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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EDWARD ASNER, et al.,

Plaintiffs,

vs.

THE SAG-AFTRA HEALTH FUND, et al.,

Defendants.

Case No. 2:20-cv-10914-CAS (JEM)

SUPPLEMENTAL DECLARATION OF STEVEN A. SCHWARTZ IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS

Date: September 11, 2023
Time: 10:00 a.m.
Courtroom: 8D
Judge: Christina A. Snyder

Steven A. Schwartz, hereby declares as follows:

1. I am a partner in Chimicles Schwartz Kriner & Donaldson-Smith LLP and have served as Lead Plaintiffs' Counsel in this case along with my law partner Robert J. Kriner, Jr., and submit this supplemental declaration ("Supp. Decl.") based on personal knowledge, and if called to do so, could testify to the matters contained herein.

2. Attached as Exhibit 1 is a copy of the July 28, 2023 Report of Fiduciary Counselors, who served as the Independent Settlement Fiduciary.

3. On June 20, 2023, in response to my request for disclosure of the amount of fees paid to Defense Counsel, Mr. Rumeld responded in what now appears to have been a carefully-worded email: "the Chubb $10 million policy will be exhausted by virtue of the settlement and that Euclid will be contributing $2 million toward the $7.5 million that is coming from the carriers." That information provided the basis for the statement in my prior declaration that Defense Counsel were paid fees of $4.5 million ($12 million - $7.5 million = $4.5 million). Discussing the relevance of Defense Counsel's fees in a teleconference on Friday, August 18, 2023, my law partner Mr. Kriner and I asked Mr. Rumeld if any source besides the insurers paid Defense Counsel, and he responded that it was "none of [our] business." In his Declaration in support of Defendants' Objection, Mr. Rumeld stated: "the total fees that are expected to be received by Defendants' counsel in connection with the defense and settlement of this lawsuit are below $5 million." ECF 149-1, ¶ 9. Based on these facts, it appears that the Plan is paying fees to Defense Counsel (in an amount up to $500,000) including the fees charged to draft and argue Defendants' Objection.

4. Defendants and their counsel know that the discovery in this case shows, as Plaintiffs claimed, that prior to the Merger, the SAG Health Plan Trustees failed to address and hid from the participants that they were funding the growing plan deficit by depleting the $200 million Retiree Reserve established to fund Senior's health coverage, despite publicly representing that the Merger would strengthen the Plan and ensure comprehensive benefits for all participants post-merger. *See, e.g.* 3/28/14 SAG HP Trustee Meeting Minutes SAHP000003995-4026 at 16; 7/25/14 SAG HP Trustee Meeting Minutes SAHP000004197-4020 at 10-11; 10/30/14 Joint Benefits Design Meeting Notes SAHP000017573-78 at 3. These documents are designated confidential by Defendants and therefore have not been included with this public Declaration but can of course be provided to the Court.

5. Defendants and their counsel also know that the discovery, as Plaintiffs claimed, shows that the Plan Trustees and their counsel knew shortly after the 2017 Merger and prior to the 2019 and 2020 collective bargaining negotiations that, without increased employer contributions, a drastic change to the benefit structure would be required by 2020, and yet for two years they hid the funding crisis from the non-SAHP trustee Union CBA bargainers while secretly plotting to balance the books by targeting the benefits of Seniors. *See, e.g* 3/21/19 SAHP Minutes SAHP000014311-14 at 1-2; 5/2/19 SAHP Benefits Committee Minutes SAHP000015965-74 at 2-3, 7; Cohen Weiss Notes of 5/2/19 Meeting SAHP000017746-50 at 1.

6. The Settlement Agreement at Section 5.1(iii) and the incorporated HRA Amendment (ECF No. 128-1 at 180) both provide for HRA enrollment reminders, and *minimal* best practices in class settlement administration routinely require reminders to the Senior Performers who qualify for the 2023 payment. In response to our request, Defendants have agreed for the Settlement Administrator to send reminders to encourage HRA enrollment. Based my extensive experience managing claims programs in my class settlements and the uniform experience and information shared by various leading claims administrators, such reminders should be expected to materially increase enrollment, particularly given the size of the HRA allocations as the May 2024 deadline approaches.

7. Section 11.2.4 of the Settlement Agreement, where Defendants admit they failed to provide detailed information about the funding shortfall to the 2019/2020 negotiators, was heavily-negotiated and only inserted into the Settlement Agreement over great resistance from Defendants.

8. My firm, with the assistance of our co-counsel Mr. Siedle and others, based on information learned via discovery and our independent investigation, determined that while the Plan's prior efforts to save on costs were helpful, there were still opportunities to identify additional cost saving measures. Accordingly, we demanded that the settlement require the Plan to issue an RFP and retain a Cost Consultant to focus energy on finding additional cost savings in areas. To the extent Defendants are suggesting they

will ignore or give lip service to the Cost Consultant's recommendations, Class Counsel are prepared to initiate appropriate enforcement proceedings.

9. We also determined, with the assistance of our client Mr. Joliffe, that the Plan lacked effective guidance and procedures to properly count sessional earnings for eligibility and ensure participants are informed how to qualify for coverage, and therefore insisted and prevailed, over Defendants' reluctance, to include relevant remedial provisions in the Settlement.

10. The Plan has provided important settlement administration services. Those services (*e.g.*, compiling mailing lists, identifying who falls into the $400-$4,400 buckets, who qualifies for the 2023-2030 HRA allocations, gathering information that permitted Class Counsel to respond to numerous class member inquiries, CAFA notice, etc.), which have been substantial, would typically be performed by the settlement administrator, qualify as a settlement administration expense and, therefore, be charged against the settlement recovery. In negotiations, Class Counsel rejected Defendants' request to have those administrative services paid to the Plan off the top. Based on my experience and information provided by the Settlement Administrator, and my fiduciary duty to maximize my clients' settlement distributions, it is my informed opinion and expectation that likely there will little if any residual payment at all to the Plan for the settlement administration services it provided or otherwise.

11. In connection with its evaluation, as is typical, Stephen Caflisch of Fiduciary Counselors, the Independent Settlement Fiduciary, discussed all aspects of the Settlement, including our forthcoming fee request, with my law partner Mr. Kriner and me. From that discussion, it was apparent to us that Defense Counsel had previously spoken with Mr. Caflisch and expressed their intent to object to our fee and expense request and likely lobbied him to challenge our request as well. In our discussions, Mr. Caflisch, in properly fulfilling his fiduciary duty, thoroughly, if not aggressively questioned us about various aspects of the Settlement, including the fee request, and challenged us to respond to what appeared to be arguments made to him by Defense

Counsel. We provided all the information he requested, answered all of his questions during that discussion, and provided him with a copy of our fee and expense motion after filing. Upon later receiving the Fiduciary Counselors' Report, we were very pleased with its thorough and favorable analysis of the Settlement, the litigation risks we overcame, and the fee and expense request. So, on July 30, 2023, I asked Defense Counsel if they would consent to our filing the Report with the Court and posting it on the Settlement Website, but they responded: "we are not inclined to agree that posting the report is necessary or appropriate."

12. I served as Co-Lead Counsel in the *Macbook Keyboard* case. The potential arguable damages (as reflected in the Initial Disclosures) in *Macbook Keyboard* exceeded $1 billion based on a total refund of the entire price of every MacBook sold with a "Butterfly" Keyboard, but as is typical, the maximum damages that could have been presented and recovered at trial (after fact and expert discovery, *Daubert* motions, and pre-trial motions) was far less (between of $178 to $569 million), and that is exactly how we presented that number to Judge Davila (without objection from defendant Apple) for purposes of comparing the $50 million settlement to the maximum damages *recoverable at trial*. *See* Motion for Preliminary Approval, *MacBook* ECF No. 410, at 26:

> Plaintiffs believe that if they prevailed at trial and in a post-trial appeal, the class could obtain a judgment in the range of $178 to $569 million. Dkt. No. 395-1 (Merits Expert Report of Hal J. Singer) at ¶ 51 & App'x 4, Table A1. The $50 million settlement fund represents between approximately 9% to 28% of the total estimated damages from a trial verdict and falls within the typical range of recovery in class action settlements.

It is standard practice to list the maximum arguable potential damages in Initial Disclosures served at the outset of discovery in order to avoid waiving any rights and refine those disclosures (typically downward) in amendments based on the state of the as the pleadings, fact discovery, expert discovery and other pre-trial proceedings. It has

been my experience, in my over three decades of class action experience, that sophisticated class counsel and courts use the damages *recoverable at trial* as the metric for settlement approval and fee purposes and not the aspirational potential damages listed in early Initial Disclosures.

13. As Class Counsel, my focus is getting meaningful relief to my clients, as opposed to pyrrhic victories. My law partner Mr. Kriner and I have vast experience analyzing insurance policies and negotiating with insurers, including cases involving layers of policies and excess carriers like the situation here. Part of my experience with respect to one insurance coverage disputes in the Ninth Circuit includes a case I litigated up to the day of trial, where, after extensive litigation, I secured a partial summary judgment as to liability and total recoveries against the primary carrier and two excess carriers of over $6 million on an $8 million claim. Mediator Robert Meyer also has extensive knowledge and experience regarding insurers, excess carriers, and insurance coverage issues. This case presented difficult issues because the insurers in this case contested coverage based on their view our claims, at their core, were benefit denial claims, and also due to the fact there were four layers of insurance. As is typical in situations like this case, defendants often retain insurance coverage counsel and the negotiations between defendants and their insurers is as intense as negotiations between plaintiffs and defendants. The other reality we had to face was that we expected that absent a settlement, pretrial defense costs would have wasted about $15 million of the $40 million insurance coverage, with trial, post-trial proceedings and appeals depleting more of the available limits. Based on our experience and analysis, input from Mediator Mr. Meyer, and our sense of the status of negotiations between Defendants and their insurers, it was Class Counsel's informed assessment that we obtained every penny possible that could be obtained in a settlement from the insurers, and that since that the policies were wasting policies, we would not have been likely to collect more from the insurers if we won at trial. In addition, absent settlement, we believe there was a material risk that the insurers would have filed a declaratory judgment action seeking a

determination that some or all of the claims in this case were not covered by their polices, particularly given the business-wide implications to the insurers.

14. One of our clients told us that one of the Individual Defendants told him that Defense Counsel told their clients that Class Counsel were "not ERISA lawyers" and that they expected to get the case dismissed based on the settlor function defense.

15. Mr. Kriner and I have extensive ERISA and breach of fiduciary duty experience including our successful *Musicians* case against the same defense counsel and the *Davis v. Washington University* settlement where Judge White awarded a one-third fee. I also was part of the team representing Firestone in the Third Circuit and before the Supreme Court and in pretrial proceedings after remand in the seminal ERISA decision *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989). Mr. Kriner has extensive breach of fiduciary duty litigation experience in the business entity context based on his decades of experience litigating some major cases in the Delaware Court of Chancery and in other courts across the country.

16. We spent over 5,000 hours including nights and weekends. Those efforts included over 600 hours investigating and pleading the claims; defeating serial motions on the settlor function defense; identifying and serving subpoenas and negotiating productions with respect to dozens of non-parties, analyzing extensive productions (including hand-written attorney's notes); serving responses and collecting our clients documents in response to Defendants' discovery requests; identifying dozens of deponents and crafting a plan of goals for each, defeating Defendants' repeated attempts to limit deposition and document discovery; carefully analyzing class certification issues, including crafting responses to Defendants' stated challenges to certification and defeating their attempts to truncate certification proceedings; comprehensively analyzing all the relevant evidence and legal standards as reflected (in part) in our drafting of what Mediator Meyer described as "two rounds of detailed mediation briefs" that were the product of "hard work that was highly adversarial and complex" by counsel that were "engaged, motivated and highly knowledgeable about the case" and who "fully

understood the strengths and weaknesses of their positions;" and tirelessly negotiating and papering what all parties agree is a complex and novel Settlement, while all along engaging in extensive discussions with our clients and other class members.

17. A partial list of courts approving the rates for virtually every lawyer who worked at our firm over the last several decades is attached as Exhibit 2. Biographical information of all attorneys who worked on this case is attached as Exhibit 3

18. The chart attached as Exhibit 4 presents, based on information available to us, a summary chart listing and comparing the work both Counsel did in this litigation.

Executed this 28th day of August, 2023 in Berwyn, Pennsylvania.

/s/ Steven A. Schwartz
Steven A. Schwartz

EXHIBIT 1

Report of the Independent Fiduciary for the Settlement in *Asner, et al. v. The SAG-AFTRA Health Fund, et al.*

July 28, 2023

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I. Introduction

Fiduciary Counselors has been appointed as an independent fiduciary for the SAG-AFTRA Health Fund (the "Plan") in connection with the settlement (the "Settlement") reached in *Asner, et al. v. The SAG-AFTRA Health Fund, et al.*, Case No. 2:20-cv-10914-CAS (JEM), (the "Litigation" or "Action"), which was brought in the United States District Court for the Central District of California (the "Court"). Fiduciary Counselors has reviewed over 100 previous settlements involving ERISA plans.

II. Executive Summary of Conclusions

After a review of key pleadings, decisions and orders, selected other materials and interviews with counsel for the parties, Fiduciary Counselors has determined that:

- The Court has preliminarily certified the Litigation as a class action for settlement purposes, and in any event, there is a genuine controversy involving the Plan.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption ("PTE") 76-1.
- All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.
- To the extent there is non-cash consideration, it is in the interest of the Plan's participants and beneficiaries, and the Plan is receiving no assets other than cash in the Settlement.

Based on these determinations about the Settlement, Fiduciary Counselors hereby approves and authorizes the Settlement on behalf of the Plan in accordance with PTE 2003-39.

III. Procedure

Fiduciary Counselors reviewed key documents, including the Complaint, the First Amended Complaint, the Motion to Dismiss, the Court's Order Denying Motion to Dismiss, the parties' mediation statements, the Settlement Agreement, the Motion for Preliminary Approval and related papers, the Court's Order Preliminarily Approving Settlement, the Notice, the Plan of Allocation, the Motions for Final Approval of Class Action Settlement and for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards and related papers. In order to help assess the strengths and weaknesses of the claims and defenses in the Litigation, as well as the process leading to the

Settlement, the members of the Fiduciary Counselors Litigation Committee conducted separate telephone interviews with counsel for both Defendants and Plaintiffs.

IV. Background

A. Factual Background and Procedural History of Case

Factual Background.

The SAG-AFTRA Health Plan ("Plan" or "SAHP") resulted from a January 1, 2017 merger of the Screen Actors Guild-Producers Health Plan ("SAG Health Plan" or "SAPH") and the AFTRA Health Plan (the "Merger"). The Plan is a multiemployer welfare plan that provides health benefits primarily to employees of employers in the entertainment industry that are signatory to collective bargaining agreements with the union, Screen Actors Guild-American Federation of Television and Radio Artists ("SAG-AFTRA"), and who meet the Plan's eligibility requirements.

In July 2020, the Board of Trustees of the Plan amended the Plan's benefit structure in various ways effective January 1, 2021, including to change the eligibility requirements for many performers age 65 and older (the "2020 Amendments").

Litigation.

Plaintiffs (Class Representatives Michael Bell, Raymond Harry Johnson, David Jolliffe, Robert Clotworthy, Thomas Cook, Audrey Loggia, Deborah White, and Donna Lynn Leavy)[1] filed a Complaint on December 1, 2020. On March 26, 2021, in response to Defendants' motion to dismiss the Complaint, the Class Representatives amended the Complaint. As a result, the operative complaint became the First Amended Class Action Complaint (the "Amended Complaint"). The Amended Complaint was brought against the Board of Trustees of the SAG Health Plan, the Board of Trustees of the Plan, individually named Trustees of the two Boards (the "Trustee Defendants"), and against the Plan nominally "to facilitate comprehensive relief" (collectively, the "Defendants"). Specifically, Counts I and III were brought against the Board of Trustees of the SAG Health Plan and the Trustee Defendants who served as Trustees of the SAG Health Plan, while Counts II and IV were brought against the Board of Trustees of the Plan and the Trustee Defendants who serve or served as Trustees of the Plan. Collectively, they asserted (i) direct claims for breach of fiduciary duty under ERISA § 404(a)(1) (Counts I and II), and (ii) claims for co-fiduciary breach under ERISA § 405(a) (Counts III and IV).

Plaintiffs alleged that the 2020 Amendments made major changes to the Plan's benefit structure and eligibility requirements that, in effect, eliminated Plan health coverage for certain Plan participants age 65 and older and pushed them to Medicare coverage ("2020 Amendments"). Plaintiffs claim that breaches of fiduciary duties by the Plan Trustees in connection with the Merger and breaches by the Plan Trustees thereafter caused losses in Plan assets and led to the 2020 Amendments.

[1]Edward Asner and Sondra James Weil were omitted from the Class Representatives due to their deaths on August 29, 2021 and September 12, 2021, respectively.

Plaintiffs alleged in the Amended Complaint that Defendants violated ERISA and breached their fiduciary duties based on the following: (i) statements made in 2012 suggesting that any future merger process would involve investigation and/or would be subject to fiduciary duties; (ii) the SAG Health Plan Trustees either failed to perform a diligent pre-merger investigation or approved the Merger despite knowing that the benefit structure of the merged Plan was not sustainable; (iii) the SAG Health Plan Trustees depletion of substantial assets from the "Retiree Reserve" to fund plan costs prior to the merger; (iv) statements made in June 2016 suggesting that the Merger would strengthen the financial health of the Plan and ensure comprehensive benefits in the future for all participants; (v) the SAG-AFTRA Health Plan Trustees knew by at least mid-2018 that employer contributions and investment income would be insufficient to sustain the Plan's benefit structure; (vi) the SAG-AFTRA Health Plan Trustees failed to disclose the Plan's funding condition and amount of funding required to sustain the benefit structure, which prevented the Union negotiators, of the 2019 Commercials CBA, 2019 Netflix CBA, and 2020 TV/Theatrical CBA, including Plaintiff David Jolliffe, from leveraging that information to help secure additional funding; and (vii) the Plan Trustees secretly planned for over 2 years to address the deficit that resulted from their imprudent actions by eliminating the cost of Plan coverage for Senior Performers age 65 and older by the 2020 Amendments and announced the 2020 Amendments in August 2020, in the midst of an industry-wide shut-down due to the COVID-19 pandemic.

Plaintiffs alleged that four aspects of the 2020 Amendments eliminated Plan coverage for many performers age 65 and older. Those allegations are summarized in this paragraph. First, the 2020 Amendments eliminated the "Dollar Sessional Rule."[2] Under the 2020 Amendments, the residuals earnings no longer counted for Senior Performers, even though employers continued to make contributions to the Plan based on the Senior Performer's residuals earnings, and even though all reported earnings (residuals and sessional) of participants younger than 65 count toward health benefit eligibility, regardless of whether the participant is taking a Union pension. A participant with ten qualifying years can take a pension at age 55. As a result, hundreds of Senior Performers whose combined sessional and residuals earnings exceeded the $25,950 qualifying threshold, which generated substantial contributions to the Plan, lost their Plan health coverage. Second, the 2020 Amendments also eliminated the "Age and Service Rule," which provided a lower threshold of earnings (only $13,000) for Plan participants 40 and older with 10 years of qualifying service to qualify for Plan health coverage. The elimination of the Age and Service Rule eliminated coverage for hundreds of performers and surviving spouses, who were forced to Medicare. Third, the 2020 Amendments raised the earnings threshold to qualify for coverage, which eliminated coverage for a smaller number of Senior Performers (and some younger participants). Fourth, the 2020 Amendments eliminated secondary coverage for all Senior Performers who did not qualify for active (primary) coverage from the Plan.

Plaintiffs also alleged that other aspects of the 2020 Amendments selectively affected Senior Performers. Those allegations are described in this paragraph. For example, the base earnings year for only participants 65 years of age and older taking their pensions was immediately set

[2]The Dollar Sessional Rule was the Plan's rule in effect between January 1, 2017 and December 31, 2020, that allowed a participant to satisfy the qualifying earnings threshold with residual earnings reported to the Plan as long as the participant had at least one dollar of sessional earnings reported to the Plan, which, for Retirees (including Senior Performers), was eliminated by the 2020 Amendments.

to October 1- September 30. This unfairly limited the time for affected older participants from seeking opportunities urgently for sessional earnings, when the Trustees knew sessional opportunities had been limited by the Covid-19 pandemic. Further, the benefit period for all participants 65 and older taking a pension was set to January 1 - December 31. The change also took pre-qualified coverage from participants 65 and older. For example, Plaintiff David Jolliffe lost three months coverage for which he had already qualified. Under the 2020 Amendments, the Plan established a new Senior Performers Health Reimbursement Account Plan ("HRA") and allocated $95 per month ($1,140 per year) to the HRA accounts of those Senior Performers who had at least 20 qualifying years and $20 per month ($240 per year) for those Senior Performers with fewer than 20 qualifying years, but Plaintiffs alleged that this was not nearly enough to purchase the replacement Medicare coverage sufficient to provide a reasonable replacement of the Plan's coverage.

