from 1973-1976, serving in Costa Rica, the Dominican Republic, and Belize. He then worked for ten years at the United States General Services Administration.

Mr. Deutsch is a graduate of Boston University (B.A. 1973), George Washington University's School of Government and Business Administration (M.S.A. 1979), and Temple University's School of Law (J.D. 1985). He became a member of the Pennsylvania Bar in 1986 and the New Jersey Bar in 1987. He has also been admitted to practice in Eastern District of Pennsylvania, the First Circuit Court of Appeals, the Second Circuit Court of Appeals, the Third Circuit Court of Appeals, the Fourth Circuit Court of Appeals, Eleventh Circuit Court of Appeals and the U.S. Court of Federal Claims as well as various jurisdictions across the country for specific cases.

E. Michelle Drake – Shareholder

E. Michelle Drake is a Shareholder in the Firm's Minneapolis office. With career settlements and verdicts valued at more than $150 million, Michelle has had great success at a young age and in a wide variety of cases.

Michelle focuses her practice primarily on consumer protection, improper credit reporting, and financial services class actions. Michelle is empathetic towards her clients and unyielding in her desire to win. Possessing a rare combination of an elite academic pedigree and real-world trial skills, Michelle has successfully gone toe-to-toe with some of the world's most powerful companies.

Michelle helped achieve one of the largest class action settlements in a case involving improper mortgage servicing practices associated with force-placed insurance, resulting in a settlement valued at $110 million for a nationwide class of borrowers who were improperly force-placed with overpriced insurance. Michelle also served as liaison counsel and part of the Plaintiffs' Steering Committee on behalf of consumers harmed in the Target data breach, a case she helped successfully resolve on behalf of over ninety million consumers whose data was affected by the breach. In 2015, Michelle resolved a federal class action on behalf of a group of adult entertainers in New York for $15 million. Most recently, Michelle has been successful in litigating numerous cases protecting consumers' federal privacy rights under the Fair Credit Reporting Act, securing settlements valued at over $10 million on behalf of tens of thousands of consumers harmed by improper background checks and inaccurate credit reports in the last two years alone.

Michelle was admitted to the bar in 2001 and has since served as lead class counsel in over fifty class and collective actions alleging violations of the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Fair Labor Standards Act, various states' unfair and deceptive trade practices acts, breach of contract and numerous other pro-consumer and pro-employee causes of action.

Michelle serves on the Board of the National Association of Consumer Advocates, is a member of the Partner's Council of the National Consumer Law Center, and is an At-Large Council Member for the Consumer Litigation Section for the Minnesota State Bar Association. She was

named as a Super Lawyer in 2013-2018 and was named as a Rising Star prior to that. Michelle was also appointed to the Federal Practice Committee in 2010 by the United States District Court for the District of Minnesota. She has been quoted in the New York Times and the National Law Journal, and her cases were named as "Lawsuits of the Year" by Minnesota Law & Politics in both 2008 and 2009.

Michelle began her practice of law by defending high stakes criminal cases as a public defender in Atlanta. Michelle has never lost her desire to litigate on the side of the "little guy."

Candice J. Enders – Shareholder
Candice J. Enders is a Shareholder in the Antitrust practice group. She concentrates her practice in complex antitrust litigation.

Her significant involvements include *In re Microcrystalline Cellulose Antitrust Litigation* (E.D. Pa.) ($50 million settlement achieved shortly before trial); *In re Methyl Methacrylate (MMA) Antitrust Litigation* (E.D. Pa.) ($15.1 million settlement); *In re Chocolate Confectionary Antitrust Litigation*; *In re TFT LCD (Flat Panel) Antitrust Litigation* (N.D. Cal.); and *In re Cathode Ray Tube (CRT) Antitrust Litigation* (N.D. Cal.).

While in law school, Ms. Enders served as a senior editor on the Journal of Labor and Employment Law, volunteered as a legal advocate at the Custody and Support Assistance Clinic, and interned at Philadelphia City Council.

Michael T. Fantini – Shareholder
Michael T. Fantini is a Shareholder in the Consumer Protection and Commercial Litigation practice groups. Mr. Fantini concentrates his practice on consumer class action litigation.

Mr. Fantini has considerable experience in notable consumer cases such as: *In re TJX Companies Retail Security Breach Litigation*, Master Docket No. 07-10162 (D. Mass) (class action brought on behalf of persons whose personal and financial data were compromised in the largest computer theft of personal data in history - settled for various benefits valued at over $200 million); *In re Educational Testing Service Praxis Principles of Learning and Teaching: Grade 7-12 Litigation*, MDL No. 1643 (E.D. La. 2006) (settlement of $11.1 million on behalf of persons who were incorrectly scored on a teachers' licensing exam); *Block v. McDonald's Corporation*, No: 01CH9137 (Cir. Ct. Of Cook County, Ill.) (settlement of $12.5 million where McDonald's failed to disclose beef fat in french fries); *Fitz, Inc. v. Ralph Wilson Plastics Co.*, No. 1-94-CV-06017 (D. N.J.) (claims-made settlement whereby fabricators fully recovered their losses resulting from defective contact adhesives); *Parker v. American Isuzu Motors, Inc.*; No: 3476 (CCP, Philadelphia County) (claims-made settlement whereby class members recovered $500 each for their economic damages caused by faulty brakes); *Crawford v. Philadelphia Hotel Operating Co.*, No: 04030070 (CCP Phila. Cty. 2005) (claims-made settlement whereby persons with food poisoning recovered $1,500 each); *Melfi v. The Coca-Cola Company* (settlement reached in case involving alleged misleading advertising of Enviga drink); *Vaughn v. L.A. Fitness International LLC*, No. 10-cv-2326 (E.D. Pa.) (claims made settlement in class action relating to failure to cancel gym

memberships and improper billing); *In re Chickie's & Pete's Wage and Hour Litigation*, Master File No. 12-cv-6820 (E.D. Pa.) (settled class action relating to failure to pay proper wage and overtime under FLSA).

Notable security fraud cases in which Mr. Fantini was principally involved include: *In re PSINet Securities Litigation*, No: 00-1850-A (E.D. Va.) (settlement in excess of $17 million); *Ahearn v. Credit Suisse First Boston, LLC*, No: 03-10956 (D. Mass.) (settlement of $8 million); and *In re Nesco Securities Litigation*, 4:0l-CV-0827 (N.D. Okla.).

Mr. Fantini has represented the City of Chicago in an action against certain online travel companies, such as Expedia, Hotels.com, and others, for their alleged failure to pay hotel taxes. He also represented the City of Philadelphia in a similar matter.

Prior to joining the Firm, Mr. Fantini was a litigation associate with Dechert LLP. At George Washington University Law School, he was a member of the Moot Court Board. In 2017 and 2018, Mr. Fantini was named a Pennsylvania Super Lawyer by Thomson Reuters.

Benjamin Galdston – Shareholder

Benjamin Galdston is a Shareholder in the Antitrust, Commercial Litigation, Commodities & Financial Instruments practice groups and Co-Chair of the Securities department. He manages the Firm's San Diego office and has specialized in complex securities fraud and other class actions, corporate governance matters, opt-out litigation and consumer cases for more than 18 years.

Among the nation's top litigators, Mr. Galdston has represented prominent public pension funds, municipalities, Taft Hartley funds, and asset managers and secured billions of dollars and extensive corporate reforms for injured investors. He has presented arguments in federal district and appellate courts and state courts across the country. Formerly a partner with another national plaintiffs' firm, Mr. Galdston recently secured a landmark pro-investor ruling from the Ninth Circuit in *In re Quality Systems, Inc. Securities Litigation* limiting PSLRA safe harbor protections for mixed statements involving forward-looking projections and current factual assertions. He has served as lead or co-lead counsel in numerous historic securities fraud class actions, including *In re McKesson HBOC Securities Litigation*, the largest securities fraud class action in the Ninth Circuit; *In re Lehman Brothers Holdings, Inc.*, which recovered more than $735 million for shareholders of the defunct brokerage firm; *In re Citigroup Bond Litigation*, a $730 million recovery; *In re Wachovia Corp. Securities Litigation*, a $627 million recovery; *In re Washington Mutual Securities Litigation*, the largest securities class action recovery in the Western District of Washington; *In re Maxim Integrated Products, Inc. Securities Litigation*, the largest stock option backdating recovery in the Ninth Circuit; and *In re New Century*, a $125 million recovery. Mr. Galdston has been at the forefront in successfully pursuing novel legal claims on behalf of institutional investors in individual direct actions, as well, including *In re EMAC Securities Litigation*, a direct action arising from a private offering of asset-backed securities and *In re AXA Rosenberg Investor Litigation*, which asserted claims under the Investment Advisers Act of 1940 and resulted in a $65 million recovery.

Mr. Galdston frequently speaks and publishes on topics relating to securities regulation, class actions, corporate governance, investor advocacy and consumer protection. Most recently, he was a guest speaker at the American Bar Association winter conference and published an article titled “Shareholder Litigation for Waste of Corporate Assets in Internal FCPA Investigations” in *The Review of Securities & Commodities Regulation*.

Ruthanne Gordon – Chief Administrative Officer & Shareholder

Ms. Gordon is a Shareholder in the Antitrust practice group and serves as the Firm's Chief Administrative Officer. In the last few years alone, Ms. Gordon has served as one of the lead lawyers in antitrust class actions resulting in recoveries of hundreds of millions of dollars for the class members she has represented.

Ms. Gordon has played a lead role in litigation involving a wide range of industries, including the credit card industry, chemical products industries, the real estate industry, the computer industry, the public utility industry, the environmental services industry, the tobacco industry, the biotechnology industry and the healthcare industry, among others.

In addition, she represented a class of Pennsylvania inmates in a federal civil rights class action, resulting in the establishment of a statewide treatment program for Pennsylvania inmates suffering from post-traumatic stress disorder as a result of their service in the Vietnam war.

Ms. Gordon has argued issues of the first impression before the Second Circuit Court of Appeals, in *Ross v. American Express Company* (concerning standing to invoke the interlocutory appeal provision of Section 16 of the Federal Arbitration Act, in a case alleging a horizontal price-fixing conspiracy) and before the New Jersey Supreme Court, in *In re PSE&G Derivative Litigation* (concerning the standard for excusal of demand in a duty of care case).

As a member of the Antitrust Law Section of the American Bar Association, Ms. Gordon has served as a panelist at the American Bar Association's Antitrust Law Spring Meeting, where she addressed the key issues that arise in the prosecution and defense of an antitrust class action lawsuit.

Peter R. Kahana – Shareholder

Peter R. Kahana is a Shareholder in the Insurance and Antitrust practice groups. He concentrates his practice in complex civil and class action litigation involving relief for insurance policyholders and consumers of other types of products or services who have been victimized by fraudulent conduct and unfair business practices.

Significant class cases vindicating the rights of insurance policyholders or consumers in which Mr. Kahana was appointed as co-class counsel have included: settlement in 2012 for $90 million of breach of fiduciary duty and negligence claims (certified for trial in 2009) on behalf of a class of former policyholder-members of Anthem Insurance Companies, Inc. ("Anthem") alleging the class was paid insufficient cash compensation in connection with Anthem's conversion from a

mutual insurance company to a publicly-owned stock insurance company (a process known as "demutualization") (*Ormond v. Anthem, Inc., et al.*, USDC, S.D. Ind., Case No. 1:05-cv-01908 (S.D. Ind. 2012)); settlement in 2010 for $72.5 million of a nationwide civil RICO and fraud class action (certified for trial in 2009) against The Hartford and its affiliates on behalf of a class of personal injury and workers compensation claimants for the Hartford's alleged deceptive business practices in settling these injury claims for Hartford insureds with the use of structured settlements (*Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.*, 256 F.R.D. 284 (D. Conn. 2009)); settlement in 2009 for $75 million of breach of contract, Unfair Trade Practices Act and insurance bad faith tort claims on behalf of a class of West Virginia automobile policyholders (certified for trial in 2007) alleging that Nationwide Mutual Insurance Company failed to properly offer and provide them with state-required optional levels of uninsured and underinsured motorist coverage (*Nationwide Mutual Insurance Company v. O'Dell, et al.*, Circuit Court of Roane County, W. Va., Civ. Action No. 00-C-37); and, settlement in 2004 for $20 million on behalf of a class of cancer victims alleging that their insurer refused to pay for health insurance benefits for chemotherapy and radiation treatment (*Bergonzi v. CSO, USDC, D.S.D.*, Case No. C2-4096). For his efforts in regard to the Bergonzi matter, Mr. Kahana was named as the recipient of the American Association for Justice's Steven J. Sharp Public Service Award, which is presented annually to those attorneys whose cases tell the story of American civil justice and help educate state and national policymakers and the public about the importance of consumers' rights.

Mr. Kahana has also played a leading role in major antitrust and environmental litigation, including cases such as *In re Brand Name Prescription Drugs Antitrust Litigation* ($723 million settlement), *In re Ashland Oil Spill Litigation* ($30 million settlement), and *In re Exxon Valdez* ($287 million compensatory damage award and $507.5 million punitive damage award). In connection with his work as a member of the trial team that prosecuted *In re The Exxon Valdez*, Mr. Kahana was selected in 1995 to share the Trial Lawyer of the Year Award by the Public Justice Foundation.

Michael J. Kane – Shareholder

Michael J. Kane, a Shareholder of the Firm, is a graduate of Rutgers University and Ohio Northern University School of Law, with distinction, where he was a member of the Law Review. Mr. Kane is admitted to practice in Pennsylvania and various federal courts.

Mr. Kane joined the antitrust practice in 2005. Prior to joining the Firm, Mr. Kane was affiliated with Mager, White & Goldstein, LLP where he represented clients in complex commercial litigation involving alleged unlawful business practices including: violations of federal and state antitrust and securities laws, breach of contract and other unfair and deceptive trade practices. Mr. Kane has extensive experience working with experts on economic issues in antitrust cases, including impact and damages. Mr. Kane has served in prominent roles in high profile antitrust, securities, and unfair trade practice cases filed in courts around the country.

Currently, Mr. Kane is one the lead attorneys actively litigating and participating in all aspects of the *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.) alleging, *inter alia*, that certain of Visa and MasterCard rules, including anti-

steering restraints and default interchange fees, working in tandem have caused artificially inflated interchange fees paid by Merchants on credit and debit card transactions. After over a decade of litigation, a settlement of as much as $6.24 billion and no less than $5.54 billion was preliminary approved in January 2019. He is also one of the lead counsel in *Contant, et al. v. Bank of America Corp., et al.*, 1:17-cv-03139-LGS (S.D.N.Y.) alleging a conspiracy among horizontal competitors to fix the prices of foreign currencies and certain foreign currency instruments to recover damages caused by defendants on behalf of plaintiffs and members of a proposed class of indirect purchasers of FX instruments from defendants.

Mr. Kane was also one of the lead lawyers in *Castro v. Sanofi Pasteur, Inc.*, No. 2:11-cv-07178-JMV-MAH (D.N.J.), a certified class action of over 26,000 physician practices, other healthcare providers, and vaccine distributors direct purchasers, alleging that defendant Sanofi engaged in anticompetitive conduct to maintain its monopoly in the market for MCV4 vaccines resulting in artificially inflated prices for Sanofi's MCV4 vaccine Menactra and the MCV4 vaccine Menveo. In October 2017 the court granted final approval the $61.5 million settlement.

Mr. Kane also had a leading role in *Ross v. American Express Company* (S.D.N.Y.) ($49.5 million settlement achieved after more than 7 years of litigation and after summary judgment was denied). In the related matter *Ross v. Bank of America* (S.D.N.Y.) involving claims that the defendant banks and American Express unlawfully acted in concert to require cardholders to arbitrate disputes, including debt collections, and to preclude cardholders from participating in any class actions, Mr. Kane was one of the primary trial counsel in the five week bench trial. Mr. Kane also has had a prominent role in several antitrust cases against pharmaceutical companies challenging so-called pay for delay agreements wherein the brand drug company allegedly seeks to delay competition from generic equivalents to the brand drug through payments by the brand drug company to the generic drug company. Mr. Kane served as co-lead counsel in *In re Microsoft Corporation Massachusetts Consumer Protection Litigation* (Mass. Super. Ct., Middlesex Cty.), in which plaintiffs alleged that as a result of Microsoft Corporation's anticompetitive practices, Massachusetts consumers paid more than they should have for Microsoft's operating systems and software. The case was settled for $34 million. Other cases in which Mr. Kane has had a prominent role include: *In re Currency Conversion Fee Antitrust Litig.* (S.D.N.Y.) (settlement for $336 million and injunctive relief); *In re Nasdaq Market Makers Antitrust Litig*. (S.D.N.Y); *In re Compact Disc Antitrust Litig.* (C.D. Cal.); *In re WorldCom, Inc. Securities Litig.* (S.D.N.Y); *In re Lucent Technologies, Inc. Securities Litig*. (D.N.J.); *City Closets LLC v. Self Storage Assoc., Inc.* (S.D.N.Y.); *Rolite, Inc. v. Wheelabrator Environmental Sys. Inc.*, (E.D. Pa.); and *Amin v. Warren Hospital* (N.J. Super.).

Jon J. Lambiras – Shareholder

Jon J. Lambiras, Esq., CPA, CFE is a Shareholder in the Securities and Consumer Protection practice groups. Since joining the Firm in 2003, he has practiced primarily in the areas of securities fraud, consumer fraud, and data breach class actions.

In the Securities group, he concentrates on class action and opt-out litigation involving accounting fraud and financial misrepresentations made to investors. In the Consumer Protection group, he

concentrates on unfair business practices and data breach litigation involving the theft of personal information by computer hackers. He has also litigated Antitrust pay-for-delay matters involving drug manufacturers wrongly keeping generic drugs off the market.

Jon's clients are plaintiffs such as individual investors, institutional investors, and consumers. He strives to provide a smooth, comfortable litigation experience for his clients. He welcomes inquiries from potential clients and referring counsel regarding new matters. Fees in his cases are generally earned on a contingent basis, meaning clients do not pay out-of-pocket attorneys' fees.

Jon is an attorney, Certified Public Accountant, and Certified Fraud Examiner. Prior to law school, he practiced accounting for four years as a financial statement auditor, including with a Big-Four accounting firm.

Jon has obtained the highest peer review rating, "AV Preeminent," in Martindale-Hubbell for his legal abilities and ethical standards. Also, for several years from 2012 to the present, he was selected for inclusion in "Pennsylvania Super Lawyers" or "Rising Stars," an honor conferred on less than 5% of attorneys in Pennsylvania.

Jon has published numerous articles and lectured on various class action topics, as summarized below. He has also commented on class action issues for publications such as The Washington Post and The Legal Intelligencer, among others. The cases on which he worked have collectively settled for hundreds of millions of dollars.

While in law school, Jon was a Lead Articles Editor for the Pepperdine Law Review.

Jon's speaking engagements include the following:

- "Securities Fraud Class Actions: A Primer for Certified Fraud Examiners," 2018, presented to the Association of Certified Fraud Examiners
- "Securities Fraud Class Actions: A Bird's Eye View," 2017, presented to the Delaware County Bar Association
- "Securities Fraud Class Actions: A Bird's Eye View for Attorney-CPAs," 2017, presented to the Philadelphia Chapter of the American Association of Attorney-CPAs
- "How the CFO Landed in Prison: The Nuts & Bolts of His Fraud," 2012, presented to the Phila. Chap. of the Am. Assoc. of Attorney-CPAs
- "State of the Cyber Nation Address," 2011, presented at HB Litigation/NetDiligence Cyber Risk & Privacy Forum
- "Data Breach Class Actions Involving Theft of Personal Information," 2009, presented to the Phila. Chap. of the Am. Assoc. of Attorney-CPAs
- "Class Actions Involving Estate Planning, Financial Planning, Trusts, and Income Tax," 2009, presented to the Phila. Chap. of the Am. Assoc. of Attorney-CPAs
- "Securities Fraud Class Actions: Comparing and Contrasting the Plaintiffs' and Defendants' View," 2007, presented to the Phila. Chap. of the Am. Assoc. of Attorney-CPAs

- "Securities Fraud Class Actions: A Primer for the Attorney-CPA," 2006-08, presented to the Phila. Chap. of the Am. Assoc. of Attorney-CPAs

Eric Lechtzin – Shareholder
Eric Lechtzin is a Shareholder in the Firm's Securities, Consumer Protection, ERISA and Employment & Unpaid Wages Litigation practice groups.

Mr. Lechtzin has been instrumental in helping the Firm secure leadership positions and obtain settlements in national securities fraud class actions, including *In re: Oppenheimer Rochester Funds Group Securities Litigation*, No. 09-md-02063-JLK (D. Col.) ($89.5 million settlement); *In re Hemispherx Biopharma, Inc. Litigation*, 09-cv-5262-PD (E.D. Pa. 2010) ($3.6 million settlement); *Beckman Coulter, Inc. Securities Litigation*, No. 8:10-cv-1327 (C.D. Cal. 2011) ($5.5 million settlement).

Among his successful representations in the area of consumer fraud is *Silver v. Fitness Intern., LLC*, No. 10-cv-2326-MMB, 2013 WL 5429293 (E.D. Pa.), a class action against a national health club chain that resulted in substantial changes of its cancellation policies and practices.

Mr. Lechtzin is the Pennsylvania State Chair for the National Association of Consumer Advocates. He has been named a "Super Lawyer" in Pennsylvania for Class and Mass Tort Litigation, and is AV Preeminent rated by Martindale Hubble.

Lawrence J. Lederer – Shareholder
Lawrence J. Lederer is a Shareholder in the Firm's Securities and Commercial Litigation practice groups. He has extensive experience representing and advising institutional investors in securities litigation. He has led the prosecution of many securities class action cases that have resulted in substantial recoveries for investors.

For example, he was co-lead counsel for the State Teachers Retirement System of Ohio which, in August 2009, obtained $475 million in *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, Master File No. 07-cv-9633 (JSR) (DFE) (S.D.N.Y.). This securities class action involved Merrill Lynch's financial exposures to collateralized debt obligations and other financial instruments linked to subprime mortgages. It represents one of the largest recoveries ever under the Private Securities Litigation Reform Act. During a hearing on July 27, 2009, Judge Jed S. Rakoff stated that the lead plaintiff had made "very full and well-crafted" and "excellent submissions"; that there was a "very fine job done by plaintiffs' counsel in this case"; and that the attorney fees requested were "eminently reasonable" and "appropriately modest."

Mr. Lederer presently is, or recently was, also involved in many individual "opt-out" securities cases such as *Commonwealth of Pennsylvania Public School Employees' Ret. Sys. v. Citigroup, Inc.*, No. 11-2583, 2011 U.S. Dist. LEXIS 55829 (E.D. Pa. May 20, 2011); *State of New Jersey, Department of Treasury, Division of Investment v. Fuld*, 604 F.3d 816 (3d Cir. 2010); *Commonwealth of Pennsylvania Public School Employees' Ret. Sys. v. Time Warner Inc.*,

Case No. 002103, July Term 2003 (Pa. Common Pleas Ct., Phila. Cty.); *In re Waste Management, Inc. Securities Litigation*, 194 F. Supp. 2d 590 (S.D. Tex. 2002); and *Kelly v. McKesson HBOC, Inc.*, C.A. No. 99C-09-265 WCC, 2002 Del. Super. LEXIS 39 (Del. Super. Jan. 17, 2002). The investor plaintiffs in each of these cases obtained recoveries significantly larger than what they would have obtained from the related class actions.

Mr. Lederer also advises and represents government entities in commercial and other matters. For example, he was part of a team of outside counsel for one state Attorney General's office in multi-state civil enforcement proceedings that resulted in landmark mortgage modifications and related relief for hundreds of thousands of borrowers nationwide against Countrywide Financial Corp. (and its parent, Bank of America Corp.) in December 2008 valued at approximately $8.6 billion; has advised public pension funds on a wide array of corporate governance and shareholder rights issues; and has advised state government entities concerning financial practices in the structured finance sector, among other areas.

Earlier in his career, Mr. Lederer played a major role in the historic Drexel/Milken/Boesky complex of cases. See, e.g., *In re Michael R. Milken and Associates Securities Litigation*, MDL Dkt. No. 924, Master File No. M21-62 (MP), 1993 U.S. Dist. LEXIS 14242, 1993 WL 413673 (S.D.N.Y. Oct. 7, 1993) (approving approximately $1.3 billion overall settlement with Michael R. Milken and some 500 other persons and entities); *In re Drexel Burnham Lambert Group Inc.*, 995 F.2d 1138 (2d Cir. 1993) (affirming $1.3 billion settlement); Presidential Life Insurance Co. v. Milken, et al., 946 F. Supp. 267 (S.D.N.Y. 1996) (approving $50 million settlement against some 500 defendants); In re Ivan F. Boesky Securities Litigation, 948 F.2d 1358 (2d Cir. 1991) (affirming approval of settlements totaling approximately $29 million; subsequent class, derivative, and other settlements approved totaling in excess of $200 million).

Also experienced on the defense side, Mr. Lederer helped obtain a pre-trial dismissal of a securities class action against DRDGold, a gold mining company based in South Africa. See In re DRDGold Ltd. Securities Litigation, 05-cv-5542 (VM), 2007 U.S. Dist. LEXIS 7180 (S.D.N.Y. Jan. 31, 2007). He also helped defend an individual charged with "insider trading" in a criminal jury trial in federal court, and in parallel civil enforcement proceedings brought by the SEC. United States v. Pileggi, No. 97-cr-612-2, 1998 U.S. Dist. LEXIS 8068 (E.D. Pa. June 3, 1998), aff'd, No. 98-1811, 1999 U.S. App. LEXIS 18592 (3d Cir. July 22, 1999).

In bankruptcy litigation, Mr. Lederer helped obtain hundreds of millions of dollars for investors in the complex Chapter 11 proceedings involving Drexel Burnham Lambert, including through appeals before the United States Court of Appeals for the Second Circuit and the United States Supreme Court. See, e.g., *In re The Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910 (Bankr. & S.D.N.Y. Aug. 20, 1991), aff'd, 960 F.2d 285 (2d Cir. 1992), cert. denied, 506 U.S. 1088 (1993). See also *Sapir, et al. v. Delphi Ventures, et al.*, No. 99-cv-8086-JORDAN (S.D. Fla.) (recovery of $3.8 million following extensive bankruptcy and related proceedings).