On April 30, 2021, Defendants filed a motion to dismiss the Amended Complaint, asserting, *inter alia*, that the challenged actions were not undertaken in a fiduciary capacity. The Court denied Defendants' motion to dismiss by Opinion and Order dated August 30, 2021. The Court also denied Defendants' motion to certify the Court's August 30, 2021 Order for interlocutory appeal to the Ninth Circuit by Opinion and Order dated November 9, 2021. On September 24, 2021, Defendants filed their Answer to the Amended Complaint, denying all allegations of wrongdoing and liability and advancing certain affirmative and other defenses. On December 29, 2021, the Court approved the parties' Joint Case Management Plan, which provided for a limited initial document production by Defendants in advance of mediation. On July 22, 2022, the Court entered a stipulated schedule for the parties to complete discovery and briefing on class certification.

On July 27, 2022, the Court dismissed with prejudice an action arising out of the same factual predicate that Class Counsel had filed on behalf of a putative class of SAG-AFTRA members in the United States District Court for the Central District of California titled *Fisher v. Screen Actors Guild-American Federation of Television and Radio Artists, et al.*, No. 21-cv-05215-CAS (JEM) (the "Fisher Action"). In the Fisher Action, it was alleged, *inter alia*, that certain of the Trustee Defendants who served as SAG-AFTRA employees, officers, or bargaining committee members, as well as SAG-AFTRA and other individuals who served as SAG-AFTRA officers, breached their fiduciary duties under 29 U.S.C. § 501(a) by failing to disclose information about the Plan's funding in connection with the 2019 Commercials CBA, 2019 Netflix CBA, and 2020 TV/Theatrical CBA. The dismissal is currently on appeal to the Ninth Circuit (the "Fisher Appeal").

The parties had widely divergent views on regarding the scope of discovery and a schedule for motion practice. Plaintiffs pushed for extensive document production, including production of allegedly relevant emails of all the Defendant Trustees, and depositions of each defendant Trustee plus 15 non-parties such as the Plan's many advisors. Defendants sought to limit document production to only 12 of the 36 Defendant Trustees and limit Plaintiffs to only 15 depositions (including non-parties).

With respect to class certification, Defendants requested that the Court either require Plaintiffs to file their class certification motion before the substantial completion of discovery or permit Defendants to file an early motion to deny class certification before Plaintiffs completed substantial discovery. After an extensive hearing where the Court was dissatisfied

with the parties and their inability to reach any common ground, the Court instructed the parties to try to narrow their differences. Those efforts proved largely unsuccessful. The parties had a strong command of the facts and their respective legal arguments but remained far apart. After another extensive hearing, the Court resolved the discovery and schedule issues, which resulted in the entry of a scheduling order on July 22, 2022. Plaintiffs aggressively pursued discovery against the Defendant Trustees, and the Defendants did the same with respect to the class representative Plaintiffs.

***Settlement and Preliminary Approval*.**

Following the Court's denial of Defendants' motions, the parties agreed to initially focus their efforts on an early mediation process under the auspices of Robert A. Meyer of JAMS, one of the country's leading mediators in complex Class and ERISA cases. They focused their initial discovery efforts on information to facilitate and informed mediation. This included exchanging initial disclosures, drafting confidentiality and ESI protocol agreements, serving and responding to document requests, and early exchange relevant documents, including board minutes, various reports provided to the Defendant Trustees, various Plan documents, documents such as attorneys' notes of meetings and various communications and analyses by the Plan's attorneys produced pursuant to ERISA's "fiduciary exception" for attorney-client documents, and insurance policies. Based on that focused discovery, the parties prepared two rounds of detailed mediation briefs and engaged in a full-day mediation on March 4, 2022 with Mr. Meyer. The mediation proved unsuccessful. The parties had divergent views of the merits of Plaintiffs' claims. Moreover, as expected, Defendants' fiduciary liability insurers contested coverage based on the argument that Plaintiffs' claims were in essence "benefits denial" claims, which are typically not covered under fiduciary liability insurance policies. Accordingly, while the parties and mediator Meyer continued to engage in discussions, the parties shifted gears and proceeded to full-fledged litigation. Simultaneous with the battles over discovery and class certification, the parties, with the extensive involvement of Mediator Meyer, continued to engage in settlement discussions. Eventually, due to the efforts of Mediator Meyer and hard work by the parties and their counsel, sufficient progress was made in negotiations to justify a pause of the most expensive portions of formal discovery in favor of focusing on discovery targeted toward settlement. The parties ultimately agreed on and signed the Settlement Agreement in April 2023.

Plaintiffs filed a motion seeking preliminary approval of the Settlement on April10, 2023. The Court granted Plaintiffs' motion on May 3, 2023. The Court's Order: (1) preliminarily certified the class for settlement purposes; (2) approved the form and method of class notice; (3) set September 11, 2023 as the date for a Fairness Hearing; (4) set August 14, 2023 as the deadline for objections; and (5) approved A.B. Data, Ltd as the Settlement Administrator.

Objections.

August 14, 2023 is the deadline for Class Members to file objections to the Settlement. To the best of our knowledge, as of the date of this report, no Class Members have filed any objections.

V. Settlement

A. Settlement Consideration

The Settlement Agreement provides for a $15 million Gross Settlement Amount. Defendants and the SAHP fiduciary liability insurers have each agreed to pay $7.5 million, for a total of $15 million for the Gross Settlement Amount. After deducting (a) all attorneys' fees and costs (inclusive of Service Awards) awarded by the Court and paid to Class Counsel; and (b) the total amount of administrative expenses paid (plus any reserve for expected future administrative expenses as determined by the Settlement Administrator), the remainder (known as the "Net Settlement Amount") will be distributed to the Class Members in accordance with the Plan of Allocation. The Gross Settlement Amount will be used to compensate Senior Performers and their age 65+ and surviving spouses who lost either primary or secondary SAHP coverage solely due to the 2020 Amendments.

In addition, the Board of Trustees will amend the HRA Plan to provide for additional allocations to the HRA Accounts of Qualifying Senior Performers[3] (provided they have established HRA Accounts as of the date the allocations are made). The HRA Plan amendment will provide that, for each of the eight years, 2023 through 2030, additional amounts will be allocated to the HRA Accounts of that year's Qualifying Senior Performers. The aggregate amount of additional allocations to the HRA Accounts of Qualifying Senior Performers in each year will be equal to one-half of the aggregate contributions made to the Plan with respect to the Qualifying Senior Performers' residual earnings reported to the Plan that were processed by the Plan during the previous October 1 through September 30 Base Earnings Period (which earnings will be capped at $125,000 per Qualifying Senior Performer for such calculation). The aggregate amount in any particular year will not, however, exceed a maximum of $700,000. The allocations for 2023 will be made as soon as practicable after the Settlement Effective Date, and will allow for allocations to any Class Members who has enrolled in an HRA account by May 1, 2024. Allocations for subsequent years will be made at the beginning of the year. The potential maximum total payments under this provision is $5.6 million, paid over eight years. The actual amount will depend on how many eligible individuals have established HRA Accounts by the deadline and the amount of their residual earnings. The Plan has calculated that if all of the Senior Performers who it has identified as having lost their entitlement to Plan coverage due to the elimination of the Dollar Sessional Rule have HRA accounts by May 1, 2024 as provided in the settlement, the total payments for 2023 will be over $625,000 and the average payment will be over $1,600 per Qualifying Senior Performer. Schwartz Decl., ¶ 2. However, as of July 9, 2023, there were many such Senior Performers who were not enrolled in the HRA, which was first made available as a result of the 2020 Amendments. The reasons eligible individuals did not sign up when originally eligible for the HRA and have not signed up yet when given a new opportunity under the Settlement undoubtedly vary, but they include that participating in the HRA requires using Via Benefits to obtain medical coverage, and some individuals might prefer options not available through Via Benefits. In any event, we understand that by sometime in early August, the Plan will have a better idea how many individuals are likely to be eligible

[3] A Qualifying Senior Performer is an individual who, for any particular year: (i) meets the definition of "Senior Performer" under Article I, Section 1.1(v) of the HRA Plan, and (ii) is ineligible for active coverage under the Plan that year solely as a result of the Amendments' elimination of the Dollar Sessional Rule.

for the distribution for 2023, as well as the likely payment for 2023. Allocations for years after that will depend on how many eligible individuals are in the HRA (existing HRA participants can die and new individuals can become eligible to join the HRA and receive allocations under the settlement), as well as on their residual earnings. To protect the Plan, the HRA Plan amendment will provide that, if projections of the Plan's Continuation Value are such that modifications to the Plan are required under Article XIII, Section 3 of the Trust Agreement, the additional allocations to the HRA Accounts of Qualifying Senior Performers will cease as of the date it is determined that such modifications are required.[4]

The Settlement also requires the Plan to implement non-monetary relief which will benefit all Plan participants, including: making periodic disclosures to SAG-AFTRA of the Plan's projected financial condition for purposes of anticipating whether additional changes to the Plan will be needed[5]; making financial disclosures to the Union and its negotiators in advance of various collective bargaining negotiations[6]; and retaining a consultant to provide advice on how to further reduce the costs of providing health coverage to Plan participants[7].

The Settlement requires the Trustees to make disclosures and administrative changes and keep those provisions in place for at least four years after the Settlement Effective Date. Specifically, no later than thirty (30) days after the Settlement Effective Date, the Plan's Board of Trustees will amend the Plan's Summary Plan Description as follows with respect to the manner in which Retirees' (including Senior Performers') sessional earnings are applied for purposes of qualifying for active coverage under the Plan: (a) Senior Performers will be able to use additional sessional earnings reported to the Plan within forty-five (45) days of the September 30 end of their Base Earnings Period (meaning fifteen (15) days beyond the 30-day period in which employers are expected to submit such earnings) toward active coverage qualification for the benefit period beginning the following January 1, provided that the covered employment generating the sessional earnings occurred on or before the referenced September 30. Any Senior Performer wishing to do so must

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[4] On the other hand, the Settlement explicitly provides that it does not prohibit or limit the discretion of the Plan or its trustees to make other types of additional allocations to the HRA Accounts of any Plan participants or to reinstitute the Dollar Sessional Rule.

[5] No later than thirty (30) days after each Benefits Committee meeting, the Plan will provide the SAG-AFTRA National Executive Director with the projections required in Article XIII, Section 2 of the Trust Agreement, and any accompanying reports of the Benefit Consultant (including proposed changes to participant premiums, eligibility thresholds, or benefits or any combination thereof, suggested by the Benefit Consultant) (section 11.2.1(a) of the Settlement Agreement). No later than five (5) days after the minutes of the Plan's Board of Trustees' first meeting of each year are approved, the Plan will provide the SAG-AFTRA National Executive Director with a copy of the minutes to the extent they relate to Continuation Value and the projections referred to in Section 11.2.1(a) of the Settlement Agreement. No later than five (5) days after the Union Trustees decide on a proposed modification they intend to make pursuant to Article XIII of the Trust Agreement, the Union Trustees will provide the SAG-AFTRA National Executive Director with the substance of the proposed modification.

[6] Prior to the commencement of collective bargaining negotiations relating to the Commercials CBA, Netflix CBA, or TV/Theatrical CBA, the Plan will provide detailed reports to the SAG-AFTRA National Board and the SAG-AFTRA negotiating committees regarding the projected funding needed to sustain the then-current participant premiums, eligibility thresholds, and benefits for the duration of the agreements being negotiated.

[7] No later than thirty (30) days after the Settlement Effective Date, the Plan will commence the Request for Proposal process described in Exhibit 5 of the Settlement Agreement to select a Cost Consultant. Once retained, the Cost Consultant will provide an oral report and issue a written report advising on potential cost-saving measures (in areas other than those in which the Plan has already achieved cost-savings in recent years, as indicated in the memorandum attached to Exhibit 5 of the Settlement Agreement).

affirmatively make this request with the Plan office within the 45-day window period; (b) any such late reported earnings that are counted for purposes of qualifying for Plan coverage in a particular year will be excluded in the following year's active qualification evaluation; and (c) Senior Performers will have two opportunities from 2023 through 2028 to retrospectively apply late reported earnings in this manner. In conjunction with the amendment described above (in Section 11.4 of the Settlement Agreement), the Plan will post a Notice of Additional Credited Earnings Opportunity on the Plan Website (in substantially the form attached as Exhibit 10 of the Settlement Agreement) so that Senior Performers potentially impacted by this provision are aware of the opportunity. The Plan Website will also advise Senior Performers of their ability to determine the amount of sessional earnings reported to the Plan for the applicable quarter and the October 1 through September 30 Base Earnings Period. In addition, the Plan will send at least two emails each year to Senior Performers for whom it has an email address with a link to the Benefits Manager log-in on the Plan Website where the Senior Performer can review their reported sessional earnings.

Class and Class Period

The Settlement defines the Settlement Class as follows:

> all individuals who (i) were enrolled in health coverage under the Plan at any time during the Class Period, (ii) were notified that they qualified for health coverage under the Plan for any time during the Class Period, and/or (iii) qualified or had qualified as a Senior Performer as of the beginning of or during the Class Period, but excluding the Trustee Defendants.

The Settlement defines Class Period as the period from January 1, 2017 through the date the Court issues its Preliminary Approval Order [May 3, 2023].

The Court has preliminarily certified the Settlement Class, for settlement purposes only.

B. The Release

The Settlement defines Released Claims as follows:

> any and all actual or potential claims, actions, allegations, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action, whether arising under federal, state or local law, whether by statute, contract or equity, whether brought in an individual, derivative, or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, that:
>
> (a) were or could have been asserted in the Complaint or Amended Complaint (or in any submission made by the Class Representatives or Class Counsel in connection with the Action), or that arise out of, depend upon, or are based on any of the factual allegations asserted in the Complaint or Amended Complaint (or in any submission made by the Class Representatives or Class Counsel in connection with the Action), including, but not limited to, those that arise out of, depend upon, or are based on: (i) the Merger and/or the pre-Merger evaluation process, (ii) the SAG Health Plan's maintenance of assets in, or transfer of

assets out of, a "Retiree Reserve" portfolio, (iii) disclosures or failures to disclose information regarding the Merger and/or the pre-Merger evaluation process, (iv) the Amendments, (v) disclosures or failures to disclose information regarding the Plan's financial condition, funding, and/or actual or potential amendments to the Plan that occurred on or before the Settlement Effective Date, or (vi) any alleged breach of fiduciary duty in connection with (i) through (v) above.

(b) arise out of, relate in any way to, are based on, or have any connection with the approval by the Independent Settlement Evaluation Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone;

(c) arise out of, relate in any way to, are based on, or have any connection with the calculation, allocation, and/or distribution of the Net Settlement Amount to Class Members (i.e., the Settlement Allocations) in accordance with the Plan of Allocation;

(d) arise out of, relate in any way to, are based on, or have any connection with the calculation, allocation, and/or distribution of additional amounts to the HRA Accounts of Qualifying Senior Performers or any amendments to the HRA Plan that provide for such additional allocations; or

(e) would be barred by *res judicata* based on entry by the Court of the Final Approval Order.

Released Claims do not include claims based on factual allegations that were not asserted in the Complaint or Amended Complaint (or in any other submission made by the Class Representatives or Class Counsel in connection with the Action), and do not include individual claims for relief under the terms of the Plan or the HRA Plan.

The terms of the release, including the provision for the Independent Fiduciary to determine whether to approve and authorize the settlement of Released Claims on behalf of the Plan, are reasonable.

C. The Plan of Allocation

The Net Settlement Amount will be paid or allocated to Senior Performers and their age 65+ spouses (including surviving spouses) who lost active or secondary health coverage from the Plan in 2021 or 2022 solely due to the 2020 Amendments. (Each of the Senior Performers and their age 65+ spouses will receive the targeted amount.) The targeted amount of these payments or allocations are as follows:

- $4,400 - For Senior Performers and their age 65+ spouses who received active health coverage from the Plan in December 2020 but did not qualify for active coverage in 2021 due to the elimination of the Dollar Sessional Rule in the 2020 Amendments.

- $2,200 - For Senior Performers and their age 65+ spouses who received active health coverage from the Plan in December 2020 but did not qualify for active coverage in 2021 solely due to the elimination of the age and service rules and/or raising of the

earnings eligibility thresholds to qualify for health coverage as part of the 2020 Amendments.

- $1,100 - For Senior Performers and their age 65+ spouses who received active health coverage from the Plan in December 2020 and who qualified for active health coverage in 2021 but did not qualify for active coverage in 2022 solely due to the 2020 Amendments.

- $400 - For Senior Performers and their age 65+ spouses who received secondary health coverage from the Plan in December 2020 but did not receive secondary coverage in 2021 solely due to the 2020 Amendments.

These target amounts have been set based on information provided by the Plan with respect to the number of Senior Performers and age 65+ spouses who are entitled to receive payment for the reasons set forth in each of the categories identified above. The Plan represents that it conducted a reasonable investigation and believes that the information it provided is accurate.

Within twenty-five (25) days after the later of the Settlement Effective Date or after the Court's award of Attorneys' Fees, Costs, and Service Awards becomes Final, and the amount available for distribution from the Net Settlement Amount can be quantified, Lead Class Counsel, with the assistance of the Settlement Administrator, shall evaluate whether there are sufficient funds to make an upward *pro rata* adjustment to the targeted amount payments or allocations set forth above, or if a downward *pro rata* adjustment is necessary, given the amount of Administrative Expenses that remain unpaid or expect to be incurred in the future. Lead Class Counsel shall notify the Settlement Administrator and Counsel for Defendants of their decision regarding any *pro rata* adjustments to the targeted amounts for payment or allocation, who shall implement Lead Class Counsel's decision in a manner consistent with this Settlement Agreement. Any disagreements with Lead Class Counsel's decision shall be communicated within ten (10) days, and any unresolved disagreements shall be mediated before Robert Meyer, Esq. and, if no agreement is reached, submitted thereafter to the Court for resolution.

Additionally, for up to eight years (2023 – 2030), the Plan will allocate up to $700,000 into the HRA Accounts of Qualifying Senior Performers. The aggregate amount of additional allocations to the HRA Accounts of Qualifying Senior Performers in each year will be equal to one-half of the aggregate contributions made to the Plan with respect to the Qualifying Senior Performers' residual earnings reported to and processed by the Plan during the prior year's Base Earnings Period (which earnings will be capped at $125,000 per Qualifying Senior Performer). The aggregate amount of additional allocations for each year will be apportioned among Qualifying Senior Performers based on the relative amount of their residual earnings reported to the Plan (up to $125,000).

The distribution method for the monetary component in the Settlement provides significant benefits for Class members, as there will be no need to fill out claim forms or submit a claim. The immediate monetary relief from the Settlement will automatically be allocated to the HRA Accounts of Senior Performers or alternatively paid via check for those without an HRA Account. The future payments will be allocated to the HRA Accounts of Qualifying Senior Performers who have established HRA Accounts.

We find the Plan of Allocation to be reasonable, including:

1. the allocations of immediate cash payments to Senior Performers and their age 65+ spouses;

2. the provisions for immediate cash payments into HRA Accounts for Qualifying Senior Performers; and

3. the provisions for future payments into HRA Accounts for Qualifying Senior Performers.

The provisions are cost-effective and fair to Class Members in terms of both calculation and distribution.

D. Attorneys' Fees, Litigation Expenses and Case Contribution Awards

Class Counsel seek an award of attorneys' fees in the amount of $6,866,667, which represents one-third of Maximum Gross Monetary Settlement Amount (i.e., the $15 million Gross Settlement Fund and the maximum $5.6 million in HRA contributions from 2023-2030) up to $20.6 million. To date, Class Counsel's collective lodestar is $3.8 million. This does not include the more than $1 million lodestar in the related *Fisher* matter, for which counsel will receive no fees. This would produce a lodestar multiplier of 1.8 if the requested $6,686,667 were awarded.

In our experience, the percentage requested and the lodestar multiplier are within the range of attorney fee awards for ERISA cases involving payments by defendants other than the plan into a 401(k) plan or directly to plan participants, with by awards equaling one-third of the settlement amount being common and percentages lower than that also awarded. In the Ninth Circuit, courts start with 25% and make adjustments up or down taking into account a variety of factors. Here the complexity of the case and the risk of non-payment favor an upward adjustment. Although the value of the non-monetary relief is hard to judge, it also arguably favors an upward adjustment. On the other hand, only $7.5 million of the cash payments involve payments by parties other than the Plan. The remaining $7.5 million in cash payments, as well as the future payments into HRA Accounts, essentially involve the Plan paying more to some participants and less to others. We believe those elements of the Settlement are reasonable, but we believe it is appropriate for the Court to take that into account in setting the percentage. Finally, the total amount to be paid into HRA Accounts in the future is uncertain, and those amounts will be paid over up to eight years. We believe it is appropriate for the Court to consider the uncertainties and the spread-out payment schedule when considering how much of the maximum $5.6 million in total future payments to count in applying the percentage award. We expect that the Plan will be able to provide at least some additional information on that issue in August.