Mr. Lederer has achieved the highest peer-review rating, "AV," in Martindale-Hubbell for legal abilities and ethical standards; has repeatedly been selected as one of Pennsylvania's "Super

Lawyers" in the category of securities litigation, and has served on the editorial advisory board of Securities *Law360*. Mr. Lederer is admitted to practice law in Pennsylvania, the District of Columbia, and several federal courts. Mr. Lederer graduated from Georgetown University Law Center (LL.M. 1988), Western New England College School of Law (J.D. 1987), where he was a member of Western New England Law Review, and the University of Pittsburgh (B.A. 1984), where he was managing editor of The Pitt News, and co-captain (1983) and captain (1984) of the men's varsity tennis team.

Daniel R. Miller – Shareholder

Daniel R. Miller's practice is exclusively devoted to representing whistleblowers in state and federal False Claim Act cases, and in actions filed with the IRS, SEC, and CFTC. Mr. Miller has extensive experience litigating *qui tam* cases across the country.

Prior to joining the Firm, Mr. Miller was a Deputy Attorney General for the Delaware Department of Justice for more than 16 years. He is battle-tested, having tried more than 125 cases to jury verdict.

Over the past fifteen years, Mr. Miller has served on dozens of litigation and negotiation teams in nationwide *qui tam* cases. Collectively, those cases have returned more than $3.5 billion to state and federal treasuries.

Whistleblower ("*Qui Tam*") cases are complex matters which often require extensive communication and coordination with the United States Department of Justice, local United States Attorneys' Offices, all 50 state Attorneys General Offices, the Federal Bureau of Investigation, the Food and Drug Administration, the Securities and Exchange Commission, the Office of Inspector General, the Internal Revenue Service, and numerous other federal and state agencies. Now in private practice, Mr. Miller is able to provide his clients with extensive trial experience, deep insight into the personnel, structure, and function of these government entities, and a thorough understanding of the investigative sequences utilized by the prosecutors who lead these cases.

Mr. Miller is a former President of the National Association of Medicaid Fraud Control Units ("NAMFCU"), an organization whose members were responsible for securing more than 1,300 criminal convictions and returning more than $1.3 billion to the Medicaid Program during Mr. Miller's term. As a member of NAMFCU's Global Case Committee, Mr. Miller routinely worked on large-scale fraud cases. Prior to serving as NAMFCU's President, Mr. Miller was the co-chair of NAMFCU's *Qui Tam* Subcommittee where he coordinated communications and litigation positions for all states which have enacted False Claims Acts.

From 2003 through early 2010, Mr. Miller also served as the Director of the Medicaid Fraud Control Unit in the Delaware Department of Justice. In that capacity, he coordinated the investigation and prosecution of health care provider fraud – including cases involving physician groups, pharmaceutical companies, nursing homes, and hospitals – with local, state, and federal authorities. These multi-disciplinary teams of government lawyers, investigators, and data analysts returned hundreds of millions of dollars to state and federal governments.

Prior to serving as Director of the Medicaid Fraud Unit, Mr. Miller was a Deputy Attorney General in the Criminal Division of the Delaware Department of Justice. During that time he managed a large caseload and prosecuted hundreds of violent offenders.

Before becoming a prosecutor, Mr. Miller served as a judicial clerk for Delaware Superior Court Judge Susan C. Del Pesco.

Mr. Miller graduated with honors from Temple University Law School in 1992.

Ellen T. Noteware – Shareholder

Since joining the Firm, Ms. Noteware has successfully represented investors, retirement plan participants, employees, consumers and direct purchasers of prescription drug products in a variety of class action cases. Ms. Noteware currently concentrates her practice on prosecuting antitrust class actions on behalf of direct purchasers of brand name drugs who are harmed when brand companies block cheaper generic competitors from entering the market. To date, five of her cases have resulted in substantial settlements: *In re Ovcon Antitrust Litigation*, (D.D.C.) $22 million; *In re Tricor Direct Purchaser Antitrust Litigation*, (D. Del.) $250 million; *In re Oxycontin Antitrust Litig.*, (S.D.N.Y.) $16 million; *Meijer, Inc. v. Abbott Laboratories*, (N.D. Cal.) (Norvir) $52 million; and *In re Metoprolol Succinate Direct Purchaser Antitrust Litigation*, (D. Del.) $20 million.

Ms. Noteware is also extensively involved in litigation Employee Retirement Income Securities Act ("ERISA") breach of fiduciary duty class action cases. Her ERISA settlements include: *In re Nortel Networks Corp. ERISA Litigation* (M.D. Tenn.) $21 million; *In re Lucent Technologies, Inc. ERISA Litigation* (D.N.J.) $69 million; *In re SPX Corporation ERISA Litigation* (W.D. N.C.) $3.6 million. Ms. Noteware is currently actively litigating two ERISA cases against financial institutions who operated improper securities lending programs.

As a key member of the trial team that litigated *Cook v. Rockwell Corp.* (D. Colo.), Ms. Noteware helped secure the largest jury verdict in Colorado history and the third largest jury trial verdict nationwide in 2006 -- $554 million on behalf of thousands of individuals who owned property near the contaminated former Rocky Flats nuclear weapons facility outside Denver, Colorado. Ms. Noteware and the rest of the trial team received the Trial Lawyer of the Year Award from the Public Justice Foundation in recognition of the efforts.

Ms. Noteware is a graduate of Cornell University (B.S. 1989) and the University of Wisconsin-Madison Law School (J.D. *cum laude* 1993) where she won the Daniel H. Grady Prize for the highest grade point average in her class, served as Managing Editor of the Law Review, and earned Order of the Coif honors. She is currently a member of the Pennsylvania and New York bars.

Phyllis Maza Parker – Shareholder

Phyllis Maza Parker, a Shareholder, concentrates her practice primarily on complex securities class action litigation, representing both individual and institutional investors. Her practice also includes commercial litigation.

Ms. Parker served on the team as co-lead counsel for the Class in *In re Xcel Energy, Inc. Securities Litigation* (D. Minn.). The case, which settled for $80 million, was listed among the 100 largest securities class action settlements in the United States since the enactment of the 1933-1934 Securities Acts. Among other cases, she has also served as co-lead counsel in *In re Reliance Group Holdings, Inc. Securities Litigation* ($15 million settlement); *In re The Loewen Group, Inc. Securities Litigation* ($6 million settlement); as lead counsel in *In re Veeco Instruments Inc. Securities Litigation* ($5.5 million settlement on the eve of trial); as co-lead counsel in *In re Nuvelo, Inc. Securities Litigation* ($8.9 million settlement); and, most recently, as co-lead counsel in *Coady v. Perry, et al.* (IndyMac Bancorp, Inc.) ($6.5 million settlement).

While studying for her J.D. at Temple, Ms. Parker was a member of the Temple Law Review. She published a Note on the subject of the Federal Sentencing Guidelines in the Temple Law Review, Vol. 67, No. 4, 1994, which has been cited by a court and in a law review article. After her first year of law school, Ms. Parker interned with the Honorable Dolores K. Sloviter of the United States Court of Appeals for the Third Circuit.

Ms. Parker is fluent in Hebrew and French.

Russell D. Paul – Shareholder

Russell Paul is a Shareholder in the Securities, Consumer Protection, *Qui Tam*/Whistleblower, Corporate Governance/Shareholder Rights and Commercial Litigation practice groups. He concentrates his practice on securities class actions and derivative suits, complex securities, and commercial litigation matters, False Claims Act suits and consumer class actions.

Mr. Paul has litigated securities class actions against Tyco International Ltd., Baxter Healthcare Corp., ALSTOM S.A., Able Laboratories, Inc., Refco Inc., Toll Brothers and the Federal National Mortgage Association (Fannie Mae). He has also litigated derivative actions in various state courts around the country, including in the Delaware Court of Chancery. He has litigated consumer protection and product defect actions in the automotive, pet food, soft drink, and home products industries. Mr. Paul has also briefed and argued several federal appeals.

In addition to securities litigation, Mr. Paul has broad corporate law experience, including mergers and acquisitions, venture capital financing, proxy contests, and general corporate matters. He began his legal career in the New York office of Skadden, Arps, Slate, Meagher & Flom.

Mr. Paul has been designated a "Pennsylvania Super Lawyer" and a "Top Attorney in Pennsylvania."

Mr. Paul graduated from the Columbia University School of Law (J.D. 1989) where he was a Harlan Fiske Stone Scholar, served on the Moot Court Review Board, was an editor of Pegasus (the law school's catalog) and interned at the United States Attorneys' Office for the Southern District of New York. He completed his undergraduate studies at the University of Pennsylvania, earning a B.S. in Economics from the Wharton School (1986) and a B.A. in History from the College of Arts and Sciences (1986). He was elected to the Beta Gamma Sigma Honors Society.

Barbara A. Podell – Shareholder
Barbara A. Podell is a Shareholder in the Securities practice group at the Firm. She concentrates her practice on securities class action litigation.

Ms. Podell graduated from the University of Pennsylvania (cum laude) and the Temple University School of Law (magna cum laude), where she was Editor-in-Chief of the Temple Law Quarterly.

Ms. Podell was one of the Firm's senior attorneys representing the Pennsylvania State Employees' Retirement System ("SERS") as the lead plaintiff in the *In re CIGNA Corp. Sec. Litig.*, No. 02-CV-8088 (E.D. Pa.), a federal securities fraud class action in which SERS moved for, and was appointed, lead plaintiff. CIGNA allegedly concealed crucial operational problems, which, once revealed, caused the company's stock price to fall precipitously. The Firm obtained a $93 million settlement. This was a remarkable recovery because there were no accounting restatements, government investigations, typical indicators of financial fraud, or insider trading. Moreover, the case was settled on the eve of trial (22.7% of losses recovered).

Before joining the Firm, Ms. Podell was a founding member of Savett Frutkin Podell & Ryan, P.C., and before that, a shareholder at Kohn, Savett, Klein & Graf and an associate at Dechert LLP, all in Philadelphia.

Sarah R. Schalman-Bergen – Shareholder
Sarah R. Schalman-Bergen is a Shareholder at the Firm. She Co-Chairs the Firm's Employment Law Department and is a member of the Firm's Antitrust, Insurance Products & Financial Services, and Lending Practices & Borrowers' Rights Departments. She is also a member of the Firm's Hiring Committee, Associate Development Committee and Pro Bono Committee.

Ms. Schalman-Bergen represents employees who are not being paid properly in class and collective action wage and hour employment cases as well as in class action discrimination cases across the country. Specifically, Ms. Schalman-Bergen has served as lead counsel in dozens of wage theft lawsuits, representing employees in a variety of industries, including at meat and poultry plants, at fast food restaurants, in the oil and gas industry, in white collar jobs and in the government.

Ms. Schalman-Bergen also serves as counsel to employees, consumers and businesses in antitrust cases, including representing the employees of several high tech companies who alleged that the companies entered into "do not poach" agreements that illegally suppressed employees' wages. Ms. Schalman-Bergen has represented homeowners whose mortgage loan servicers have force-placed extraordinarily high-priced insurance on them. She currently represents several cities in lawsuits against major banks for allegedly discriminatory practices in violation of the Fair Housing Act.

Ms. Schalman-Bergen is frequently asked to speak on continuing legal education seminars that relate to employment issues. In 2015, Ms. Schalman-Bergen was honored as a “Lawyer on the Fast Track” by The Legal Intelligencer. Ms. Schalman-Bergen was 1 of 40 attorneys selected by

a six-member judging panel composed of evaluators from all corners of the legal profession and Pennsylvania. From 2010 through 2019, Ms. Schalman-Bergen was named as a Pennsylvania Super Lawyer- Rising Star. In 2010, Ms. Schalman-Bergen was honored as an “Unsung Hero” by the Legal Intelligencer, Pennsylvania’s daily law journal, for her pro bono work with the AIDS Law Project of Pennsylvania. From 2007-2009 Ms. Schalman-Bergen served as the Jerome J. Shestack Public Interest Fellow at WolfBlock LLP.

Ms. Schalman-Bergen maintains an active pro bono practice. She serves as volunteer of counsel to the AIDS Law Project of Pennsylvania. Through her role there, Ms. Schalman-Bergen litigates HIV discrimination and confidentiality cases, as well as other cases impacting the rights of people living with HIV/AIDS.

Prior to joining the Firm, Ms. Schalman-Bergen practiced in the litigation department at a large Philadelphia firm where she represented clients in a variety of industries in complex commercial litigation.

Ms. Schalman-Bergen is a 2007 *cum laude* graduate of Harvard Law School and a 2001 *summa cum laude* graduate of Tufts University. During law school, Ms. Schalman-Bergen served as an executive editor for the Harvard Civil Rights-Civil Liberties Law Review.

Martin I. Twersky – Shareholder

Martin I. Twersky is a Shareholder in the Antitrust Department. He has considerable experience in litigation involving a wide range of industries including oil and gas, banking, airline, waste hauling, agricultural chemicals and other regulated industries. For more than 30 years, Mr. Twersky has successfully represented numerous plaintiffs and defendants in both individual and class actions pending in state and federal courts.

Mr. Twersky has played a leading role in the following class action cases among others: *In re Linerboard Antitrust Litigation* (E.D. Pa.) (as a member of the Executive Committee, he helped obtain settlements of more than $200 million dollars and he received specific praise from the court for co-managing the major discovery effort; see 2004 WL 1221350 at *10); *In re Graphite Antitrust Litigation* (E.D. Pa.) (settlements of more than $120 million dollars); *In re Catfish Antitrust Litigation* (N.D. Miss.) (as a member of the trial team he helped obtained settlements of more than $27 million dollars); *In re Revco Securities Litigation* (N.D. Ohio) ("Junk Bond" class action where settlements of $36 million were reached and where he received judicial praise from Senior District Court Judge William K. Thomas for the "specialized, highly competent and effective quality of the legal services." See 1993 CCH Fed Sec. L. Rep. at Para. 97,809); *Bogosian v. Gulf Oil* (E.D. Pa.) (landmark litigation with settlements and injunctive relief on behalf of a nationwide class of gasoline dealers); and *Lease Oil Antitrust* (S.D. Tex.), where in a significant class action decision, the Fifth Circuit affirmed the granting of an injunction prohibiting settlements in related state court actions (see 200 F.3d 317 (5th Cir. 2000), cert. denied, 530 U.S. 1263). Mr. Twersky was appointed one of the co-lead counsel in *In re Abrasive Grains Antitrust Litig.* (95-cv-7574) (W.D.N.Y.).

Mr. Twersky has also played a key role in various non-class action cases, such as *Kutner Buick v. America Motors*, 848 F.2d 614 (3rd Circuit 1989) (breach of contract) (cited in the Advisory Committee Notes to the 1991 Amendment to Rule 50, Fed. R. Civ. P.), Florham Park v. Chevron (D.N.J. 1988) (Petroleum Marketing Act case), and *Frigitemp v. IDT Corp.*, 638 F. Supp. 916 (S.D. N.Y. 1986) and 76 B.R. 275, 1987 LEXIS 6547 (S.D. N.Y. 1987) (RICO case brought by the Trustee of Frigitemp Corp. against General Dynamics and others involving extortion of kickbacks from Frigitemp officers). Mr. Twersky also served prominently in savings-and-loan related securities and fraud litigation in federal and state courts in Florida, where the Firm represented the Resolution Trust Corporation and officers of a failed bank in complex litigation involving securities, RICO and breach of fiduciary duty claims. E.g., *Royal Palm v. Rapaport*, Civ. No. 88-8510 (S.D. Fla.) and *Rapaport v. Burgoon*, CL-89-3748 (Palm Beach County).

Daniel J. Walker – Shareholder

Dan Walker is a Shareholder of the Firm, which he rejoined in July 2017 after serving three years in the Health Care Division at the Federal Trade Commission. Mr. Walker practices in the Firm's Washington, D.C. office.

While at the Federal Trade Commission, Mr. Walker investigated and litigated antitrust matters in the health care industry. In addition to leading various nonpublic investigations in the pharmaceutical and health information technology sectors, Mr. Walker litigated *Federal Trade Commission v. AbbVie Inc., et al.*, a case alleging that a brand pharmaceutical manufacturer engaged in sham patent litigation to delay generic competition, and *Federal Trade Commission v. Cephalon Inc.*, a "pay-for-delay" lawsuit over a brand pharmaceutical manufacturer's payment to four generic competitors in return for the generics' agreement to delay entry into the market. The Cephalon case settled shortly before trial for $1.2 billion-the largest equitable monetary relief ever secured by the Federal Trade Commission-as well as significant injunctive relief.

During his time in private practice, Mr. Walker has litigated cases on behalf of plaintiffs and defendants in many areas of law, including antitrust, financial fraud, breach of contract, bankruptcy, and intellectual property. Mr. Walker has helped recover hundreds of millions of dollars on behalf of plaintiffs, including in *In re Titanium Dioxide Antitrust Litigation* (with settlements totaling $163.5 million for purchasers of titanium dioxide), *In re High Tech Employee Antitrust Litigation* (with settlements totaling $435 million for workers in the high tech industry), and *Adriana Castro, M.D., P.A., et al. v. Sanofi Pasteur Inc.*, No. 11-cv-07178 (D.N.J.) (with a $61.5 million settlement pending court approval for purchasers of pediatric vaccines). Mr. Walker was also a member of the team that recovered the funds lost by account holders during MF Global's collapse and a member of the trial team that successfully represented the Washington Mutual stockholders seeking to recover investments lost in the bankruptcy.

In addition, Mr. Walker has spoken frequently on antitrust issues, including on the intersection of antitrust and intellectual property in the health care industry.

Mr. Walker is a *magna cum laude* graduate of Amherst College and Cornell University Law School, where he was an Articles Editor for the Cornell Law Review. Before entering private

practice, Mr. Walker clerked for the Honorable Richard C. Wesley of the United States Court of Appeals for the Second Circuit.

Senior Counsel

David A. Langer – Senior Counsel
David A. Langer is Senior Counsel in the Antitrust practice group. He concentrates his practice in complex antitrust litigation.

Mr. Langer has had a primary role in the prosecution of the following antitrust class actions: *In re Currency Conversion Fee Antitrust Litigation* (S.D.N.Y.) (after 5½ years of litigation, through the close of fact and expert discovery, achieved a settlement consisting of $336 million and injunctive relief for a class of U.S. Visa and MasterCard cardholders; extraordinary settlement participation from class members drawing more than 10 million claimants in one of the largest consumer antitrust class actions); *Ross and Wachsmuth v. American Express Co., et al.* (S.D.N.Y.) ($49.5 million settlement achieved after more than 7 years of litigation and after summary judgment was denied); *Ross, et al. v. Bank of America, N.A. (USA), et al.* (S.D.N.Y.) (obtained settlements with four of the nations' largest card issuers (Bank of America, Capital One, Chase and HSBC) to drop their arbitration clauses for their credit cards for 3.5 years, and a settlement with the non-bank defendant arbitration provider (NAF), who agreed to cease administering arbitration proceedings involving business cards for 3.5 years); and *In re Linerboard Antitrust Litigation* (E.D. Pa.) (helped obtain settlements of more than $200 million dollars).

Mr. Langer was one of the trial team chairs in the 5-week consolidated bench trial of arbitration antitrust claims in *Ross v. American Express* and *Ross v. Bank of America*, where the Honorable William H. Pauley, III of the United States District Court for the Southern District of New York, commended the "extraordinary talents of Plaintiffs' counsel."

Mr. Langer has also had a primary role in appellate proceedings, obtaining relief for his clients in a number of matters, including *Ross, et al. v. American Express Co., et al.*, 547 F.3d 137 (S.D.N.Y. 2008) (precluding an alleged co-conspirator from relying on the doctrine of equitable estoppel to invoke arbitration clauses imposed by its competitor co-conspirators); *Ross, et al. v. Bank of America, N.A. (USA), et al.*, 524 F.3d 217 (S.D.N.Y. 2008) (holding that antitrust plaintiffs possess Article III standing to challenge the defendants' collusive imposition of arbitration clauses barring participation in class actions); *In re Pharmacy Benefit Managers Antitrust Litig.*, 700 F.3d 109 (3d Cir. 2012) (finding opposing party waived the right to compel arbitration and reversing district court).

While at Vermont Law School, Mr. Langer was Managing Editor and a member of the Vermont Law Review.

Hans Lodge – Senior Counsel
Hans Lodge is a zealous advocate and is dedicated to protecting the rights of consumers in and out of court. Hans assists consumers who have been denied jobs or housing due to inaccurate

criminal history information reporting in their employment/tenant background check reports. Hans also assists consumers who have been denied credit due to inaccurate information reporting in their credit reports and have suffered harm due to unlawful debt collection behavior.

Hans is an aggressive and strategic litigator who has a reputation of working tirelessly to get favorable outcomes for his clients. Hans understands how frustrating it can be trying to deal with background check companies, credit reporting agencies, credit bureaus, and debt collectors, and has a passion for helping clients navigate these areas of the law during their times of need.

Prior to joining the Firm, Hans combined his passions for fighting for the little guy and oral advocacy by representing consumers in individual and class action litigation where he held businesses, banks, background check companies, credit bureaus, and debt collectors accountable for illegal practices. As an Associate Attorney at a consumer rights law firm, Hans represented consumers who had trouble paying their bills and were abused and harassed by debt collection agencies, some of whom had their motor vehicles wrongfully repossessed, bringing numerous individual and class action claims under the Fair Debt Collection Practices Act (FDCPA).

Hans also represented consumers who had trouble obtaining credit, employment, and housing due to inaccuracies in their credit reports and background check reports, bringing numerous individual and class action claims under the Fair Credit Reporting Act (FCRA). As an Associate Attorney at a national employment and consumer protection law firm, Hans represented consumers who purchased defective products and employees misclassified as independent contractors, bringing class action claims under consumer protection statues and the Fair Labor Standards Act (FLSA).

Hans grew up in the Twin Cities and received his Bachelor's Degree from Gustavus Adolphus College in St. Peter, Minnesota, where he double-majored in Political Science and Communication Studies and graduated with honors. His first experience resolving quasi-legal disputes began as a Student Representative on the Campus Judicial Board, where he served for three years and resolved numerous complex disputes between students and the College. His interests in sports and ethics took him to New Zealand, Australia, and Fiji, where he studied Sports Ethics.

During his time at Marquette University Law School, Hans concentrated his legal studies on civil litigation and sports law. As a second-year law student, Hans gained valuable experience working as a law clerk for the Honorable Joan F. Kessler at the Wisconsin Court of Appeals. He also served as a member of the Marquette Sports Law Review where he wrote and edited articles about legal issues impacting the sports industry.

As a member of Marquette Law's moot court team, his brief writing and oral advocacy skills earned him a regional championship and an appearance in the national competition at the New York City Bar Association. Hans was also a member of Marquette's mock trial team, finishing in third place at the regional competition at the Daley Center in Chicago, Illinois.

Mr. Lodge is admitted to practice law in the United States District Court, District of Minnesota; United States District Court, Western District of Wisconsin; and both Minnesota and Wisconsin state courts.

In addition to practicing law, Hans is an Adjunct Professor at Concordia University, St. Paul, where he teaches a sports law course in the Master of Arts in Sports Management program. He is also a professionally-trained umpire and umpires Little League, high school, college, legion, and amateur baseball throughout Minnesota. In his free time, Hans enjoys working out, long distance running, road biking, bowling, going to concerts, playing ping pong and softball, and kayaking on Lake Minnetonka.

Jeff Osterwise – Senior Counsel

Jeff Osterwise is a Senior Associate in the Commercial Litigation, Consumer Protection, Defective Products, Predatory Lending and Borrowers' Rights, and Securities & Investor Protection practice groups.

Mr. Osterwise earned his J.D. from the Duke University School of Law and his B.A. from Duke University.

Mr. Osterwise has significant experience advising clients and litigating class actions on behalf of consumers damaged by the sale of defective products and by sellers' failure to fulfill their warranty obligations. He has represented clients asserting claims against manufacturers and sellers of defective automobiles, pharmaceuticals, solar panels, riding lawn tractors, and HVAC and plumbing products.

Mr. Osterwise also has fought to protect consumers from unfair business practices, including clients deceived by their auto insurance carriers and consumers improperly billed by a national health club chain.

In addition, Mr. Osterwise has represented the interests of shareholders in securities fraud and corporate governance matters. And, he represented the City of Philadelphia and the City of Chicago in separate actions against certain online travel companies for their failure to pay hotel taxes.

Jacob M. Polakoff –Senior Counsel

Since joining the Firm in 2006, Mr. Polakoff has concentrated his practice on the prosecution of class actions and other complex litigation, including the representation of plaintiffs in consumer protection, securities, and commercial cases.

Mr. Polakoff currently represents homeowners throughout the country in various product liability actions concerning defective construction products, including roofing, siding, and plumbing. He served on the team of co-lead counsel in *George v. Uponor, Inc., et al.*, a class action about Uponor's high zinc yellow brass PEX plumbing fittings ($21 million settlement).

He represented the shareholders of the Philadelphia Stock Exchange in *Ginsburg v. Philadelphia Stock Exchange, Inc., et al.*, in the Delaware Court of Chancery, which settled for in excess of $99 million in addition to significant corporate governance provisions. Mr. Polakoff's experience also includes representing entrepreneurs and small businesses in actions against Fortune 500 companies.

Mr. Polakoff was selected as a Pennsylvania Super Lawyer - Rising Star in 2010 and 2013-2018, an honor conferred upon only the top 2.5% of attorneys in Pennsylvania who are 40 or younger.

Mr. Polakoff is a 2006 graduate of the joint J.D./M.B.A. program at the University of Miami, where he was the recipient of the Dean's Certificate of Achievement in Legal Research & Writing, was awarded a Graduate Assistantship and was honored with the Award for Academic Excellence in Graduate Studies.

He holds a 2002 B.S.B.A. from Boston University's School of Management, where he concentrated in finance.

Mr. Polakoff is the Judge of Election for Philadelphia's 30th Ward, 1st Division. He was also a member of the planning committee and the sponsorship sub-committee for the Justice for All 5K from its inception. The event benefited Community Legal Services of Philadelphia, which provides free legal services, in civil matters, to low-income Philadelphians.

Shoshana Savett – Senior Counsel
Shoshana Savett is in the Securities, Consumer Protection and Commercial Litigation practice groups. She concentrates her practice primarily in the area of securities class action litigation.

Since joining the Firm in 2003, Ms. Savett has been involved in securities class action including: *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, relating to the Securities Action, 07-cv-9633; *Ginsburg v. Philadelphia Stock Exchange* (settlement valued at over $99 million in action brought on behalf of a class A shareholders of the Philadelphia Stock Exchange which included breach of fiduciary allegations against the Exchange's Board of Governors in connection with strategic transactions that the Exchange announced in June and August 2005); *In re Sepracor Inc. Securities Litigation*, Civil Action no. 02-12235-MEL (D. Mass.) ($52.5 million settlement approved September 6, 2007).

Richard Schwartz – Senior Counsel
Richard Schwartz is Senior Counsel in the Antitrust practice group. Mr. Schwartz concentrates his practice in the area of complex antitrust litigation with a focus on representation of direct purchasers of prescription drugs.

Prior to joining the Firm, Mr. Schwartz was an attorney in the New York and Philadelphia offices of a firm where he represented plaintiffs in a variety of matters before trial and appellate courts with a focus on antitrust and shareholder class actions.

Mr. Schwartz is a member of the teams prosecuting a number of antitrust class actions on behalf of direct purchasers of prescription drugs in which the purchasers allege that generic drugs have been illegally kept off the market. Those cases include *In re Opana ER Antitrust Litigation*, No. 14-cv-10151 (N.D. Ill.); *In re Suboxone*, No. 13-MD-2445 (E.D. Pa.); *In re Solodyn*, No. 14-MD-2503 (D. Mass.) and *In re Celebrex*, No. 14-cv-00361 (E.D. Va.).

Mr. Schwartz is admitted to practice in New York, Pennsylvania, and Illinois.

Daniel C. Simons – Senior Counsel

Daniel C. Simons is Senior Counsel in the Antitrust and Consumer Protection Groups. He concentrates a significant percentage of his practice on complex antitrust litigation, with a focus on anticompetitive arrangements in the pharmaceutical industry. Mr. Simons has been at the forefront of the efforts to curb "pay-for-delay" agreements, whereby brand companies compensate generic rivals to forestall the entry of lower priced generic equivalents. His practice has led to appearances in district and appellate courts across the country.

Mr. Simons's significant representations have included:

- *In re Modafinil Antitrust Litigation*, No. 06-1797 (E.D. Pa.), in which Mr. Simons represents direct purchasers of the drug Provigil, suing the brand company for fraudulently obtaining its patents on the drug and entering into agreements with its four generic rivals to delay competition.
- *In re Androgel Antitrust Litigation*, (No. II), MDL No. 2084 (N.D. Ga.). This private antitrust suit parallels the precedent-setting *FTC v. Actavis* case, which held that pay-for-delay agreements are not immune from the antitrust laws and must be examined under the antitrust "rule of reason." 133 S. Ct. 2223 (2013). Mr. Simons was heavily involved in all aspects of appellate litigation, including the United States Supreme Court.
- *In re K-Dur Antitrust Litigation*, 686 F.3d 197 (3d Cir. 2012), where the Third Circuit held that pay-for-delay agreements are subject antitrust scrutiny, which helped to trigger the eventual review of the issue by the Supreme Court. The Court of Appeals also made notable holdings concerning class certification in delayed generic entry cases. The case has since settled for $60.2 million.
- *In re DDAVP Direct Purchaser Antitrust Litigation*, 585 F.3d 677 (2d Cir. 2009), the first appellate decision directly addressing the issue of antitrust standing for claims relating to fraudulently obtained patents. The case later settled on terms favorable to the direct purchaser class.
- *In re Nifedipine Antitrust Litigation*, MDL No. 1515 (D.D.C.), in which Mr. Simons was one of the principal attorneys responsible for winning certification of a class of direct purchasers of generic versions of the antihypertensive drug Adalat CC, and for successfully defending that certification before the United States Court of Appeals. *In re Nifedipine Antitrust Litigation*, 246 F.R.D. 365 (D.D.C. 2007), Rule 23(f) appeal denied, 2009 U.S. App. LEXIS 3643 (D.C. Cir. Feb. 23, 2009). The case was resolved with settlements on behalf of the class worth $35 million.

- *In re Relafen Antitrust Litigation*, Civ. A. No. 01-12239-WGY (D. Mass.), in which Mr. Simons was a member of the team of attorneys representing a class of direct purchasers of the prescription anti-inflammatory drug Relafen. A $175 million settlement was obtained on behalf of the class.
- *Congregation Kol Ami v. Abington Township*, Civ. A. No. 01-1919 (E.D. Pa.), in which Mr. Simons represented a non-profit in a civil rights challenge. The case presented several questions of first impression under the Federal and Pennsylvania Constitutions, the Pennsylvania Religious Freedom Restoration Act, and the Religious Land Use and Institutionalized Persons Act.

Amanda R. Trask – Senior Counsel

Amanda R. Trask is Senior Counsel in the Consumer Protection and Insurance Fraud practice groups. She concentrates her practice in the area of complex consumer litigation, prosecuting actions on behalf of consumers asserting claims against banks, insurance companies and other institutions for violations of both state and federal law, including claims under RESPA, RICO, FHA and state causes of action challenging unfair and deceptive practices.

Ms. Trask has successfully participated in litigation which resulted in multi-million dollar settlements that helped put an end to major banks' reinsurance of borrowers' private mortgage insurance in violation of RESPA, providing relief to hundreds of thousands of borrowers. Ms. Trask also contributed to litigation against major banks that helped change their force-placed insurance practices. Ms. Trask has extensive experience working with experts in the fields of economics, insurance, mortgage lending and regulatory matters.

Ms. Trask is a graduate of Bryn Mawr College and Harvard Law School.

Lane L. Vines – Senior Counsel

Lane L. Vines's practice is concentrated in the areas of securities/investor fraud, consumer and *qui tam* litigation. For more than 17 years, Mr. Vines has prosecuted both class action and individual opt-out securities cases for state government entities, public pension funds, and other large investors. Mr. Vines also represents consumers in class actions involving unlawful and deceptive practices, as well as relators in *qui tam*, whistleblower and False Claims Act litigations. Mr. Vines is admitted to practice law in Pennsylvania, New Jersey and numerous federal courts.

Mr. Vines also has experience in the defense of securities and commercial cases. For example, he was one of the Firm's principal attorneys defending a public company which obtained a pre-trial dismissal in full of a proposed securities fraud class action against a gold mining company based in South Africa. See *In re DRDGold Ltd. Securities Litigation*, 05-cv-5542 (VM), 2007 U.S. Dist. LEXIS 7180 (S.D.N.Y. Jan. 31, 2007).

During law school, Mr. Vines was a member of the Villanova Law Review and served as a Managing Editor of Outside Works. In that role, he selected outside academic articles for publication and oversaw the editorial process through publication.

Prior to law school, Mr. Vines worked as an auditor for a Big 4 public accounting firm and a property controller for a commercial real estate development firm, and served as the Legislative Assistant to the Minority Leader of the Philadelphia City Council.

Mr. Vines has achieved the highest peer rating, "AV Preeminent" in Martindale-Hubbell for legal abilities and ethical standards. Mr. Vines is admitted to practice law in Pennsylvania, New Jersey and several federal courts.

Associates and Staff Attorneys

John G. Albanese – Associate
John Albanese is an Associate in the Minneapolis office. Mr. Albanese concentrates his practice on consumer protection with a focus on Fair Credit Reporting Act violations related to criminal background checks. Mr. Albanese has also prosecuted class actions related to illegal online lending, unfair debt collection, privacy breaches, and other consumer law issues. Mr. Albanese is regularly invited to speak on consumer law and litigation issues. Mr. Albanese has obtained favorable decisions for consumers in state and federal courts all over the country. He also frequently represents consumer advocacy groups as *amici curiae* at the appellate level.

Mr. Albanese is a graduate of Columbia Law School and Georgetown University. At Columbia, he was a managing editor of the Columbia Law Review and was elected to speak at graduation by his classmates. Mr. Albanese clerked for Magistrate Judge Geraldine Brown in the Northern District of Illinois.

Christina M. Black – Associate
Christina M. Black is an Associate in the Philadelphia office. Prior joining Berger Montague, Ms. Black clerked for the Honorable Anne E. Thompson on the United States District Court for the District of New Jersey. She also completed a one-year legal fellowship at the National Center for Lesbian Rights, where she supported nationwide impact litigation for LGBT rights. While in law school, Ms. Black was a lead articles editor at the Stanford Law and Policy Review, participated in the Williams Institute Moot Court Competition, and interned at the San Francisco City Attorney's Office.

Zachary D. Caplan – Associate
Zachary D. Caplan is an Associate in the Antitrust and Commodities practice groups.

Mr. Caplan has worked on a variety of matters resulting in substantial settlements. *E.g., Marchbanks Truck Service, Inc. v. Comdata Network, Inc.*, No. 07-cv-1078 (E.D. Pa.) ($130 million settlement plus significant prospective relief); *In re Titanium Dioxide Antitrust Litigation*, No. 10-cv-318 (D. Md.) (settlements totaling $163.5 million); *In re High Tech Employee Antitrust Litigation*, No. 11-cv-2509 (N.D. Cal.) (settlements totaling $435 million); *Adriana Castro, M.D.,*

P.A., et al. v. Sanofi Pasteur Inc., No. 11-cv-7178 (D.N.J.) ($61.5 million settlement); *In re Celebrex Antitrust Litigation*, No. 14-cv-361 (E.D. Va.) ($94 million settlement).

Mr. Caplan is currently involved in a number of antitrust and commodities class actions alleging manipulation of key financial benchmarks. *E.g., In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, No. 14-md-2548 (S.D.N.Y.); *In re Libor-Based Financial Instruments Antitrust Litigation*, No. 11-md-2262 (S.D.N.Y.); *In re Platinum and Palladium Antitrust Litigation*, No. 14-cv-9391 (S.D.N.Y.). He also works on antitrust class actions on behalf of direct purchasers of prescription drugs. *E.g., In re Loestrin 24 Fe Antitrust Litigation*, No. 1:13-md-2472 (D.R.I.); *In re Opana ER Antitrust Litigation*, No. 14-cv-10151 (N.D. Ill.); *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 16-md-2724 (E.D. Pa.).

Mr. Caplan is a member of the committee that selects the annual winner of the American Antitrust Institute's Jerry S. Cohen Memorial Writing Award for the best antitrust scholarship. Mr. Caplan is a regular contributor to American Bar Association health care and antitrust publications and has several other published articles including on Philly.com, CNN.com, and Law360.

While in law school, Mr. Caplan was a senior editor of the University of Pennsylvania Journal of Business Law, represented clients in various civil matters as part of the Civil Practice Clinic, and interned with the United States Department of Justice Antitrust Division.

Aurelia Chaudhury – Associate

Aurelia Chaudhury is an Associate in the Antitrust Department. Prior to starting work at the Firm, Ms. Chaudhury clerked for the Honorable Judge David J. Barron on the United States Court of Appeals for the First Circuit and the Honorable Judge Denise J. Casper on the United States District Court for the District of Massachusetts. Ms. Chaudhury received her J.D. from Yale Law School, where she was an editor of the Yale Law Journal, a student director of the Mortgage Foreclosure Litigation Clinic, and a Coker Fellow. Ms. Chaudhury received a B.A. in Mathematical Economic Analysis from Rice University.

Ms. Chaudhury is admitted to practice in Pennsylvania and Massachusetts.

Krysten Connon – Associate

Ms. Connon is an Associate in the Firm’s Employment & Unpaid Wages practice group. She represents employees who are not being paid properly in class and collective actions arising under the Fair Labor Standards Act and state laws.

Prior to joining the Firm, Ms. Connon practiced as a litigation associate at a large Philadelphia firm, where she represented corporate and individual clients in complex commercial litigation and arbitration matters. Ms. Connon also worked as a Staff Attorney at Women Against Abuse, where she litigated cases originating as domestic violence matters.

Ms. Connon graduated *summa cum laude* from the Drexel University School of Law, and is a Phi Beta Kappa graduate of the University of Maryland. Following law school, Ms. Connon served as

a federal judicial law clerk in the United States District Court for the District of New Jersey and the United States District Court for the District of Columbia. She co-authored the 2015 Oxford University Press book, *Living in the Crosshairs: The Untold Stories of Anti-Abortion Terrorism*, which presents the results of extensive interviews with abortion providers around the intersections of law, policy, and anti-abortion violence. Ms. Connon currently serves on the Board of Directors of Planned Parenthood Southeastern Pennsylvania.

Jonathan Z. DeSantis – Associate

Jonathan Z. DeSantis is an Associate in the Firm's Philadelphia office and practices in the Firm's Whistleblower, *Qui Tam* & False Claims Act group, which has collectively recovered more than $3 billion for federal and state governments, as well as over $500 million for the Firm's whistleblower clients. Mr. DeSantis represents whistleblowers in litigation across the county and also actively assists in investigating and evaluating potential whistleblower claims before a lawsuit is filed.

Mr. DeSantis received a B.A. in Criminal Justice from Temple University. While at Temple, Mr. DeSantis served as Student Body Vice President and as president of his fraternity, in addition to receiving several awards for excellence in leadership. He graduated *magna cum laude* from Stetson University College of Law. During law school, Mr. DeSantis earned book awards for receiving the top grade in several classes and served as a senior associate on the Stetson Law Review. Mr. DeSantis also interned for the Atlantic Center for Capital Representation, a Philadelphia-based non-profit that provides support to attorneys representing capital defendants.

Prior to joining Berger Montague, Mr. DeSantis clerked for the Honorable Susan C. Bucklew of the United States District Court for the Middle District of Florida and then worked as a commercial litigation associate in a large corporate defense firm.

Mr. DeSantis is admitted to practice in state courts in Pennsylvania and Florida, in addition to the United States District Courts for the Northern District of Florida, Middle District of Florida, and Southern District of Florida.

William H. Ellerbe – Associate

William H. Ellerbe is an Associate in the Philadelphia office and practices in the Firm’s Whistleblower, *Qui Tam* & False Claims Act group, which has collectively recovered more than $3 billion for federal and state governments, as well as over $500 million for the firm’s whistleblower clients. Mr. Ellerbe represents whistleblowers in litigation across the country and also actively assists in investigating and evaluating potential whistleblower claims before a lawsuit is filed.

Mr. Ellerbe received an A.B. in English from Princeton University. He graduated *magna cum laude* from the University of Michigan Law School and also received a certificate in Science, Technology, and Public Policy from the Ford School of Public Policy. During law school, Mr. Ellerbe was an Associate Editor of the *Michigan Telecommunications and Technology Law*

Review and an active member of both the Environmental Law Society and the Native American Law Students Association.

Prior to joining the Firm, Mr. Ellerbe clerked for the Honorable Anne E. Thompson of the United States District Court for the District of New Jersey. He also worked as a white collar and commercial litigation associate at two large corporate defense firms.

Mr. Ellerbe is admitted to practice in the state courts of Pennsylvania, New Jersey, and New York, as well as the Third and Fourth Circuit Courts of Appeals and the United State District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the District of New Jersey, the Southern District of New York, and the Eastern District of New York.

Joseph C. Hashmall – Associate
Joe Hashmall, an Associate, is a member of the Firm's Consumer Protection practice group. In that practice group, Mr. Hashmall primarily focuses on consumer class actions concerning financial and credit reporting practices.

Mr. Hashmall is a graduate of the Grinnell College and the Cornell University School of Law. During law school, Mr. Hashmall served as the Executive Editor of the Cornell Legal Information Institute's Supreme Court Bulletin and as an Editor for the Cornell International Law Journal. Mr. Hashmall has also worked as law clerk for President Judge Bonnie B. Leadbetter of the Pennsylvania Commonwealth Court and for the Honorable David J. Ten Eyck of the Minnesota District Court.

Daniel E. Listwa – Staff Attorney
Daniel E. Listwa is a Staff Attorney. He has worked on a number of antitrust matters, with a focus on the suppression of generic competition by major pharmaceutical manufacturers. Before joining the Firm, Mr. Listwa clerked for the Honorable J. Brian Johnson of the Lehigh County Court of Common Pleas, and was an associate at a medical malpractice defense firm in Blue Bell, PA. While in law school, Mr. Listwa was a staff writer for the Boston College Environmental Affairs Law Review, and interned at the U.S. District Court for the Eastern District of Pennsylvania.

Patrick F. Madden – Associate
Patrick F. Madden is an Associate in the Consumer Protection, Insurance Fraud, and Predatory Lending and Borrowers' Rights practice groups. His practice principally focuses on consumer class actions concerning financial practices and insurance products.

Mr. Madden has served in key roles in multiple nationwide consumer class actions. For example, he represented homeowners whose mortgage loan servicers force-placed extraordinarily high-priced insurance on them and allegedly received a kickback from the insurer in exchange. Collectively, Mr. Madden's force-placed insurance settlements have made more than $175 million in recoveries available to class members.

Furthermore, Mr. Madden represents the City of Philadelphia, the City of Miami and the City of Miami Gardens in cases against financial institutions alleging the institutions issued loans to minority borrowers that were higher-priced than those issued to similarly situated white borrowers in violation of the federal Fair Housing Act and causing injuries to those cities.

He is also presently involved in the representation of a proposed class of elite mixed martial arts fighters in an antitrust lawsuit against the Ultimate Fighting Championship. *Le, et al. v. Zuffa, LLC*, No. 15-cv-1045 (D. Nev.). In addition, Mr. Madden represents a proposed class of direct purchasers of dental supplies and equipment in an antitrust lawsuit against distributors of those products. See *Dental Supplies Antitrust Litigation*.

Prior to attending law school, Mr. Madden worked at the United States Department of Labor, Office of Labor-Management Standards as an investigator during which time he investigated allegations of officer election fraud and financial crimes by union officers and employees.

While at Temple Law School, Mr. Madden was the Executive Editor of Publications for the Temple Journal of Science, Technology & Environmental Law.

Amey J. Park – Associate

Amey J. Park is an Associate in the Firm's Philadelphia office and practices in the Firm's Consumer Protection and Commercial Litigation practice groups.

Before joining the Firm, Ms. Park was an associate in the litigation department of a large corporate defense firm. She represented corporate and individual clients in complex commercial litigation, product liability, and personal injury matters in a wide variety of industries, including financial services, insurance, trust administration, and real estate. Ms. Park also represented clients *pro bono*, serving as first-chair counsel in a federal jury trial for violations of an inmate's constitutional rights by law enforcement officers and assisting a young refugee seeking asylum in federal immigration court.

Ms. Park is admitted to practice in state courts in Pennsylvania and New Jersey; the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, and the District of New Jersey; and the United States Court of Appeals for the Third Circuit.

Alexandra Koropey Piazza – Associate

Alexandra Koropey Piazza, an Associate, is a member of the Firm's Employment Law, Consumer Protection and Lending Practices & Borrowers' Rights practice groups. In the Employment Law practice group, Ms. Piazza primarily focuses on wage and hour class and collective actions arising under state and federal law. Ms. Piazza's work in the Consumer Protection and Lending Practices & Borrowers' Rights practice groups involves consumer class actions concerning financial practices.

Ms. Piazza is a graduate of the University of Pennsylvania and Villanova University School of Law. During law school, Ms. Piazza served as a managing editor of the Villanova Sports and

Entertainment Law Journal and as president of the Labor and Employment Law Society. Ms. Piazza also interned at the United States Attorney's Office and served as a summer law clerk for the Honorable Eduardo C. Robreno of the United States District Court for the Eastern District of Pennsylvania.

Josh Ripley – Associate
Josh Ripley is an Associate in the Antitrust, Insurance Products & Financial Services, and Environmental & Mass Tort practice groups.

Mr. Ripley graduated from Harvard Law School in 2015. While in law school, Mr. Ripley participated in various clinical organizations, including the Tenant Advocacy Project, the Employment Law Clinic, and the Predatory Lending and Consumer Protection Clinic.

Camille Fundora Rodriguez – Associate
Ms. Rodriguez is an Associate in the Firm's Employment Law, Consumer Protection, and Lending Practices & Borrowers' Rights practice groups. Ms. Rodriguez primarily focuses on wage and hour class and collective actions arising under the Fair Labor Standards Act and state laws.

Prior to joining the Firm, Ms. Rodriguez practiced in the litigation department at a boutique Philadelphia law firm where she represented clients in a variety of personal injury, disability, and employment discrimination matters. Ms. Rodriguez is a graduate of Widener University School of Law.

Ms. Rodriguez is an active member of the Pennsylvania, Philadelphia, and Hispanic Bar Associations.

Karissa Sauder – Associate
Prior to joining the Firm, Karissa Sauder clerked for the Honorable Eduardo C. Robreno of the United States District Court for the Eastern District of Pennsylvania.

Ms. Sauder is a 2014 graduate of Harvard Law School, where she served as Managing Editor of the *Harvard Law Review*. In 2010, she graduated *summa cum laude* from Eastern Mennonite University, where she was a Yoder Scholar.

Stacy Savett – Staff Attorney
Stacy Savett is a Staff Attorney in the Firm’s Employment & Unpaid Wages Group. She focuses on wage and hour class and collective actions arising under federal and state laws.

Mark R. Suter – Associate
Mark Suter is an Associate in the Philadelphia office and a member of the Firm’s Antitrust practice group. He concentrates his practice in complex commercial litigation, representing a broad range of businesses, government entities, workers, and consumers in high-stakes matters throughout the country.

Mr. Suter has handled a wide variety of civil litigation both large and small in federal and state court. He primarily focuses on antitrust litigation on behalf of plaintiffs alleging anticompetitive conduct such as monopolization, price-fixing, and artificial wage suppression. Among his notable successes, Mr. Suter has represented direct purchasers in price-fixing class actions such as *In re Domestic Drywall Antitrust Litigation* (E.D. Pa.) ($190.7 million total settlements) and *In re Capacitors Antitrust Litigation* (N.D. Cal.) ($99.5 million in settlements to date). He currently serves as co-lead counsel in *Le, et al v. Zuffa, LLC* (D. Nev.), representing a proposed class of professional mixed martial arts fighters in antitrust litigation against the Ultimate Fighting Championship. In addition, Mr. Suter represents whistleblowers in *qui tam* or False Claims Act litigation against companies that have committed fraud against the government.

Mr. Suter also maintains an active pro bono practice, and is a member of the Firm's Pro Bono Committee.

Mr. Suter received his J.D., *magna cum laude*, Order of the Coif from Rutgers Law School, where he served as Senior Editor of the *Rutgers Law Review.* He received his B.A. in Philosophy and Political Science from McGill University.

Y. Michael Twersky – Associate

Y. Michael Twersky concentrates his practice primarily on representing plaintiffs in complex litigation, including on insurance, antitrust, and environmental matters.

In the past, Mr. Twersky has worked on a wide variety of insurance matters including an insurance case in which a Federal District Court found on Summary Judgement that a large insurance company had breached its policy when it denied benefits under an accidental death insurance plan. Mr. Twersky has also worked on a number of antitrust class actions alleging that pharmaceutical manufacturers wrongfully kept less expensive generic drugs off the market, in violation of the antitrust laws, including: *In re Skelaxin (Metaxalone) Antitrust Litigation*, 1:12-md-02343 (E.D. Tenn.) ($73 million settlement in 2014), and *In re Solodyn Antitrust Litig.*, 14 MD 2503 (D. Mass.) (combined settlements in excess of $76 million in 2018). Mr. Twersky has also represented inmates in connection with allegations that various inmate calling services charged unreasonable rates and fees in violation of the Federal Communication Act.

Currently, Mr. Twersky is litigating a number of complex class actions related to insurance products, including proposed class actions in multiple forums against a workers' compensation insurance company alleging that the company deceptively sold illegal workers' compensation programs that were not properly filed with state regulators. *E.g.*, *Shasta Linen Supply, Inc. v Applied Underwriters et al.*, No. 2:16-cv-0158 (N.D. Cal.). Mr. Twersky is also involved in a proposed class action in Federal Court brought on behalf of Alaska-enrolled Medicaid Healthcare Providers against the developers of the Alaska Medicaid Management Information System Company alleging that providers were harmed as a result of the negligent and faulty design and implementation of the MMIS system. *See South Peninsula Hospital et al v. Xerox State Healthcare, LLC*, 3:15-cv-00177 (D. Alaska). Mr. Twersky is also involved in environmental

litigation on behalf of various states to recover the costs of remediation for contamination to groundwater resources.

Mr. Twersky graduated from Temple University Beasley School of Law in 2011, where he was a member of the Rubin Public Interest Law Honors Society and a Class Senator. In addition, Mr. Twersky advised various clients in business matters as part of Temple University's Business Law Clinic.

Nick Urban – Associate
Nick Urban is an Associate in the Antitrust practice group. He concentrates his practice in the area of complex antitrust litigation.

Mr. Urban focuses on antitrust class actions alleging that pharmaceutical manufacturers wrongfully kept less expensive generic drugs off the market, in violation of the antitrust laws. These cases include *In re Modafinil Antitrust Litigation*, 2:06-cv-01797 (E.D. Pa.) ($512 million settlement with three of five defendants); *In re Aggrenox Antitrust Litigation*, 3:13-cv-01776 (D. Conn.) ($146 million settlement); *In re Skelaxin (Metaxalone) Antitrust Litigation*, 1:12-md-02343 (E.D. Tenn.) ($73 million settlement); *In re Wellbutrin XL Antitrust Litigation*, 2:08-cv-02431 (E.D. Pa.) ($37.5 million settlement with one of two defendants); *In re Niaspan Antitrust Litigation*, 2:13-md-02460 (E.D. Pa.); *In re AndroGel Antitrust Litigation*, 3:13-cv-01776 (N.D. Ga.).

He has also devoted significant time to antitrust cases brought against the banking industry. E.g., *Ross and Wachsmuth v. American Express Co., et al.*, 04-CV-5723 (S.D.N.Y.) ($49.5 million settlement); *Ross, et al. v. Bank of America, N.A. (USA), et al.*, 05-CV-7116 (S.D.N.Y.) (obtained settlements with four of the nation's largest card issuers (Bank of America, Capital One, Chase and HSBC) to drop their arbitration clauses for their credit cards for 3.5 years).

While at the University of Pennsylvania Law School, Mr. Urban served as senior editor for the Journal of Law and Social Change and worked at several organizations dedicated to increasing the availability of quality affordable housing through impact litigation and development. Prior to attending law school, he worked as an anti-hunger advocate in the San Diego region, and also worked for the Office of the Secretary of State of California.

Michaela Wallin – Associate
Michaela Wallin is an Associate in the Antitrust and Employment Law practice groups. Ms. Wallin's work in the Antitrust group involves complex class actions, including those alleging that pharmaceutical manufacturers have wrongfully kept less expensive drugs off the market, in violation of the antitrust laws. In the Employment Law Group, Ms. Wallin focuses on wage and hour class and collective actions arising under federal and state law.