Class Counsel also request reimbursement of $50,954.13 in litigation costs, including mediation fees ($17,438), internal reproduction/copies ($13,750.57), computer research ($7,041.73) and technology services/data collection/hosting ($6,017.03). Fiduciary Counselors believes these amounts are reasonable expenses. We note, however, that the Settlement limits attorneys' fees and costs to the amount Class Counsel have requested for attorney's fees alone. To be consistent with the Settlement, the total amount awarded for attorneys' fees and costs should not exceed $6,866,667.

Class Counsel also seek service awards of $5,000 each for Class Representatives Michael Bell, Raymond Harry Johnson, David Jolliffe, Robert Clotworthy, Thomas Cook, Audrey Loggia, Deborah White, and Donna Lynn Leavy for a total of $40,000. The Class Representatives have spent many hours over the years developing the case, conferring with counsel, answering discovery requests, searching for and producing documents, and evaluating the Settlement. Mr. Jolliffe, who spent an extraordinary number of hours assisting counsel, has committed to donating his service award to the SAG Foundation.

The Settlement caps the amount of attorneys' fees and expense and the amount of individual service awards that can be requested and does not make approval of fees, expenses or service awards a condition of the Settlement. Further, unlike most ERISA settlements, where defendants agree not to object if the fees, expenses and service awards are within the caps specified in the settlement, the Settlement specifically provides that Defendants may object. ERISA settlements do not need to have provisions allowing defendants to object, and defendants do not need to object, in order for the settlements to be reasonable in terms of attorneys' fees, expenses and service awards, but in this case the Settlement terms provide an additional level of protection to participants' interests and assure that the fees will be reasonable.

In light of the foregoing, we have determined that the terms of the Settlement regarding attorneys' fees, expenses and service awards are reasonable, and the amounts awarded will be reasonable.

VI. PTE 2003-39 Determination

As required by PTE 2003-39, Fiduciary Counselors has determined that:

- **The Court has preliminarily certified the Litigation as a class action for settlement purposes only.** Thus, the requirement of a determination by counsel regarding the existence of a genuine controversy does not apply. Nevertheless, we have determined that there is a genuine controversy involving the Plan, which the Settlement will resolve.

- **The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.** Plaintiffs claim that the Defendant Trustees of the SAG Health Plan breached their ERISA fiduciary duties in connection with the Merger. Plaintiffs allege that these Trustees falsely assured participants that the Merger would strengthen the health plan and ensure comprehensive health benefits for all participants in the future. Plaintiffs also claim that the Defendant Trustees of the SAG-AFTRA Health Plan breached their ERISA fiduciary duties in connection with the 2020 Amendments. Throughout the Litigation and in the Settlement Agreement, the Defendant Trustees have denied that they breached any applicable fiduciary duties, violated any age discrimination laws, failed to make any disclosures required by law, or committed any wrongdoing whatsoever. They maintain that, with respect to both the Merger and the 2020 Amendments, they engaged in a prudent process with the advice of consultants to reach prudent decisions that were in the best interests of participants in light of projected funding deficits that had arisen due to ever-increasing health care costs. Defendants further assert that, in an effort to mitigate the adverse consequences of the Plan's financial

shortfall, the Plan has adopted numerous changes that have substantially reduced administrative expenses and the cost of benefits, as a result of which the Plan's administrative expenses compare very favorably to those of similarly situated plans.

Plaintiffs faced risks in continuing the Litigation. Class Counsel understood that any attack on the 2020 Amendments faced a grave risk of dismissal due to the "settlor function" defense. As argued in Defendants' motion to dismiss the Amended Complaint and citing decisions by the Supreme Court and Ninth Circuit Court of Appeals, "it is well-settled that plan sponsors do not act as fiduciaries when making decisions that concern the structure or design of the plan, including—as challenged here—decisions to merge plans and to amend a plan's benefit provisions." Defendants would have also argued that they engaged in a prudent process by engaging a number of financial and legal advisors and conducting a series of meetings in re-drawing the eligibility requirements to qualify for Plan health coverage in the face of the Plan's declining financial condition. Class Counsel also recognized that despite the view that promises of lifetime health coverage were made to Senior Performers, the Plan "specifically stated that future benefits 'are not promised, vested or guaranteed,' and it reserved the right to 'reduce, modify or discontinue benefits or the qualification rules for benefits at any time,' including with respect to retiree benefits." In their final approval and attorneys' fees papers, Class Counsel cited the following: "Employers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans." *Curtis-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995). An amendment to a plan to deprive participants of health benefits "is not a cognizable complaint under ERISA; the only cognizable claim is that the company did not do so in a permissible manner." *Id*. Any age discrimination claims based on ERISA faced grave risks because, as pointed out in Defendants' motion to dismiss, the Supreme Court has noted, in the context of welfare benefit plans, that: (1) "ERISA does not mandate that employers provide any particular benefits, and does not itself proscribe discrimination in the provision of employee benefits" and (2) the legislative history of ERISA shows that the Senate expressly considered and rejected the inclusion of nondiscrimination provisions because it was desirable to maintain 'centralized administration' of employment discrimination claims via the *EEOC*. *Shaw v. Delta Airlines*, 463 U.S. 85, 91, 104 (1983), citing 119 CONG. REC. S30, 409-10 (1973). Finally, direct age-discrimination claims faced grave risks as well, because the age discrimination laws do not prohibit plan rules that distinguish between employees based on criteria that merely correlate with age. Since retiree and pension status are "analytically distinct" from age, their use in determining eligibility for retiree benefits thus does not violate the ADEA. See *Ky. Ret. Sys. v. EEOC*, 554 U.S. 135, 141, 143 (2008); *Harris v. County of Orange*, 902 F.3d 1061, 1072 (9th Cir. 2018). Given the obstacles and risks posed by this case law, at least one firm specializing in age discrimination cases decided against filing an age discrimination class action despite receiving substantial assistance from Plaintiffs' counsel Chimicles Schwartz Kriner & Donaldson-Smith LLP. Class Counsel also assumed that before implementing the 2020 Amendments, Defendants' legal advisors had received at least informal guidance from the relevant governmental agency that the 2020 Amendments did not violate the Medicare Secondary Payor Program rules and regulations. That assumption was confirmed in discovery.

While Plaintiffs defeated Defendants' motion to dismiss, Plaintiffs continued to face a substantial risk that some or all of the claims would be dismissed at summary judgement, trial or on appeal based on the Defendants' defenses including that the challenged conduct was

"settlor," not fiduciary, conduct under ERISA. In addition, the SAHP, via its Summary Plan Document and other communications, had advised the participants that the benefits could be reduced, modified, or eliminated at any time, which posed another substantial risk. Further, while Plaintiffs believe that the Defendants did not engage in a prudent process in connection with the Merger, or in cost management and disclosure or implementation of the 2020 Amendments following the Merger, it is undisputed that Defendants conducted many meetings, and received advice and numerous reports from various financial and legal advisors, which may have insulated them from liability even if the Court ultimately concluded, as a matter of fact, that the decisions Defendants made were objectively imprudent, unfair and inequitable. Plaintiffs also faced the risk that any victory in the litigation would be an empty victory if it resulted in a judgment finding Defendants breached their duties in implementing the 2020 Amendments, but that injunctive relief could not be granted to restore the benefit structure to the pre-2020 Amendments structure or any particular benefit structure. Plaintiffs assert that the Defendant Trustees would then be free to engage in a renewed process to cut costs and limit coverage albeit pursuant to a prudent process guided by their attorneys.

Continued litigation also involved the risk that it would be determined that the insurers are not required to provide coverage for any judgment obtained, as well as the risk that the insurers would cease providing coverage for defense costs, which would have imposed a significant financial burden on the SAHP, and that the amount available from insurance would decline as a result of ongoing coverage of defense costs.

Continued litigation would have likely resulted in appeals, causing more expense and further delaying resolution. Instead of a drawn-out period of costly litigation, with a risk of no recovery, class members will receive a certain benefit now and some will receive additional payments into their HRA Accounts into the future.

The $7.5 million payment from the insurers, $7.5 million from the Plan and up to an additional $700,000 for each of the eight years from 2023 through 2030 (for a potential maximum of $5.6 million), along with the non-cash consideration, represent a fair and reasonable settlement for all parties in light of the costs and the risks involved in proceeding to trial and the possibility of reversal on appeal of any favorable judgment.

Fiduciary Counselors also finds the other terms of the Settlement to be reasonable, including the scope of the release, attorneys' fees, the requested service awards to the Class Representatives and the Plan of Allocation.

- **The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.** As indicated in the finding above, Fiduciary Counselors determined that Class Counsel obtained a favorable agreement from Defendants in light of the challenges in proving the underlying claims. The agreement also was reached after extensive arm's-length negotiations supervised by mediator Robert A. Meyer of JAMS.

- **The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.** Fiduciary Counselors found no indication the Settlement is part of any broader agreement between Defendants and the Plan.

- **The transaction is not described in PTE 76-1.** The Settlement did not relate to delinquent employer contributions to multiple employer plans and multiple employer collectively bargained plans, the subject of PTE 76-1.

- **All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.**

- **The inclusion of consideration other than immediate cash payments in the Settlement meets the requirements of PTE 2003-39.** In addition to the immediate cash payment, the Settlement provides that, the SAHP will allocate up to an additional $700,000 for each of the eight years from 2023 through 2030 to the HRA accounts of Qualifying Senior Performers who become ineligible for Active Plan coverage in one or more of those years solely because of the elimination of the Dollar Sessional Rule. Given the Plan's cash-flow constraints, this provision is more favorable to both the Plaintiffs and the Plan than a settlement that required all monetary consideration to be in immediate cash.

  Defendants also agreed to a number of non-monetary provisions including making periodic disclosures to SAG-AFTRA of the Plan's projected financial condition for purposes of anticipating whether additional changes to the Plan will be needed, making financial disclosures to the Union and its negotiators in advance of various collective bargaining negotiations, and retaining a consultant to provide advice on how to further reduce the costs of providing health coverage to Plan participants. The Settlement requires the Trustees to make disclosures and administrative changes and keep those provisions in place for at least four years after the Settlement Effective Date. This non-monetary consideration is specifically described in the Settlement and in Section V.A. of this report. Including the non-monetary consideration was more beneficial to participants and beneficiaries than an all-cash settlement would have been. The non-cash consideration does not include non-cash assets, so the requirements related to non-cash assets do not apply.

- **Acknowledgement of fiduciary status.** Fiduciary Counselors has acknowledged in its engagement that it is a fiduciary with respect to the settlement of the Litigation on behalf of the Plan.

- **Recordkeeping**. Fiduciary Counselors will keep records related to this decision and make them available for inspection by the Plan's participants and beneficiaries as required by PTE 2003-39.

- **Fiduciary Counselors' independence**. Fiduciary Counselors has no relationship to, or interest in, any of the parties involved in the litigation, other than the Plan, that might affect the exercise of our best judgment as a fiduciary.

Based on these determinations about the Settlement, Fiduciary Counselors (i) authorizes the Settlement in accordance with PTE 2003-39; and (ii) gives a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan. Fiduciary Counselors also has determined not to object to any aspect of the Settlement.

Sincerely,

Stephen Caflisch

Stephen Caflisch
Senior Vice President & General Counsel

FIDUCIARY COUNSELORS

EXHIBIT 2

CASES APPROVING CSKD's RATES

- ***In re MacBook Keyboard Litig.***, 2023 U.S. Dist. LEXIS 92063, *43 (N.D. Cal. May 25, 2023) ("rates charged are reasonable and commensurate with those charged by attorneys with similar experience in the market").

- ***Udeen v. Subaru***, No. 1:18-cv-17334-RBK-JS, ECF No. 67 at ¶ 13 (D.N.J. June 30, 2020) (approving CSKD rates).

- ***Bentley v. LG Elecs. U.S.A., Inc.***, No. 2:19-cv-13554-MCA-MAH, ECF No. 67 (D.N.J. 2020) (approving CSKD rates).

- ***In re Cigna-American Specialty Health Administrative Fee Litigation***, No. 2:16-cv-03967-NIQA (E.D. Pa.), August 29, 2019 Order, ECF No. 101 (approving CSKD rates in connection with settlement providing class members a net recovery of the full amount of administrative fees they paid).

- ***In re Nexus 6P Products Liab. Litig.***, No. 17-cv-02185-BLF, Dkt. No. 225 (N.D. Cal. Nov. 12, 2019).

- ***Weeks v. Google LLC***, No. 18-cv-00801, Dkt. No. 184 (N.D. Cal. Aug. 30, 2019).

- ***Granados v. County of L.A.***, 2018 Cal. Super. LEXIS 7807, *52 (Cal. Super. 2018).

- ***Rodman v. Safeway***, No. 3:11-cv-03003-JST (N.D. Cal.), August 23, 2018 Order, ECF No. 496 at 11-12 (approving CSKD rates in connection with $42 million full-recovery judgment affirmed on appeal at 2017 U.S. App. LEXIS 14397 (9th Cir. Aug. 4, 2017)).

- ***In re 24 Hour Fitness Prepaid, Mbrshp. Litig.***, 2018 U.S. Dist. LEXIS 235375, at *13 (N.D. Cal. June 8, 2018).

- ***Chambers v. Whirlpool Corp., et al.***, 11-1773 FMO (C.D. Cal.) (October 11, 2016) (reviewing the hourly rates of CSKD's attorneys and holding, over Defendants' objections, that "the hourly rates sought by counsel are reasonable."). In approving CSKD's fee petition over defendants' objections, Judge Olguin specifically held that CSKD "are among the most capable and experienced lawyers in the country in these kinds of cases." *See* Dkt. No. 351 at 23; Dkt. No. 218-7 at 77.

- ***In re LG Front-Loading Washing Machine Litigation***, Case No. 08-51 (D.N.J.) at Dkt. No. 421 at page 1 ("the hourly rates of each Lead Counsel firm are likewise reasonable and appropriate in a case of this complexity"); *See* Dkt. 421 at page 1; Dkt. No. 409-5 at page 59.

- ***Alessandro Demarco v. Avalon Bay Communities, Inc.***, No. 2:15-628 (D.N.J), July 11, 2017 Order; Dkt. No. 223 at ¶18 ("The court, after careful review of the time entries and rates requested by Class Counsel, and after applying the appropriate standards required by relevant case law,

hereby grants Class Counsel's application for attorneys' fees …"). The hourly rates specifically reviewed and approved by this Court include various CSKD partners and associates.

- ***In re Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation***, Case No. 15-0018 (JLL)(LAD) (D.N.J. Feb 27, 2017); Dkt. No. 126 at pg. 2, which specifically reviewed Class Counsel's "time summaries and hourly rates," and found that "the hourly rates of each of Plaintiffs' Steering Committee firm are ... reasonable and appropriate in a case of this complexity." The hourly rates specifically reviewed and approved by this Court include various CSKD partners and associates.

- ***Johnson et al. v. W2007 Grace Acquisition I Inc. et al.***, Case No. 2:13-cv-2777 (W.D. Tenn.), at ECF #135 pg. 37 (opinion filed Dec. 4, 2015) ("Both the hours spent and the hourly rates [by lead counsel CSKD] are reasonable given the nature and circumstances of this case, and the applied lodestar multiplier is at the low end of the range regularly approved in securities class actions"). The hourly rates reviewed by this Court include various CSKD partners and associates.

- ***Ardon v. City of Los Angeles***, Case No. BS363959 (Superior Court, County of Los Angeles), Final approval Order at 19-20; (approving CSKD's rates).

- ***Henderson v. Volvo Cars of N. Am.***, *LLC*, 2013 U.S. Dist. LEXIS 46291 *4-47 (D.N.J. Mar. 22, 2013) (CSKD's rates "are entirely consistent with hourly rates routinely approved by this Court in complex class action litigation.").

- ***In re Philips/Magnavox TV Litig.***, 2012 U.S. Dist. LEXIS 67287, 44-48 (D.N.J. May 14, 2012) ("The Court finds the billing rates to be appropriate and the billable time to have been reasonably expended.").

- ***In re Prudential Sec. Ins. Limited Partnerships Lit.***, 985 F. Supp. 410, 414 (S.D.N.Y. 1997) (approving CSKD's rates and hours billed in case where CSKD was on Plaintiffs' Executive Committee in settlement resulting in a $130 million recovery).

EXHIBIT 3

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- Automobile Defects and False Advertising
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Mergers & Acquisitions
- Non-Listed REITs
- Other Complex Litigation
- Securities Fraud

Education:

- University of Virginia School of Law, J.D., 1973
- University of Virginia Law Review; co-author of a course and study guide entitled "Student's Course Outline on Securities Regulation," published by the University of Virginia School of Law
- University of Pennsylvania, B.A., 1970

Memberships & Associations:

- Supreme Court of Pennsylvania Disciplinary Board Hearing Committee Member, 2008-2014.
- Past President of the National Association of Securities and Commercial Law Attorneys based in Washington, D.C., 1999-2001
- Chairman of the Public Affairs Committee of the American Hellenic Institute, Washington, D.C.
- Member of the Boards of Directors of Opera Philadelphia, Pennsylvanians for Modern Courts, and the Public Interest Law Center of Philadelphia.

Admissions:

- Supreme Court of Pennsylvania
- United States Supreme Court
- Second Circuit Court of Appeals
- Third Circuit Court of Appeals

NICHOLAS E. CHIMICLES

Mr. Chimicles has been lead counsel and lead trial counsel in major complex litigation, antitrust, securities fraud and breach of fiduciary duty suits for over 40 years. Representative Cases include:

- Mr. Chimicles led our Firm's team, including partners Kimberly Donaldson-Smith and Timothy Mathews, in representing the lead plaintiff in a securities class action, *SEPTA v. Orrstown Financial Services, Inc.* (M.D.Pa.), that had a $15 million settlement approved in May 2023. That settlement, which included a monetary contribution from the defendant bank's former outside auditor, represented a significant percentage of the recoverable damages. The case is also noteworthy for spawning a landmark Third Circuit decision that upheld the district judge's granting a motion to amend the complaint to rejoin the outside auditor and other defendants years after their initial dismissal, one of several reasons the district court's settlement approval order commended our Firm for its "relentless" efforts in the more than decade-old case.
- In three related cases involving the collection of improperly imposed telephone utility users taxes, Mr. Chimicles was co-lead counsel representing taxpayers in the Superior Court in Los Angeles, resulting in the creation of settlement funds totaling more than $120 million. *Ardon v. City of Los Angeles* ($92.5 million)(2016); *McWilliams v. City of Long Beach* ($16.6 million)(2018); and *Granados v. County of Los Angeles* ($16.9 million)(2018). The suits were settled after the Supreme Court of California unanimously upheld the rights of taxpayers to file class action refund claims under the California Government Code.
- *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation,* Civ. No. 2:13-cv-2777, involved various violations of contractual, fiduciary and corporate statutory duties by defendants who engaged in various related-party transactions, wrongfully withheld dividends and financial information, and failed to timely hold an annual preferred stockholder meeting. This litigation resulted in a swift settlement valued at over $76 million after ten months of hard-fought litigation.
- *Lockabey v. American Honda Motor Co.,* Case No. 37-2010-87755 (Superior Ct., San Diego). A settlement valued at over $170 million

- Fourth Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Tenth Circuit Court of Appeals
- Eleventh Circuit Court of Appeals
- Court of Appeals for the D.C. Circuit
- Eastern District of Pennsylvania
- Eastern District of Michigan
- Northern District of Illinois
- District of Colorado
- Eastern District of Wisconsin
- Court of Federal Claims
- Southern District of New York

Honors:

- Recipient of the American Hellenic Institute's Heritage Achievement & National Public Service Award (2019)
- Fellow of the American Bar Foundation (2017) - an honorary organization of lawyers, judges and scholars whose careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.
- Prestigious 2016 Thaddeus Stevens Award of the Public Interest Law Center (Philadelphia) in recognition of his leadership and service to this organization.
- Ellis Island Medal of Honor in May 2004, in recognition of his professional achievements and history of charitable contributions to educational, cultural and religious organizations.
- Pennsylvania and Philadelphia SuperLawyers, 2006-present.
- AV® rated by Martindale-Hubbell

resolved a consumer action involving false advertising claims relating to the sale of Honda Civic Hybrid vehicles as well as claims relating to a software update to the integrated motor assist battery system of the HCH vehicles. As a lead counsel, Mr. Chimicles led a case that, in the court's view, was "difficult and risky" and provided "significant public value."

- *City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc.*, Case No. 07 C 6174 (N.D. Ill.). A $90 million settlement was reached in 2010 in this class action challenging the accuracy of a proxy statement that sought (and received) stockholder approval of the merger of an external advisor and property managers by a multi-billion dollar real estate investment trust, Inland Western Retail Real Estate Trust, Inc. The settlement provided that the owners of the advisor/property manager entities (who are also officers and/or directors of Inland Western) had to return nearly 25% of the Inland Western stock they received in the merger.
- *In re Real Estate Associates Limited Partnerships Litigation*, No. CV 98-7035 DDP, was tried in the federal district court in Los Angeles before the Honorable Dean D. Pregerson. Mr. Chimicles was lead trial counsel for the Class of investors in this six-week jury trial of a securities fraud/ breach of fiduciary duty case that resulted in a $185 million verdict in late 2002 in favor of the Class (comprising investors in the eight REAL Partnerships) and against the REALs' managing general partner, National Partnership Investments Company ("NAPICO") and the four individual officers and directors of NAPICO. The verdict included an award of $92.5 million in punitive damages against NAPICO. This total verdict of $185 million was among the "Top 10 Verdicts of 2002," as reported by the National Law Journal (verdictsearch.com). On post-trial motions, the Court upheld in all respects the jury's verdict on liability, upheld in full the jury's award of $92.5 million in compensatory damages, upheld the Class's entitlement to punitive damages (but reduced those damages to $2.6 million based on the application of California law to NAPICO's financial condition), and awarded an additional $25 million in pre-judgment interest. Based on the Court's decisions on the post-trial motions, the judgment entered in favor of the Class on April 28, 2003 totaled over $120 million.
- *CNL Hotels & Resorts, Inc. Securities Litigation*, Case No. 6:04-cv-1231 (M.D. Fla., Orl. Div. 2006). The case settled Sections 11 and 12 claims for $35 million in cash and Section 14 proxy claims by significantly reducing the merger consideration by nearly $225 million (from $300 million to $73 million) that CNL paid for internalizing its advisor/ manager.
- *Prudential Limited Partnerships Litigation*, MDL 1005 (S.D.N.Y.). Mr. Chimicles was a member of the Executive Committee in this case where the Class recovered from Prudential and other defendants $130 million in settlements, that were approved in 1995. The Class

- *Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712 (N.D. Ill.) involving a twenty-week jury trial in which Mr. Chimicles was lead trial counsel for the Class that concluded in July, 1987 (the Class ultimately recovered nearly $40 million).

ROBERT J. KRINER, JR.

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Delaware Law School of Widener University, J.D., 1988
- University of Delaware, B.S. Chemistry, 1983

Memberships:

- Delaware State Bar Association

Admissions:

- Supreme Court of Delaware

Robert K. Kriner, Jr. is a Partner in the Firm's Wilmington, Delaware office. From 1988 to 1989, Mr. Kriner served as law clerk to the Honorable James L. Latchum, Senior Judge of the United States District Court for the District of Delaware. Following his clerkship and until joining the Firm, Mr. Kriner was an associate with a major Wilmington, Delaware law firm, practicing in the areas of corporate and general litigation.

Mr. Kriner has prosecuted actions, including class and derivative actions, on behalf of stockholders, limited partners and other investors with claims relating to mergers and acquisitions, hostile acquisition proposals, the enforcement of fiduciary duties, the election of directors, and the enforcement of statutory rights of investors such as the right to inspect books and records. Among his recent achievements are Sample v. Morgan, C.A. No. 1214-VCS (obtaining full recovery for shareholders diluted by an issuance of stock to management), Edward Asner v. SAG-AFTRA Health Fund, No. 20-101914 (resulting in a $20.6 million settlement for performers and actors affected by changes to health plan), In re Genentech, Inc. Shareholders Litigation, Consolidated C.A. No. 3911-VCS (leading to a nearly $4 billion increase in the price paid to the Genentech stockholders) and In re Kinder Morgan, Inc. Shareholders Litigation, Consolidated Case No. 06-C-801 (action challenging the management led buyout of Kinder Morgan, settled for $200 million).

Recently, Mr. Kriner led the prosecution of a derivative action in the Delaware Court of Chancery by stockholders of Bank of America Corporation relating to the January 2009 acquisition of Merrill Lynch & Co. In re Bank of America Corporation Stockholder Derivative Litigation, C.A. No. 4307-CS. The derivative action concluded in a settlement which included a $62.5 million payment to Bank of America.

Steven A. Schwartz

Practice Areas:

- Antitrust
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

Education:

- Duke University School of Law, J.D., 1987
- ◊ Law & Contemporary Problems Journal, Senior Editor
- University of Pennsylvania, B.A., 1984 - *cum laude*

Memberships & Associations:

- National Association of Shareholder and Consumer Attorneys (NASCAT) Executive Committee Member
- American Bar Association
- Pennsylvania Bar Association

Admissions:

- United States Supreme Court
- Pennsylvania Supreme Court
- Third Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Eighth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Eastern District of Pennsylvania
- Western District of Pennsylvania
- Eastern District of Michigan
- District of Colorado

Honors:

- National Trial Lawyers Top 100
- AV Rating from Martindale Hubbell
- Pennsylvania Super Lawyer, 2006-Present
- America's Top 100 High Stakes Litigator

STEVEN A. SCHWARTZ has prosecuted complex class actions in a wide variety of contexts. Notably, Mr. Schwartz has been successful in obtaining several settlements and judgments where class members received a full recovery on their damages. Representative cases include:

- *In re Philips Recalled CPAP, Bi-Level PAP, And Mechanical Ventilator Products Litigation*, MDL No. 3014 (W.D. Pa.). The Court appointed Mr. Schwartz as Plaintiffs' Co-Lead Counsel in this multi district litigation alleging claims for economic losses, medical monitoring and personal injury in connection with Philips' recall of millions of CPAPs, BiPAPs and ventilators that contained polyester-based polyurethane foam that degrades into particles and emits volatile toxic compounds. This case is ongoing.
- *Edward Asner v. SAG-AFTRA Health Fund*, No. 20-10914 (C.D. Cal.). Mr. Schwartz serves as Co-Lead Class Counsel in this ERISA case, which challenges the SAG-AFTRA Health Plan Trustees' decision to merge the SAG and AFTRA health plans, their related failures to implement the merger and properly manage the Plan's deteriorating financial condition, their imprudent negotiation of the 2019 and 2020 Commercials, Netflix and TV/Theatrical contracts, and the subsequent decision to eliminate health benefits for senior actors. The parties reached a proposed settlement for $20.6 million along with substantial non-monetary benefits. *See* https://youtu.be/4LgRxJnxI8o featuring prominent actors supporting the lawsuit.
- *In re Macbook Keyboard Litigation*, No. 5:18-cv-02813 -EJD (N. D. Cal.). Mr. Schwartz served as Co-Lead Class Counsel in this case alleging that the ultra-thin "butterfly keyboard in Apple MacBooks were defective. Shortly before trial, the case settled for $50 million. The settlement was recognized as the Number 1 Consumer Fraud Settlement in California for 2022 by TopVerdict.com.
- *Snitzer v. Board of Trustees of the American Federation of Musicians Pension Plan*, No. 1:17-cv-5361 (S.D.N.Y.). Mr. Schwartz served as Plaintiffs' Lead Counsel in this case which alleged that the Trustees of the AFM Pension Plan made a series of imprudent, overly-aggressive bets by investing an excessive percentage of plan assets in risky asset classes such ss emerging markets equities and private equity far beyond the percentage of such investment by other Taft-Hartley pension plans. The cases settled shortly before trial for $26.85 million plus substantial governance reforms including appointment of a Neutral Independent Fiduciary. The Trustee independent neutral trustee. The $26.85 million cash recovery represented the vast majority of provable damages that likely could have been won at trial and between about 65% to 75% of the Trustees' available insurance policy limits to pay any final judgment achieved through continued litigation.
- *In re Cigna-American Specialty Health Administrative Fee Litigation*,

No. 2:16-cv-03967-NIQA (E. D. Pa.). Mr. Schwartz served as co-lead counsel in this national class action alleging that defendant Cigna and its subcontractor, ASH, violated the written terms of ERISA medical benefit by treating ASH's administrative fees as medical expenses to artificially inflate the amount of "benefits" owed by plans and the cost-sharing obligations of plan participants and beneficiaries. The Court approved the $8.25 million settlement in which class members were automatically mailed checks representing a full or near-full recovery of the actual amount they paid for the administrative fees. ECF 101 at 4, 23-24.

- *Rodman v. Safeway Inc.*, No. 11-3003-JST (N.D. Cal.). Mr. Schwartz served as Plaintiffs' Lead Trial Counsel and presented all of the district court and appellate arguments in this national class action regarding grocery delivery overcharges. He was successful in obtaining a national class certification and a series of summary judgment decisions as to liability and damages resulting in a $42 million judgment, which represents a full recovery of class members' damages plus interest. The $42 million judgment was entered shortly after a scheduled trial was postponed due to Safeway's discovery misconduct, which resulted in the district court imposing a $688,000 sanction against Safeway. The Ninth Circuit affirmed the $42 million judgment. 2017 U.S. App. LEXIS 14397 (9th Aug. 4, 2017).

- *In re Apple iPhone/iPod Warranty Litig.*, 3:10-1610-RS (N.D. Cal.). Mr. Schwartz served as co-lead counsel in this national class action in which Apple agreed to a $53 million non-reversionary, cash settlement to resolve claims that it had improperly denied warranty coverage for malfunctioning iPhones due to alleged liquid damage. Class members were automatically mailed settlement checks for more than 117% of the average replacement costs of their iPhones, net of attorneys' fees, which represented an average payment of about $241.

- *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, No. 06 C 7023, (N.D. Ill.) & Case 1:09-wp-65003-CAB (N. D. Ohio) (MDL No. 2001). Schwartz served as co-lead class counsel in this case which related to defective central control units ("CCUs") in front load washers manufactured by Whirlpool and sold by Sears. After extensive litigation, including two trips to the Seventh Circuit and a trip to the United States Supreme Court challenging the certification of the plaintiff class, he negotiated a settlement shortly before trial that the district court held, after a contested proceeding approval proceeding, provided a "full-value, dollar-for-dollar recovery" that was "as good, if not a better, [a] recovery for Class Members than could have been achieved at trial." 2016 U.S. Dist. LEXIS 25290 at *35 (N.D. Ill. Feb. 29, 2016).

- *Chambers v. Whirlpool Corp., et al., Case No.* 11-1773 FMO (C.D. Cal.). Mr. Schwartz served as co-lead counsel in this national class action involving alleged defects resulting in fires in Whirlpool, Kenmore, and KitchenAid dishwashers. The district court approved a settlement which he negotiated that provides wide-ranging relief to owners of approximately 24 million implicated dishwashers, including a full recovery of out-of-pocket damages for costs to repair or replace dishwashers that suffered Overheating Events. In approving the settlement, Judge Olguin of the Central District of California described Mr. Schwartz as "among the most capable and experienced lawyers in the country in [consumer class actions]."

214 F. Supp. 3d 877, 902 (C.D. Cal. 2016).

- ***Wong v. T-Mobile,*** 05-cv-73922-NGE-VMM (E.D. Mich.). In this billing overcharge case, Mr. Schwartz served as co-lead class counsel and negotiated a settlement where T-Mobile automatically mailed class members checks representing a 100% net recovery of the overcharges and with all counsel fees paid by T-Mobile in addition to the class members' 100% recovery.

- ***In re Certainteed Corp. Roofing Shingle Products Liability Litig.***, No, 07 -md-1817-LP (E.D. Pa.). In this MDL case related to defective roof shingles, Mr. Schwartz served as Chair of Plaintiffs' Discovery Committee and worked under the leadership of co-lead class counsel. The parties reached a settlement that provided class members with a substantial recovery of their out-of-pocket damages and that the district court valued at between $687 to $815 million.

- ***Shared Medical Systems 1998 Incentive Compensation Plan Litig.,*** Mar. Term 2003, No. 0885 (Phila. C.C.P.). In this case on behalf of Siemens employees, after securing national class certification and summary judgment as to liability, on the eve of trial, Mr. Schwartz negotiated a net recovery for class members of the full amount of the incentive compensation sought (over $10 million) plus counsel fees and expenses. At the final settlement approval hearing, Judge Bernstein remarked that the settlement "should restore anyone's faith in class action[s]. . . ." Mr. Schwartz served as co-lead counsel in this case and handled all of the arguments and court hearings.

- ***In re Pennsylvania Baycol: Third-Party Payor Litig.***, Sept. Term 2001, No. 001874 (Phila. C.C.P.) ("Baycol"). Mr. Schwartz served as co-lead class counsel in this case brought by health and welfare funds and insurers to recover damages caused by Bayer's withdrawal of the cholesterol drug Baycol. After extensive litigation, the court certified a nationwide class and granted plaintiffs' motion for summary judgment as to liability, and on the eve of trial, he negotiated a settlement providing class members with a net recovery that approximated the maximum damages (including pre-judgment interest) that class members suffered. That settlement represented three times the net recovery of Bayer's voluntary claims process (which AETNA and CIGNA had negotiated and was accepted by many large insurers who opted out of the class early in the litigation)

- ***Wolens v. American Airlines, Inc.*** Schwartz served as plaintiffs' co-lead counsel in this case involving American Airlines' retroactive increase in the number of frequent flyer miles needed to claim travel awards. In a landmark decision, the United States Supreme Court held that plaintiffs' claims were not preempted by the Federal Aviation Act. 513 U.S. 219 (1995). After eleven years of litigation, American Airlines agreed to provide class members with mileage certificates that approximated the full extent of their alleged damages, which the Court, with the assistance of a court-appointed expert and after a contested proceeding, valued at between $95.6 million and $141.6 million.

- ***In Re ML Coin Fund Litigation,*** (Superior Court of the State of California for the County of Los Angeles). Mr. Schwartz served as plaintiffs' co-lead counsel and successfully obtained a settlement from defendant Merrill Lynch in excess of $35 million on behalf of

limited partners, which represented a 100% net recovery of their initial investments (at the time of the settlement the partnership assets were virtually worthless due to fraud committed by Merrill's co-general partner Bruce McNall, who was convicted of bank fraud).

- ***Nelson v. Nationwide,*** July Term 1997, No. 00453 (Phila. C.C.P.). Mr. Schwartz served as lead counsel on behalf of a certified class. After securing judgment as to liability in the trial court (34 Pa. D. & C. 4th 1 (1998)), and defeating Nationwide's Appeal before the Pennsylvania Superior Court, 924 PHL 1998 (Dec. 2, 1998), he negotiated a settlement whereby Nationwide agreed to pay class members approximately 130% of their bills.

Timothy N. Mathews

Practice Areas:

- Antitrust
- Corporate Mismanagement
- Consumer Fraud & Deceptive Products
- Securities Fraud Litigation

Education:

- Rutgers School of Law-Camden, J.D., 2003 - *with High Honors*
- Rutgers University-Camden, B.A., 2000 - *with Highest Honors*

Memberships & Associations:

- National Association of Shareholder and Consumer Attorneys (NASCAT) Amicus Committee Member
- Rutgers Journal of Law & Religion – Lead Marketing Editor (2002-2003)

Admissions:

- Pennsylvania
- New Jersey
- Eastern District of Pennsylvania
- District of New Jersey
- United States Court of Appeals for the First Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Eleventh Circuit

Honors:

- 2019-2021 Lawdragon 500 Leading Plaintiff Lawyer
- Super Lawyers 2019-2023
- Pennsylvania Super Lawyers Rising Star 2008, 2010, 2013-2014
- Rutgers Law Legal Writing Award 2003

Tim Mathews is a partner in the firm's Haverford office. He has been described as "among the most capable and experienced lawyers in the country" in consumer class action litigation. *Chambers v. Whirlpool*, 214 F. Supp 3d 877 (C.D.Cal. 2016). He is also an experienced appellate attorney in the United States Courts of Appeals for the Third, Fourth, Ninth, and Eleventh Circuits, as well as the Supreme Court of California. Representative cases in which Mr. Mathews has held a lead role include:

- *SEPTA v. Orrstown Financial Services, Inc., et al.* (M.D. Pa) - $15 million settlement in a securities fraud action after successfully briefing and arguing a landmark appeal in the United States Court of Appeals for the Third Circuit (*SEPTA v. Orrstown Fin. Servs*., 12 F.4th 337, 342 (3d Cir. 2021));
- *Suarez v. Nissan North America* (M.D.Tenn.) – over $50 million settlement providing reimbursements, free repairs, and extended warranty for Nissan Altima headlamps;
- *Rodman v. Safeway, Inc.* (N.D.Cal.) – $42 million judgment against Safeway, Inc., representing 100% of damages plus interest for grocery delivery overcharges;
- *Ardon v. City of Los Angeles* (Superior Court, County of Los Angeles) – $92.5 million tax refund settlement with the City of Los Angeles after winning landmark decision in the Supreme Court of California securing the rights of taxpayers to file class-wide tax refund claims under the CA Government Code;
- *McWilliams v. City of Long Beach* (Superior Court, County of Los Angeles) - $16.6 million telephone tax refund settlement;
- *Granados v. County of Los Angeles* - $16.9 million telephone tax refund settlement;
- *In re 24 Hour Fitness Prepaid Memberships. Litig.* (N.D.Cal.) - Full-relief settlement providing over $8 million in refunds and an estimated minimum of $16 million in future rate reductions, for class of consumers who purchased prepaid gym memberships;
- *Chambers v. Whirlpool Corp.* (C.D.Cal.) – Settlement providing 100% of repair costs and other benefits for up to 24 million dishwashers that have an alleged propensity to catch fire due to a control board defect;
- *Livingston v. Trane U.S. Inc.* (D.N.J.) – multimillion-dollar settlement providing repair reimbursements, extended warranty coverage, and free service for owners of defective air conditioners;

- *In re Apple iPhone Warranty Litig.* (N.D.Cal.) – $53 million settlement in case alleging improper iPhone warranty denials; class members received on average 118% of their damages;
- *In re Colonial Bancgroup, Inc*.– Settlements totaling $18.4 million for shareholders in securities lawsuit involving one of the largest U.S. bank failures of all time;
- *International Fibercom* (D.Ariz.) – Represented plaintiff in insurance coverage actions against D&O carriers arising out of securities fraud claims; achieved a near-full recovery for the plaintiff; and
- *In re Mutual Funds Investment Litigation*, MDL 1586 (D.Md.) – Lead Fund Derivative Counsel in the multidistrict litigation arising out of the market timing and late trading scandal of 2003, which involved seventeen mutual fund families and hundreds of parties, and resulted in over $250 million in settlements.

Mr. Mathews graduated from Rutgers School of Law-Camden with high honors, where he served as Lead Marketing Editor for the Rutgers Journal of Law & Religion, served as a teaching assistant for the Legal Research and Writing Program, received the 1L legal Writing Award, and received a Dean's Merit Scholarship and the Hamerling Merit Scholarship. He received his B.A. from Rutgers University-Camden in 2000 with highest honors, where he was inducted into the Athenaeum honor society.

Mr. Mathews also serves as Co-Chair of the Planning Commission for the township of Lower Merion. His pro bono work has included representation of the Holmesburg Fish and Game Protective Association in Philadelphia. He also served on the Amicus Committee for the National Association of Shareholder and Consumer Attorneys (NASCAT) for over ten years.

Scott M. Tucker

Practice areas:

- Corporate Mismanagement and Shareholder Derivative Actions
- Mergers and Acquisitions

Education:

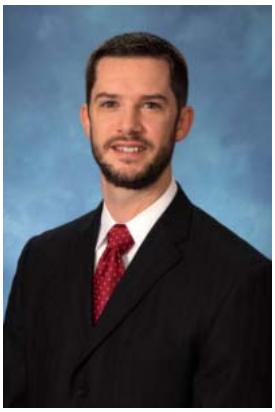
- SUNY Cortland, B.S., 2002, *cum laude*
- Syracuse University College of Law, 2006, J.D., *cum laude*
- Whitman School of Management at Syracuse University, 2006, M.B.A

Admissions:

- Supreme Court of Delaware
- Supreme Court of Connecticut
- District of Colorado
- District of Delaware
- Third Circuit Court of Appeals

Honors:

- Named a 2016, 2017, 2018, and 2019 Delaware "Rising Star"
- Martindale Hubbell-Distinguished rated
- 2015–2017 Secretary of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- 2013 – 2015 Assistant Secretary of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- 2010 – 2013 Associate Member of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- Member, Richard S. Rodney Inn of Court



Scott M. Tucker is a Partner in the Firm's Wilmington Office. Mr. Tucker is a member of the Firm's Mergers & Acquisitions and Corporate Mismanagement and Shareholder Derivative Action practice areas. Together with the Firm's Partners, Mr. Tucker assisted in the prosecution of the following actions:

- *In re Kinder Morgan, Inc. Shareholders Litigation*, Consol. C.A. No. 06-C-801 (Kan.) (action challenging the management led buyout of Kinder Morgan Inc., which settled for $200 million).
- *In re J.Crew Group, Inc., Shareholders Litigation.* C.A. No. 6043-CS (Del. Ch.) (action that challenged the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management which resulted in a settlement fund of $16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction be approved by a majority of the unaffiliated shareholders).
- *In re Genentech, Inc. Shareholder Litigation*, C.A. No. 3911-VCS (Del. Ch.) (action challenging the attempt by Genentech's controlling stockholder to take Genentech private which resulted in a $4 billion increase in the offer).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.*, C.A. No. 6900-VCP (Del. Ch.) (action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and controlling shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery.
- *In re Sanchez Derivative Litigation*, C.A. No. 9132-VCG (Del. Ch.) (action challenging a related party transaction between Sanchez Energy Inc. and Sanchez Resources, LLC a privately held company, which settled for roughly $30 million in cash and assets)

Mr. Tucker is a Member of the Richard S. Rodney Inn of Court. While attending law school, Mr. Tucker was a member of the Securities Arbitration Clinic and received a Corporate Counsel Certificate from the Center for Law and Business Enterprise.