Prior to joining the Firm, Ms. Wallin served as a law clerk for the Honorable James L. Cott of the United States District Court of the Southern District of New York. She also completed an Equal Justice Works Fellowship at the ACLU Women's Rights Project, where she worked to challenge

local laws that target domestic violence survivors for eviction and impede tenants' ability to call the police.

Ms. Wallin is a graduate of Columbia Law School, where she was a Harlan Fiske Stone Scholar. Ms. Wallin graduated *magna cum laude* from Bowdoin College, where she was Phi Beta Kappa and a Sarah and James Bowdoin Scholar.

Of Counsel

Harold Berger – Of Counsel & Managing Shareholder *Emeritus*

Judge Berger is Of Counsel & Managing Shareholder Emeritus. He participated in many complex litigation matters, including the *Exxon Valdez Oil Spill Litigation*, No. A89-095, in which he served on the case management committee and as Co-Chair of the national discovery team. He also participated in the *Three Mile Island Litigation*, No. 79-0432 (M.D. Pa.), where he acted as liaison counsel, and in the nationwide school asbestos property damage class action, *In re Asbestos School Litigation*, Master File No. 83-0268 (E.D. Pa.), where the firm served as co-lead counsel.

A former Judge of the Court of Common Pleas of Philadelphia, he has long given his service to the legal community and the judiciary. He is also active in law and engineering alumni affairs at the University of Pennsylvania and in other philanthropic endeavors. He serves as a member of Penn's Board of Overseers and as Chair of the Friends of Penn's Biddle Law Library, having graduated from both the engineering and law schools at Penn. Judge Berger also serves on the Executive Board of Penn Law's Center for Ethics and Rule of Law. In 2017, he was the recipient of Penn Law's Inaugural Lifetime Commitment Award, which recognizes graduates "who through a lifetime of service and commitment to Penn Law have truly set a new standard of excellence."

He is past Chair of the Federal Bar Association's National Committee on the Federal and State Judiciary and past President of the Federal Bar Association's Eastern District Chapter. He is the author of numerous law review articles, has lectured extensively before bar associations and at universities, and has served as Chair of the International Conferences on Global Interdependence held at Princeton University. Judge Berger has served as Chair of the Aerospace Law Committees of the American, Federal and Inter-American Bar Associations and, in recognition of the importance and impact of his scholarly work, was elected to the International Academy of Astronautics in Paris.

As his biographies in *Who's Who in America*, *Who's Who in American Law* and *Who's Who in the World* outline, he is the recipient of numerous awards, including the Special Service Award of the Pennsylvania Conference of State Trial Judges, a Special American Bar Association Presidential Program Award and Medal, and a Special Federal Bar Association Award for distinguished service to the Federal and State Judiciary. He has been given the highest rating (AV Preeminent) for legal ability as well as the highest rating for ethical standards by Martindale-Hubbell. Judge Berger was also presented with a Lifetime Achievement Award in 2014 by *The Legal Intelligencer* in recognition of figures who have helped shape the law in Pennsylvania and who had a distinct impact on the legal profession in the Commonwealth.

He is a permanent member of the Judicial Conference of the United States Court of Appeals for the Third Circuit and has served as Chair of both the Judicial Liaison and International Law Committees of the Philadelphia Bar Association. He has also served as National Chair of the FBA's Alternate Dispute Resolution Committee.

Recipient of the Alumnus of the Year Award of the Thomas McKean Law Club of the University of Pennsylvania Law School, he was further honored by the University's School of Engineering and Applied Science by the dedication of the Harold Berger Biennial Distinguished Lecture and Award given to a technical innovator who has made a lasting contribution to the quality of our lives. He was also honored by the University by the dedication of an auditorium and lobby bearing his name and by the dedication of a student award in his name for engineering excellence.

Long active in diverse, philanthropic, charitable, community and inter-faith endeavors Judge Berger serves as a Lifetime Honorary Trustee of the Federation of Jewish Charities of Greater Philadelphia, as a Director of the National Museum of Jewish History, as a National Director of the Hebrew Immigrant Aid Society (HIAS) in its endeavors to assist refugees and indigent souls of all faiths, as A Charter Fellow of the Foundation of the Federal Bar Association and as a member of the Hamilton Circle of the Philadelphia Bar Foundation.

Among other honors and awards, as listed above, Judge Berger was honored by the University of Pennsylvania Law School at its annual Benefactors' Dinner and is the recipient of the "Children of the American Dream" award of HIAS for his leadership in the civic, legal, academic and Jewish communities.

Jonathan D. Berger – Of Counsel
Mr. Berger concentrates his practice on the prosecution of class actions, collective actions, and multiple plaintiff litigations on behalf of employees, consumers, and shareholders.

Mr. Berger serves as counsel for several commercial hydraulic manufacturers and other companies, and is engaged in litigation, corporate, commercial, employment, and governmental regulatory compliance matters on behalf of his clients.

Mr. Berger has been involved in class actions and complex commercial litigation including the *Exxon Valdez Oil Spill Litigation*; *In re Asbestos School Litigation*, Master File No. 83-0268 (E.D. Pa); *In re Domestic Airlines Antitrust Litigation*, 137 F.R.D. 677 (N.D. Ga. 1991); *Ford/Firestone MDL Litigation*; *Unisys ERISA Benefits Litigation*; *Commercial Explosives Antitrust Litigation*; and *Vitamins Antitrust Litigation*. Mr. Berger has also prosecuted complex multi-party litigation involving hydraulic engineered systems.

Mr. Berger has litigated wage & hour cases in federal and state courts including *Chabrier v. Wilmington Finance, Inc.*, No. 06-4176 (E.D. Pa.), in which Mr. Berger obtained a settlement of $2.9 million on behalf of retail loan officers who worked in four offices of Wilmington Finance, Inc.; *Espinosa v. National Beef California, L.P.*, No. ECU04657 (Cal. Super. Ct.) ($3.35 million

settlement); and *Justison v. McDonalds Corp.*, No. 08-cv-448 (D. Del.) ($2.4 million settlement on behalf of hundreds of assistant manager trainees alleging claims for unpaid overtime wages).

Currently, Mr. Berger is engaged in a variety of military defense, healthcare, and other Whistleblower, *Qui Tam* and False Claim Act cases.

Mr. Berger graduated from the University of Pennsylvania (B.S. Economics, Wharton School, 1980) and the Widener University Delaware Law School (J.D., 1985). During and after law school, Mr. Berger served as a law clerk for the Honorable Charles P. Mirarchi, Jr, Administrative Judge, Civil Division, Court of Common Pleas of Philadelphia County, PA.

Robin Switzenbaum – Of Counsel

Robin Blumenfeld Switzenbaum concentrates her practice on litigating complex civil cases, with a particular focus on real estate, securities, corporate governance (including limited partnerships and REITs), and voting control disputes. In addition to successfully resolving major securities class actions in her career, Ms. Switzenbaum has applied her plaintiffs' side expertise to representing business sellers who have encountered difficulties in securing the value of their pay-outs from purchasers of their companies.

Ms. Switzenbaum currently serves as lead counsel with Lawrence Deutsch in *In re Precision Castparts Corp. Shareholder Litigation*, No. 15CV21455 (Oregon) and *Rabin v. NASDAQ*, No. 215CV0551 (E.D. Pa.), contesting market manipulation in call options on the NASDAQ PHLX. Recently, with Lawrence Lederer, she was lead counsel in *Dodona v. Goldman, Sachs, et al.*, No. 10 Civ. 7497 (VM) (DCF) (S.D.N.Y.), regarding two synthetic collateralized debt obligations sold by Goldman Sachs.

Ms. Switzenbaum served as lead counsel in *Ginsburg v. Philadelphia Stock Exchange, Inc., et al.*, C.A. No. 2202-CC (Del. Ch.), representing certain shareholders of the Philadelphia Stock Exchange in the Delaware Court of Chancery. The case settled in excess of $99 million. In another state court action, Ms. Switzenbaum represented a class of holders of a publicly traded common stock who were denied their preemptive rights, *Korman v. InKine Pharmaceutical*, Case No. 04341 (CCP, Philadelphia County). This case settled for $9 million.

She has also successfully pursued claims on behalf of litigation trusts, bringing actions against officers, directors, and auditors of insolvent companies. Ms. Switzenbaum has also been extensively involved in litigating securities cases against financial institutions such as Wells Fargo, Merrill Lynch, Lehman Brothers, Citi, and Chase Manhattan, and against retailers such as Rite Aid, Sunbeam, and Revlon.

Prior to joining the Firm, Ms. Switzenbaum was an attorney with Saul Ewing, focusing on real estate, bankruptcy and zoning matters.

Susan Schneider Thomas – Of Counsel
Susan Schneider Thomas concentrates her practice on *qui tam* litigation.

Ms. Thomas has substantial complex litigation experience. Before joining the Firm, she practiced law at two Philadelphia area firms, Schnader, Harrison, Segal & Lewis and Greenfield & Chimicles, where she was actively involved in the litigation of complex securities fraud and derivative actions.

Upon joining the Firm, Ms. Thomas concentrated her practice on complex securities and derivative actions. In 1986, she joined in establishing Zlotnick & Thomas where she was a partner with primary responsibility for the litigation of several major class actions including *Geist v. New Jersey Turnpike Authority, C.A.* No. 92-2377 (D.N.J.), a bond redemption case that settled for $2.25 million and *Burstein v. Applied Extrusion Technologies, C.A.* No. 92-12166-PBS (D. Mass.), which settled for $3.4 million.

Upon returning to the Firm, Ms. Thomas has had major responsibilities in many securities and consumer fraud class actions, including *In re CryoLife Securities Litigation, C.A.* No. 1:02-CV-1868 BBM (N.D.Ga.), which settled in 2005 for $23.25 million and *In re First Alliance Mortgage Co.*, Civ. No. SACV 00-964 (C.D.Cal.), a deceptive mortgage lending action which settled for over $80 million in cooperation with the FTC. More recently, Ms. Thomas has concentrated her practice in the area of healthcare *qui tam* litigation. As co-counsel for a team of whistleblowers, she worked extensively with the U.S. Department of Justice and various State Attorney General offices in the prosecution of False Claims Act cases against pharmaceutical manufacturers that recovered more than $2 billion for Medicare and Medicaid programs and over $350 million for the whistleblowers. She has investigated or is litigating False Claims Act cases involving defense contractors, off-label marketing by drug and medical device companies, federal grant fraud, upcoding and other billing issues by healthcare providers, drug pricing issues and fraud in connection with for-profit colleges and student loan programs.

Tyler E. Wren - Of Counsel
Mr. Wren is a trial lawyer with over 35 years of experience in both the public and private sectors.

Mr. Wren has represented both plaintiffs and defendants in a broad spectrum of litigation matters, including class actions, environmental, civil rights, commercial disputes, personal injury, insurance coverage, election law, zoning and historical preservation matters and other government affairs. Mr. Wren routinely appears in both state and federal courts, as well as before local administrative agencies.

Following his graduation from law school, Mr. Wren served as staff attorney to the Committee of Seventy, a local civic watchdog group. Mr. Wren then spent a decade in the Philadelphia City Solicitor's Office in various positions in which his litigation and counseling skills were developed: Chief Assistant City Solicitor for Special Litigation and Appeals, Divisional Deputy City Solicitor for the Environment, Counsel to the Philadelphia Board of Ethics and Counsel to the Philadelphia Planning Commission. After leaving government employ and before joining the Firm in 2010, Mr.

Wren was in private practice, including nine years with the Sprague and Sprague firm, headed by nationally recognized litigator Richard Sprague.

EXHIBIT B

Gary E. Cantor

Gary E. Cantor is a Shareholder in the Philadelphia office. He concentrates his practice on securities and commercial litigation and derivatives valuations.

Mr. Cantor served as co-lead counsel in *Steiner v. Phillips, et al. (Southmark Securities)*, Consolidated C.A. No. 3-89-1387-X (N.D. Tex.), (class settlement of $82.5 million), and *In re Kenbee Limited Partnerships Litigation*, Civil Action No. 91-2174 (GEB), (class settlement involving 119 separate limited partnerships resulting in cash settlement, oversight of partnership governance and debt restructuring (with as much as $100 million in wrap mortgage reductions)). Mr. Cantor also represented plaintiffs in numerous commodity cases.

In recent years, Mr. Cantor played a leadership role in *In re Oppenheimer Rochester Funds Group Securities Litigation* ($89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc.), No. 09-md-02063-JLK (D. Col.); *In re KLA-Tencor Corp. Securities Litigation*, Master File No. C-06-04065-CRB (N.D. Cal.) ($65 million class settlement); *In re Sepracor Inc. Securities Litigation*, Civil Action no. 02-12235-MEL (D. Mass.) ($52.5 million settlement.); *In re Sotheby's Holding, Inc. Securities Litigation*, No. 00 Civ. 1041 (DLC) (S.D.N.Y.) ($70 million class settlement). He was also actively involved in the *Merrill Lynch Securities Litigation* (class settlement of $475 million) and *Waste Management Securities Litigation* (class settlement of $220 million).

For over 20 years, Mr. Cantor also has concentrated on securities valuations and the preparation of event or damage studies or the supervision of outside damage experts for many of the firm's cases involving stocks, bonds, derivatives, and commodities. Mr. Cantor's work in this regard has focused on statistical analysis of securities trading patterns and pricing for determining materiality, loss causation and damages as well as aggregate trading models to determine class-wide damages.

Mr. Cantor was a member of the Moot Court Board at University of Pennsylvania Law School where he authored a comment on computer-generated evidence in the University of Pennsylvania Law Review. He graduated from Rutgers College with the highest distinction in economics and was a member of Phi Beta Kappa.

Todd S. Collins

Todd S. Collins is a graduate of the University of Pennsylvania (B.A. 1973) and the University of Pennsylvania Law School (J.D. 1978), where he won the 1978 Henry C. Laughlin Prize for Legal Ethics. He is a member of the Pennsylvania and Delaware Bars. Since joining the Firm in 1982, following litigation and corporate experience in Wilmington, Delaware, and Philadelphia, he has concentrated on complex class litigation, including cases on behalf of securities purchasers, shareholders, trust beneficiaries, and retirement plan participants and beneficiaries.

Mr. Collins has served as lead counsel or co-lead counsel in numerous cases that have achieved significant benefits on behalf of the Class. These cases include: *In re AMF Bowling Securities Litigation* (S.D.N.Y.) ($20 million recovery, principally against investment banks, where defendants asserted that Class suffered no damages); *In re Aero Systems, Inc. Securities Litigation* (S.D. Fla.) (settlement equal to 90 percent or more of Class members' estimated damages); *Price v. Wilmington Trust Co.* (Del. Ch.) (in litigation against bank trustee for breach of fiduciary duty, settlement equal to 70% of the losses of the Class of trust beneficiaries); *In re Telematics International, Inc. Securities Litigation* (S.D. Fla.) (settlements achieved, after extensive litigation, following 11th Circuit reversal of dismissal below); *In re Ex-Cell-O Securities Litigation* (E.D. Mich.); *In re Sequoia Systems, Inc.* (D. Mass.); *In re Sapiens International, Inc. Securities Litigation* (S.D.N.Y.); *In re Datastream Securities Litigation* (D.S.C.); *Copland v. Tolson* (Pa. Common Pleas) (on eve of trial, in case against corporate principals for breach of fiduciary duty, settlement reached that represented 65% or more of claimants' losses, with settlement funded entirely from individual defendants' personal funds); and *In re IKON Office Solutions, Inc. Securities Litigation* (E.D. Pa.). In *IKON*, where Mr. Collins was co-lead counsel as well as the chief spokesman for plaintiffs and the Class before the Court, plaintiffs' counsel created a fund of $111 million for the benefit of the Class.

In addition, Mr. Collins has served as lead or co-lead counsel in several of the leading cases asserting the ERISA rights of 401(k) plan participants. Mr. Collins has served as co-lead counsel in *In re Lucent Technologies, Inc. ERISA Litigation* (D.N.J.); *In re Nortel Networks Corp. ERISA Litigation* (M.D. Tenn.); *In re SPX Corporation ERISA Litigation* (W.D. N.C.); and *King v. Wal-Mart Stores, Inc.* (D. Nev.). In *Lucent*, Mr. Collins and his team achieved a settlement consisting of $69 million for the benefit of plan participants, as well as substantial injunctive relief with respect to the operation of the 401(k) plans.

Mr. Collins is at the forefront of litigation designed to achieve meaningful corporate governance reform. Recently, he brought to a successful conclusion two landmark cases in which corporate therapeutics are at the core of the relief obtained. In *Oorbeek v. FPL Group, Inc.* (S.D. Fla.), a corporate derivative action brought on behalf of the shareholders of FPL Group, plaintiffs challenged excessive "change of control" payments made to top executives. In the settlement, plaintiffs recovered not only a substantial cash amount but also a range of improvements in FPL's corporate governance structure intended to promote the independence of the outside directors.

Similarly, in *Ashworth Securities Litigation* (S.D. Cal.), a Section 10(b) fraud case, in which Mr. Collins was co-lead counsel, plaintiffs again have been successful in recovering millions of dollars and also securing important governance changes. In this case, the changes focused on strengthening the accounting function and improving revenue recognition practices.

In corporate acquisition cases, Mr. Collins has served as co-lead counsel in cases such as *In re Portec Rail Products, Inc. Shareholders Litig.* (C.P. Allegheny County, Pennsylvania) (tender offer enjoined), *Silberman v. USANA Health Sciences, Inc. et, al.* (D. Utah) (offer enjoined on plaintiffs' motion).

Michael C. Dell'Angelo

Michael Dell'Angelo litigates complex cases, primarily for plaintiffs, throughout the country.

The National Law Journal recently featured Mr. Dell'Angelo in its profile of Berger Montague for a special annual report entitled "Plaintiffs' Hot List." The National Law Journal's Hot List identifies the top plaintiff practices in the country. The Hot List profile focused on Mr. Dell'Angelo's role in the MF Global litigation (*In re MF Global Holding Ltd. Inv. Litig.*, No. 12-MD-2338-VM (S.D.N.Y.)). In MF Global, Mr. Dell'Angelo represented former commodity account holders seeking to recover approximately $1.6 billion of secured customer funds after the highly publicized collapse of MF Global, a major commodities brokerage. At the outset of this high-risk litigation, the odds appeared grim: MF Global had declared bankruptcy, leaving the corporate officers, a bank, and a commodity exchange as the only prospect for the recovery of class's misappropriated funds. Nonetheless, four years later, a result few would have believed possible was achieved. Through a series of settlements, the former commodity account holders recovered more than 100 percent of their missing funds, totaling over $1.6 billion.

Mr. Dell'Angelo serves as co-lead counsel or class counsel in numerous cases alleging price-fixing or other wrongdoing affecting a variety of financial instruments including: *In re Commodity Exchange, Inc., Gold Futures And Options Trading Litig.*, 1:14-MD-2548-VEC (S.D.N.Y); *In re Platinum and Palladium Antitrust Litig.*, No. 14-cv-09391-GHW (S.D.N.Y.); *Baker et al v. Bank of America Corp., et al.*, 1:16-cv-07512-LGS (S.D.N.Y.); *In re Libor-Based Financial Instruments Antitrust Litig.*, No. 11-md-2262 (S.D.N.Y.); *In re North Sea Brent Crude Oil Futures Litig.*, No. 13-md-2475 (S.D.N.Y.); *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (S.D.N.Y.); and *In re London Silver Fixing, Ltd. Antitrust Litig.*, No. 14-md-2573 (S.D.N.Y.).

Mr. Dell'Angelo also represents relators in SEC "whistleblower" actions and serves as co-lead counsel in a variety of non-financial instrument cases including: *Le et al. v. Zuffa, LLC*, No. 15-1045 (D. Nev.) (alleging the Ultimate Fighting Championship ("UFC") obtained illegal monopoly power of the market for Mixed Martial Arts promotions and monopsony power of

MMA fighters); and *In re Domestic Drywall Antitrust Litig.*, No. 13-2437 (E.D. Pa.) (alleging an anticompetitive conspiracy to monopolize the price of drywall).

Mr. Dell'Angelo has been recognized consistently as a Pennsylvania Super Lawyer, a distinction conferred upon him annually since 2007. He is regularly invited to speak at Continuing Legal Education (CLE) and other seminars and conferences, both locally and abroad. As such, in response to his recent CLE, "How to Deal with the Rambo Litigator", Mr. Dell'Angelo was singled out as "One of the best CLE speakers [attendees] have had the pleasure to see." He formerly served as the Third Circuit Editor of the American Bar Association's quarterly publication, Class Action and Derivative Suits.

Prior to joining Berger Montague, Mr. Dell'Angelo concentrated his practice in antitrust, securities and complex commercial litigation at Miller Faucher and Cafferty LLP. While at Miller Faucher, Mr. Dell'Angelo also practiced before the Federal Trade Commission. Early in his career, Mr. Dell'Angelo devoted a substantial portion of his practice to the prosecution of numerous class action law suits on behalf of survivors of slave labor during the Holocaust. These suits, against German companies, resulted in a $5.2 billion German Foundation to pay Nazi-era claims.

Mr. Dell'Angelo's pro bono work includes the representation of an Alabama death row inmate. That representation resulted in a reversal of the client's sentencing by the Eleventh Circuit and a grant of a writ of habeas corpus vacating the client's death sentence.

Mr. Dell'Angelo graduated from Connecticut College (B.A. 1994) and The Catholic University of America, Columbus School of Law (J.D. 1997).

While in law school, Mr. Dell'Angelo served as a law clerk for the Honorable Richard A. Levie (Ret.), Superior Court, D.C., Presiding Judge, Civil Division.

Lawrence Deutsch

Mr. Deutsch has been involved in numerous major shareholder class action cases. He served as lead counsel in the Delaware Chancery Court on behalf of shareholders in a corporate governance litigation concerning the rights and valuation of their shareholdings. Defendants in the case were the Philadelphia Stock Exchange, the Exchange's Board of Trustees, and six major Wall Street investment firms. The case settled for $99 million and also included significant corporate governance provisions. Chancellor Chandler, when approving the settlement allocation and fee awards on July 2, 2008, complimented counsel's effort and results, stating, "Counsel, again, I want to thank you for your extraordinary efforts in obtaining this result for the class." The Chancellor had previously described the intensity of the litigation when he had approved the settlement, "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong like they have gone at it in this case."

Mr. Deutsch was one of principal trial counsel for plaintiffs in *Fred Potok v. Floorgraphics, Inc., et al.* (Phila Co. CCP 080200944 and Phila Co. CCP 090303768) resulting in an $8 million judgment against the directors and officers of the company for breach of fiduciary duty.

Over his 25 years working in securities litigation, Mr. Deutsch has been a lead attorney on many substantial matters. Mr. Deutsch served as one of lead counsel in the ***In Re Sunbeam Securities Litigation*** class action concerning "Chainsaw" Al Dunlap (recovery of over $142 million for the class in 2002). As counsel on behalf of the City of Philadelphia he served on the Executive Committee for the securities litigation regarding *Frank A. Dusek, et al. v. Mattel Inc., et al.* (recovery of $122 million for the class in 2006).

Mr. Deutsch served as lead counsel for a class of investors in Scudder/Deutsche Bank mutual funds in the nationwide ***Mutual Funds Market Timing*** cases. Mr. Deutsch served on the Plaintiffs' Omnibus Steering Committee for the consortium of all cases. These cases recovered over $300 million in 2010 for mutual fund purchasers and holders against various participants in widespread schemes to "market time" and late trade mutual funds, including $14 million recovered for Scudder/Deutsche Bank mutual fund shareholders.

Mr. Deutsch has been court-appointed Lead or a primary attorney in numerous complex litigation cases: *NECA-IBEW Pension Trust Fund, et al. v. Precision Castparts Corp., et al.* (Civil Case No. 3:16-cv-01756-YY); ***Fox et al. v. Prime Group Realty Trust, et al.*** United States

District Court Northern District of Illinois (Civil Case No. 1:12-cv-09350) ($8.25 million settlement pending); served as court-appointed lead counsel in ***In Re Inergy LP Unitholder Litigation*** (Del. Ch. No. 5816-VCP) ($8 million settlement).

Mr. Deutsch served on a team of lead counsel in ***In Re: CertainTeed Fiber Cement Siding Litigation***, E.D.Pa. MDL NO. 11-2270 ($103.9 million settlement); ***Tim George v. Uponor, Inc., et al.***, United States District Court, District of Minnesota, Case No. 12-CV-249 (ADM/JJK) ($21 million settlement); *Batista, et al. v. Nissan North America, Inc.*, United States District Court, Southern District of Florida, Miami Division, Case No 1;14-cv-24728 (settlement valued at $65,335,970.00).

In addition to his litigation work, Mr. Deutsch has been a member of the Firm's Executive Committee and also manages the Firm's paralegals. He has also regularly represented indigent parties through the Bar Association's VIP Program, including the Bar's highly acclaimed representation of homeowners facing mortgage foreclosure.

Prior to joining the Firm, Mr. Deutsch served in the Peace Corps from 1973-1976, serving in Costa Rica, the Dominican Republic, and Belize. He then worked for ten years at the United States General Services Administration.

Mr. Deutsch is a graduate of Boston University (B.A. 1973), George Washington University's School of Government and Business Administration (M.S.A. 1979), and Temple University's School of Law (J.D. 1985). He became a member of the Pennsylvania Bar in 1986 and the New Jersey Bar in 1987. He has also been admitted to practice in Eastern District of Pennsylvania, the First Circuit Court of Appeals, the Second Circuit Court of Appeals, the Third Circuit Court of Appeals, the Fourth Circuit Court of Appeals, Eleventh Circuit Court of Appeals and the U.S. Court of Federal Claims as well as various jurisdictions across the country for specific cases.

Professional Leadership

- Mr. Deutsch had been a member of the Firm's Administrative Committee and also manages the Firm's paralegals.

Business and Community Leadership

- Board Member of the Koby Mandell Foundation (2011-2018)
- Lower Merion Synagogue Treasurer, Board member, and program chairman (various roles 1985-2012)
- Board Member of Tikvah Housing (2011-2012)
- Friends of the Dominican Republic (Board member) (2009-2012)
- Pathway Parents Association (President) (2005-2007)
- Buildings Owners and Managers Association (member) (1979 – 1986)

Judicial Praise:

In ***Ginsburg v. Philadelphia Stock Exchange***, Chancellor Chandler, when approving the settlement allocation and fee awards on July 2, 2008, complimented counsel's effort and results, stating:

"Counsel, again, I want to thank you for your extraordinary efforts in obtaining this result for the class." The Chancellor had previously described the intensity of the litigation when he had approved the settlement, "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case."