Benjamin F. Johns

Practice Areas:

- Antitrust
- Automobile Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud
- Data Breach

Education:

- Penn State Dickinson School of Law, J.D., 2005 - Woolsack Honor Society
- Penn State Harrisburg, M.B.A., 2004 - Beta Gamma Sigma Honor Society
- Washington and Lee University, B.S., 2002 - *cum laude*

Memberships & Associations:

- Executive Committee, Young Lawyers Division of the Philadelphia Bar Association (2011-2014)
- Board Member, The Dickinson School of Law Alumni Society
- Editorial Board, Philadelphia Bar Reporter (2013-2016)
- The Federalist Society

Admissions:

- Supreme Court of Pennsylvania
- Supreme Court of New Jersey
- Third Circuit Court of Appeals
- Fifth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- D.C. Circuit Court of Appeals
- Eastern District of Pennsylvania
- Middle District of Pennsylvania
- Western District of Pennsylvania
- District of New Jersey
- District of Colorado
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- U.S. Court of Federal Claims
- Eastern District of Wisconsin

Benjamin F. Johns first began working at the firm as a Summer Associate while pursuing a J.D./M.B.A. joint degree program in business school and law school. He became a full-time Associate upon graduation, and is now a Partner. Over the course of his legal career, Ben has argued in state and federal courts across the country, including the Pennsylvania Supreme Court (won unanimous reversal), Pennsylvania Commonwealth Court (won), and U.S. Court of Appeals for the D.C. Circuit (lost, 2-1). He has taken and defended hundreds of depositions, including those of c-suite level executives of Fortune 500 companies, lawyers, bankers, experts, engineers, prison guards, I.R.S. officials, and information technology personnel.

Ben is currently serving as Court appointed interim co-lead counsel in several consumer data breach class actions, including *In re Wawa, Inc. Data Security Litig*., Lead Case No. 2:19-cv-06019-GEKP (E.D. Pa); *Kostka v. Dickey's Barbeque Rests*., Civil Action No. 3:20-cv—3424-K (N.D. Tex.); and *In re Rutter's Inc. Data Security Breach Litig*., No. 1:20-cv-382 (M.D. Pa.). He is also a Court appointed member of the Plaintiffs' Steering Committee in *Dusterhoft v. OneTouchPoint, Inc.,* 22-cv-0882-bhl (E.D. Wisc.), another data breach case involving medical information. In the defective automobile arena, Ben is currently serving as Chair of the Executive Committee in *In re Subaru Battery Drain Prods. Liab. Litig.*, Civil Action No. 1:20-cv-03095-JHR-JS (D.N.J.) and as a member of the Plaintiffs' Steering Committee in *Altobelli v. General Motors LLC*, No. 20-cv -13256 (E.D. Mich.). The complaints in both of these cases have largely withstood motions to dismiss, and a proposed settlement is pending in the former matter.

Over the course of his career, Ben has provided substantial assistance in the prosecution of the following cases:

- *In re Macbook Keyboard Litig.*, No. 5:18-cv-02813-EJD (N.D. Cal.) (Mr. Johns took and defended numerous depositions and successfully argued two motions to dismiss and plaintiffs' motion for class certification in this case which has settled for a $50 million common fund.)
- *Udeen v. Subaru of Am., Inc.,* 18-17334 (RBK/JS) (D.N.J.) (Mr. Johns was co-lead counsel in this consumer class action involving allegedly defective infotainment systems in certain Subaru automobiles, which resulted a settlement valued at $6.25 million. At the hearing granting final approval of the settlement, the district court commented that the plaintiffs' team "are very skilled and very efficient lawyers…They've done a nice job.")
- *In re Nexus 6P Product Liability Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (Mr. Johns served as co-lead counsel – and argued two of the motions to dismiss – in this defective smartphone class action. The case resulted in a settlement valued at $9.75 million, which Judge Beth Labson Freeman described as "substantial" and an "excellent resolution of the case.")
- *In re MyFord Touch Consumer Litig*., No. 13-cv-03072-EMC (N.D. Cal.)

(Mr. Johns served as court-appointed co-lead counsel in this consumer class action concerning allegedly defective MyFord Touch infotainment systems, which settled for $17 million shortly before trial)

- *Weeks v. Google LLC,* No. 5:18-cv-00801-NC, 2019 U.S. Dist. LEXIS 215943, at *8-9 (N.D. Cal. Dec. 13, 2019) (Mr. Johns was co-lead counsel – and successfully argued against a motion to dismiss – in this defective smartphone class action. A $7.25 million settlement was reached, which Magistrate Judge Nathanael M. Cousins described as being an "excellent result.")
- *Gordon v. Chipotle Mexican Grill, Inc*., No. 17-cv-01415-CMA-SKC (D. Colo.) (Mr. Johns served as co-lead counsel of behalf of a class of millions of cardholders who were impacted by a data breach at Chipotle restaurants. After largely defeating a motion to dismiss filed by Chipotle, the case resulted in a favorable settlement for affected consumers. At the final approval of the settlement, the district court noted that class counsel has "extensive experience in class action litigation, and are very familiar with claims, remedies, and defenses at issue in this case.")
- *Bray et al. v. GameStop Corp.,* No. 1:17-cv-01365-JEJ (D. Del.) (Mr. Johns served as co-lead counsel for consumers affected by a data breach at GameStop. After largely defeating a motion to dismiss, the case was resolved on favorable terms that provided significant relief to GameStop customers. At the final approval hearing, the District Judge found the settlement to be "so comprehensive that really there's nothing else that I need developed further," that "the settlement is fair," "reasonable," and "that under the circumstances it is good for the members of the class under the circumstances of the claim.")
- *In re: Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litig.*, No. 15-cv-18-JLL-JAD (D.N.J.) (Mr. Johns served on the Plaintiffs' Steering Committee in this MDL proceeding, which involved allegedly defective wood-composite decking, and which ultimately resulted in a $20 million settlement)
- *In re Checking Account Overdraft Litig.,* No. 1:09-MD-02036-JLK (S.D. Fla.). (Ben was actively involved in these Multidistrict Litigation proceedings, which involve allegations that dozens of banks reorder and manipulate the posting order of debit transactions. Settlements collectively in excess of $1 billion were reached with several banks. Ben was actively involved in prosecuting the actions against U.S. Bank ($55 million settlement) and Comerica Bank ($14.5 million settlement)
- *In re Flonase Antitrust Litig.,* 2:08-cv-03301-AB (E.D. Pa.). (indirect purchaser plaintiffs alleged that the manufacturer of Flonase (a nasal allergy spray) filed "sham" citizen petitions with the FDA in order to delay the approval of less expensive generic versions of the drug. A $46 million settlement was reached on behalf of all indirect purchasers. Ben argued a motion before the District Court.)
- *In re TriCor Indirect Purchasers Antitrust Litig.,* No. 05-360-SLR (D. Del.). ($65.7 million settlement on behalf of indirect purchasers who claimed that the manufacturers of a cholesterol drug engaged in anticompetitive conduct designed to keep generic versions off of the market.)
- *Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation,* No. 1:10-cv-00264-CAB (N.D. Ohio). ($20 million settlement on behalf of hospitals and surgery centers that purchased

a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA.)

- *West v. ExamSoft Worldwide, Inc.*, No. 14-cv-22950-UU (S.D. Fla.) ($2.1 million settlement on behalf of July 2014 bar exam applicants in several states who paid to use software for the written portion of the exam which allegedly failed to function properly)
- *Henderson v. Volvo Cars of North America, LLC,* No. 2:09-cv-04146-CCC-JAD (D. N.J.). (provided substantial assistance in this consumer automobile case that settled after the plaintiffs prevailed, in large part, on a motion to dismiss)
- *In re Marine Hose Antitrust Litig.,* No. 08-MDL-1888 (S.D. Fla.) (Settlements totaling nearly $32 million on behalf of purchasers of marine hose)
- *In re Philips/Magnavox Television Litig.,* No. 2:09-cv-03072-CCC-JAD (D. N.J.). (Settlement in excess of $4 million on behalf of consumers whose flat screen televisions failed due to an alleged design defect. Ben argued against one of the motions to dismiss.)
- *Allison, et al. v. The GEO Group*, No. 2:08-cv-467-JD (E.D. Pa.), and *Kurian v. County of Lancaster*, No. 2:07-cv-03482-PD (E.D. Pa.). (Settlements totaling $5.4 million in two civil rights class action lawsuits involving allegedly unconstitutional strip searches at prisons)
- *In re Canon Inkjet Printer Litig*., No. 2-14-cv-03235-LDW-SIL (E.D.N.Y.) (Ben was co-lead counsel in this consumer class action involving allegedly defective printers that resulted in a $930,000 settlement.)
- *In re Recoton Sec. Litig.*, 6:03-cv-00734-JA-KRS (M.D.Fla.). ($3 million settlement for alleged violations of the Securities Exchange Act of 1934)
- *Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB (D. Colo.). (Obtained a settlement in this consumer fraud case that provided full recovery to approximately 930,000 class members)

Ben has also had success at the appellate level in cases to which he substantially contributed. *See Cohen v. United States*, 578 F.3d 1 (D.C. Cir. 2009), *reh'g granted per curiam*, 599 F.3d 652 (D.C. Cir. 2010), *remanded by*, 650 F.3d 717 (D.C. Cir. 2011) (en banc) (reversing district court's decision to the extent that it dismissed taxpayers' claims under the Administrative Procedure Act); *Lone Star Nat'l Bank, N.A. v. Heartland Payment Sys.*, No. 12-20648, 2013 U.S. App. LEXIS 18283 (5th Cir. Sept. 3, 2013) (reversing district court's decision dismissing financial institutions' common law tort claims against a credit card processor).

Ben was elected by fellow members of the Philadelphia Bar Association to serve a three year term on the Executive Committee of the organization's Young Lawyers Division. He also served on the Editorial Board of the Philadelphia Bar Reporter, and the Board of Directors for the Dickinson School of Law Alumni Society. Ben was also a head coach in the Narberth basketball summer league for several years. He has been published in the Philadelphia Lawyer magazine and the Philadelphia Bar Reporter, presented a Continuing Legal Education course , and spoken to a class of law school students about the practice. While in college, Ben was on the varsity basketball team and spent a semester studying abroad in Osaka, Japan. Ben has been named a "Lawyer on the Fast Track" by The Legal Intelligencer, a "Top 40 Under

40" attorney by The National Trial Lawyers, and a Pennsylvania "Rising Star" for the past nine years.

Beena M. McDonald

Beena Mallya McDonald is a Partner in the Firm's Haverford office. She is an experienced federal and state trial attorney, having first-chaired numerous civil and criminal jury trials, hundreds of bench trials, and innumerable arbitrations, motions, and depositions. She has also successfully argued before the Judicial Panel on Multidistrict Litigation for centralization of large-scale nationwide class actions.

Beena focuses her practice on complex litigation including consumer protection, ERISA, and securities fraud cases. She manages cases that demand significant motion practice, massive e-discovery, and numerous depositions of Fortune 500 corporate 30(b)(6) witnesses and fiduciaries, product design and development engineers, marketing heads, investment company executives, and liability and damages experts. She also serves as part of the firm's Client Business Development group, responsible for overseeing client portfolio monitoring, evaluation, and litigation, and maintaining client relationships.

Prior to joining the firm Beena served as a Special Assistant U.S. Attorney in the Southern District of California where she prosecuted major corruption, drug importation and immigration cases. Upon initially receiving her law degree, she rose through the ranks at the Defender Association of Philadelphia. She also served as lead counsel in cases throughout the Philadelphia area while in-house at Allstate Insurance Company.

Beena's extensive trial experience is also bolstered by her business management experience working for a Fortune 200 company, allowing her to bring this business acumen to her current practice representing defrauded consumers and investors.

- *In re Phillips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Liability Litigation* (MDL No. 3014) (W.D. Pa.) (successfully argued before the Judicial Panel on Multidistrict Litigation for centralization of more than 100 class action and personal injury cases to the Western District of Pennsylvania, arising out of Philips' recall of certain Continuous Positive Airway Pressure (CPAP), Bi-Level Positive Airway Pressure (Bi-Level PAP), and mechanical ventilator devices, due to the potential that its polyester-based polyurethane (PE-PUR) sound abatement foam may degrade into particles or off-gas volatile organic compounds that may then be ingested or inhaled by the user, causing injury);
- *In re MacBook Keyboard Litig.*, No: 5:18-cv-02813-EJD (N.D. Cal.) (served as Co-Lead Class Counsel in a class action lawsuit alleging that Apple sold MacBook, MacBook Pro, and MacBook Air butterfly keyboard laptops from 2015 – 2020 with a known defect of allowing dust and debris to disrupt the keyboard use. Shortly before trial, the case settled for $50 million. The Settlement was recognized as the Number 1 Consumer Fraud Settlement in California for 2022 by TopVerdict.com.);

Practice Areas:

- Consumer Protection and Defective Products
- Data Breach
- ERISA
- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Other Complex Litigation

Education:

- Widener University Delaware Law School, J.D., 1998
- Pennsylvania State University, B.A., 1995

Memberships and Associations:

- The Sedona Conference, Working Group 1
- American Bar Association (ABA), Litigation Section:
  - 2023 Co-Chair Diverse Trial Lawyer Academy
  - 2022-2024 Diverse Leaders Academy
  - Class and Derivative Suits Committee
- Complex Litigation e-Discovery Forum (CLEF)
- American Association of Justice (AAJ)
- Philadelphia Bar Association
- South Asian Bar Association, Philadelphia Chapter

Admissions:

- Pennsylvania
- District of Columbia
- Third Circuit Court of Appeals
- Eastern District of Pennsylvania
- Western District of Pennsylvania
- Middle District of Pennsylvania
- Eastern District of Michigan

Speaking Engagements and Publications:

- The Sedona Conference, WG1 Drafting Committee on Unique eDiscovery Challenges in Multidistrict Litigation
- ABA Litigation Section Annual 2023, The Great Tuna Debate
- CLEF Annual 2023, What's New in Defendants' Playbook

- *In re Chevy Bolt EV Battery Litigation*, No. 2:21-cv-13256-TGB-CI (E.D. Mich.) (argued before the Judicial Panel on Multidistrict Litigation, that was ultimately centralized in the Eastern District of Michigan, in this class action against General Motors LLC and various LG entities alleging that the Chevy Bolt EV is defective, causing its electric battery to overheat when charged to full or nearly full capacity, which has resulted in devastating fires and created an unreasonable safety risk to these vehicle owners. The operative complaint covers all Model Year 2020 – 2022 Chevy Bolts EVs and asserts that the defendants, as claimed by both GM and LG, were "strategic partners" in researching, developing, and manufacturing the Bolt EV and its critical components, including the defective electric battery cells and pack);
- *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (class action lawsuit alleging that smartphones manufactured by Google and Huawei contain defects that cause the phones to "bootloop" and experience sudden battery drain; after overcoming a motion to dismiss, a $9.75 million settlement was reached, which Judge Beth Labson Freeman described as "substantial" and an "excellent resolution of the case.");
- *Weeks v. Google LLC*, No. 5:18-cv-00801-NC (N.D. Cal.) (consumer class action against Google relating to Pixel smartphones, alleging that Google sold these phones with a known microphone defect; after defeating a motion to dismiss, a $7.25 million settlement was reached, which Magistrate Judge Nathanael M. Cousins described as being an "excellent result.");
- *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415- CMA (D. Colo.) (class action relating to a data breach suffered by Chipotle that allegedly exposed consumers' payment card data to hackers, in which a $1.6 million settlement was reached);
- *Christofferson v. Creation Entertainment, Inc.*, No. 19STCV11000 (Sup. Ct. CA). (class action relating to a data breach suffered by Creation Entertainment that allegedly exposed consumers' payment card data to hackers, in which a $950,000 settlement was reached);
- *Turner v. Sony Interactive Entertainment LLC*, No. 4:21-cv-02454-DMR (N.D. Cal.) (class action lawsuit alleging that Sony's PlayStation 5 DualSense Controller suffers from a "drift defect" that results in character or gameplay moving on the screen without user command or manual operation of the controller thereby compromising its core functionality);
- *Davis v. Washington University*, No. 4:17-cv-01641-RLW (E.D. Missouri) (ERISA class action lawsuit alleging breach of fiduciary duties in managing the Washington University in St. Louis Retirement Plan – one of the largest university retirement plans in the country with $5.8 billion in assets and more than 27,000 participants – causing it to incur unreasonable and excessive recordkeeping fees; Judge White approved a $7.5 million settlement on behalf of the class);
- *Spitzley v. Mercedes-Benz U.S. Int'l, Inc.*, 7:21-cv-00074-RDP (N.D. Ala.) (ERISA class action lawsuit alleging breach of fiduciary duties in managing the Mercedes-Benz International Retirement and Savings Plan – a $934 million plan with more than 4,400 participants – causing it to incur unreasonable and excessive fees for retirement plan services);
- *Mator v. Wesco Distribution, Inc.*, No. 2:21-cv-00403-MJH (W.D. Pa.) (ERISA class action lawsuit alleging breach of fiduciary duties by

imprudently allowing the Wesco Distribution, Inc. Retirement Savings Plan – a $837 million plan with more than 8,200 participants – to pay unreasonable recordkeeping and administrative expenses and retain higher-cost share classes of funds when lower-cost funds were available);

- *Hummel v. East Penn Mfg. Co., Inc.*, No. 5:21-cv-01652 (E.D. Pa.) - (ERISA class action lawsuit alleging breach of fiduciary duties in managing the East Penn Manufacturing Co., Inc. Profit Sharing & 401(k) Savings Plan – with $279 million in assets and over 10,000 participants – by imprudently failing to monitor recordkeeping fees and determine the reasonableness of those fees);
- *Cunningham v. USI Ins. Services LLC*, No. 7:21-cv-01819-NSR (S.D.N.Y.) (ERISA class action lawsuit alleging breach of fiduciary duties in managing the USI 401(k) Plan – a $848 million plan with over 9,800 participants – by paying unreasonable and excessive retirement plan services fees);
- *Westmoreland County v. Inventure Foods*, No. CV2016-002718 (Super Ct. Ariz.) (state securities shareholder class action filed against Inventure Foods., Inc., after identifying that the company's stock price had suffered a precipitous decline due to troubles at a manufacturing facility, including a major food recall. After mediation, a preliminary settlement was reached that recovers over 35% of damages for investors.); and
- *Orrstown Financial Services, Inc., et al., Securities Litig.*, No. 12-cv-00793 (USDC M.D. Pa.) (federal securities class action lawsuit by large transportation authority institutional investor client, named sole lead plaintiff, challenging false and misleading statements made by Orrstown to investors about its internal controls and financial condition; the court has preliminarily approved a $15 million settlement).

Speaking Engagements and Publications:

Andrew W. Ferich

Andrew W. Ferich is an associate in the Firm's Haverford office. Andy focuses his practice on complex litigation, including in the Firm's consumer protection, ERISA/ employee benefits, and whistleblower/*qui tam* practice groups. He has made significant contributions to expanding the firm's ERISA practice.

Andy routinely briefs and litigates dispositive motions to dismiss, for class certification, and for summary judgment. He has also appeared and argued before state and federal courts of various jurisdictions, and possesses major jury trial experience. Andy is admitted to practice in Pennsylvania, New Jersey, and the District of Columbia, and has been admitted to practice in multiple federal courts.

Andy has played a principal role in prosecuting the following matters, among others:

- *Udeen, et al. v. Subaru of America, Inc*., No. 1:18-cv-17334-RBK-JS (D.N.J.) (Andy is appointed co-lead class counsel by the Court; preliminary approval of a claims-made settlement valued at more than $6.25 million granted in this consumer class action on behalf of owners and lessees of Subaru vehicles alleging that Subaru's Starlink infotainment system is defective);
- *Perdue v. Hy-Vee, Inc.*, No. 1:19-cv-01330 (C.D. Ill.) (Andy is appointed interim co-lead counsel in this class action relating to a data breach that allegedly exposed millions of consumers' payment card data to hackers);
- *In re Wawa, Inc. Data Breach Litigation,* No. 2:19-cv-06019 (E.D. Pa.) (CSK&D was appointed interim co-lead counsel in this class action relating to a data breach that allegedly exposed millions of consumers' payment card information to hackers. The nine-month long data breach affected all Wawa's convenience stores and gas pump locations);
- *In re Subaru Battery Drain Products Liability Litigation*, No. 1:20-cv-03095 (D.N.J.) (consumer class action brought on behalf of owners and lessees of certain Subaru vehicles that suffer from an alleged defect causing parasitic rapid battery drain; CSK&D has been appointed as chair of the plaintiffs' executive committee);
- *In re Nexus 6P Prods. Liab. Litig.,* No. 5:17-cv-02185-BLF (N.D. Cal.) (final approval of a $9.75 million settlement granted in this class action lawsuit which alleged that Google smartphones contained a defect that caused "bootlooping" and sudden battery drain; CSK&D

Practice Areas:

- Antitrust
- Corporate Mismanagement
- Consumer Fraud & Defective Products
- Whistleblower/False Claims Act
- Employee Benefits/ ERISA
- Data Breach

Education:

- Villanova University School of Law, J.D., 2012
    - ♦ Journal of Catholic Social Thought – Executive Editor (2011-2012),
- Georgetown University, B.A. (Government), 2009

Memberships and Associations:

- Member, Philadelphia Bar Association
- Member, Georgetown University Alumni Admissions Program (AAP)
- Member, Young Friends of the Philadelphia Orchestra

Admissions:

- Admitted, Pennsylvania Bar
- Admitted, New Jersey Bar
- Admitted, District of Columbia Bar
- Admitted, United States District Court for the Eastern District of Pennsylvania
- Admitted, United States District Court for the District of New Jersey
- Admitted, United States District Court for the District of Columbia
- Admitted, United States District Court for the District of Colorado
- Admitted, United States District Court for the Central District of Illinois
- Admitted, United States Court of Appeals for the District of Columbia Circuit

Honors:

- Pennsylvania Super Lawyers Rising Star 2017, 2018, & 2019

served as co-lead class counsel);

- *Weeks, et al. v. Google LLC*, 5:18-cv-00801-NC (N.D. Cal.) (final approval of a $7.25 million settlement granted in this consumer class action alleging that Google sold first-generation Pixel smartphones with a known microphone defect; CSK&DS was appointed co-lead class counsel);
- *In re: Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation*, No. 2;15-cv-00018-JLL-JAD (D.N.J.) (final approval of settlement valued at approximately $20 million granted in this products liability MDL proceeding relating to allegedly defective wood-composite decking; CSK&DS was appointed to the Plaintiffs' Steering Committee);
- *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA (D. Colo.) (final approval granted in class action relating to a data breach that allegedly exposed consumers' payment card data to hackers; CSK&D served as co-lead class counsel);
- *Bray, et al. v. GameStop Corp.*, 1:17-cv-01365 (D. Del.) (final approval of settlement granted in this class action relating to a data breach that exposed the personal and payment card information of consumers who made purchases through defendant's website; CSK&D served as class counsel);
- *In re Anadarko Basin Oil and Gas Lease Antitrust Litigation*, No. 16-cv-209-HE (W.D. Okla.) (antitrust action under federal antitrust laws brought on behalf of a class of landowners who leased land to defendants for drilling for natural gas and received less in lease bonuses and royalties than they should have due to defendants' anticompetitive lease bid-rigging scheme; parties have agreed to settlement and preliminary approval is pending);
- *DeMarco, et al. v. AvalonBay Communities, Inc., et al.,* No. 2:15-cv-00628-JLL-JAD (D.N.J.) (settled class action lawsuit on behalf of hundreds of tenants and former tenants of AvalonBay community that was destroyed in a massive fire, in which case CSK&D has been appointed interim co-lead counsel);
- *In re: MacBook Keyboard Litig*., No: 5:18-cv-02813-EJD (N.D. Cal.) (motion to dismiss denied in this class action lawsuit alleging that Apple sold 2015 and later MacBook, 2016 and later MacBook Pro, and 2018 MacBook Air laptops with a known defect plaguing the butterfly keyboards, and allowing dust and other debris to disrupt keyboard use; CSK&DS is appointed interim co-lead counsel);
- *Davis, et al. v. Washington University in St. Louis, et al*., No. 4:17-cv-01641-RLW (E.D. Mo.) (ERISA class action alleging excessive fees and other breaches of fiduciary duties relating to university 403(b) retirement plan; CSK&D is appointed interim co-lead counsel);
- *Stanley, et al. v. The George Washington University*, No. 1:18-cv-00878 (D.D.C.) (ERISA class action alleging excessive fees and other

breaches of fiduciary duty relating to university 403(b) retirement plan);

- *Rollolazo et al. v. BMW of North America, LLC*, et al, No. 8:16-cv-00966-TJH-SS (C.D. Cal.) (class action lawsuit against BMW on behalf of owners of the BMW i3 REx—a plug-in electric hybrid vehicle with a gas engine known as a Range Extender—wherein Plaintiffs have alleged that a defect in the Range Extender causes class vehicles to suddenly decelerate); and
- *Kirkpatrick, et al. v. HomeAway.com, Inc.,* No. 1:16-cv-00733-LY (W.D. Tex.) (consumer class action on behalf of owners of rental/ vacation properties across the country alleging that owners entered into rental listing subscription agreements with HomeAway and its websites based upon the false and broken promise that renters and travelers would never be assessed a fee at booking).

Andy is also involved in and has made significant contributions to the development of the firm's whistleblower and *qui tam* practice area. He is involved in multiple cases on behalf of relators and whistleblowers seeking to recover on behalf of the United States government through a variety of channels.

Andy received his law degree from Villanova University School of Law in 2012. While in law school, he clerked for a well-known suburban Philadelphia law firm. Prior to joining the Firm, Andy was an associate at a well-known international litigation firm in Philadelphia where he focused his practice on commercial litigation, financial services litigation, and antitrust matters.

Prior to law school, Andy attended Georgetown University and was a member of the Division I baseball team. During his time in college, Andy also worked on Capitol Hill and for a well-known think tank.

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Villanova University School of Law, J.D., 2007
  - ◊ Co-President of Asian-Pacific American Law Students Association
- Tufts University, B.A., 2002 – *cum laude* in Political Science

Memberships & Associations:

- Delaware State Bar Association
- The Richard S. Rodney American Inn of Court

Admissions:

- Delaware, 2007
- U.S. District Court for the District of Delaware, 2008

Tiffany J. Cramer

Tiffany J. Cramer is Senior Counsel in the Wilmington office. Her entire practice is devoted to litigation, with an emphasis on corporate mismanagement & derivative stockholder actions and mergers & acquisitions.

Together with the Firm's Partners, Ms. Cramer has assisted in the prosecution of numerous shareholder and unitholder class and derivative actions arising pursuant to Delaware law, including:

- *In re Starz Stockholder Litigation,* C.A. No. 12584-VCG (Del. Ch.) (Co-Lead Counsel in Court of Chancery class action challenging the acquisition of Starz by Lions Gate Entertainment Corporation, which led to a settlement of $92.5 million).
- *In re Freeport McMoRan Copper & Gold, Inc. Deriv. Litig.,* C.A. No. 815-VCN (Del. Ch.) (Co-Lead Counsel in Court of Chancery derivative litigation arising from Freeport McMoRan Copper & Gold, Inc.'s acquisition of Plains Exploration Production Co. and McMoran Exploration Production Co, which led to a settlement valued at nearly $154 million, including an unprecedented $147.5 million dividend paid to Freeport's stockholders).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.*, C.A. No. 6900-VCP (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and largest shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery).
- *In Re Genentech, Inc. Shareholders Litigation*, Consol. C.A. No. 3911-VCS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery class action litigation challenging Roche Holding's buyout of Genentech, Inc., which resulted in a settlement providing for, among other things, an additional $4 billion in consideration paid to the minority shareholders of Genentech, Inc.).
- *In re Atlas Energy Resources, LLC Unitholder Litigation*, Consol. C.A. No. 4589-VCN (Co-Lead Counsel in the Court of Chancery class action litigation challenging Atlas America, Inc.'s acquisition of Atlas Energy Resources, LLC, which resulted in a settlement providing for an additional $20 million fund for former Atlas Energy Unitholders).
- *In re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-CS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative litigation arising from Barnes & Noble, Inc.'s acquisition of Barnes & Noble College Booksellers, Inc., which resulted in a settlement of nearly $30 million).

Ms. Cramer is a Member of the Richard S. Rodney American Inn of Court. Ms. Cramer has also been selected to the Delaware "Rising Stars" list from Super Lawyers: 2016 and 2017. While in law school, she served as law clerk to the Honorable Jane R. Roth of the United States Court of Appeals for the

Third Circuit. While in college, she played the bassoon as a member of the Tufts Symphony Orchestra.

Alex M. Kashurba

Practice Areas:

- Defective Products and Consumer Protection
- Securities Fraud Class Actions
- Other Complex Litigation

Education:

- University of Michigan Law School, J.D. cum laude, 2014
- The College of William & Mary, B.A. cum laude, 2011

Admissions:

- Pennsylvania
- New Jersey
- Western District of Pennsylvania
- Eastern District of Pennsylvania
- Middle District of Pennsylvania
- District of New Jersey
- Central District of Illinois
- Eastern District of Michigan

Honors:

- 2021 & 2022 Rising Star, Pennsylvania Super Lawyers

Alex M. Kashurba is an associate in the Firm's Haverford office. He focuses his practice on complex litigation including securities, consumer protection, and data privacy class actions.

Alex received his law degree from the University of Michigan Law School. While in law school, he interned for the United States Attorney's Office for the Eastern District of Pennsylvania as well as the Office of General Counsel for the United States House of Representatives. Prior to joining the Firm, Alex served as a law clerk in the United States District Court for the Western District of Pennsylvania, including for the Honorable Kim R. Gibson and the Honorable Nora Barry Fischer. Alex graduated from The College of William & Mary where he majored in Government.

Alex has assisted in prosecuting the following matters, among others:

- *In re Phillips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Liability Litigation* (MDL No. 3014) (W.D. Pa.) (MDL of more than 100 class action and personal injury cases consolidated in the Western District of Pennsylvania, arising out of Philips' recall of certain Continuous Positive Airway Pressure (CPAP), Bi-Level Positive Airway Pressure (Bi-Level PAP), and mechanical ventilator devices, due to the potential that its polyester-based polyurethane (PE-PUR) sound abatement foam may degrade into particles or off-gas volatile organic compounds that may then be ingested or inhaled by the user, causing injury);
- *Suarez v. Nissan North America*, No. 3:21-cv-00393 (M.D. Tenn.) (appointed lead class counsel in a consumer class action alleging defective headlamps in Nissan Altima vehicles, a settlement valued at over $50 million that provided reimbursements, free repairs, and an extended warranty received final approval from the Court);
- *Udeen, et al. v. Subaru of America, Inc.*, No. 1:18-cv-17334-RBK-JS (D.N.J.) (final approval granted of a settlement valued at $6.25 million in this consumer class action involving defective infotainment systems in certain Subaru automobiles);
- *In re: MacBook Keyboard Litig.*, No: 5:18-cv-02813-EJD (N.D. Cal.) (class action lawsuit alleging that Apple sold 2015 and later MacBook and 2016 and later MacBook Pro laptops with a known defect plaguing the butterfly keyboards, and allowing dust and other debris to disrupt keyboard use; CSK&D is appointed interim co-lead counsel);
- *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (final approval of a $9.75 million settlement granted in this class action lawsuit which alleged that Google smartphones contained a defect that caused "bootlooping" and sudden battery drain; CSK&D served as co-lead class counsel);
- *Weeks, et al. v. Google LLC*, 5:18-cv-00801-NC (N.D. Cal.) (final

approval of a $7.25 million settlement granted in this consumer class action alleging that Google sold first-generation Pixel smartphones with a known microphone defect; CSK&DS was appointed co-lead class counsel);

- *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA (D. Colo.) (final approval granted in class action relating to a data breach that allegedly exposed consumers' payment card data to hackers; CSK&D served as co-lead class counsel).

Mark B. DeSanto

Practice Areas:

- Securities Fraud Class Actions & Complex Litigation
- Consumer Protection and Multi-District Litigation
- Other Complex Litigation/ Mass Actions

Education:

- University of Miami School of Law, J.D. 2013 – *cum laude*
  - ◊ University of Miami NSAC Law Review
  - ◊ Dean's List-Spring 2013 (4.0 GPA); Spring 2012; Fall 2012
  - ◊ Advanced Business Litigation Skills-honors recognition
- University of Miami, B.B.A.,2009 – Finance

Admissions:

- Member, Florida Bar
- Member, Pennsylvania Bar
- Member, New Jersey Bar
- Admitted, United States District Court for the Eastern District of Pennsylvania
- Admitted, United States District Court for the Southern District of Florida
- Admitted, United States District Court for the District of New Jersey
- Admitted, United States District Court for the District of Colorado

Publications:

- Practicing Law Institute's 23rd Annual Consumer Financial Services Institute - Chapter 57: The Impact of *Payment Card II* on Class Action Litigation & Settlements

Honors:

- Pennsylvania Super Lawyers Rising Star 2018
- Pennsylvania Super Lawyers Rising Star 2019
- Pennsylvania Super Lawyers Rising Star 2020

Mark B. DeSanto is an Associate Attorney in the Firm's Haverford office. He has extensive experience in ERISA, securities, data breach, TCPA, all types of consumer protection, and other forms of class actions. Prior to joining the Firm, he was an attorney in the Radnor office of a national class action law firm where he represented sophisticated institutional and individual investors in complex class actions against corporate defendants and their executives for violations of federal securities laws, as well as consumers in nationwide consumer protection class actions. To date, Mr. DeSanto has been involved in the prosecution of the following federal court class actions:

- *Snitzer et al v. The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund et al*, No. 1:17-cv-5361 (S.D.N.Y) (settled – **$26.85 Million**) (represented a class of pension participants of the American Federation of Musicians and Employers' Pension Plan, alleging that the Board of Trustees breached their fiduciary duties of prudence and loyalty under ERISA by, inter alia, over-allocating plan assets to high-risk asset classes);
- *Lacher et al v. Aramark Corp*., 2:19-cv-00687 (E.D. Pa. 2019) (represented a class of Aramark's current and former managers alleging that Aramark breached its employment contracts by failing to pay bonuses and restricted stock unit compensation to managers nationwide);
- *High St. Rehab., LLC v. Am. Specialty Health Inc.,* No. 2:12-cv-07243-NIQA, 2019 U.S. Dist. LEXIS 147847 (E.D. Pa. Aug. 29, 2019) (settled – **$11.75 million**) (represented a class of chiropractors and other similar healthcare practitioners alleging, inter alia, that Cigna and its third-party claims management provider's use of utilization management review ("UMR") when evaluating out-of-network claims for chiropractic services performed on individuals who participated in employer-sponsored health benefits Plans that Cigna insured and/or for which Cigna administered benefits claims violated ERISA);
- *Lietz v. Cigna Corp. (In re Cigna-American Specialty Health Admin. Fee Litig.),* No. 2:16-cv-03967-NIQA, 2019 U.S. Dist. LEXIS 146899 (E.D. Pa. Aug. 29, 2019) (settled – **$8.25 million**) (represented insureds alleging that Cigna violated ERISA by charging an elevated amount for services that included an administrative fee charged by Cigna's third-party claims management provider, and only passing on a small portion of the elevated amount charged to the doctor, while knowingly hiding this fee from insureds);

- *Louisiana Municipal Police Employees' Retirement System v. Green Mountain Coffee Roasters, Inc. et al.*, Civ. No. 2:11-cv-00289 (D. Vt.) (settled – $36.5 million) (represented financial institutions in class action lawsuit brought on behalf of all Keurig Green Mountain shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);

- *In re St. Jude Medical, Inc. Securities Litigation*, Civ. No. 10-0851 (D. Minn.) (settled – $39.25 million) (represented financial institutions in class action lawsuit brought on behalf of all St. Jude Medical Inc. shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);

- *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 14–2522 (D. Minn.) (settled – $39 million) (represented a class of payment card issuing financial institutions in nationwide class action against Target for its highly-publicized 2013 data breach in which roughly 110 million Target customers' personal and financial information was compromised by hackers);

- *Smith v. ComplyRight, Inc*., No. 1:18-cv-4990, 2019 U.S. Dist. LEXIS 174217 (N.D. Ill. Oct. 7, 2019) (settled – $3 million) (represented a class of consumers whose personal information was maintained on ComplyRight's website during a data breach that occurred from at least April 20, 2018 through May 22, 2018);

- *In re Wawa, Inc. Data Security Litig.*, Lead Case No. 2:19-cv-06019-GEKP (E.D. Pa) (representing a class of consumers whose personal information was compromised in the highly-publicized Wawa data breach);

- *Kyles et al v. Stein Mart, Inc.* et al, No. 1:19-cv-00483-CFC (D. Del. 2018) (represented a class of consumers whose personal information was compromised in a data breach involving Stein Mart and Annex Cloud at various times between December 28, 2017 and July 9, 2018);

Mr. DeSanto is admitted to practice law in Pennsylvania, New Jersey, and Florida. He earned his Juris Doctor, cum laude, from the University of Miami School of Law in 2013, where he was also a member of the NSAC Law Review. During his second and third years of law school, Mr. DeSanto worked at a boutique securities litigation firm on Brickell Avenue in Downtown Miami. Mr. DeSanto earned his Bachelor of Business Administration, with a major in Finance, from the University of Miami in 2009.

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Michigan State University College of Law, J.D. *summa cum laude*, 2017
- Michigan State Law Review – managing editor (2016-2017), staff editor (2015-2016)
- York College of Pennsylvania, B.A. *magna cum laude*, 2013

Admissions:

- Pennsylvania
- Eastern District of Pennsylvania
- United States Court of Appeals for the Ninth Circuit

Honors:

- 2019-2021 Rising Star, Pennsylvania Super Lawyers

Zachary P. Beatty

Zachary P. Beatty is an associate in the Firm's Haverford office. He focuses his practice on complex litigation including securities fraud, shareholder derivative suits, and consumer protection class actions.

Zachary received his law degree from Michigan State University College of Law in 2017. While in law school, Zachary served as a managing editor for the Michigan State Law Review. His law school career was marked by several academic honors including earning Jurisprudence Awards for receiving the highest grades in his Corporate Finance, Business Enterprises, Constitutional Law II, and Advocacy classes. Zachary clerked for a small central Pennsylvania law firm and clerked for the Honorable Carol K. McGinley in the Lehigh County Court of Common Pleas. He also clerked for the Firm's Haverford office. Zachary graduated from York College of Pennsylvania where he majored in history.

Zach has assisted in prosecuting the following matters, among others:

- *Oddo v. Arcoaire Air Conditioning & Heating*, No. 8:15-cv-01985-CAS -E (C.D. Cal.) (consumer class action against Carrier Corporation arising out of the sale of air conditioners that contained an unapproved rust inhibitor in the compressor, which causes widespread failures of thermostatic expansion valves. The plaintiffs allege that the unapproved rust inhibitor was present in virtually all Carrier-manufactured air conditioners from December 2013 through August 2014);
- *Livingston v. Trane U.S. Inc.*, No. 2:17-cv-06480-ES-MAH (D.N.J.) (consumer class action against Trane U.S. Inc. arising out of the sale of air conditioners that contained an unapproved rust inhibitor in the compressor, which causes widespread failures of thermostatic expansion valves);
- *In re MyFord Touch Consumer Litig.*, No. C-13-3072 EMC (N.D. Cal.) (consumer class action against Ford alleging flaws, bugs, and failures in certain Ford automobile infotainment systems. CSK&D is co-lead counsel in this certified class action);
- *Weeks v. Google LLC*, No. 5:18-cv-00801-NC (N.D. Cal.) (consumer class action against Google relating to Pixel smartphones alleging that Google sold these phones with a known defect);
- *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (class action lawsuit alleging that smartphones manufactured by Google and Huawei contain defects that cause the phones to "bootloop" and experience sudden battery drain; CSK&D has been

appointed interim co-lead class counsel;

- *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415- CMA (D. Colo.) (class action relating to a data breach suffered by Chipotle that allegedly exposed consumers' payment card data to hackers, in which case CSK&D has been appointed interim co-lead counsel); and
- *Chambers v. Whirlpool Corp.*, No. 11-1773-0FMO (C.D. Cal.) (a national class action involving alleged defects resulting in fires in Whirlpool, Kenmore, and KitchenAid dishwashers. The district court approved a settlement which he negotiated that provides wide-ranging relief to owners of approximately 24 million implicated dishwashers, including a full recovery of out-of-pocket damages for costs to repair or replace dishwashers that suffered Overheating Events).