Prominent Judgments and Settlements

- Served as co-lead counsel in *Potok v. Rebh*, a corporate governance suit against four directors and officers of FLOORgraphics, Inc. alleging that the individual Defendants breached their fiduciary duties by authorizing and accepting payments to themselves in connection with a March 2009 transaction entered into as part of the settlement of a lawsuit by the company against News Corp. subsidiary, News America Marketing. On September 16, 2014, following a complete trial prosecuted by Berger Montague, Judge Albert John Snite of the Philadelphia Court of Common Pleas (Commerce Division) entered a verdict for a total of $12,000,000 in favor of the Plaintiffs that was modified to $8,000,000 on a subsequent motion. This case was the ninth largest PA verdict of 2014.

- ***Ginsburg v. Philadelphia Stock Exchange*** (settled for $99 million and also included significant corporate governance provisions)

- ***In re Sunbeam Securities Litigation*** (served as lead counsel and obtained recovery of over $142 million for the class in 2002)

- Deutsch served as Lead Counsel for a class of investors in Scudder/Deutsche Bank mutual funds in the nationwide ***Mutual Funds Market Timing*** **cases.** These cases recovered over $300 million for mutual fund purchasers and holders against various participants in a widespread scheme to market time and late trade mutual funds. Mr. Deutsch served on the Plaintiffs' Omnibus Steering Committee for the consortium of all cases and recovered $14 million for Scudder/Deutsche Bank mutual fund shareholders.

- As counsel for the City of Philadelphia he served on the Executive Committee for the securities litigation regarding *Frank A Dusek, et al v. Mattel Inc., et al.* (recovery of $122 million for the class in 2006).

BENJAMIN GALDSTON

Benjamin Galdston is a Shareholder in the Antitrust, Commercial Litigation, Commodities & Financial Instruments and Securities & Investor Protection practice groups. He manages the Firm's San Diego office and has specialized in complex securities fraud and other class actions, corporate governance matters, opt-out litigation and consumer cases for more than 18 years.

Among the nation's top litigators, Mr. Galdston has represented prominent public pension funds, municipalities, Taft Hartley funds, and asset managers and secured billions of dollars and extensive corporate reforms for injured investors. He has presented arguments in federal district and appellate courts and state courts across the country. Formerly a partner with another national plaintiffs' firm, Mr. Galdston recently secured a landmark pro-investor ruling from the Ninth Circuit in *In re Quality Systems, Inc. Securities Litigation* limiting PSLRA safe harbor protections for mixed statements involving forward-looking projections and current factual assertions. He has served as lead or co-lead counsel in numerous historic securities fraud class actions, including *In re McKesson HBOC Securities Litigation*, the largest securities fraud class action in the Ninth Circuit; *In re Lehman Brothers Holdings, Inc.*, which recovered more than $735 million for shareholders of the defunct brokerage firm; *In re Citigroup Bond Litigation*, a $730 million recovery; *In re Wachovia Corp. Securities Litigation*, a $627 million recovery; *In re Washington Mutual Securities Litigation*, the largest securities class action recovery in the Western District of Washington; *In re Maxim Integrated Products, Inc. Securities Litigation*, the largest stock option backdating recovery in the Ninth Circuit; and *In re New Century*, a $125 million recovery. Mr. Galdston has been at the forefront in successfully pursuing novel legal claims on behalf of institutional investors in individual direct actions, as well, including *In re EMAC Securities Litigation*, a direct action arising from a private offering of asset-backed securities and *In re AXA Rosenberg Investor Litigation*, which asserted claims under the Investment Advisers Act of 1940 and resulted in a $65 million recovery.

Mr. Galdston frequently speaks and publishes on topics relating to securities regulation, class actions, corporate governance, investor advocacy and consumer protection. Most recently, he was a guest speaker at the American Bar Association winter conference and published an article titled "Shareholder Litigation for Waste of Corporate Assets in Internal FCPA Investigations" in *The Review of Securities & Commodities Regulation*.

Professional Leadership

- President (frmr), San Diego Barristers Club

JON J. LAMBIRAS

Jon J. Lambiras, Esq., CPA, CFE is a shareholder in the Securities and Consumer Protection practice groups at Berger & Montague. Since joining the firm in 2003, he has practiced primarily in the areas of securities fraud, consumer fraud, and data breach class actions.

In the Securities group, he concentrates on class action and opt-out litigation involving accounting fraud and financial misrepresentations. In the Consumer Protection group, he concentrates on unfair business practices and data breach litigation involving the theft of personal information by computer hackers. He has also engaged in Antitrust pay-for-delay matters involving drug manufacturers wrongly keeping generic drugs off the market.

Jon's clients are plaintiffs such as individual investors, institutional investors, and consumers. He strives to provide a smooth, comfortable litigation experience for his clients. He welcomes inquiries from potential clients and referring counsel regarding new matters. Fees in his cases are generally earned on a contingent basis, meaning clients do not pay out-of-pocket attorneys' fees.

Jon is an attorney, Certified Public Accountant, and Certified Fraud Examiner. Prior to law school he practiced accounting for four years as a financial statement auditor, including with a Big-Four accounting firm.

Jon has obtained the highest peer review rating, "AV Preeminent," in Martindale-Hubbell for his legal abilities and ethical standards. Also, for several years from 2012 to today he was selected for inclusion in "Pennsylvania Super Lawyers" or "Rising Stars," an honor conferred on less than 5% of attorneys in Pennsylvania.

Jon has published numerous articles and lectured on various class action topics as summarized below. He has also commented on class action issues for publications including The Washington Post and The Legal Intelligencer, among others. The cases on which he worked have collectively settled for hundreds of millions of dollars.

While in law school, Jon was a Lead Articles Editor for the Pepperdine Law Review.

Lawrence J. Lederer

Lawrence J. Lederer is a shareholder in the firm's Securities and Commercial Litigation practice groups. He has extensive experience representing and advising institutional investors in securities litigation. He has led the prosecution of many securities class action cases that have resulted in substantial recoveries for investors.

For example, he was co-lead counsel for the State Teachers Retirement System of Ohio which, in August 2009, obtained $475 million in *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, Master File No. 07-cv-9633 (JSR) (DFE) (S.D.N.Y.). This securities class action involved Merrill Lynch's financial exposures to collateralized debt obligations and other financial instruments linked to subprime mortgages. It represents one of the largest recoveries ever under the Private Securities Litigation Reform Act. During a hearing on July 27, 2009, Judge Jed S. Rakoff stated that lead plaintiff had made "very full and well-crafted" and "excellent submissions"; that there was a "very fine job done by plaintiffs' counsel in this case"; and that the attorney fees requested were "eminently reasonable" and "appropriately modest."

Mr. Lederer presently is or recently was also involved in many individual, "opt out" securities cases such as *Commonwealth of Pennsylvania Public School Employees' Ret. Sys. v. Citigroup, Inc.*, No. 11-2583, 2011 U.S. Dist. LEXIS 55829 (E.D. Pa. May 20, 2011); *State of New Jersey, Department of Treasury, Division of Investment v. Fuld*, 604 F.3d 816 (3d Cir. 2010); *Commonwealth of Pennsylvania Public School Employees' Ret. Sys. v. Time Warner Inc.*, Case No. 002103, July Term 2003 (Pa. Common Pleas Ct., Phila. Cty.); *In re Waste Management, Inc. Securities Litigation*, 194 F. Supp. 2d 590 (S.D. Tex. 2002); and *Kelly v. McKesson HBOC, Inc.*, C.A. No. 99C-09-265 WCC, 2002 Del. Super. LEXIS 39 (Del. Super. Jan. 17, 2002). The investor plaintiffs in each of these cases obtained recoveries significantly larger than what they would have obtained from the related class actions.

Mr. Lederer also advises and represents government entities in commercial and other matters. For example, he was part of a team of outside counsel for one state Attorney General's office in multi-state civil enforcement proceedings that resulted in landmark mortgage modifications and related relief for hundreds of thousands of borrowers nationwide against Countrywide Financial Corp. (and its parent, Bank of America Corp.) in December 2008 valued at approximately $8.6 billion; has advised public pension funds on a wide array of corporate governance and shareholder rights issues; and has advised state government entities concerning financial practices in the structured finance sector, among other areas.

Earlier in his career, Mr. Lederer played a major role in the historic Drexel/Milken/Boesky complex of cases. *See, e.g., In re Michael R. Milken and Associates Securities Litigation*, MDL

Dkt. No. 924, Master File No. M21-62 (MP), 1993 U.S. Dist. LEXIS 14242, 1993 WL 413673 (S.D.N.Y. Oct. 7, 1993) (approving approximately $1.3 billion overall settlement with Michael R. Milken and some 500 other persons and entities); *In re Drexel Burnham Lambert Group Inc*., 995 F.2d 1138 (2d Cir. 1993) (affirming $1.3 billion settlement); *Presidential Life Insurance Co. v. Milken, et al.*, 946 F. Supp. 267 (S.D.N.Y. 1996) (approving $50 million settlement against some 500 defendants); *In re Ivan F. Boesky Securities Litigation*, 948 F.2d 1358 (2d Cir. 1991) (affirming approval of settlements totaling approximately $29 million; subsequent class, derivative and other settlements approved totaling in excess of $200 million).

Also experienced on the defense side, Mr. Lederer helped obtain a pre-trial dismissal of a securities class action against DRDGold, a gold mining company based in South Africa. *See In re DRDGold Ltd. Securities Litigation*, 05-cv-5542 (VM), 2007 U.S. Dist. LEXIS 7180 (S.D.N.Y. Jan. 31, 2007). He also helped defend an individual charged with "insider trading" in a criminal jury trial in federal court, and in parallel civil enforcement proceedings brought by the SEC. *United States v. Pileggi*, No. 97-cr-612-2, 1998 U.S. Dist. LEXIS 8068 (E.D. Pa. June 3, 1998), aff'd, No. 98-1811, 1999 U.S. App. LEXIS 18592 (3d Cir. July 22, 1999).

In bankruptcy litigation, Mr. Lederer helped obtain hundreds of millions of dollars for investors in the complex Chapter 11 proceedings involving Drexel Burnham Lambert, including through appeals before the United States Court of Appeals for the Second Circuit and the United States Supreme Court. S*ee, e.g., In re The Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910 (Bankr. & S.D.N.Y. Aug. 20, 1991), aff'd, 960 F.2d 285 (2d Cir. 1992), cert. denied, 506 U.S. 1088 (1993). *See also Sapir, et al. v. Delphi Ventures, et al*., No. 99-cv-8086-JORDAN (S.D. Fla.) (recovery of $3.8 million following extensive bankruptcy and related proceedings).

Mr. Lederer has achieved the highest peer-review rating, "AV," in Martindale-Hubbell for legal abilities and ethical standards; has repeatedly been selected as one of the Pennsylvania's "Super Lawyers" in the category of securities litigation; and has served on the editorial advisory board of Securities Law360. Mr. Lederer is admitted to practice law in Pennsylvania, the District of Columbia, and several federal courts. Mr. Lederer graduated from Georgetown University Law Center (LL.M. 1988), Western New England College School of Law (J.D. 1987), where he was a member of Western New England Law Review, and the University of Pittsburgh (B.A. 1984), where he was managing editor of The Pitt News, and co-captain (1983) and captain (1984) of the men's varsity tennis team.

Professional Leadership

- Named by the publisher to the Editorial Board of Securities Law360, a daily newsletter serving securities lawyers nationwide.

Phyllis M. Parker

Phyllis Maza Parker is a shareholder at Berger Montague. She concentrates her practice primarily on complex securities class action litigation, representing both individual and institutional investors. Her practice also includes commercial litigation.

Ms. Parker served on the team as co-lead counsel for the Class in *In re Xcel Energy, Inc. Securities Litigation* (D. Minn.). The case, which settled for $80 million, was listed among the 100 largest securities class action settlements in the United States since the enactment of the 1933-1934 Securities Acts. Among other cases, she has also served as co-lead counsel in *In re Reliance Group Holdings, Inc. Securities Litigation* ($15 million settlement); *In re The Loewen Group, Inc. Securities Litigation* ($6 million settlement); as lead counsel in *In re Veeco Instruments Inc. Securities Litigation* ($5.5 million settlement on the eve of trial); as co-lead counsel in I*n re Nuvelo, Inc. Securities Litigation* ($8.9 million settlement); and, most recently, as co-lead counsel in *Coady v. Perry, et al. (IndyMac Bancorp, Inc.)* ($6.5 million settlement).

While studying for her J.D. at Temple, Ms. Parker was a member of the Temple Law Review. She published a Note on the subject of the Federal Sentencing Guidelines in the Temple Law Review, Vol. 67, No. 4, 1994, which has been cited by a court and in a law review article. After her first year of law school, Ms. Parker interned with the Honorable Dolores K. Sloviter of the United States Court of Appeals for the Third Circuit.

Ms. Parker is fluent in Hebrew and French.

Judicial Praise:

As Lead Counsel, Ms. Parker was responsible for winning a $5.5 million dollar settlement in *In re Veeco Instruments Inc. Secs. Litig.*, 05-md-01695 (S.D.N.Y.) which was litigated up to the eve of trial. In approving the settlement and award of attorneys' fees, Judge McMahon commented:

> *This was a hard-fought battle. It was a well and at times bitterly litigated case. Plaintiff's counsel was tenacious.*
>
> *I think for the first time since I have gotten on the federal bench I can say that I am absolutely comfortable in every way in approving the settlement and also in approving the requested attorney fees award. The class counsel have put in an immense amount of time on this action. They deserve every dime they are going to get and probably some that they are not going to get....*

I want to thank everybody for all the hard work you put in on the case, they were very interesting and well-done motion papers, for the fascinating experience of the final pretrial conference. I hope it was just as good for you as it was for me. It was one of those very, very intense days, but I could say afterward and my law clerks, my then law clerks said afterward that it was an incredibly intense enlightening experience. They were impressed with and commented on the professionalism of everybody involved.

Barbara A. Podell

Barbara A. Podell is a shareholder in the Securities practice group at Berger Montague. She concentrates her practice on securities class action litigation.

Ms. Podell graduated from the University of Pennsylvania (cum laude) and the Temple University School of Law (magna cum laude), where she was Editor-in-Chief of the Temple Law Quarterly.

Ms. Podell was one of the firm's senior attorneys representing the Pennsylvania State Employees' Retirement System ("SERS") as the lead plaintiff in the *In re CIGNA Corp. Sec. Litig.*, No. 02-CV-8088 (E.D. Pa.), a federal securities fraud class action in which SERS moved for, and was appointed, lead plaintiff. CIGNA allegedly concealed crucial operational problems, which, once revealed, caused the company's stock price to fall precipitously. The firm obtained a $93 million settlement. This was a remarkable recovery because there were no accounting restatements, government investigations, typical indicators of financial fraud, or insider trading. Moreover, the case was settled on the eve of trial (22.7% of losses recovered).

Before joining Berger Montague, Ms. Podell was a founding member of Savett Frutkin Podell & Ryan, P.C., and before that, a shareholder at Kohn, Savett, Klein & Graf and an associate at Dechert LLP, all in Philadelphia.

Business and Community Leadership

- Docent, The Barnes Foundation in Philadelphia.
- Volunteer Guide, Philadelphia Museum of Art and the Rodin Museum in Philadelphia.
- Chair, Executive Committee of the Philadelphia Museum of Art Weekend Guides, 2016-2018; Member of Executive Committee, 2012-present.
- Chair of the 2007 annual fundraising gala for the Lower Merion Conservancy; co-chair for the 2010 gala.
- Member of The Women's Committee of the Philadelphia Museum of Art.

Judicial Praise

- The Honorable Michael M. Baylson of the U.S. District for the Eastern District of Pennsylvania stated:

The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive." *In re CIGNA Corp. Securities Litigation*, 2007 U.S. Dist. LEXIS 51089, at *17-18 (E.D. Pa. July 13, 2007) ($93 million settlement).

Sherrie R. Savett

Sherrie R. Savett, Chair *Emeritus* of the Firm, Chair of the Securities Litigation Department and *Qui Tam*/False Claims Act Department, and member of the Firm's Management Committee, has practiced in the areas of securities litigation and class actions since 1975.

Ms. Savett serves or has served as lead or co-lead counsel or as a member of the executive committee in a large number of important securities and consumer class actions in federal and state courts across the country, including:

- ***In re Alcatel Alsthom Securities Litigation*:** The Firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.));
- ***In re CIGNA Corp. Securities Litigation*:** The Firm, as co-lead counsel, obtained a settlement of $93 million for the benefit of the class. (Master File No. 2:02-cv-8088 (E.D. Pa.));
- ***In re Fleming Companies, Inc. Securities Litigation*:** The Firm, as lead counsel, obtained a class settlement of $94 million for the benefit of the class. (No. 5-03-MD-1530 (TJW) (E.D. Tex.));
- ***In re KLA Tencor Securities Litigation*:** The Firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.));
- ***Medaphis/Deloitte & Touche*** (class settlement of $96.5 million) (No. 1:96-CV-2088-FMH (N.D. GA));
- ***In re Rite Aid Corp. Securities Litigation*:** The Firm, as co-lead counsel, obtained settlements totaling $334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (No. 99-cv-1349) (E.D. Pa.));
- ***In re Sotheby's Holding, Inc. Securities Litigation:*** The Firm, as lead counsel, obtained a $70 million settlement, of which $30 million was contributed, personally, by an individual defendant (No. 00-cv-1041 (DLC) (S.D.N.Y.));
- ***In re Waste Management, Inc. Securities Litigation:*** In 1999, the Firm, as co-lead counsel, obtained a class settlement for investors of $220 million cash, which included a settlement against Waste Management's outside accountants. (No. 97-cv-7709 (N.D. Ill.)); and
- ***In re Xcel Inc. Securities, Derivative & "ERISA" Litigation***: The Firm, as co-lead counsel in the securities actions, obtained a cash settlement of $80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (No. 02-cv-2677 (DSD/FLN) (D. Minn.)).

Ms. Savett has helped establish several significant precedents. Among them is the holding (the first ever in a federal appellate court) that municipalities are subject to the anti-fraud provisions of SEC Rule 10b-5 under § 10(b) of the Securities Exchange Act of 1934, and that municipalities that issue bonds are not acting as an arm of the state and therefore are not entitled to immunity from suit in the federal courts under the Eleventh Amendment. *Sonnenfeld v. City and County of Denver*, 100 F.3d 744 (10th Cir. 1996).

In the *U.S. Bioscience* securities class action, a biotechnology case where critical discovery was needed from the federal Food and Drug Administration, the court ruled that the FDA may not automatically assert its administrative privilege to block a subpoena and may be subject to discovery depending on the facts of the case. *In re U.S. Bioscience Secur. Litig.*, 150 F.R.D. 80 (E.D. Pa. 1993).

In the *CIGNA Corp. Securities Litigation*, the Court denied defendants' motion for summary judgment, holding that a plaintiff has a right to recover for losses on shares held at the time of a corrective disclosure and his gains on a stock should not offset his losses in determining legally recoverable damages. *In re CIGNA Corp. Securities Litigation*, 459 F. Supp. 2d 338 (E.D. Pa. 2006).

Additionally, Ms. Savett has become increasingly well-known in the area of consumer litigation, achieving a groundbreaking $24 million settlement in 2008 in the *Menu Foods* case brought by pet owners against manufacturers of allegedly contaminated pet food. *(In re Pet Food Products Liability Litigation*, MDL Docket No. 1850 (D.N.J. 2007). In the data breach area, she was co-lead counsel in *In re TJX Retail Securities Breach Litigation*, MDL Docket No. 1838 (D.Mass), the first very large data breach case where hackers stole personal information from 45 million consumers. The settlement, which became the template for future data breach cases, consisted of providing identity theft insurance to those whose social security or driver's license numbers were stolen, a cash fund for actual damages and time spent mitigating the situation, and injunctive relief.

In the past decade, she has also actively worked in the False Claims Act arena. She was part of the team that litigated over more than a decade and settled the Average Wholesale Price *qui tam* cases, which collectively settled for more than $1 billion.

Significant Achievements Within the Legal Community

Ms. Savett speaks and writes frequently on securities litigation, consumer class actions and False Claims Act litigation. She has lectured at the University of Pennsylvania Law School, the Wharton School of the University of Pennsylvania and at the Stanford Law School on prosecuting shareholder class actions and on False Claims Act Litigation. She is frequently invited to present and serve as a panelist in American Bar Association, American Law Institute/American Bar Association and Practicing Law Institute (PLI) conferences on securities class action litigation and the use of class actions in consumer litigation. She has been a presenter and panelist at PLI's Securities Litigation and Enforcement Institute annually from 1995 to 2010. She has also spoken at major institutional investor and insurance industry conferences, and DRI – the Voice of the Defense Bar. In February 2009, she was a member of a six-person panel who presented an analysis of the current state of securities litigation before more than 1,000 underwriters and insurance executives at the PLUS (Professional Liability Underwriting Society) Conference in New York City. She has presented at the Cyber-Risk Conference in 2009, as well as the PLUS Conference in

Chicago on November 16, 2009 on the subject of litigation involving security breaches and theft of personal information.

Most recently, in April 2019, she spoke as a panelist at PLI's Securities Litigation 2019: From Investigation to Trial program. Her panel was titled "Commencement of a Civil Action: Filing the Complaint, Preparing the Motion to Dismiss, Coordinating Multiple Securities Litigation Actions." Ms. Savett also co-authored an article for the program that was published in PLI's *Corporate Law and Practice Court Handbook Series*. The article is titled "After the Fall—A Plaintiff's Perspective."

In 2015 and 2016, she served as a panelist in American Law Institute programs held in New York City called "Securities and Shareholder Litigation: Cutting-Edge Developments, Planning and Strategy." Ms. Savett also spoke at the 2013 ABA Litigation Section Annual Conference in Chicago on two panels. One program on securities litigation was entitled "The Good, The Bad, and The Ugly: Ethical Issues in Class Action Settlements and Opt Outs." The other program focused on consumer class actions in the real estate area and was entitled "The Foreclosure Crisis Puzzle: Navigating the Changing Landscape of Foreclosure."

In May 2007, Ms. Savett spoke in Rome, Italy at the conference presented by the Litigation Committee of the Dispute Resolution Section of the International Bar Association and the Section of International Law of the American Bar Association on class certification. Ms. Savett participated in a mock hearing before a United States Court on whether to certify a worldwide class action that includes large numbers of European class members.

Ms. Savett has written numerous articles on securities and complex litigation issues in professional publications, including:

- "After the Fall – A Plaintiff's Perspective," with Phyllis M. Parker, *PLI Corporate Law and Practice Course Handbook Series No. B-2475*, pg. 73-105, April 2019
- "Plaintiffs' Vision of Securities Litigation: Current Trends and Strategies," 1762 *PLL* October 2009
- "Primary Liability of 'Secondary' Actors Under the PSLRA," I *Securities Litigation Report*, (Glasser) November 2004
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," 1442 *PLI! Corp.13*, September – October 2004
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," SJ084 ALI-ABA 399, May 13-14, 2004
- "The 'Indispensable Tool' of Shareholder Suits," *Directors & Boards*, Vol. 28, February 18, 2004
- "Plaintiffs Perspective on How to Obtain Class Certification in Federal Court in a Non-Federal Question Case," 679 *PLI*, August 2002
- "Hurdles in Securities Class Actions: The Impact of Sarbanes-Oxley From a Plaintiffs Perspective," 9 *Securities Litigation and Regulation Reporter* (Andrews), December 23, 2003
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," SG091 ALI-ABA, May 2-3, 2002
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," SF86 ALI-ABA 1023, May 10, 2001

- "Greetings From the Plaintiffs' Class Action Bar: We'll be Watching," SE082 ALI-ABA739, May 11, 2000
- "Preventing Financial Fraud," B0-00E3 *PLJB0-00E3* April – May 1999
- "Shareholders Class Actions in the Post Reform Act Era," SD79 ALI-ABA 893, April 30, 1999
- "What to Plead and How to Plead the Defendant's State of Mind in a Federal Securities Class Action," with Arthur Stock, *PLI*, ALI/ABA 7239, November 1998
- "The Merits Matter Most: Observations on a Changing Landscape Under the Private Securities Litigation Reform Act of 1995," 39 *Arizona Law Review* 525, 1997
- "Everything David Needs to Know to Battle Goliath," ABA Tort & Insurance Practice Section, The Brief, Vol. 20, No.3, Spring 1991
- "The Derivative Action: An Important Shareholder Vehicle for Insuring Corporate Accountability in Jeopardy," *PLIH4-0528*, September 1, 1987
- "Prosecution of Derivative Actions: A Plaintiffs Perspective," *PLIH4-5003*, September 1, 1986

Professional Recognition

Ms. Savett is widely recognized as a leading litigator and a top female leader in the profession by local and national legal rating organizations.

In 2019, *The Legal Intelligencer* named Ms. Savett a "Distinguished Leader," and in 2018 she was named to the *Philadelphia Business Journal*'s 2018 Best of the Bar: Philadelphia's Top Lawyers.

The Legal Intelligencer and *Pennsylvania Law Weekly* named her one of the "56 Women Leaders in the Profession" in 2004.

In 2003-2005, 2007-2013, and 2015-2016, Berger Montague was named to the *National Law Journal's* "Hot List" of 12-20 law firms nationally "who specialize in plaintiffs' side litigation and have excelled in their achievements." The Firm is on the *National Law Journal*'s "Hall of Fame," and Ms. Savett's achievements were mentioned in many of these awards.

Ms. Savett was named a "Pennsylvania Top 50 Female Super Lawyer" and/or a "Pennsylvania Super Lawyer" from 2004 through 2018 by *Philadelphia Magazine* after an extensive nomination and polling process among Pennsylvania lawyers.

In 2006 and 2007, she was named one of the "500 Leading Litigators" and "500 Leading Plaintiffs' Litigators" in the United States by *Lawdragon*. In 2008, Ms. Savett was named as one of the "500 Leading Lawyers in America." Also in 2008, she was named one of 25 "Women of the Year" in Pennsylvania by *The Legal Intelligencer* and *Pennsylvania Law Weekly,* which stated on May 19, 2008 in the *Women in the Profession* in *The Legal Intelligencer* that she "has been a prominent figure nationally in securities class actions for years, and some of her recent cases have only raised her stature." In June 2008, Ms. Savett was named by *Lawdragon* as one of the "100 Lawyers You Need to Know in Securities Litigation."