Emily L. Skaug

Emily L. Skaug is an associate in the Firm's Wilmington office. Together with the Firm's Partners, she focuses her practice on complex litigation, including shareholder derivative and other investor rights cases.

Emily received her Bachelor of Arts in Psychology from University of Delaware. She received her law degree from Widener University Delaware Law School in 2018. While in law school, Emily was a student ambassador and was involved in Wills for Heroes and Delaware Volunteer Legal Services. After graduating law school, Emily interned in the Delaware Superior Court for the Honorable Jan R. Jurden, President Judge and later served as a law clerk for the Honorable John A. Parkins, Jr. and the Honorable Calvin L. Scott, Jr.

Education:

- Widener University Delaware Law School, J.D., 2018
- University of Delaware, B.A., 2015

Admissions:

- Pennsylvania
- New Jersey
- Delaware

Juliana Del Pesco

Juliana Del Pesco is an associate attorney in the Firm's Delaware office. She focuses her practice on corporate and fiduciary duty litigation.

Juliana received her LL.M. degree from the University of Pennsylvania Carey Law School in 2018. While in law school, Juliana served as an interpreter at the Transnational Legal Clinic. She also has a JD equivalent from the Universidade Presbiteriana Mackenzie, Brazil, in 2009. Prior to joining the firm Juliana worked at one of Brazil's most prestigious firms, where she represented clients in complex litigation cases and cases involving contract disputes, class action lawsuits, consumer law, product liability, and environmental law. She also provided legal opinions addressing the applicability of Brazilian law to foreign clients.

Education:

- University of Pennsylvania Carey Law School, LL.M., 2018
- Pontificia Universidade Catolica, Sao Paulo, Brazil, Specialization in Contract Law, 2011
- Universidade Presbiteriana Mackenzie, Brazil, JD equivalent, 2009

Admissions:

- Pennsylvania, 2019
- Brazil, Sao Paulo, 2010

Mariah Heinzerling

Mariah Heinzerling is an associate attorney in the Firm's Haverford office.

Mariah received her law degree from the Georgetown University Law Center in 2022. While in law school, Mariah served as the submissions editor and a staff editor for the Georgetown Environmental Law Review. She also worked as a student clinician for the Georgetown Environmental Law and Justice Clinic. While in law school, she interned for the New York State Attorney General as well as a regional environmental nonprofit. Mariah graduated from the University of Rochester where she majored in Physics and Astronomy.

Admissions:

- Pennsylvania
- Eastern District of Pennsylvania
- United States Court of Appeals for the Third Circuit

Education:

- Georgetown University Law Center, J.D., 2022
- University of Rochester, B.A., 2017

Practice Areas

Health & Welfare Fund Assets

CSK&D Protects Clients' Health & Welfare Fund Assets Through Monitoring Services & Vigorously Pursuing Health & Welfare Litigation.

At no cost to the client, CSK&D seeks to protect its clients' health & welfare fund assets against fraud and other wrongdoing by monitoring the health & welfare fund's drug purchases, Pharmacy benefit Managers and other health service providers. In addition, CSK&D investigates potential claims and, on a fully-contingent basis, pursues legal action for the client on meritorious claims involving the clients' heath & welfare funds. These claims could include: the recovery of excessive charges due to misconduct by health service providers; antitrust claims to recover excessive prescription drug charges and other costs due to corporate collusion and misconduct; and, cost-recovery claims where welfare funds have paid for health care treatment resulting from defective or dangerous drugs or medical devices.

Monitoring Financial Investments

CSK&D Protects Clients' Financial Investments Through Securities Fraud Monitoring Services.

Backed by extensive experience, knowledge of the law and successes in this field, CSK&D utilizes various information systems and resources (including forensic accountants, financial analysts, seasoned investigators, as well as technology and data collection specialists, who can cut to the core of complex financial and commercial documents and transactions) to provide our institutional clients with a means to actively protect the assets in their equity portfolios. As part of this no-cost service, for each equity portfolio, CSK&D monitors relevant financial and market data, pricing, trading, news and the portfolio's losses. CSK&D investigates and evaluates potential securities fraud claims and, after full consultation with the client and at the client's direction, CSK&D will, on a fully-contingent basis, pursue legal action for the client on meritorious securities fraud claims.

Corporate Transactional

CSK&D Protects Shareholders' Interest by Holding Directors Accountable for Breaches of Fiduciary Duties

Directors and officers of corporations are obligated by law to exercise good faith, loyalty, due care and complete candor in managing the business of the corporation. Their duty of loyalty to the corporation and its shareholders requires that they act in the best interests of the corporation at all times. Directors who breach any of these "fiduciary" duties are accountable to the stockholders and to the corporation itself for the harm caused by the breach. A substantial part of the practice of Chimicles Schwartz Kriner & Donaldson-Smith LLP involves representing shareholders in bringing suits for breach of fiduciary duty by corporate directors.

Practice Areas

Securities Fraud

CSK&D Protects and Recovers Clients' Assets Through the Vigorous Pursuit of Securities Fraud Litigation.

CSK&D has been responsible for recovering over $1 billion for institutional and individual investors who have been victims of securities fraud. The prosecution of securities fraud often involves allegations that a publicly traded corporation and its affiliates and/or agents disseminated materially false and misleading statements to investors about the company's financial condition, thereby artificially inflating the price of that stock. Often, once the truth is revealed, those who invested at a time when the company's stock was artificially inflated incur a significant drop in the value of their stock. CSK&D's securities practice group comprises seasoned attorneys with extensive trial experience who have successfully litigated cases against some of the nation's largest corporations. This group is strengthened by its use of forensic accountants, financial analysts, and seasoned investigators.

Antitrust and Unfair Competition

CSK&D Enforces Clients' Rights Against Those Who Violated Antitrust Laws.

CSK&D successfully prosecutes an array of anticompetitive conduct, including price fixing, tying agreements, illegal boycotts and monopolization, anticompetitive reverse payment accords, and other conduct that improperly delays the market entry of less expensive generic drugs . As counsel in major litigation over anticompetitive conduct by the makers of brand-name prescription drugs, CSK&D has helped clients recover significant amounts of price overcharges for blockbuster drugs such as BuSpar, Coumadin, Cardizem, Flonase , Relafen, and Paxil, Toprol-XL, and TriCor.

Real Estate Investment Trusts

CSK&D is a Trail Blazer in Protecting Clients' Investments in Non-Listed Equities.

CSK&D represents limited partners and purchaser of stock in limited partnerships and real estate investment trusts (non-listed REITs) which are publicly-registered but not traded on a national stock exchange. These entities operate outside the realm of a public market that responds to market conditions and analysts' scrutiny, so the investors must rely entirely on the accuracy and completeness of the financial and other disclosures provided by the company about its business, its finances, and the value of its securities. CSK&D prosecutes: (a) securities law violations in the sale of the units or stock; (b) abusive management practices including self-dealing transactions and the payment of excessive fees; (c) unfair transactions involving sales of the entities' assets; and (d) buy-outs of the investors' interests.

Practice Areas

Shareholder Derivative Action

CSK&D is a Leading Advocate for Prosecuting and Protecting Shareholder Rights through Derivative Lawsuits and Class Actions.

CSK&D is at the forefront of persuading courts to recognize that actions taken by directors (or other fiduciaries) of corporations or associations must be in the best interests of the shareholders. Such persons have duties to the investors (and the corporation) to act in good faith and with loyalty, due care and complete candor. Where there is an indication that a director's actions are influenced by self-interest or considerations other than what is best for the shareholders, the director lacks the independence required of a fiduciary and, as a consequence, that director's decisions cannot be honored. A landmark decision by the Supreme Court of Delaware underscored the sanctity of this principal and represented a major victory for CSK&D's clients.

Corporate Mismanagement

CSK&D is a Principal Advocate for Sound Corporate Governance and Accountability.

CSK&D supports the critical role its investor clients serve as shareholders of publicly held companies. Settlements do not provide exclusively monetary benefits to our clients. In certain instances, they may include long term reforms by a corporate entity for the purpose of advancing the interests of the shareholders and protecting them from future wrongdoing by corporate officers and directors. On behalf of our clients, we take corporate directors' obligations seriously. It's a matter of justice. That's why CSK&D strives not to only obtain maximum financial recoveries, but also to effect fundamental changes in the way companies operate so that wrongdoing will not reoccur.

Defective Products and Consumer Protection

CSK&D Protects Consumers from Defective Products and Deceptive Conduct.

CSK&D frequently represents consumers who have been injured by false advertising, or by the sale of defective goods or services. The firm has achieved significant recoveries for its clients in such cases, particularly in those involving defectively designed automobiles and other consumer products. CSK&D has also successfully prosecuted actions against banks and other large institutions for engaging in allegedly deceptive conduct.

Practice Areas

Data Breaches

CSK&D Protects Consumers Affected by Data Breaches

CSK&D has significant experience in prosecuting class action lawsuits on behalf of consumers who have been victimized by massive payment card data breaches. Large-scale payment data breaches have been on the rise over the past couple years. These breaches occur when cybercriminals gain unauthorized access to a company's payment systems or computer servers. When they occur, consumers are forced to take significant precautionary measures such as cancelling other cards and accounts, obtaining replacement cards (often for a fee), purchasing credit monitoring and identity theft, and spending large amounts of time reviewing accounts and statements for incidences of fraud. Two recent examples of settlements that CSK&D has resolved are: *Crystal Bray v. GameStop Corp.,* No. 1:17-cv-01365 (D. Del.) and *Gordon, et al. v. Chipotle Mexican Grille, Inc.,* No. 1:17-cv-01415-CMA-SKC (D. Colo.).

Representative Cases

Securities Cases Involving Real Estate Investments

***CNL Hotels & Resorts Inc. Securities Litigation*, Case No. 6:04-CV-1231, United States District Court, Middle District of Florida.**

CSK&D was Lead Litigation Counsel in CNL Hotels & Resorts Inc. Securities Litigation**,** representing a Michigan Retirement System, other named plaintiffs and over 100,000 investors in this federal securities law class action that was filed in August 2004 against the nation's second largest hotel real estate investment trust, CNL Hotels & Resorts, Inc. (f/k/a CNL Hospitality Properties, Inc.) ("CNL Hotels") and certain of its affiliates, officers and directors. CNL raised over $3 billion from investors pursuant to what Plaintiffs alleged to be false and misleading offering materials. In addition, in June 2004 CNL proposed an affiliated-transaction that was set to cost the investors and the Company over $300 million ("Merger").

The Action was filed on behalf of: (a) CNL Hotels shareholders entitled to vote on the proposals presented in CNL Hotels' proxy statement dated June 21, 2004 ("Proxy Class"); and (b) CNL Hotels' shareholders who acquired CNL Hotels shares pursuant to or by means of CNL Hotels' public offerings, registration statements and/or prospectuses between August 16, 2001 and August 16, 2004 ("Purchaser Class").

The Proxy Class claims were settled by (a) CNL Hotels having entered into an Amended Merger Agreement which significantly reduced the amount that CNL Hotels paid to acquire its Advisor, CNL Hospitality Corp., compared to the Original Merger Agreement approved by CNL Hotels' stockholders pursuant to the June 2004 Proxy; (b) CNL Hotels having entered into certain Advisor Fee Reduction Agreements, which significantly reduced certain historic, current, and future advisory fees that CNL Hotels paid its Advisor before the Merger; and (c) the adoption of certain corporate governance provisions by CNL Hotels' Board of Directors. **In approving the Settlement, the Court concluded that in settling the Proxy claims, "a substantial benefit [was] achieved (estimated at approximately $225,000,000)" and "this lawsuit was clearly instrumental in achieving that result."** The Purchaser Class claims were settled by Settling Defendants' payment of **$35,000,000**, payable in three annual installments (January 2007 to January 2009).

On August 1, 2006, the Federal District Court in Orlando, Florida granted final approval of the Settlement as fair, reasonable, and adequate, and in rendering its approval of an award of attorneys' fees and costs to Plaintiffs' Counsel, the Court noted that "Plaintiffs' counsel pursued this complex case diligently, competently and professionally" and "achieved a successful result." More than 100,000 class members received notice of the proposed settlement and no substantive objection to the settlement, plan of allocation or fee petition was voiced by any class member.

Representative Cases

Securities Cases Involving Real Estate Investments

***In re Real Estate Associates Limited Partnership Litigation*, Case No. CV 98-7035, United States District Court, Central District of California.**

Chimicles Schwartz Kriner & Donaldson-Smith LLP achieved national recognition for obtaining, in a federal securities fraud action, the first successful plaintiffs' verdict under the PSLRA. Senior partner Nicholas E. Chimicles was Lead Trial Counsel in the six-week jury trial in federal court in Los Angeles, in October 2002. The jury verdict, in the amount of $185 million (half in compensatory damages; half in punitive damages), was ranked among the top 10 verdicts in the nation for 2002. After the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million, representing full recovery for the losses of the class**.** At the final hearing, held in November 2003, the Court praised Counsel for achieving both a verdict and a settlement that "qualif[ied] as an exceptional result" in what the Judge regarded as "a very difficult case…" In addition, the Judge noted the case's "novelty and complexity…and the positive reaction of the class. Certainly, there have been no objections, and I think Plaintiffs' counsel has served the class very well."

Case Summary: In August of 1998, over 17,000 investors ("Investor Class") in 8 public Real Estate Associates Limited Partnerships ("REAL Partnerships") were solicited by their corporate managing general partner, defendant National Partnership Investments Corp. ("NAPICO"), and other Defendants via Consent Solicitations filed with the Securities and Exchange Commission ("SEC"), to vote in favor of the sale of the REAL Partnerships' interests in 98 limited partnerships ("Local Partnerships"). In a self-dealing and interested transaction, the Investor Class was asked to consent to the sale of these interests to NAPICO's affiliates ("REIT Transaction"). In short, Plaintiffs alleged that defendants structured and carried out this wrongful and self-dealing transaction based on false and misleading statements, and omissions in the Consent Solicitations, resulting in the Investor Class receiving grossly inadequate consideration for the sale of these interests. Plaintiffs' expert valued these interests to be worth a minimum of $86,523,500 (which does not include additional consideration owed to the Investor Class), for which the Investor Class was paid only $20,023,859.

Plaintiffs and the Certified Class asserted claims under Section 14 of the Securities Exchange Act of 1934 ("the Exchange Act"), alleging that the defendants caused the Consent Solicitations to contain false or misleading statements of material fact and omissions of material fact that made the statements false or misleading. In addition, Plaintiffs asserted that Defendants breached their fiduciary duties by using their positions of trust and authority for personal gain at the expense of the Limited Partners. Moreover, Plaintiffs sought equitable relief for the Limited Partners including, among other things, an injunction under Section 14 of the Exchange Act for violation of the "anti-bundling rules" of the SEC, a declaratory judgment decreeing that defendants were not entitled to indemnification from the REAL Partnerships.

Trial: This landmark case is the *first* Section 14 – proxy law- securities class action seeking damages, a significant monetary recovery, for investors that has been tried, and ultimately won, before a jury anywhere in the United States since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Trial began on October 8, 2002 before a federal court jury in Los Angeles. The jury heard testimony from over 25 witnesses, and trial counsel moved into evidence approximately 4,810 exhibits; out of those 4,810 exhibits, witnesses were questioned about, or referred to, approximately 180 exhibits.

Representative Cases

Securities Cases Involving Real Estate Investments

On November 15, 2002, the ten-member jury, after more than four weeks of trial and six days of deliberation, unanimously found that Defendants knowingly violated the federal proxy laws and that NAPICO breached its fiduciary duties, and that such breach was committed with oppression, fraud and malice. The jury's unanimous verdict held defendants liable for compensatory damages of $92.5 million in favor of the Investor Class. On November 19, 2002, a second phase of the trial was held to determine the amount of punitive damages to be assessed against NAPICO. The jury returned a verdict of $92.5 million in punitive damages. In total, trial counsel secured a unanimous jury verdict of $185 million on behalf of the Investor Class.

With this victory, Mr. Chimicles and the trial team secured the 10th largest verdict of 2002. (See, National Law Journal, "The Largest Verdicts of 2002", February 2, 3003; National Law Journal, "Jury Room Rage", Feb. 3. 2002). Subsequent to post-trial briefing and rulings, in which the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million. The settlement represented full recovery for the losses of the class.

Prosecuting and trying this Case required dedication, tenacity, and skill: This case involved an extremely complex transaction. As Lead Trial Counsel, CSK&D was faced with having to comprehensively and in an understandable way present complex law, facts, evidence and testimony to the jury, without having them become lost (and thus, indifferent and inattentive) in a myriad of complex terms, concepts, facts and law. The trial evidence in this case originated almost exclusively from the documents and testimony of Defendants and their agents. As Lead Trial Counsel, CSK&D was able, through strategic cross-examination of expert witnesses, to effectively stonewall defendants' damage analysis. In addition, CSK&D conducted thoughtful and strategic examination of defendants' witnesses, using defendants' own documents to belie their testimony.

The significance of the case: The significance of this trial and the result are magnified by the public justice served via this trial and the novelty of issues tried. This case involved a paradigm of corporate greed, and CSK&D sent a message to not only the Defendants in this Action, but to all corporate fiduciaries, officers, directors and partners, that it does not pay to steal, lie and cheat. There needs to be effective deterrents, so that "corporate greed" does not pay. The diligent and unrelenting prosecution and trial of this case by CSK&D sent that message.

Moreover, the issues involved were novel and invoked the application of developing case law that is not always uniformly applied by the federal circuit courts. In Count I, Plaintiffs alleged that defendants violated § 14 of the Exchange Act. Subsequent to the enactment of the PLSRA, the primary relief sought and accorded for violations of the proxy laws is a preliminary injunction. Here, the consummation of the REIT Transaction foreclosed that form of relief. Instead, Plaintiffs' Counsel sought significant monetary damages for the Investor Class on account of defendants' violations of the federal proxy laws. CSK&D prevailed in overcoming defendants' characterization of the measure of damages that the Investor Class was required to prove (defendants argued for a measure of damages equivalent to the difference in the value of the security prior to and subsequent to the dissemination of the Consent Solicitations), and instead, successfully recouped damages for the value of the interests and assets given up by the Investor Class. The case is important in the area of enforcement of fiduciary duties in public partnerships which are a fertile ground for unscrupulous general partners to cheat the public investors.

Representative Cases

Securities Cases Involving Real Estate Investments

Aetna Real Estate Associates LP

Nicholas Chimicles and Pamela Tikellis represented a Class of unitholders who sought dissolution of the partnership because the management fees paid to the general partners were excessive and depleted the value of the partnership. The Settlement, valued in excess of $20 million, included the sale of partnership property to compensate the class members, a reduction of the management fees, and a special cash distribution to the class.

***City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc., Case No. 07 C 6174*, United States District Court, Northern District of Illinois .**

CSK&D was principal litigation counsel for the plaintiff class of stockholders that challenged the accuracy of a proxy statement that was used to secure stockholder approval of a merger between an external advisor and property managers and the largest retail real estate trust in the country. In 2010, in a settlement negotiation lead by the Firm, we succeeded in having $90 million of a stock, or 25% of the merger consideration, paid back to the REIT.

***Wells and Piedmont Real Estate Investment Trust, Inc., Securities Litigation, Case Nos. 1:07-cv-00862, 02660*, United States District Court, Northern District of Georgia.**

CSK&D served as co-lead counsel in this federal securities class action on behalf of Wells REIT/Piedmont shareholders. Filed in 2007, this lawsuit charged Wells REIT, certain of its directors and officers, and their affiliates, with violations of the federal securities laws for their conducting an improper, self-dealing transaction and recommending that shareholders reject a mid-2007 tender offer made for the shareholders' stock. On the verge of trial, the Cases settled for $7.5 million and the Settlement was approved in 2013.

***In re Cole Credit Property Trust III, Inc. Derivative and Class Litigation, Case No. 24-C-13-001563,* Circuit Court for Baltimore City.**

In this Action filed in 2013, CSK&D, as chair of the executive committee of interim class counsel, represents Cole Credit Property Trust III ("CCPT III") investors, who were, without their consent, required to give Christopher Cole (CCPT III's founder and president) hundreds of millions of dollars' worth of consideration for a business that plaintiffs allege was worth far less. The Action also alleges that, in breach of their fiduciary obligations to CCPT III investors, CCPT III's Board of Directors pressed forward with this wrongful self-dealing transaction rebuffing an offer from a third party that proposed to acquire the investors' shares in a $9 billion dollar deal. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

Representative Cases

Securities Cases Involving Real Estate Investments

Roth v. The Phoenix Companies, Inc. and U.S. Bank National Association, in its capacity as Indenture Trustee, Index No. 650634/2016 (N.Y. Sup. Ct.).