Mentoring, Promoting and Advancing Women Lawyers

Unquestionably, it is because of Ms. Savett, who for decades has been in the top leadership of the Firm, that the Firm has a remarkably high proportion of women lawyers and shareholders. At this

time, 23 of the Firm's 66 lawyers (34.8%) are women, and 11 of the Firm's 33 shareholders (33.3%) are women. This percentage of women shareholders far exceeds the 23.4% of representation of women among partners in 45 American cities, and far exceeds the 19.8% of women among partners in Philadelphia law firms, according to the National Association of Law Placement.

Creating a Great Work Environment for Women Attorneys

Ms. Savett has aggressively sought to hire women, without regard to age or whether they are "right out of law school." Several of the women who have children are able to continue working at the Firm because Ms. Savett has instituted a policy of flexible work time and fosters an atmosphere of cooperation, teamwork and mutual respect. As a result, the women attorneys stay on and have long and productive careers while still maintaining a balanced life. Ms. Savett has a personal understanding of the challenges and satisfactions that women experience in practicing law while raising a family. Ms. Savett has three children and five grandchildren. One of her daughters and her daughter-in-law are lawyers.

Community Leadership

Ms. Savett has taught those around her more than good lawyering. She places great emphasis in her own life on devotion to family, community service and involvement in charitable organizations. She teaches others by her example and her obvious interest in their efforts and achievements.

Ms. Savett is a well-known leader of the Philadelphia legal, business, cultural and Jewish community. She is an exemplary citizen who spends endless hours of her after-work time helping others in the community.

From 2011 – 2014, Ms. Savett served as President and Board Chair of the Jewish Federation of Greater Philadelphia (JFGP), a community of over 215,000 Jewish people. She is only the third woman to serve as the President, the top lay leader of the Federation, in the 117 years of its existence.

Ms. Savett also serves on the Board of the National Liberty Museum, The National Museum of American Jewish History, and the local and national boards of American Associates of Ben Gurion University of the Negev. She had as Chairperson of the Southeastern Pennsylvania State of Israel Bonds Campaign and has served as a member of the National Cabinet of State of Israel Bonds. In 2005, Ms. Savett received The Spirit of Jerusalem Medallion, the State of Israel Bonds' highest honor.

Mentoring and Furthering the Advancement of Women in the Community

Ms. Savett has used her positions of leadership in the community to identify and help promote women as volunteer leaders. Ms. Savett has selected a few worthy causes to which she tirelessly dedicates herself. According to leaders of The Jewish Federation of Greater Philadelphia, Ms. Savett is viewed by many woman in the philanthropic world as a role model.

Education

Ms. Savett earned her J.D. from the University of Pennsylvania Law School and a B.A. *summa cum laude* from the University of Pennsylvania. She is a member of Phi Beta Kappa.

Personal

Ms. Savett has three married children, three grandsons, and two granddaughters. She enjoys tennis, biking, physical training, travel, and collecting art, especially glass and sculpture.

Professional Leadership

- Lectured at the University of Pennsylvania Law School, the Wharton School of the University of Pennsylvania and at the Stanford Law School on prosecuting shareholder class actions and on False Claims Act Litigation.
- Presenter/Panelist in American Bar Association, American Law Institute/American Bar Association and Practicing Law Institute (PLI) conferences on securities class action litigation and the use of class actions in consumer litigation.
- Presenter/Panelist at PLI's Securities Litigation and Enforcement Institute annually from 1995 to 2010.
- Speaker at major institutional investor and insurance industry conferences, and DRI – the Voice of the Defense Bar.
- Panelist at the PLUS (Professional Liability Underwriting Society) Conference in New York City in February 2009.
- Presenter at the Cyber-Risk Conference in 2009.
- Presenter at the PLUS Conference in Chicago on November 16, 2009.
- Panelist in American Law Institute programs held in New York City called "Securities and Shareholder Litigation: Cutting-Edge Developments, Planning and Strategy" in 2015 and 2016.
- Panelist in PLI's "Securities Litigation 2018: From Investigation to Trial" program on April 4, 2018.
- Speaker at the 2013 ABA Litigation Section Annual Conference in Chicago on two panels: "The Good, The Bad, and The Ugly: Ethical Issues in Class Action Settlements and Opt Outs" and "The Foreclosure Crisis Puzzle: Navigating the Changing Landscape of Foreclosure."
- Speaker in Rome, Italy at the conference presented by the Litigation Committee of the Dispute Resolution Section of the International Bar Association and the Section of International Law of the American Bar Association on class certification in May 2007.

Business and Community Leadership

- President and Board Chair of the Jewish Federation of Greater Philadelphia (2011 – 2014)
- Board Member, National Liberty Musuem
- Board Member, The National Museum of American Jewish History
- Board Member, local and national boards of American Associates of Ben Gurion University of the Negev
- Former Chairperson, Southeastern Pennsylvania State of Israel Bonds Campaign
- Former Member, National Cabinet of State of Israel Bonds

Judicial Praise:

From **Judge Stewart Dalzell**, of the U.S. District Court for the Eastern District of Pennsylvania, *In re U.S. Bioscience Securities Litigation*, Civil Action No. 92-0678, hearing held April 4, 1994 (E.D. Pa. 1994):

"The quality of lawyering on both sides, but I am going to stress now on the plaintiffs' side, simply has not been exceeded in any case, and we have had some marvelous counsel appear before us and make superb arguments, but they really don't come any better than Mrs. Savett, and the arguments we had on the motion to dismiss [Mrs. Savett argued the motion], both sides were fabulous, but plaintiffs' counsel were as good as they come."

From **Judge David S. Doty**, of the U.S. District Court for the District of Minnesota, *In re Xcel Energy Sec. Deriv. "ERISA" Litig.*, 364 F. Supp. 2d 980, 992, 995-96 (D. Minn. 2005):

"...[A] just result without the assistance of a governmental investigation," plaintiffs' co-lead counsel Berger Montague "conducted themselves in an exemplary manner," "consistently demonstrated considerable skill and cooperation to bring this matter to an amicable conclusion," and "moved the case along expeditiously."

From **Judge Wayne R. Andersen**, of the U.S. District Court for the Northern District of Illinois, *In Re: Waste Management, Inc. Securities Litigation*, Civil Action No. 97-C 7709 (N.D. Ill. 1999):

"...[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases...in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here...I would say this has been the best representation that I have ***seen.***"

From **Judge Stewart Dalzell**, of the U.S. District Court for the Eastern District of Pennsylvania, *In re Rite Aid Inc. Sec. Litig.*, 269 F.Supp. 2d 603, 611 (E.D. Pa. 2003):

"This litigation presented layers of factual and legal complexity which assured that, absent a global settlement, these disputes would take on Dickensian dimensions...In short, it would be hard to equal the skill class counsel demonstrated here...[T]hey were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over $1.6 billion in previously reported Rite Aid earnings."

From U.S. District Judge **Michael M. Baylson**, *In Re: CIGNA Corp. Sec. Litig.*, 2007 U.S. Dist. LEXIS 51089, **17-18 (E.D. Pa. July 13, 2007):

"The Court is aware of the attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive."

From U.S. District Judge, then **Chief Judge William Young**, *In Re TJX Retail Security Breach Litig.*, 584 F.Supp. 2d 395, 399 n.5 (D.Mass 2008); *In Re TJX*, No. 07-cv-10162, Dict. #297 of 6:12 (D.Mass Sept. 27, 2007), transcript of preliminary approval hearing, who praised the result as an "excellent settlement" containing "innovative" and "groundbreaking elements."

Prominent Judgments and Settlements

Ms. Savett serves or has served as lead or co-lead counsel or as a member of the executive committee in a large number of important securities and consumer class actions in federal and state courts across the country, including:

- ***In re Alcatel Alsthom Securities Litigation:*** The Firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.));
- ***In re CIGNA Corp. Securities Litigation:*** The Firm, as co-lead counsel, obtained a settlement of $93 million for the benefit of the class. (Master File No. 2:02-cv-8088 (E.D. Pa.));
- ***In re Fleming Companies, Inc. Securities Litigation:*** The Firm, as lead counsel, obtained a class settlement of $94 million for the benefit of the class. (No. 5-03-MD-1530 (TJW) (E.D. Tex.));
- ***In re KLA Tencor Securities Litigation:*** The Firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.));
- ***Medaphis/Deloitte & Touche:*** (class settlement of $96.5 million) (No. 1:96-CV-2088-FMH (N.D. GA));
- ***In re Rite Aid Corp. Securities Litigation:*** The Firm, as co-lead counsel, obtained settlements totaling $334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (No. 99-cv-1349) (E.D. Pa.));
- ***In re Sotheby's Holding, Inc. Securities Litigation:*** The Firm, as lead counsel, obtained a $70 million settlement, of which $30 million was contributed, personally, by an individual defendant (No. 00-cv-1041 (DLC) (S.D.N.Y.));
- ***In re Waste Management, Inc. Securities Litigation:*** In 1999, the Firm, as co-lead counsel, obtained a class settlement for investors of $220 million cash, which included a settlement against Waste Management's outside accountants. (No. 97-cv-7709 (N.D. Ill.)); and
- ***In re Xcel Inc. Securities, Derivative & "ERISA" Litigation:*** The Firm, as co-lead counsel in the securities actions, obtained a cash settlement of $80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (No. 02-cv-2677 (DSD/FLN) (D. Minn.)).

Amanda R. Track

Amanda R. Trask is Senior Counsel in the Consumer Protection and Insurance Fraud practice groups. She concentrates her practice in the area of complex consumer litigation, prosecuting actions on behalf of consumers asserting claims against banks, insurance companies and other institutions for violations of both state and federal law, including claims under RESPA, RICO, FHA and state causes of action challenging unfair and deceptive practices.

Ms. Trask has successfully participated in litigation which resulted in multi-million dollar settlements that helped put an end to major banks' reinsurance of borrowers' private mortgage insurance in violation of RESPA, providing relief to hundreds of thousands of borrowers. Ms. Trask also contributed to litigation against major banks that helped change their force-placed insurance practices. Ms. Trask has extensive experience working with experts in the fields of economics, insurance, mortgage lending and regulatory matters.

Ms. Trask is a graduate of Bryn Mawr College and Harvard Law School.

Lane L. Vines

Lane L. Vines's practice is concentrated in the areas of securities/investor fraud, consumer and qui tam litigation. For more than 17 years, Mr. Vines has prosecuted both class action and individual opt-out securities cases for state government entities, public pension funds, and other large investors. Mr. Vines also represents consumers in class actions involving unlawful and deceptive practices, as well as relators in qui tam, whistleblower and False Claims Act litigations. Mr. Vines is admitted to practice law in Pennsylvania, New Jersey and numerous federal courts.

Mr. Vines also has experience in the defense of securities and commercial cases. For example, he was one of the firm's principal attorneys defending a public company which obtained a pre-trial dismissal in full of a proposed securities fraud class action against a gold mining company based in South Africa. *See In re DRDGold Ltd. Securities Litigation*, 05-cv-5542 (VM), 2007 U.S. Dist. LEXIS 7180 (S.D.N.Y. Jan. 31, 2007).

During law school, Mr. Vines was a member of the Villanova Law Review and served as a Managing Editor of Outside Works. In that role, he selected outside academic articles for publication and oversaw the editorial process through publication.

Prior to law school, Mr. Vines worked as an auditor for a Big 4 public accounting firm and a property controller for a commercial real estate development firm, and served as the Legislative Assistant to the Minority Leader of the Philadelphia City Council.

Mr. Vines has achieved the highest peer rating, "AV Preeminent" in Martindale-Hubbell for legal abilities and ethical standards. Mr. Vines is admitted to practice law in Pennsylvania, New Jersey and several federal courts.

Professional Leadership

- Villanova Law J. Willard O'Brien American Inn of Court, Pupillage Team Captain and Master member, 2004 to present
- Villanova Law School, Guest lecturer in "Accounting for Lawyers" course, 2012 & 2011

Business and Community Leadership

- He served as the Vice Chairman/Member of the Ethics Board of Radnor Township (Pennsylvania) from January 2014-December 2017.
- He currently serves as an Assistant Scoutmaster and Merit Badge Counselor for Boy Scout Troop Paoli 1 in Wayne, PA.
- Previously, he has served as a member of the Planning Commission for Narberth Borough (Pennsylvania), as well as an officer or director and participated in numerous other civic organizations.

EXHIBIT C

Gender and Racial Composition of the Firm

Job Categories	Total Employees in Establishment			Veterans	Minority Group Employees							
					Male				Female			
	Total Employees Including Veterans & Minorities (1)	Total Male Including Veterans & Minorities (2)	Total Female Including Veterans & Minorities (3)	Total Veterans (4)	Black (5)	Asian/ Pacific Islander (6)	American Indian/ Alaskan Native (7)	Hispanic (8)	Black (9)	Asian/ Pacific Islander (10)	American Indian/ Alaskan Native (11)	Hispanic (12)
Senior Partners	9	8	1	0	0	0	0	0	0	0	0	0
Junior Partners	24	15	9	0	0	0	0	0	0	0	0	0
Of Counsel	3	2	1	0	0	0	0	0	0	0	0	0
Senior Associates												
Associates	29	18	11	0	0	1	0	0	0	2	0	1
Paralegals	24	8	16	0	1	0	0	0	0	3	0	1
Clerical												
Other ADM STAFF	34	13	21	1	0	2			5	2	0	1
Other (specify)												
TOTALS	123	64	59	1	1	3	0	0	5	7	0	3

EXHIBIT D

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AFTER THE FALL - A PLAINTIFF'S PERSPECTIVE

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A sharp drop in the price of a company's stock is often newsworthy and troubling to companies and their investors. However, from the plaintiffs' perspective, while the sharp decline may catch their attention, the determination of whether a particular set of facts gives rise to a potentially viable claim under the federal securities laws requires careful analysis and review of the relevant facts and law. A good way for plaintiffs to begin the investigation is by asking and answering the following questions:

- Was the stock drop significant – that is, a large percentage drop over the previous day's price resulting in a large loss of market capitalization?
- Did the drop follow the company's release of negative news such as loss of a key customer, or failure of a previously touted acquisition or merger, or reported revenues and profits dramatically lower than previous guidance?
- Was the stock drop consistent with general market trends that day (for example in reaction to some news report)?
- Was the stock drop consistent with the stock of other companies in its industry peer group or was the drop specific to that company?
- Is the company's stock historically volatile, or is the drop sudden and uncharacteristically steep?
- Did the price of the stock rebound in the days immediately following the sudden decline, or did the price remain depressed?

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- Did the company file a restatement of financial data with the SEC or announce that the company's financials could no longer be relied upon?
- Did the company (or other reliable source) disclose that it was the target of an investigation by the SEC, Justice Department, FDA or some other regulatory agency, or that the company was initiating an internal investigation into its business practices?
- Was there insider trading by any company officers or directors that differed markedly from their previous trading patterns and, in particular, were there large insider sales in the period prior to announcements of bad news?

Although a sudden dramatic drop in the stock price can trigger plaintiffs' investigation, it should be viewed in the context of general market and industry trends. For example, plaintiffs should compare the company's stock price with indices such as the NASDAQ Composite Index and the NASDAQ Industrial Index and the indices of companies in the same industry as the company being investigated, focusing on the period preceding and following the disclosure of bad news. Evidence that the company's stock price diverged meaningfully from general market and industry peers arguably indicates that the company's stock price was influenced by circumstances concerning that specific company, confirming that further investigation of the facts is warranted. In addition, it is important to track the price of the stock in the days following the decline. If the stock quickly rebounds to pre-disclosure prices, it is quite possible that the decline was a "blip" and that the market did not consider the disclosure all that material. On the other hand, a massive one-day loss in market capitalization can result in heavy investor losses, even if the stock rebounds. There is no single formula. The amount and duration of the stock decline must be considered on a case-by-case basis, together with other facts described further below, in plaintiffs' pre-filing investigation of a potential securities case.

Investigating the Potential Securities Class Action Claim

It bears emphasizing that even if an announcement or event causes the company's stock price to drop and investors sustain substantial losses, and there are indicia of violations of the securities laws, plaintiffs who seek to bring a securities class action are faced with a difficult task in investigating the

facts and drafting an initial complaint. All plaintiffs are required to investigate claims thoroughly before filing a complaint and to plead facts with some degree of particularity. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). But plaintiffs investigating a class action to be brought under the securities laws face a uniquely difficult pre-filing burden in investigating the claims and drafting a complaint, because such plaintiffs must comply with the requirements of the Private Securities Litigation Reform Act (the "PSLRA"). The PSLRA was enacted by Congress in 1995 to discourage what were perceived as unwarranted and frivolous private securities fraud class actions. Among key provisions, the PSLRA imposes, with limited exception, an *automatic stay on all* discovery until the motion to dismiss is decided.[2] At the same time, the PSLRA imposes heightened pleading requirements for establishing the elements of a securities fraud claim under the Exchange Act, most frequently, the anti-fraud provisions of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.[3] Without discovery, it is often challenging for plaintiffs to find and allege evidence to support their allegations, while defendants and third parties have access to that evidence.

[2] The PSLRA amended the provisions applicable to private class actions under both the Securities Exchange Act of 1934 (the "Exchange Act"), at Section 21D, 15 U.S.C. § 78u-4, and the Securities Act of 1933 (the "Securities Act"), at Section 27, 15 U.S.C. § 77z-1. Key PSLRA provisions are appointment of lead plaintiff and the imposition of an automatic stay of discovery during the pendency of the motion to dismiss. The discovery stay provision states: "In any private action arising under this Act, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party." 15 U.S.C. § 78u-4(b)(3)(B); 15 U.S.C. § 77z-1(b)(1).

[3] The elements of a private action under Section 10(b) are "(1) a material misrepresentation or omission by the defendants; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Stoneridge Investment partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 157 (2008). To adequately plead falsity under the PSLRA, "the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed." Exchange Act, 15 U.S.C. § 78u-4(b)(1). To adequately plead scienter under the PSLRA "the complaint shall, with respect to each act or omission alleged to violate this Act, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C. § 78u-4(b)(2)(A).

Indeed, the Ninth Circuit, in a recent decision, explicitly noted the unfair advantage enjoyed by defendants over plaintiffs due to the PSLRA's automatic stay of discovery, and attempted to remedy it by limiting defendants' use of documents outside the pleadings in defendants' motion to dismiss a securities complaint. *Khoja v. Orexigen Therapeutics, Inc*., 899 F. 3d 988 (9th Cir. 2018). In *Khoja*, a case in which plaintiffs alleged that a biotech company failed to disclose the truth and/or adverse material information about the drug study involving its primary drug candidate, the Ninth Circuit reversed in part the district court's dismissal of the plaintiff's claim under Section 10(b) and Rule 10b-5, because the Appeals Court found that the district court abused its discretion by improperly considering certain material outside the complaint at the motion to dismiss stage. *Id*. at 1000-1001. At the outset of its opinion, the Ninth Circuit court noted a "concerning pattern in securities cases like this one: exploiting these [incorporation-by reference and judicial notice] procedures improperly to defeat what would otherwise constitute adequately stated claims at the pleading stage." *Id.* at 998. The Court warned that the "[t]he overuse and improper application of judicial notice and the incorporation-by-reference doctrine… can lead to unintended and harmful results…. [T]he unscrupulous use of extrinsic documents to resolve competing theories against the complaint risks premature dismissals of plausible claims that may turn out to be valid after discovery." *Id. "This risk is especially significant in SEC fraud matters, where there is already a heightened pleading standard and the defendants possess materials to which the plaintiffs do not yet have access.*" *Id.* (emphasis added) (collecting cases).

In short, when evaluating a set of events or facts to determine whether to file a complaint under the securities laws, and what claims to prosecute, plaintiffs' counsel must determine, as best as possible within the constraints of the PSLRA, whether facts exist to adequately plead the elements of the claim, and to determine the appropriate class period, and where to file the claims. Still, even without the normal avenues of discovery, a number of excellent sources of information are available to plaintiffs that enable plaintiffs to evaluate whether a particular set of facts gives rise to liability under the securities laws and to draft a complaint that meets the PSLRA stringent pleading requirements that will survive a motion to dismiss (at which point the stay on discovery is lifted). The following are useful sources of information:

- ***The company's public statements***

Defendants will rarely, if ever, admit outright that they lied to investors. However, a careful and exhaustive review of defendants' own previous public statements concerning the facts revealed in the curative disclosure often provide useful information to adequately plead that the company misrepresented or omitted to disclose a material fact that it was required to disclose to investors earlier than it did, thereby artificially inflating the price of the shares and causing investors' losses when the stock price dropped upon disclosure of the truth.

First, plaintiffs should analyze the company's own statements and any other publicly available facts. The goal is to compare the statement that led the stock price to drop with the company's prior public statements. Was the disclosure inconsistent with the company's prior statements? Did the disclosure reveal a sudden problem, or a longstanding problem that the company should have been expected to know at the time it issued its prior statements? For example, if the disclosure was that the company had lost its most important customer, causing material loss of future revenue and earnings, and that the company had known about the probable loss for months, the likelihood of establishing falsity and scienter is strengthened.

Plaintiffs should carefully review the company's statements in press releases, conference calls with analysts, presentations at industry events, and other publicly available statements prior to the disclosure. Plaintiffs should also review the company's filings with the Securities and Exchange Commission ("SEC"), including sections enumerating "risk factors" and "management's discussion and analysis ("MD&A"). The "risk factors" are especially important and should be read closely in the pre-filing investigation, with an eye to considering whether they were mere boilerplate, or whether they in fact disclosed the "true" facts to investors with the same intensity as the undisclosed facts. Such considerations are essential because if a complaint is filed, defendants may attempt to assert a "truth-on-the-market" defense – arguing that they disclosed the risks that later materialized throughout the alleged class period.

- ***Analyst reports***

Reports by analysts covering the company at issue and analyst conference calls at which analysts question the company officers are extremely valuable sources of information for plaintiffs investigating potential securities claims. Plaintiffs should obtain and review as many analyst reports and conference call transcripts as possible. Analysts are well-versed in the industry and the company, and they are perceptive and ask the "right" questions. It is well worth reviewing the Q&A sections of conference calls. The questions that analysts ask company officers during conference calls usually target the issues that concern them and that are most important to investors. As a result, any statements or omissions on those issues by defendants that are later revealed to be misleading are arguably "material." Even more useful are analyst reports that analysts file after a conference call in which the analysts typically summarize their "key takeaways" from the call, and then rate the stock. Not surprisingly, the price of a stock often rises during the period of alleged false statements when analysts react positively to the company's financial or other statements, releases, and reports.

The most helpful analyst reports are often those issued by the analysts *after* defendants' disclosure of the bad news. In those reports, analysts often express opinions that can plausibly support allegations that defendants knew, or recklessly disregarded, material facts which were not disclosed during the class period, or that the prospectus and registration statement in connection with an offering of a company's securities contained materially false and misleading statements or omissions. For example, analysts may express surprise and disappointment that the company was not candid in their prior statements and assurances that the company's financials were complete and accurate, that its business operations were on solid footing, and that prospects for future revenues and earnings were strong. Analysts may complain that the company has not been "transparent" with investors or that its "credibility" has been badly damaged. These negative comments can arguably indicate that the analysts felt that the company had hidden material information in previous statements and that the sudden disclosure of the truth was more than "mismanagement." Further, analysts may identify "red flags" that were present all along and that, in retrospect, were material information that should have been disclosed

to investors. In addition, plaintiffs can cite analysts' statements that the analysts were downgrading the company's stock based upon their reaction to the company's disclosures as compelling proof that the stock drop was caused by the disclosure of previously undisclosed material information.[4]

- ***Former employees***

Former employees of the defendant company are often useful sources of information about the company's practices that can confirm whether or not the case has merit, primarily to help establish scienter and falsity. Former employees can be cited in the complaint anonymously, without revealing their names, as confidential witnesses ("CWs"). CWs can play an important role in securities class action litigation. It has been noted that "[g]iven the obstacles imposed by the PSLRA, the opportunity to use CWs often represents the only viable opportunity for plaintiffs to survive a motion to dismiss." *See* Gideon Mark, *Confidential Witness Interviews in Securities Litigation*, 96 N.C. L. Rev. 789, 822 (2018).

- ***Government regulatory actions and significant news events***

A company's disclosure that it is the subject of an investigation by the SEC, Justice Department, FDA, or other federal or state regulator, or even foreign regulator, can trigger a significant drop in the company's share price. For example, a company may announce that it received a subpoena from the US Attorney's office or the SEC requesting documents about the company's accounting practices or its compliance with ethical or other business standards. Actions against newly-public or established pharmaceutical companies are frequently triggered by steep drops in the stock price and massive loss of market capitalization following an announcement that an important drug trial failed to achieve anticipated results or that the FDA refused to approve or recalled the company's primary drug or device. In some cases, the SEC or some other regulator may have already brought an action against the company.

[4] These analysts' opinions are relevant for claims under both the Exchange Act and the Securities Act. Plaintiffs must affirmatively plead "loss causation" as a prima facie element of a securities fraud claim under the Exchange Act,15 U.S.C. § 78u-4(b)(4). While loss causation is not a required element for a false registration statement or prospectus claim under Section 11 and 12(a)(2) of the Securities Act, loss causation is an affirmative defense against those claims, by defendant proving that "any portion or all" of the alleged damages were not caused by the alleged violations. 15 U.S.C. §§ 77k(e), 77l(b).

Pleadings and other documents in those actions are often public and can provide a wealth of facts that plaintiffs can review to evaluate whether to bring a private securities action.

Recently, many securities cases have been investigated and filed in the immediate aftermath of a major news event, such as a massive data breach, a natural disaster, or a whistleblower's accusations against a company or particular employees. Here too, plaintiffs should search for news articles, press releases, pleadings, transcripts, or other documents that may have been filed by any private or government entity who may be investigating or already prosecuting claims against companies in the wake of these events. Review of these documents can help plaintiffs determine whether to bring a securities case in these circumstances.

- ***Consultation with experts***

Consultation with experts is a potentially worthwhile part of the pre-filing investigation to help plaintiffs determine whether a set of facts constitutes actionable violations of the securities laws. For example, plaintiffs often find it useful to consult with an accounting expert when a company announces a restatement or other serious financial problems such as failure to take adequate reserves or failure to timely write down an important asset. The expert can provide insight into such questions as whether the restatement is material, whether the company should have corrected the financials earlier, and whether accounting standards were breached. Expert opinions are also helpful where the disclosure involves technical issues, such as failure of a drug trial, or recall of a product or medical device. Often, such expert opinions help plaintiffs determine whether the problems were due to entirely unanticipated events, or general market conditions, or mere mismanagement, or some other factors, rather than actionable fraud.

The Proposed Class Period

During the pre-filing investigation, plaintiffs should determine the class period that will be asserted in the initial complaint. The class period at the initial stage of the litigation will be the basis to

calculate plaintiffs' losses for those who file motions for appointment as lead plaintiff, and will be the basis for the court's determination of the plaintiff with the "largest financial interest" in the litigation.[5]

Another consideration when determining the class period is the statute of limitations and statute of repose imposed by the securities laws. The Exchange Act has a two-year statute of limitations and a five-year statute of repose. 28 U.S.C.A. § 1658(b); *Merck & Co. v. Reynolds*, 559 U.S. 633, 638 (2010). Claims under Section 11 and 12(a)(2) of the Securities Act have a one-year statute of limitations and a three-year statute of repose. Securities Act, Section 13, 15 U.S.C.A. § 77m.[6]

Potential Defendants

Potential defendants will often include the company and its chief officers, primarily the CEO and CFO. In cases where the stock falls following the company's announcement of a restatement, or potential accounting irregularities, or failure of internal financial controls, plaintiffs may consider naming the company's auditor. Where the claims are brought under the Securities Act alleging a false or misleading registration statement and/or prospectus, potential defendants may include the company's directors and underwriters in addition to the company and its top officers, or others enumerated in the Statute.[7]

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[5] *See* Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B)(iii); Securities Act, 15 U.S.C. § 77z-1(a)(3)(B)(iii).

[6] Plaintiffs should be aware of the caselaw interpreting these statutes, including what gives rise to "discovery" of the alleged violation to trigger the statute of limitations. *See, e.g., Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 637, 649 (2010) (construing "2 years after the discovery of the facts constituting the [section 10(b)] violation" to mean that a cause of action accrues "when the plaintiff did in fact discover" or "when a reasonably diligent plaintiff would have discovered" the facts constituting the violation, whichever comes first, and include the facts showing scienter). In addition, the Supreme Court recently held that the 3-year time limit in Section 13 of the Securities Act is a "statute of repose" which "on its face creates a fixed bar against future liability" and is "not subject to equitable tolling." *California Public Employees' Retirement System v. ANZ*, 137 S. Ct. 2042, 2049, 2051 (2017). Although the Supreme Court has not explicitly applied *ANZ's* holding to the Exchange Act, at least one district court has done so, reasoning that "[c]ourts routinely characterize the Exchange Act's five-year statutory time restriction as a 'statute of repose.'" *In re BP p.l.c. Secs. Litig.*, 341 F. Supp. 3d 698, 704 (S.D. Tex. 2018)(citing, *e.g., Merck*, 559 U.S. at 650, in which the Supreme Court noted that § 1658(b)(2)'s "unqualified bar on actions instituted '5 years after such violation' giv[es] defendants total repose after five years"). Thus, the *BP* court concluded, "the five-year bar is a statute of repose, not subject to equitable tolling." *BP*, 341 F. Supp. 3d at 705.

[7] *See* Securities Act Sections 11, Section 12(a)(2), and Section 15 enumerating those who may be sued under those sections.

Although beyond the scope of this article, it should be noted that when evaluating and drafting claims under the Exchange Act, plaintiffs should review the most recent caselaw addressing the questions of who is a primary violator and who "made" the alleged false statements, to be subject to liability in a private action, in contrast to one who is arguably a mere "aider and abettor."[8]

Non-US companies

Frequently, potential claims arise against a foreign company which trades its shares on the exchange of a foreign country and offers only American Depositary Receipts ("ADRs") or American Depository Shares ("ADSs") to U.S. investors. In those cases, U.S. plaintiffs who purchased ADRs or ADSs are faced with the question of whether they can bring a securities class action against the non-U.S. company without running afoul of the Supreme Court's decision in *Morrison v. National Australia Bank, Ltd*., 561 U.S. 247 (2010). *Morrison* held that Section 10(b) did not apply extraterritorially, but is only applicable (1) in connection with the purchases or sale of any securities registered on a national securities exchange or (2) domestic transactions in other securities not so registered. *Id*. at 265-266.

Recently, the ability for U.S. purchasers of unsponsored ADRs to bring a class action against a foreign company under the Exchange Act post-*Morrison* was significantly improved by a Ninth Circuit decision, *Stoyas v. Toshiba Corp*., 896 F. 3d 933 (9th Cir. 2018). In *Stoyas*, the Ninth Circuit reversed the lower court's dismissal of plaintiffs-pension funds' securities class action complaint filed on behalf of purchasers of ADRs of Toshiba Corporation, a Japanese Corporation whose common stock is publicly traded on the Tokyo Stock Exchange and not listed directly on any US exchange.[9] The plaintiffs-funds

[8] For example, in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver N.A.*, 511 U.S. 164, 191 (1994), the Supreme Court held that only the SEC, not private parties, can bring an action under Section 10(b) based on an aiding and abetting theory. In *Janus Capital Group v. First Derivative Traders*, 564 U.S. 135, 142 (2011), the Supreme Court held that "[f]or purposes of Rule 10b–5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it."

[9] ADRs "allow U.S. investors to invest in non-U.S. companies and give non-U.S. companies easier access to U.S. capital markets." *Stoyas*, 896 F. 3d at 940 (citation omitted). "Specifically, ADRs are negotiable certificates issued by a United States depositary institution, typically banks, and they represent a beneficial interest in, but not legal title of, a specified number of shares of a non-United States company. The depositary institution itself maintains custody over the foreign company's shares." *Id.* The Court

had alleged that defendants had violated Section 10(b) based on the company's "now-admitted fraudulent accounting practices that caused hundreds of millions of dollars in loss to U.S. investors." *Id*. at 937. The district court had dismissed the case with prejudice on the grounds that the over-the-counter ("OTC") market on which Toshiba's ADRs are sold was not a "national exchange" within the meaning of *Morrison*, and that there was no "domestic transaction" between the ADR purchasers and Toshiba, *i.e.*, the complaint failed to allege Toshiba's involvement in the ADR transactions at issue. *Id*. at 937-938.

On *de novo* review, the Ninth Circuit held that the district court had "misapplied *Morrison.*" The Ninth Circuit reversed and remanded to allow the plaintiffs to amend their complaint to allege that the plaintiffs' ADR purchases on the over-the-counter market were "domestic purchases" of securities and that the alleged fraud was in connection with the purchase of those securities. *Id.* at 952.

The Ninth Circuit held that the Exchange Act applied to the Toshiba ADR transactions because *"Toshiba ADRs are 'securities' under the Exchange Act*." *Id*. at 939 (emphasis added). "Toshiba ADRs fit comfortably within the Exchange Act's definition of 'security,' specifically as 'stock,'" sharing "many of the five significant characteristics typically associated with common stock," including negotiability and the capacity to appreciate in value. *Id*. at 939-941. Further, while the over-the-counter market is not an "exchange," the "Exchange Act regulates over-the-counter markets." *Id*. at 947.

Next, the Ninth Circuit held that *plaintiffs' "purchase of Toshiba ADRs on the over-the-counter market is a domestic 'purchase or sale of … any security not' registered on a national securities exchange." Id*. at 939 (emphasis added) (citing 15 U.S.C. § 78j(b)); *Morrison*, 561 U.S. at 269-70. The Ninth Circuit adopted and applied the "irrevocable liability" test articulated by courts since *Morrison* to determine whether the plaintiffs' transactions in Toshiba's ADRs were a "domestic transaction in other

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explained that "Toshiba ADRs are *unsponsored* which means that the depositary institutions each filed Form F-6 with the SEC without Toshiba's 'formal participation' and possibly without its acquiescence." *Id*. at 941 (citation omitted). Thus, when an investor purchases an unsponsored ADR, as plaintiff did with Toshiba's ADRs, it enters into "essentially a two-party contract" with the depositary institution. "In contrast, ADRs are sponsored when a depositary institution and the foreign company jointly file Form F-6 to register the ADRs. Accordingly, purchasers of sponsored ADRs enter into essentially a three-party contract with the depositary and the foreign company." *Id*. at 941 & n. 8 (citation omitted).

securities" under *Morrison* to fit within Section 10(b). *Id*. at 948 (citations omitted). Under that test, the key question is *where* investors bought and sold the securities not whether the foreign company issued or authorized the ADRs. "[A] plaintiff must plausibly allege 'that the purchaser incurred irrevocable liability within the United States to take and pay for a security, or that the seller incurred irrevocable liability within the United States to deliver a security.'" *Id*. (citation omitted). "Looking to where purchasers incurred the liability to take and pay for securities, and where sellers incurred the liability to deliver securities, hews to Section 10(b)'s focus on transactions and *Morrison*'s instruction that purchases and sales constitute transactions." *Id.* at 949. Thus, "factual allegations concerning contract formation, placement of purchase orders, passing of title, and the exchange of money are directly related to the consummation of a securities transaction." *Id.* In the case at hand, for instance, plaintiffs alleged that the Toshiba ADRs were purchased in the United States, and that Bank of New York, one of the depositary institutions, sold Toshiba ADRs in the U.S., and the four Toshiba ADR depositary banks' principal executive offices and offices where ADR holders can exchange their ADRs for Toshiba common stock are all in New York. *Id.* The court permitted amendment to supply "specific facts regarding where the parties to the transaction incurred irrevocable liability," and anticipated that "an amended complaint could almost certainly allege sufficient facts to establish that [the plaintiff fund] purchased its Toshiba ADRs in a *domestic transaction*." *Id*. (emphasis added).

In addition, the appellate court made clear that plaintiffs would also have to amend their complaint before the court could determine whether the alleged fraud was "in connection with the purchase or sale of a security" to sufficiently plead an Exchange Act claim. *Id.* at 950. The court cautioned that "[f]irst and foremost, sufficiently pleading Toshiba's connection to the ADR transactions requires clearly setting forth the transactions" and requires amendment to provide "basic details" about the ADRs, and "factual allegations" about the over-the-counter market where Toshibas ADRs are listed, and to provide missing detail about plaintiffs' purchase of the Toshiba ADRs, including how the purchase was made and which depository institution holds the corresponding Toshiba common stock. *Id.* at 951. Second, the court noted that the complaint lacked facts supporting plaintiffs' argument that Toshiba was

"indeed involved in the establishment" of the ADRs, and permitted plaintiffs to amend to supply these facts. *Id*. at 952.

The key takeaway from the Ninth Circuit analysis and ruling in *Toshiba* that the Exchange Act can apply to Toshiba's ADR transactions under *Morrison*, is that non-U.S. companies may be more likely to face U.S. securities fraud claims. As a practical matter for plaintiffs, the description of the type of details about the ADRs and U.S. contacts that the Ninth Circuit required plaintiffs to plead offer instructive features for plaintiffs to look for when analyzing the nature of both sponsored and unsponsored ADRs of foreign companies bought by U.S. investors where there appear to be meritorious securities claims.

Where to File

Under Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a), federal district courts of the U.S. have "exclusive jurisdiction" over any cases brought under the Exchange Act. Further, as to venue, Section 27(a) provides that a suit under the Exchange Act "may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business." The Securities Act, Section 22, 15 U.S.C. § 77v has a similar venue provision which provides that any suit under the Securities Act "may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein."[10] In addition, the "general" venue statute, 28 U.S.C.A. § 1391, applies to the "the venue of all civil actions brought in district courts of the United States" (§ 1391(a)(1)), which includes those brought

[10] "Courts have interpreted this statutory language to mean that the commission of any non-trivial act in the district establishes venue for an Exchange Act claim, even if this act does not go to the core of the alleged violation*." Ato Ram II, Ltd. v. SMC Multimedia Corp*., 2004 WL 744792, at *3 (S.D.N.Y. April 7, 2004) (collecting cases). "The act or transaction committed within the district need not constitute the core of the violation, but should be an important step in the fraudulent scheme." *SEC v. Contrarian* Press, *LLC*, 2017 WL 4351525, at *2 (S.D.N.Y. Sept. 29, 2017). Further, "[i]f there is proper venue under [either the Securities or Exchange Acts], venue is also proper for a claim arising under [the other.]." *Id*. (citation omitted).

under the federal securities laws.[11] Plaintiffs frequently file in the district where the defendant company has its headquarters or principal executive offices. *See Ahrens v. Cti Biopharma Corp*., 2016 WL 2932170, at *3-4 (S.D.N.Y. May 19, 2016) (on balance, Western District of Washington was proper venue where defendant company was incorporated under laws of Washington State, maintains its headquarters, principal place of business and sole U.S. office in Seattle, and issued its allegedly false financial statements and SEC filings from that office, particularly viewed in the context of a stockholder class action, where members of the class are dispersed throughout the nation).

Importantly, while suits alleging securities fraud claims under the *Exchange Act* must be brought in *federal* court under Exchange Act Section 27's "exclusive jurisdiction" language, in contrast, a plaintiff may file claims under the *Securities Act* in *state court as well as federal court* under the "concurrent" jurisdiction provision of the Securities Act, Section 22, 15 U.S.C. § 77v(a). Recently, the U.S. Supreme Court, in a recent unanimous decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061 (2018), affirmed that investors have the right to bring claims under the Securities Act *in state or federal court*, notwithstanding SLUSA. Specifically, in *Cyan*, the Court held that the Securities Litigation Uniform Standards Act of 1998 "(SLUSA") does not strip state courts of their "longstanding jurisdiction" to adjudicate class actions alleging only violations of the federal *Securities Act* (regulating securities offerings). Second, the Court held that "neither did SLUSA authorize removing such suits from state to federal court." *Id.* at 1078.

The practical result of *Cyan* is that if a plaintiff brings a class action alleging only claims under the Securities Act against a company in *state* court, the company cannot argue that SLUSA bars the state court suit, and cannot remove the state court suit to federal court, even if there is a parallel or even identical action in *federal* court. *Cyan* was a significant victory for plaintiffs since it now clearly enables plaintiffs to choose to litigate claims under the Securities Act, arising from allegedly false or misleading statements in a registration statement or prospectus, against defendants in a state forum without facing

[11] Among the provisions of § 1391, venue is proper in the judicial district "in which a substantial part of the events or omissions giving rise to the claim occurred…" 28 U.S.C.A. § 1391(b)(2).

removal. For defendants, on the other hand, the decision means that they now face the possibility of having to litigate multiple such lawsuits in multiple jurisdictions based on the same set of events.[12]

Filing the Lead Plaintiff motion and calculating client losses

Under the PSLRA provisions applicable to both the Securities Act and the Exchange Act, plaintiffs who file a class action must comply with the Lead Plaintiff provisions of those Acts.[13] These

[12] *Cyan*'s ruling affirming the "concurrent jurisdiction" of state and federal courts over Securities Act claims refers to the courts' jurisdiction over the claims, *i.e*., subject matter jurisdiction. Although beyond the scope of this article, plaintiffs -- especially when suing in state court -- should also be aware of recent decisions by the Supreme Court that address the issue of "personal jurisdiction," which hold that, under the 14th Amendment due process clause, courts may only exercise personal jurisdiction over an out-of-state defendant who has certain minimum contacts with the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1557-1558 (2017). That clause "does not permit a State to hale an out-of-state corporation before its courts when the corporation is not 'at home' in the State and the episode-in-suit occurred elsewhere." *Id.* at 1554 (citing *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)). "The Fourteenth Amendment due process constraint described in *Daimler*… applies to all state-court assertions of general jurisdiction [an "all purpose" type of personal jurisdiction] over nonresident defendants; *the constraint does not vary with the type of claim asserted or business enterprise sued.*" *BNSF*, 137 S. Ct. at 1558-59 (emphasis added). In *Daimler*, Argentinian residents brought suit in California federal district court against German corporation Daimler under the Alien Tort Statute as well as state law. The Supreme Court held that due process did not permit exercise of general jurisdiction over Daimler in California for injuries that took place outside the U.S. since there was no evidence that Daimler's affiliations with the State are so "continuous and systematic" as to render Daimler "essentially at home" in California. *Daimler*, 571 U.S. at 122, 127. The "paradigm forum" for exercise of general jurisdiction over a corporation is the "corporation's place of incorporation and principal place of business," where "a corporate defendant may be sued on any and all claims." *Id.* at 137.

It is not clear the extent to which *Daimler* and the other Supreme Court cases on personal jurisdiction apply to cases filed under the federal securities laws, in particular those brought in *federal* court, since courts have held that where a court exercises jurisdiction based on "federal question jurisdiction," such as the Exchange Act and the Securities Act, as opposed to diversity jurisdiction, and where the federal statute confers nationwide service of process, "the issue for due process purposes is whether the party has sufficient contacts *with the United States*, not any particular state." *SEC v Lyndon*, 27 F. Supp. 3d 1062, 1068-69 (D. Hawaii, 2014) (citing *Securities Investor Protection Corp. v. Vigman*, 764 F. 2d 1309, 1315-16 (9th Cir. 1985) (emphasis added) (district court may exercise personal jurisdiction over § 10(b) claim if defendant has minimum contacts with the United States). *Lyndon* held that since both Section 27 of the Exchange Act, § 78aa and Section 22 of the Securities Act, § 77v, allow for "nationwide service of process," the court has personal jurisdiction over the defendant so long has he has "minimum contacts with the United States." *Id*. at 1069-1070. *Kammona v. Onteco Corp.*, 587 Fed. Appx. 575, 580 (11th Cir. 2014)(because § 78aa authorizes nationwide service of process in securities-fraud cases, the district court incorrectly analyzed defendants' minimum contacts in the context of the forum state of Florida, as opposed to contacts with the United States as a whole).

[13] *See* Exchange Act Section 21D(a)(3), 15 U.S.C. § 78u-4(a)(3); Securities Act Section 27, 15 U.S.C. § 77z-1(a)(3).

provisions include requiring the plaintiff filing the first complaint to file early notice to class members, and appointment of a lead plaintiff. The "rebuttable presumption" that the "most adequate plaintiff" is the "person or group of persons" that the court determines to have "the largest financial interest" is the basis of most lead plaintiff contests. A substantial body of caselaw has developed interpreting the terms "largest financial interest," and other language of the Lead Plaintiff provisions.

While the PSLRA does not specify a method by which to determine which movant has the largest financial interest, for purposes of computing losses, courts frequently apply the four "*Lax* factors" adopted in *Lax v First Merchants Acceptance Corp.,* 1997 WL 461036 (N.D. Ill. Aug. 11, 1997). These factors include (1) total number of shares purchased during the class period; (2) net shares purchased during the class period; (3) net funds expended during the class period; and (4) the approximate financial losses suffered. *See McKenna v. Dick's Sporting Goods, Inc.*, 2018 WL 1083971, at *4 (S.D.N.Y. Feb. 27, 2018) (collecting cases applying the *Lax* test). "Financial loss is the factor typically given the most weight." *Id.* Plaintiffs can calculate losses using both "first-in-first-out" ("FIFO") and "last-in-first-out" ("LIFO") methods. *Id.* "The majority view seems to be that approximate losses should be calculated using the LIFO method." *Strong v. AthroCare Corp.*, 2008 WL 11334942, at *6 (W.D. Tex. Dec. 10, 2008) (collecting cases). "Many courts have followed this preference for the LIFO method of accounting over the FIFO method in securities fraud cases, as 'the inflation of stock prices over the course of the class period may have resulted in gains accrued to plaintiffs… FIFO may overstate actual losses suffered by stockholders, whereas LIFO takes into account these gains.'" *Id.*[14]

[14] As the court in *Strong* further explained, LIFO is preferred to calculate losses for lead plaintiff motions in securities class actions because "LIFO offsets gains accrued to the plaintiffs due to the inflation of stock prices during the class period…excludes 'in-and-out' transactions during the class period [and] takes into account gains and can disregard losses that are not causally related to the misstatement claims." *Strong*, 2008 WL 11334942, at *6. *Mckenna*, 2018 WL 1083971, at *4 (courts in the Southern District of New York "have a very strong preference for the LIFO method" for calculating loss, "because LIFO accounts for gains accrued to plaintiffs during the class period due to the inflation of the stock price." (citations omitted). In contrast, the other method, first-in-first-out ("FIFO") "ignores sales occurring during the class period and hence may exaggerate losses." *Id.* at*4 n.4 (citation omitted).

Another point to consider is that a plaintiff who purchased one type of security, for example, common stock, can be appointed lead plaintiff -- and his counsel appointed as lead counsel -- to represent putative class members who purchased different type of securities, such as bonds. "[T]he weight of the caselaw is that securities cases should be consolidated under a single lead plaintiff even when the cases involve different types of securities." *In re CenturyLink Sales Practices and Secs. Litig.*, 2018 WL 1902725, at *4 (D. Minn. April 20, 2018). "[C]ourts have repeatedly concluded that stock purchasers can represent purchasers of debt instruments." *Id*. (citing *In re Enron Corp. Sec. Litig*., 206 F.R.D. 427, 455 (S.D. Tex. 2002).[15]

A final observation: Despite plaintiff's diligent pre-filing investigation and drafting of the initial complaint, it is of course quite possible that the competitive and usually hotly-contested lead plaintiff motion process will produce a lead plaintiff and lead counsel who were not the ones who filed the first complaint and disseminated notice to the class. Instead, the first-filing plaintiff will remain in the case as an absent class member. That is simply how Congress intended the PSLRA to work.

Other issues can arise when computing losses of institutional investors or other large holders of multiple funds. For example, gains in one account may offset losses in another. Or, a potential plaintiff may be a "net seller." These factors may not be disqualifying if the plaintiff has the largest financial loss. "Financial loss is the factor typically given the most weight; therefore, [m]ost courts agree that the largest loss is the critical ingredient in determining the largest financial interest and outweighs net shares purchased and net expenditures." *McKenna*, 2018 WL 1083971, at *4 (citation omitted) (collecting cases). *See also In re Audioeye, Inc. Sec. Litig.*, 2015 WL 13654027, at *5 (D. Ariz. Aug. 3, 2015) ("courts in the Ninth Circuit and elsewhere have repeatedly held that a 'net seller' can be a lead plaintiff or class representative, as long as it has a recoverable loss."). These factors, and others, must be carefully analyzed, when computing and presenting clients' trading information on the lead plaintiff motion.

[15] The court explained that choosing one lead plaintiff to represent different securities comports with the goals of the PSLRA: "The PSLRA intended to centralize decision-making into the hands of one lead-plaintiff or plaintiffs' group in order to avoid waste and empower investors. Requiring a separate lead plaintiff for every type of security would contradict these purposes." *CenturyLink*, 2018 WL 1902725 at *4.

RECENT NOTABLE DEVELOPMENTS IN SECURITIES LAW:

(1) Supreme Court holds that SLUSA does not bar filing Securities Act class actions in state courts as well as federal courts, under the "concurrent" jurisdiction provision of the Securities Act, expanding plaintiffs' ability to choose state courts as the appropriate forum for such claims and increasing potential for parallel actions in federal and state courts

- ***Cyan, Inc. v. Beaver County Employees Retirement Fund***, 138 S. Ct. 1061 (March 20, 2018). A unanimous decision by the Supreme Court, delivered by Justice Kagan, held that state courts retain concurrent jurisdiction with federal courts over class actions alleging only 1933 Act Claims (pertaining to securities offerings) and that they cannot be removed to federal court. Specifically, SLUSA (the Securities Litigation Uniform Standards Act of 1998), "did nothing to strip state courts of their longstanding jurisdiction to adjudicate class actions alleging only 1933 Act violations. Neither did SLUSA authorize removing such suits from state to federal court." *Id*. at 1078.

Investors had bought shares of stock in Cyan's IPO and, after the stock declined in value, brought a class action against Cyan in state court alleging 1933 Act violations, and no claims based on state law. *Id*. at 1068. Cyan moved to dismiss for lack of subject matter jurisdiction on the grounds that state courts have no jurisdiction over '33 Act claims in "covered class actions." Investors argued that SLUSLA left intact covered class actions alleging *only federal* '33 Act claims. *Id.* The California Superior Court agreed with the investors. The Supreme Court granted Cyan's petition for certiorari. The Court also agreed to consider whether SLUSA enabled defendants to remove 1933 Act class actions from state to federal court. *Id.* at 1069.

The Court framed the question as whether SLUSA's text, at Securities Act Section 16, 15 U.S.C.§ 77p, *limits* state court jurisdiction over class actions brought under the 1933 Act, and is therefore in conflict with Section 22, which grants state court jurisdiction. *Id*. at 1069. The Court held that it does not. Rather, §77p only bars certain securities action based on *state* law, and authorizes their removal to federal court. But, §77p "says nothing, and so does nothing, to deprive state courts of jurisdiction over class actions based on *federal* law. That means the background rule of § 77v(a) – under which a state court may hear the investors' 1933 Act suit – continues to govern." *Id.* (emphasis in original). Finding that the California Superior Court had jurisdiction over investors' claims, the Supreme Court affirmed the judgment of the California Superior Court. *Id*. at 1078.

The Supreme Court's instruction in *Cyan* that SLUSA did nothing to strip state courts of their concurrent jurisdiction over Securities Act claims, and that defendants cannot remove state actions to federal court, was recently cited in ***Sciabacucchi v. Salzberg***, 2018 WL 6719718 (Del. Ch. Dec. 19, 2018). The Delaware Court of Chancery held that a Delaware Corporation cannot compel shareholders to litigate Securities Act claims in *federal* court via a forum selection clause in its corporate charter. *Id.* at *3. The Delaware court noted that "[c]orporations and their advisors preferred federal court," and had begun adopting forum-selection provisions that specified federal courts as the exclusive forum for 1933 Act claims when the 1998 SLUSA cast doubt on the federal/state allocation of jurisdiction. *Id*. at *6. The Delaware Court held that such "Federal Forum Provisions" in corporate bylaws are "ineffective and invalid" as contrary to the federal scheme governing the Securities Act Statute. *Id*. at *3. When enacting the Securities Act in 1933, Congress explicitly gave state and federal courts "concurrent jurisdiction over claims by private plaintiffs and barred defendants from removing actions filed in state court to federal court," as confirmed by the Supreme Court in *Cyan v. Beaver City*. *Id.* at *1 & n.1.

The Delaware Chancery court explained that a corporation's bylaws can only govern the forum in which parties bring claims affecting its own "internal affairs." In contrast a "Delaware corporation cannot use it charter or bylaws to regulate the forum in which parties bring 'external claims, such as federal

securities law claims.'" *Id*. at *18 (citing *Boilermakers Local 154 Ret. Fund v. Chevron Corp*., 73 A. 3d 934 (Del. Ch. 2013). "[A] federal claim under the 1933 Act is a clear example of an external claim. The plaintiff is a purchaser of securities, and the source of the cause of action is the sale of a security that violates the federal regulatory regime." *Id.* at *22.

(2) Supreme Court holds that the statute of limitations cannot be tolled under *American Pipe* for absent class members who bring successive *class* actions outside the applicable limitations period

- ***China Agritech, Inc. v. Michael H. Resh***, 138 S. Ct. 1800 (June 11, 2018). In an 8-1 decision delivered by Justice Ginsburg, the Supreme Court held that upon denial of class certification, a putative class member, in lieu of promptly joining an existing suit or promptly filing an individual action, may not commence a class action beyond the time allowed by the applicable statute of limitations.

The Court clarified that *American Pipe and Crown Construction Co. v. Utah*, 414 U.S. 538 (1974) only "tolls the statute of limitations during the pendency of a putative class action, allowing unnamed class members to join the action *individually* or file *individual claims* if the class fails. But *American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations." *Id.* at 1804 (emphasis added).

Plaintiffs had sued China Agritech under Section 10(b) of the Exchange Act for allegedly engaging in fraud and misleading business practices, causing the company's stock price to plummet when the misconduct was reported. The first complaint was filed at the start of the Exchange Act's two year limitation period in February 2011; the court subsequently denied plaintiffs' motion for class certification in May 2012. On June 30, 2014, plaintiff Resh filed a class action, a year and a half after the Exchange Act's statute of limitations expired. The district court dismissed the complaint as untimely, but the Ninth Circuit reversed. *Id.* at 1805. Because of the circuit split on the issue, the Supreme Court granted certiorari. The Court held that considerations of efficiency dictate that a class action may not be filed after the expiration of the statute of limitations following a denial of class certification, stating as follows:

> We hold that *American Pipe* does not permit a plaintiff who waits out the statute of limitations to piggyback on an earlier, timely filed class action. The "efficiency and economy of litigation" that support tolling of individual claims do not support maintenance of untimely successive class actions; any additional *class* filings should be made early on, soon after the commencement of the first action seeking class certification.

Id. at 1806 (emphasis in original) (citing *American Pipe*, 414 U.S. at 553).

Further, the Court pointed out that Rule 23 indicates a preference for barring untimely successive class actions by "instructing that class certification should be resolved early on." *Id*. at 1807. Similarly, the PSLRA evinces a preference for early resolution of class certification by "grouping class-representative filings at the outset of litigation." *Id.*

(3) Ninth Circuit limits defendants' use of judicial notice and incorporation-by-reference doctrines at motion to dismiss stage

- ***Khoja v. Orexigen Therapeutics, Inc.***, 899 F. 3d 988 (9th Cir. 2018). Plaintiffs alleged that a biotech company failed to disclose the truth and/or adverse material information about the drug study involving its primary drug candidate. The Ninth Circuit reversed the district court's dismissal of the plaintiff's claim under §10(b) and Rule 10b-5, finding that the district court abused its discretion by

improperly considering material outside the complaint on the motion to dismiss stage. The Appeals Court found that defendants' practice was a "concerning pattern in securities cases" by "exploiting these procedures improperly to defeat what would otherwise constitute adequately stated claims at the pleading stage." 899 F. 3d at 998. *The risk of abuse and unfairness leading to "premature dismissals of plausible claims that may turn out to be valid after discovery" is "especially significant in SEC fraud matters, where there is already a heightened pleading standard and the defendants possess materials to which the plaintiffs do not yet have access." Id.* (emphasis added).

While the Ninth Circuit did not entirely bar the use of judicial notice and incorporation-by-reference, the Court "clarified" that "a court cannot take judicial notice of *disputed* facts contained in [] public records" without converting the motion to dismiss into a motion for summary judgment. *Khoja*, 899 F. 3d at 999 (emphasis added). Applying that rule, the court found the district court abused its discretion by judicially noticing certain documents, including a transcript of an investor conference call that defendants submitted with their motion to dismiss to show that they had previously disclosed the true facts about the drug trial to investors who, therefore, could not have been misled. *Id*. at 1000. The Ninth Circuit found that "[i]t is improper to judicially notice a transcript when the substance of the transcript 'is subject to varying interpretations, and there is a reasonable dispute as to what the [transcript] establishes.'" *Khoja*, 899 F. 3d at 1000 (citation omitted).

(4) Ninth Circuit states that the less restrictive "general proximate cause" is the correct test to establish the element of loss causation under the Exchange Act under *Dura:* thus, a plaintiff may prove loss causation by showing that the stock price fell upon revelation of an earnings miss, even if the fraud was not affirmatively revealed to the market prior to the claimed loss

- ***Mineworkers' Pension Scheme v. First Solar Inc.***, 881 F. 3d 750 (9th Cir. 2018).

Investors brought a § 10(b) case against producer of photovoltaic solar panel modules, alleging defendants issued financial statements which concealed product manufacturing and design defects, and that the company's stock price fell when the company disclosed the defects and attendant financial liabilities to the market. *Id*. at 752. After defendants filed a motion for summary judgment, which the court granted and denied in larger part, the court then stayed the action to seek interlocutory appeal from the Ninth Circuit to resolve a perceived conflict in two competing lines of case law in the Ninth Circuit regarding loss causation -- one that requires plaintiff to show causal connection between the *very facts* misrepresented or omitted and the plaintiff's loss; and the second "more restrictive view" requiring that the *market must have actually learned* of defendants' fraudulent practices and reacted to the fraud itself. *Id.* at 752-53.

In its response, the Ninth Circuit resolved the ambiguity by confirming the first less restrictive test for loss causation, affirming the Supreme Court's holding in *Dura*, which instructed that the inquiry "requires no more than the familiar test for proximate cause." *Id.* at 753 (citing *Dura Pharm. Inc. v. Broudo*, 544 U.S. 336, 346 (2005). "To prove loss causation, plaintiffs need only show a 'causal connection' between the fraud and the loss, by tracing the loss back to 'the 'very facts about which the defendant lied.' '***Disclosure of the fraud is not a sine qua non of loss causation, which may be shown even where the alleged fraud is not necessarily revealed prior to the economic loss***.'" *Id*. (emphasis added) (internal citations omitted). The Court explained that there is an "infinite variety" of ways that loss causation can be shown in a 10(b) case; revelation of the actual fraud in the marketplace is only one way. But, not the only way -- disclosure of an earnings miss by itself is another way to show loss causation even without revelation of the reason for the miss. "***A plaintiff may also prove loss causation by showing that the stock price fell upon the revelation of an earnings miss, <u>even if the market was unaware at the time</u> that fraud had concealed the miss***." *Id.* at 754 (emphasis added). The fact that the stock price drop comes immediately *after* the revelation of fraud helps rule out alternative causes, but that sequence is not a *condition* of loss causation. *Id*.

In short, since the element of loss causation is simply a variant of the traditional "proximate cause" test, "the ultimate issue is whether the defendant's misstatement, as opposed to some other fact, foreseeably caused the plaintiff's loss." *Id.* at 753 (citing *Dura*, 544 U.S. at 343-46). The Ninth Circuit found that the district court had applied the correct "general proximate cause" test when it found that plaintiffs had proven the element of loss causation. *Id*. at 754.

(5) Southern District of New York, on remand, holds that defendants bear the burden of "preponderance of the evidence" in order to show lack of price impact in order to rebut the *Basic* presumption of classwide "reliance" on a motion for class certification

- ***In re Goldman Sachs Group, Inc. Sec. Litig.,*** 2018 WL 3854757 (S.D.N.Y. Aug. 14, 2018). Investors filed a suit alleging Goldman Sachs violated § 10(b) and Rule 10b-5 by issuing misstatements about Goldman's conflicts of interest policies and business practices, revealed by reports by government investigations. The class was certified, but defendants filed an interlocutory appeal. The Second Circuit vacated the class certification and remanded the case for further proceedings, directing the district court to reconsider whether defendants had rebutted the *Basic* presumption of reliance by a preponderance of the evidence. *Id.* at *1. After holding an evidentiary hearing, at which defendants' expert testified that the alleged misstatements had no price impact, the district court determined that defendants "have not rebutted the *Basic* presumption [of plaintiffs' reliance under the fraud-on-the-market theory] by a preponderance of the evidence" and granted class certification to plaintiffs. *Id*. at *2.

In reviewing the applicable law, the district court acknowledged that the Supreme Court held in *Halliburton Co. v. Erica P. John Fund, Inc.,* 1134, S. Ct. 2398 (2014) ("*Halliburton II*") that the *Basic* presumption can be rebutted at the class certification stage with evidence that defendants' misrepresentation had "no price impact." *Id.* at *2. What the district court clarified is that, in the Second Circuit, defendants "bear the burden of persuasion to rebut the *Basic* presumption by a preponderance of the evidence" standard. *Id. (citing Arkansas Teachers Ret. Sys. V. Goldman Sachs Grp., Inc.,* 879 F. 3d 474, 478 (2d Cir. 2018) (*citing Waggoner v. Barclays PLC,* 875 F, 3d 79 (2d Cir. 2017). Under that standard, defendants must demonstrate, by a preponderance of the evidence, that the alleged misstatements "had no price impact," that is, that the misstatements did not contribute to any of the price declines that followed the three alleged corrective disclosures. *Id*. at *4. Finding that defendants' failed to meet this heavy evidentiary burden of proof, and thus failed to rebut the *Basic* presumption, the district court certified the class. *Id*. at *6.

(6) Supreme Court grants certiorari to revisit who is a "maker" of false statements under the federal securities laws in the wake of *Janus* and to decide whether to expand "scheme liability" to cover conduct barred by *Janus*

- ***Lorenzo v. Securities and Exchange Commission,*** 872 F. 3d 578 (D.C. Cir. 2017), *cert. granted by Lorenzo v. S.E.C.,* 138 S. Ct. 2650 (U.S. June 18, 2018). The Supreme Court granted certiorari to consider whether a person who is not considered the "maker" of a false statement under *Janus Capital Group v. First Derivative Traders*, 564 U.S. 135 (2011) can nevertheless be liable for the alleged false statement under the "scheme liability" provisions of Rule 10b-5(a) and (c) as the SEC asserted in its complaint. The Supreme Court case has been fully briefed and oral argument held.

In *Janus*, the Supreme Court had restrictively held that only the "maker" of an alleged misstatement can be primarily liable under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. 564 U.S. at 144. "For purposes of Rule 10b-5, the *maker of a statement is the person or entity with ultimate authority over the statement*, including its content and whether and how to communicate it. Without control, a person or entity can merely suggest what to say, not 'make' a

statement in its own right. One who prepares or publishes a statement on behalf of another is not its maker." *Id.* at 142 (emphasis added). Thus, the Court held, that because the false statements included in mutual fund prospectuses were "made" by the investment fund, the investment advisor and parent capital group could not be held liable in a private § 10(b)/Rule 10b-5 securities action for those statements. *Id.* at 141.

In *Lorenzo*, defendant, an investment banker, is appealing the D.C. Circuit's decision. The D.C. Circuit had found that Lorenzo, director of investment banking at a broker-dealer, was not liable as the "maker" of statements, as defined by *Janus*, by merely forwarding from his account allegedly misleading emails at the "behest of his boss" who drafted the emails. *Lorenzo*, 872 F. 3d at 587-88. However, the D.C. Circuit held that "[a]lthough Lorenzo does not qualify as the 'maker' of those [false statements] under *Janus* because he lacked ultimate authority" over their content and dissemination," Lorenzo was nevertheless liable for violating the "scheme liability" provisions of Rule 10b-5(a) and (c), through his "own active 'role in producing and sending the emails'" to investors which "constituted employing a deceptive 'device,' 'act' or 'artifice to defraud' for purposes of liability under Section 10(b), Rule 10b-5(a) and (c) and Section 17(a)(1)." *Id.* at 589. Indeed, "Lorenzo's conduct fits comfortably within the ordinary understanding of those terms," of scheme liability. *Id.* "Lorenzo, acting with scienter, (i.e., an intent to deceive or defraud, or extreme recklessness to that effect), produced email messages containing three false statements about a pending offering, sent the messages directly to potential investors, and encouraged them to contact him personally with any questions." *Id*.

The Supreme Court has heard oral arguments on *Lorenzo* and a decision can be expected this term. Although *Lorenzo* is a case brought by the SEC, the Supreme Court's ultimate decision on whether the "scheme liability" provisions of Rule 10b-5(a) and (c) should be interpreted expansively to impose liability for allegedly false statements that are not technically "made" by an actor will impact the law in private securities actions as well.

(7) Applying *Morrison*, Ninth Circuit reverses lower court decision that U.S. securities laws do not apply to Japanese company's unsponsored ADRs; Ninth Circuit applies the "irrevocable liability" test which focuses on where the stock was bought or sold and allows plaintiffs to amend complaint to allege that over-the-counter ADRs are subject to US securities laws even if not traded on a U.S. "exchange"

- ***Stoyas v. Toshiba Corp.***, 896 F. 3d 933 (9th Cir. 2018). In *Stoyas*, the Ninth Circuit reversed the lower court's dismissal of plaintiffs-pension funds' securities class action complaint filed on behalf of purchasers of ADRs of Toshiba Corporation, a Japanese Corporation whose common stock is publicly traded on the Tokyo Stock Exchange and not listed directly on any U.S. exchange. The Funds had alleged that defendants had violated § 10(b) based on the company's "now-admitted fraudulent accounting practices that caused hundreds of millions of dollars in loss to U.S. investors." *Id*. at 937. The district court had dismissed the case with prejudice on the grounds that the over-the-counter ("OTC") market on which ADRs are sold was not a "national exchange" within the meaning of *Morrison*, and that there was no "domestic transaction" between ADR purchasers and Toshiba. *Id.*

On *de novo* review, the Ninth Circuit held that the district court had "misapplied *Morrison"* and reversed and remanded to allow the plaintiffs to amend their complaint to allege that the ADR purchases on the over-the-counter market were "domestic purchases" of securities and that the alleged fraud was in connection with the purchase of those securities. *Id.* at 952. In reaching its decision, the Ninth Circuit found that the Exchange Act applied to the plaintiffs' ADR transactions because the Toshiba ADRs "fit comfortably within the Exchange Act's definition of 'security,' specifically as 'stock'" and plaintiffs' purchases of ADRs on the OTC market was a domestic "purchase or sale of … any security not" registered on a national securities exchange. *Id*. at 939 (citing 15 U.S.C. § 78j(b)); *Morrison*, 561 U.S. at

269-70. The Court agreed with the plaintiffs that the Exchange Act regulates OTC markets, even though it is not an "exchange." *Id.*

The Ninth Circuit applied the "irrevocable liability" test articulated by courts since *Morrison* to determine whether the plaintiffs' transactions in Toshiba's ADRs was a "domestic transaction in other securities" under *Morrison* to fit within § 10(b). *Id*. at 948 (citations omitted). Under that test, the key question is *where* investors bought and sold the securities not whether the foreign company issued or authorized the ADRs. In other words, the Exchange Act applies if a plaintiff "plausibly allege[s] 'that the *purchaser incurred 'irrevocable liability within the United States to take and pay for a security, or that the seller incurred irrevocable liability within the United States to deliver a security*.'" *Id.* at 948 (citation omitted) (emphasis added). "Looking to where purchasers incurred the liability to take and pay for securities, and where sellers incurred the liability to deliver securities hews to Section 10(b)'s focus on transactions and *Morrison*'s instruction that purchases and sales constitute transactions." *Id*. at 949.

Relevant to satisfying that test, the Court noted that the complaint alleged that the Toshiba ADRs were purchased in the U.S. and that Bank of New York, one of the depository institutions, sold ADRs in the U.S., and that the four Toshiba ADR depository banks had principal executive offices are all in New York. The Ninth Circuit gave plaintiffs leave to amend the complaint with "specific factual allegations" which would almost certainly allege sufficient facts to establish "irrevocable liability" within the US. *Id*. at 949 (citing with approval *In re Petrobras Secs.,* 862 F. 3d at 263, 273 (identifying the relevant facts as including who sold the relevant securities and how those transactions were effectuated, as evidenced by documentation such as confirmation slips).

In addition, the appellate court made clear that plaintiffs would also have to amend their complaint before the court could determine whether the alleged fraud was "in connection with the purchase or sale of a security" to sufficiently plead an Exchange Act claim. *Id.* at 950. The court cautioned that "[f]irst and foremost, sufficiently pleading Toshiba's connection to the ADR transactions requires clearly setting forth the transactions" and requires amendment to provide "basic details" about the ADRs, and "factual allegations" about the over-the-counter market where Toshibas ADRs are listed, and to provide missing detail about plaintiffs' purchase of the Toshiba ADRs, including how the purchase was made and which depository institution holds the corresponding Toshiba common stock. *Id.* at 951. Second, the court noted that the complaint lacked facts supporting plaintiffs' argument that Toshiba was "indeed involved in the establishment" of the ADRs, and permitted plaintiffs to amend to supply these facts. *Id*. at 952.

Toshiba filed a petition for certiorari with the Supreme Court on October 15, 2018. The Supreme Court has invited the U.S. Solicitor General to file briefs in the case "expressing the views of the United States." *See Toshiba Corp. v. Auto. Indus. Pension Trust Fund, et al.,* No. 18-486, --S. Ct. --, 2019 WL 177587 (Jan. 14, 2019).

(8) Supreme Court grants certiorari to consider whether negligence is sufficient to state a claim for false statements or omissions in connection with a tender offer under Section 14(e) of the Exchange Act

- ***Varjabedian v Emulex Corp.***, 888 F. 3d 399 (9th Cir. 2018), *cert. granted* by *Emulex Corp. v. Varjabedian,* --- S. Ct. --- 2019 WL 98542 (Mem)(U.S. Jan. 4, 2019). The Supreme Court granted certiorari in *Emulex,* in a case that will determine what a plaintiff must plead in order to state a claim for false statement or omission in connection with a tender offer under Section14(e) of the Exchange Act. The Ninth Circuit had held that a plaintiff only needs to plead negligence, not scienter, and reversed dismissal of the complaint, and remanded the case to the district court to reconsider defendants' motion to dismiss under the negligence standard. 888 F. 3d at 401.

Emulex is a "merger" case, brought by shareholders who complained that the offering price in the merger was inadequate. The plaintiffs alleged that defendants violated Section 14(e) of the Exchange Act the first clause of which prohibits making misleading statements or omissions in connection with any tender offer, by failing to include the Premium Analysis in its Recommendation Statement which would have disclosed that the premium offered to shareholders was below average compared to similar mergers. *Id*. at 402-403. The district court had dismissed the complaint on the basis that Section 14(e) requires a showing of scienter which plaintiffs failed to plead. On a lengthy *de novo* review, including analysis of the text of the statute, and legislative history, the Ninth Circuit interpreted Section 14(e) to require a "mere negligence" standard. *Id*. at 407-408. The Ninth Circuit conceded that its conclusion that Section 14(e) imposes a negligence standard departed from five other circuits which apply a scienter standard for misrepresentations in connection with a tender offer under Section 14(e) based on the similarity between the language of Rule 10b-5 and Section 14(e). *Id*. at 409. Finding "important distinctions" between Rule 10b-5 and Section 14(e), "that strongly militate against importing the scienter requirement from the context of Rule 10b-5 to Section 14(e)," the Ninth Circuit declined to follow those other circuits. *Id*. at 405, 407. "Ultimately, because the text of the first clause of Section 14(e) is devoid of any suggestion that scienter is required, we conclude that the first clause of Section 14(e) requires a showing of only negligence, not scienter." *Id*. at 408.

The Supreme Court's ruling will be watched to determine the appropriate standard for pleading a Section 14(e) claim.

(9) Federal courts issue recent opinions on whether cryptocurrencies are "investment contracts" and thus "securities" subject to regulation under the federal securities laws based on fact-specific analyses under the *Howey* test

- In ***United States v. Zaslavskiy***, 2018 WL 4346339 (E.D.N.Y. Sept. 11, 2018), the United States District Court for the Eastern District of New York found that the cryptocurrencies promoted by defendants to investors constituted an "investment contract" within the definition of a "security" in both Section 3(a)(10) of the Exchange Act and Section 2(a)(1) of the Securities Act. *Id*. at *1. In *Zaslavskiy*, the district court denied defendant's motion to dismiss an indictment and allowed federal prosecutors to pursue claims against defendant Zaslavskiy for violating the Exchange Act by making false and fraudulent representations and omissions in connection with two purported virtual currency investment schemes and their related Initial Coin Offerings ("ICOs"). *Id*. at *1. Zaslavskiy and his co-conspirators were charged with promising investors that the cryptocurrency "tokens" or coins" that he offered were backed by domestic and international real estate investments and diamonds, while, in fact, no real estate or diamonds were ever purchased. *Id*. at *2. Zaslavskiy argued that the virtual currencies promoted by his activities did not qualify as an "investment contract" and thus were not "securities," as the government had charged, and thus were outside the purview of the securities laws. *Id*. The court disagreed with the defendant. The court emphasized that "[w]hether a transaction or instrument qualifies as an investment contract is a highly fact-specific inquiry." *Id*. at *4. Still, for the purpose of the motion to dismiss, the court applied the U.S. Supreme Court's multi-factor analysis in *SEC v. W.J. Howey Co*., 328 U.S. 293 (1946) to determine whether a transaction or instrument qualifies as an "investment contract" and thus a "security" under the securities laws, and found that the facts alleged in the indictment, if proven at trial, would permit a "reasonable jury" to conclude that the investment opportunities described meet the definition of "security" under the *Howey* test. *Id.* at *5. These allegations included that individuals made an "investment of money" (and other forms of payment) in order to participate in the scheme, in exchange for investments in what they were told were investment-backed virtual tokens or coins, that investors could have reasonably had an "expectation of profits" derived solely from the managerial efforts of defendants, not any efforts of the investors themselves, and that investors pooled their assets in a "common enterprise." *Id.* at *5-7 (citing *Howey*'s three part test). The district court noted *Howey*'s

instruction that the definition of a security, and therefore of an investment contract, "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." *Id.* at *4 (citing *Howey*, 328 U.S. at 299). The court emphasized that "the ultimate fact-finder will be required to conduct an independent *Howey* analysis based on the evidence presented at trial." *Id.* at *5.

Further, the district court rejected defendant's argument that the securities laws were "unconstitutionally vague" as applied to cryptocurrencies. *Id.* at *8. "[C]ourts are clear that the securities laws are meant to be interpreted 'flexibly to effectuate [their] remedial purpose.'" *Id*. at *9 (citing *SEC v. Zandford*, 535 U.S. 813, 819 (2002)). The district court also cited numerous SEC releases and articles and caselaw interpreting and applying *Howey* that cautioned that simply labeling something a "currency" does not remove it from the purview of the securities laws, and that virtual currencies may have characteristics that make them "securities." *Id*. at *9. The court thus denied Zaslavkiy's motion to dismiss and ordered the case to proceed to trial.

- In ***SEC v Blockvest, LLC***, 2018 WL 6181408 (S.D. Cal. Nov. 27, 2018), the district court in the Southern District of California applied the *Howey* test, but concluded that the SEC had not demonstrated that the "digital asset" "or "coin" called BLV tokens that Blockvest defendants, an LLC set up to exchange cryptocurrencies, and its founder, offered in their initial coin offering ("ICO") to 32 "test" investors on Blockvest's website and whitepaper were "securities" as defined by the securities laws subject to the registration requirements of the Securities Act and antifraud provisions of the securities laws. *Id.* at *4, 7. The SEC had charged that the Blockvest defendants falsely claimed their ICO had been "registered" and "approved" by the SEC and used the SEC seal on defendants' website. *Id*. at *2. The court found the "investment of money" prong of *Howey* focusing on "what the purchasers were offered or promised" was subject to dispute because plaintiffs and defendants "provide starkly different facts as to what the 32 test investors relied on, in terms of promotional materials," "economic inducements" and other information before they purchased the BLV tokens. *Id.* at *7. Second, the court found that the SEC had not demonstrated that the 32 test investors had an "expectation of profits" to satisfy the second *Howey* prong. *Id*. The court concluded that without "full discovery" on the disputed issues of material facts, "the Court cannot make a determination whether the BLV tokens offered to the 32 test investors was a 'security.'" *Id*. Finding that the SEC had not demonstrated that the BLV tokens purchased by the 32 test investors were "securities" as defined under the securities laws, the court concluded that the SEC did not make a prima facie showing that defendants had previously violated the federal securities laws, and denied the SEC's motion for a preliminary injunction against defendants. *Id*. at *7-9.

However, in a recent Order, the court reversed its November decision and granted the SEC's motion for partial reconsideration and ordered a preliminary injunction against Blockvest, finding that "Defendants made an 'offer' of unregistered *securities* which violated [Securities Act] Section 17(a)." ***SEC v. Blockvest, LLC***, 2019 WL 625163, at *7 (S.D. Cal. February 14, 2019)(emphasis added). Importantly, the court this time ruled that *the ICO [initial coin offering] of the BLV tokens met the definition of a "security" under the securities laws*. *Id.* Specifically, on reconsideration, the court found that all three *Howey* factors were met and "the SEC has demonstrated that *the promotion of the ICO of the BLV token was a 'security'* and satisfies the *Howey* test." *Id.* at *8 (emphasis added).

First, the court found that "[d]efendants' website and their Whitepaper's invitation to potential investors to provide digital currency in return for BLV tokens satisfies the first 'investment of money' prong." *Id*. at *7. Second, "the website promoted a 'common enterprise' because Blockvest claimed that the funds raised will be pooled and there would be a profit sharing formula." *Id*. Third, investors had a "reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others" since, "as described on the website and Whitepaper, the investors in Blockvest would be 'passive' investors and the BLV tokens would generate 'passive income.'" *Id.* The Court next concluded that the

facts showed that there was an "*offer*" of these "securities" subject to Section 17(a) of the Securities Act. "The Court concludes that the contents of Defendants' website, the Whitepaper and social media posts concerning the ICO of the BLV tokens to the public at large constitute an 'offer' of 'securities' under the Securities Act." *Id*. at * 8-9.