CSK&D served as lead counsel in this action on behalf of bondholders in connection with a 2015 going-private merger. In early 2016, Phoenix sought Bondholder's consent to amend the Company's Indenture to severely limit Bondholder's access to financial information and to allow the Trustee to waive certain of its oversight responsibilities. CSK&D promptly filed a complaint seeking injunctive relief, and within seven days, CSK&D secured material benefits for Bondholders, including, most significantly, ongoing access to material financial and corporate information which increased the value of the Bonds by $17.5 million and secured ongoing liquidity for the Bonds. In approving the settlement, the Court stated that "I think the plaintiffs were successful in getting everything they could have gotten …. I think it's a great settlement."

Gamburg, et al., v. Hines Real Estate Investment Trust, Inc., et al, Case No. 24C16004496 (Cir. Ct. Baltimore City, MD).

CSK&D served as co-lead counsel in this direct and derivative action filed in 2016 on behalf of Hines REIT and its stockholders which challenges various self-dealing conduct by the managers and directors of Hines REIT. The action alleged, among other things, that $15 million in fees were paid to affiliates in violation of contractual and fiduciary duties. Defendants moved to dismiss the action, and the Court held a hearing in December 2015. In an expedited partial ruling on an issue of first impression, the Court held that plaintiffs were entitled to proceed with their derivative claims even subsequent to the then-impending liquidation – a crucial initial decision in favor of the stockholders that preserved rights that could have otherwise been extinguished upon the liquidation. While the Court's ruling on the remaining issues raised in Defendants' motion was pending, the parties reached a settlement in January 2018. On June 6, 2018 the court granted final approval of the Settlement which provides for the cash payment of $3.25 million, which represents a recovery of over 20% of the fees paid to affiliates.

In re Empire State Realty Trust, Inc. Investor Litigation, Case 650607/2012, **New York Supreme Court.**

In this action filed in 2012, CSK&D represents investors who own the Empire State Building, as well as several other Manhattan properties, whose interests and assets are proposed to be consolidated into a new entity called Empire State Realty Trust Inc. The investors filed an action against the transaction's chief proponents, members of the Malkin family, certain Malkin-controlled companies, and the estate of Leona Helmsley, claiming breaches of fiduciary for, among other things, such proponents being disproportionately favored in the transaction. A Settlement of the Litigation has been reached and was approved in full by the Court. The Settlement consists of: a cash settlement fund of $55 million, modifications to the transaction that result in an over $100 million tax deferral benefit to the investors, and defendants will provide additional material information to investors about the transaction.

Representative Cases

Securities Cases Involving Real Estate Investments

***Delaware County Employees Retirement Fund v. Barry M. Portnoy, et al.*, Case No. 1:13-cv-10405, United States District Court, District Court of Massachusetts.**

CSK&D is lead counsel in an action pending in federal court in Boston filed on behalf of Massachusetts-based CommonWealth REIT ("CWH") and its shareholders against CWH's co-founder Barry Portnoy and his son Adam Portnoy ("Portnoys"), and their wholly-owned entity Reit Management & Research, LLC ("RMR"), and certain other former and current officers and trustees of CWH (collectively, "Defendants"). The Action alleges a long history of management abuse, self-dealing, and waste by Defendants, which conduct constitutes violations of the federal securities laws and fiduciary duties owed by Defendants to CWH and its shareholders. Plaintiff seeks damages and to enjoin Defendants from any further self-dealing and mismanagement. The Defendants sought to compel the Plaintiff to arbitrate the claims, and Plaintiff has vigorously opposed such efforts on several grounds including that CWH and its shareholders did not consent to arbitration and the arbitration clause is facially oppressive and illegal. The parties are awaiting the Court's ruling on that matter.

Representative Cases

Securities Cases (Non-Real Estate)

Westmoreland County v. Inventure Foods, Case No. CV2016-002718 (Super. Ct. Ariz.)

In this securities shareholder class action, CSK&D served as Lead Counsel against Inventure Foods, and certain of its officers and underwriters, arising out of the company's secondary stock offering held in September 2014. As portfolio monitoring counsel for Westmoreland, CSK&D first identified that the company's stock price had suffered a precipitous decline, rather soon after the offering, due to troubles at the Company's manufacturing facility, including a major food recall. Before filing a complaint, CSK&D investigated the potential causes of the problems – including securing documents from the FDA and GA Department of Agriculture, talking to former employees and engaging a listeria expert. Subsequent to the investigation, CSK&D filed the first complaint alleging that the Defendants violated the Securities Act of 1933 by issuing a false and misleading Registration Statement and Prospectus in connection with the stock offering. In a pair of rulings entered on February 24, 2017, and August 4, 2017, the Court rejected defendants' motions to dismiss the action. The parties proceeded with Mediation and reached a proposed Settlement which was preliminarily approved by the court on June 6, 2018. On November 2, 2018 the court granted final approval of the settlement which recovers over 35% of damages for investors (which percentage even assumes all offering shares were damaged).

***Orrstown Financial Services, Inc., et al,* Securities Litigation, Case No. 12-cv-00793 United States District Court, Middle District of Pennsylvania.**

In this federal securities fraud class action filed in 2012, CSK&D serves as Lead Counsel on behalf of Lead Plaintiff Southeastern Pennsylvania Transportation Authority (SEPTA). The action alleges that Orrstown bank, its holding company, and certain of its officers, violated the Securities Exchange Act by misleading investors concerning material information about Orrstown's loan portfolio, underwriting practices, and internal controls. CSK&D investigated the cause of the decline which included reviewing Orrstown's filings with the SEC, making FOIA requests on the Federal Reserve Bank of Philadelphia and the PA Department of Banking, and interviewing former employees of Orrstown. The Court denied in large part Defendants' motions to dismiss, and the parties are currently engaged in discovery. This case demonstrates CSK&D's ability to identify potential claims, fully investigate them, bring litigation on behalf of a pension fund, secure appointment of lead plaintiff for its client and then vigorously prosecute the case.

***ML-Lee Litigation, ML Lee Acquisition Fund L.P.* and *ML-Lee Acquisition Fund II L.P.* and *ML-Lee Acquisition Fund (Retirement Accounts)*, (C.A. Nos. 92-60, 93-494, 94-422, and 95-724), United States District Court, District of Delaware.**

CSK&D represented three classes of investors who purchased units in two investment companies, ML-Lee Funds (that were jointly created by Merrill Lynch and Thomas H. Lee). The suits alleged breaches of the federal securities laws, based on the omission of material information and the inclusion of material misrepresentations in the written materials provided to the investors, as well as breaches of fiduciary duty and common law by the general partners in regard to conduct that benefited them at the expense of the limited partners. The complaint included claims under the often-ignored Investment Company Act of 1940, and the case witnessed numerous opinions that are considered seminal under the ICA. The six-year litigation resulted in **$32 million** in cash and other benefits to the investors.

Representative Cases

Securities Cases (Non-Real Estate)

***In re Colonial BancGroup, Inc. Securities Litigation*, Case No. 09-CV-00104, United States District Court, Middle District of Alabama.**

CSK&D is actively involved in prosecuting this securities class action arising out of the 2009 failure of Colonial Bank, in which Norfolk County Retirement System, State-Boston Retirement System, City of Brockton Retirement System, and Arkansas Teacher Retirement System are the Court-appointed lead plaintiffs. The failure of Colonial Bank was well-publicized and ultimately resulted in several criminal trials and convictions of Colonial officers and third parties involved in a massive fraud in Colonial's mortgage warehouse lending division. The pending securities lawsuit includes allegations arising out of the mortgage warehouse lending division fraud, as well as allegations that Colonial misled investors concerning its operations in connection with two public offerings of shares and bonds in early 2008, shortly before the Bank's collapse. In April 2012, the Court approved a $10.5 million settlement of Plaintiffs' claims against certain of Colonial's directors and officers. Plaintiffs' claims against Colonial's auditor, PwC, and the underwriters of the 2008 offerings are ongoing.

***Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712, United States District Court, Northern District of Illinois.**

Nicholas Chimicles served as lead counsel for the shareholder class in this action alleging federal securities fraud. Filed in the federal district court in Chicago, the case arose from the 1982 oil and gas loan debacle that ultimately resulted in the Bank being taken over by the FDIC. The case involved a twenty-week jury trial conducted by Mr. Chimicles in 1987. Ultimately, the Class recovered nearly $40 million.

***PaineWebber Limited Partnerships Litigation, 94 Civ. 8547,* United States District Court, Southern District of New York .**

The Firm was chair of the plaintiffs' executive committee in a case brought on behalf of tens of thousands of investors in approximately 65 limited partnerships that were organized or sponsored by PaineWebber. In a landmark settlement, investors were able to recover $200 million in cash and additional economic benefits following the prosecution of securities law and RICO (Racketeer Influenced and Corrupt Organizations Act) claims.

Representative Cases

Delaware and Other Merger and Acquisition Suits

In re: Starz Shareholder Litigation, Cons. C.A. No. 12584-VCG (Del. Ct. Ch.)

In this stockholder class action, CSK&D served as co-lead counsel in this stockholder class action lawsuit against Starz, its controlling stockholder, John C. Malone ("Malone"), and certain of its officers and directors, arising out of the acquisition of Starz by Lions Gate Entertainment Corp. ("Lions Gate") (the "Merger"). Pursuant to the Merger, Malone who is also a director of Lions Gate, was to receive superior consideration, including voting rights in Lions Gate, while the remaining Starz stockholders would receive less valuable consideration and lose their voting rights. The Action alleges that the process undertaken by the Starz's board of directors in connection with the Merger was orchestrated by Malone and tainted by multiple conflicts. The Complaint also alleges that the consideration proposed is unfair and represents an effort by Malone to enlarge his already-massive media empire and to ensure his control position, to the detriment of Starz's minority stockholders. On August 16, 2016, the Court appointed Norfolk County as Co-Lead Plaintiff and CSK&D, specifically Robert Kriner, as Co-Lead Counsel. After a 2-day mediation session in August 2018, the parties have reached a proposed settlement of a $92.5 million payment to former shareholder of Starz. The Settlement Agreement and supporting papers were filed with the court on October 9, 2018, and the court has scheduled the settlement hearing for December 10, 2018.

***In re Sanchez Energy Derivative Litigation*, C.A. No. 9132-VCG (Del. Ch.).**

In this derivative action, CSK&D served as co-lead counsel for plaintiffs in this derivative action which challenged the acquisition by Sanchez Energy Corporation of assets in the Tuscaloosa Marine Shale from Sanchez Resources LLC, an affiliate of Sanchez Energy's CEO, Tony Sanchez, III, and Executive Chairman Tony Sanchez, Jr. The case alleged wrongful self-dealing in the acquisition in which Sanchez Energy paid the affiliate acreage prices which far exceeded prices paid in comparable transactions. On November 6, 2017, the Delaware Court of Chancery approved a Settlement valued at more than $30 million. In approving the Settlement, the Court characterized it as a very good result in CSK&D having obtained a substantial portion of the home-run damages available at trial.

***In re Freeport-McMoran Sulphur, Inc. Shareholder Litigation*, C.A. No. 16729, Delaware Court of Chancery.**

In this shareholder class action, CSK&D served as Lead Plaintiffs' Counsel representing investors in a stock-for-stock merger of two widely held public companies, seeking to remedy the inadequate consideration the stockholders of Sulphur received as part of the merger. In June 2005, the Court of Chancery denied defendants' motions for summary judgment, allowing Plaintiffs to try each and every breach of fiduciary duty claim asserted in the Action. In denying defendants' motions for summary judgment the Court held there were material issues of fact regarding certain board member's control over the Board including the Special Committee members and the fairness of the process employed by the Special Committee implicating the duty of entire fairness and raising issues regarding the validity of the Board action authorizing the merger. The decision has broken new ground in the field of corporate litigation in Delaware. Before the trial commenced, Plaintiffs and Defendants agreed in principle to settle the case. The settlement, which was approved in April 2006, provides for a cash fund of $17,500,000.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re Genentech, Inc. Shareholders Litigation*, C.A. No. 3911-VCS, Delaware Court of Chancery.**

In this shareholder class action, CSK&D served as Co-Lead Counsel representing minority stockholders of Genentech, Inc. in an action challenging actions taken by Roche Holdings, Inc. ("Roche") to acquire the remaining approximately 44% of the outstanding common stock of Genentech, Inc. ("Genentech") that Roche did not already own. In particular, Plaintiffs challenged that Roche's conduct toward the minority was unfair and violated pre-existing governance agreements between Roche and Genentech. During the course of the litigation, Roche increased its offer from $86.50 per share to %95 per share, a $4 billion increase in value for Genentech's minority shareholders. That increase and other protections for the minority provided the bases for the settlement of the action, which was approved by the Court of chancery on July 9, 2009.

***In re Kinder Morgan Shareholder Litigation*, C.A. No. 06-c-801, District Court of Shawnee County, Kansas**

In this shareholder class action, CSK&D served as Co-Lead Counsel representing former stockholders of Kinder Morgan, Inc. (KMI) in an action challenging the acquisition of Kinder Morgan by a buyout group lead by KMI's largest stockholder and Chairman, Richard Kinder. Plaintiffs alleged that Mr. Kinder and a buyout group of investment banks and private equity firms leveraged Mr. Kinder's knowledge and control of KMI to acquire KMI for less than fair value. As a result of the litigation, Defendants agreed to pay $200 million into a settlement fund, believed to be the largest of its kind in any buyout-related litigation. The district Court of Shawnee County, Kansas approved the settlement on November 19, 2010.

***In re Chiron Shareholder Deal Litigation*, Case No. RG05-230567 (Cal. Super.) & *In re Chiron Corporation Shareholder Litigation*, C.A. No. 1602-N, Delaware Court of Chancery**

CSK&D represents stockholders of Chiron Corporation in an action which challenged the proposed acquisition of Chiron Corporation by its 42% stockholder, Novartis AG. Novartis announced a $40 per share merger proposal on September 1, 2005, which was rejected by Chiron on September 5, 2005. On October 31, Chiron announced an agreement to merge with Novartis at a price of $45 per share. CSK&D was co-lead counsel in the consolidated action brought in the Delaware Court of Chancery. Other similar actions were brought by other Chiron shareholders in the Superior Court of California, Alameda City. The claims in the Delaware and California actions were prosecuted jointly in the Superior Court of California. CSK&D, together with the other counsel for the stockholders, obtained an order from the California Court granting expedited proceedings in connection with a motion preliminary to enjoin the proposed merger. Following extensive expedited discovery in March and April, 2006, and briefing on the stockholders' motion for injunctive relief, and just days prior to the scheduled hearing on the motion for injunctive relief, CSK&D, together with Co-lead counsel in the California actions, negotiated an agreement to settle the claims which included, among other things, a further increase in the merger price to $48 per share, or an additional $330 million for the public stockholders of Chiron. On July 25, 2006, the Superior Court of California, Alameda County, granted final approval to the settlement of the litigation.

Representative Cases

Delaware and Other Merger and Acquisition Suits

Gelfman v. Weeden Investors, L.P., Civ. Action No. 18519-NC, Delaware Court of Chancery

Chimicles Schwartz Kriner & Donaldson-Smith LLP served as class counsel, along with other plaintiffs' firms, in this action against the Weeden Partnership, its General Partner and various individual defendants filed in the Court of Chancery in the State of Delaware. In this Class Action, Plaintiffs alleged that Defendants breached their fiduciary duties to the investors and breached the Partnership Agreement. The Delaware Chancery Court conducted a trial in this action which was concluded in December 2003. Following the trial, the Chancery Court received extensive briefing from the parties and heard oral argument. On June 14, 2004, the Chancery Court issued a memorandum opinion, which was subsequently modified, finding that the Defendants breached their fiduciary duties and the terms of the Partnership Agreement, with respect to the investors, and that Defendants acted in bad faith ("Opinion"). This Opinion from the Chancery Court directed an award of damages to the classes of investors, in addition to other relief. In July 2004, Class Counsel determined that it was in the best interests of the investors to settle the Action for over 90% of the value of the monetary award under the Opinion (over $8 million).

I.G. Holdings Inc., et al. v. Hallwood Realty, LLC, et al., C.A. No. 20283, Delaware Court of Chancery.

In the Delaware Court of Chancery, C& T represented the public unitholders of Hallwood Realty L.P. The action challenged the general partner's refusal to redeem the Partnership's rights plan or to sell the Partnership to maximize value for the public unitholders. Prior to the filing of the action, the Partnership paid no distributions and Units of the Partnership normally traded in the range of $65 to $85 per unit. The prosecution of the action by CSK&D caused the sale of the Partnership, ultimately yielding approximately $137 per Unit for the unitholders plus payment of the attorneys' fees of the Class.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***Southeastern Pennsylvania Transportation Authority v. Josey*, et. al., C.A. No. 5427, Delaware Court of Chancery.**

Chimicles Schwartz Kriner & Donaldson-Smith served as class counsel in this action challenging the acquisition of Mariner Energy, Inc. by Apache Corporation. Following expedited discovery, CSK&D negotiated a settlement which led to the unprecedented complete elimination of the termination fee from the merger agreement and supplemental disclosures regarding the merger. On March 15, 2011, the Delaware Court of Chancery granted final approval to the settlement of the litigation.

***In re Pepsi Bottling Group, Inc. Shareholders Litigation*, C.A. No. 4526, Delaware Court of Chancery.**

The Firm served as class counsel, along with several other firms challenging PepsiCo's buyout of Pepsi Bottling Group, Inc. CSK&D's efforts prompted PepsiCo to raise its buyout offer for Pepsi Bottling Group, Inc. by approximately $1 billion and take other steps to improve the buyout on behalf of public stockholders.

***In re Atlas Energy Resources LLC, Unitholder Litigation*, Consol C.A. No. 4589, Delaware Court of Chancery.**

The Firm was co-lead counsel in an action challenging the fairness of the acquisition of Atlas Energy Resources LLC by its controlling shareholder, Atlas America, Inc. After over two-years of complex litigation, the Firm negotiated a $20 million cash settlement, which was finally approved by the court on May 14, 2012.

***In re J. Crew Group, Inc. S'holders Litigation*, C.A. No. 6043, Delaware Court of Chancery.**

The Firm was co-lead counsel challenging the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management. After hard-fought litigation, the action resulted in a settlement fund of $16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction to be approved by a majority of the unaffiliated shareholders. The settlement was finally approved on December 16, 2011.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re McKesson Derivative Litigation, Saito*, et al. v. McCall, et al., C.A. No. 17132, Delaware Court of Chancery.**

As Lead Counsel in this stockholder derivative action, CSK&D challenged the actions of the officers, directors and advisors of McKesson and HBOC in proceeding with the merger of the two companies when their managements were allegedly aware of material accounting improprieties at HBOC. In addition, CSK&D also brought (under Section 220 of the Delaware Code) a books and records case to discover information about the underlying events. CSK&D successfully argued in the Delaware Courts for the production of the company's books and records which were used in the preparation of an amended derivative complaint in the derivative case against McKesson and its directors. Seminal opinions have issued from both the Delaware Supreme Court and Chancery Court about Section 220 actions and derivative suits as a result of this lawsuit. Plaintiffs agreed to a settlement of the derivative litigation subject to approval by the Delaware Court of Chancery, pursuant to which the Individual Defendants' insurers will pay $30,000,000 to the Company. In addition, a claims committee comprised of independent directors has been established to prosecute certain of Plaintiffs' claims that will not be released in connection with the proposed settlement. Further, the Company will maintain important governance provisions among other things ensuring the independence of the Board of Directors from management. On February 21, 2006, the Court of Chancery approved the Settlement and signed the Final Judgment and Order and Realignment Order.

***Barnes & Noble Inc.,* C.A. No. 4813, Delaware Court of Chancery.**

CSK&D served as Co-Lead Counsel in a shareholder lawsuit brought derivatively on behalf of Barnes & Noble ("B&N") alleging wrongdoing by the B&N directors for recklessly causing B&N to acquire Barnes & Noble College Booksellers, Inc. ("College Books") the "Transaction") from B&N's founder, Chairman and controlling stockholder, Leonard Riggio ("Riggio") at a grossly excessive price, subjecting B&N to excessive risk. The case settled for nearly $30 million and finally approved by the court on September 4, 2012.

***Sample v. Morgan*, et. al., C.A. No. 1214-VCS, Delaware Court of Chancery.**

Action alleging that members of the board of directors of Randall Bearings, Inc. breached their fiduciary duties to the company and its stockholders and committed corporate waste. The action resulted in an eve-of-trial settlement including revocation of stock issued to insiders, a substantial cash payment to the corporation and reformation of the Company's corporate governance. The Court finally approved the settlement on August 5, 2008.

***Manson v. Northern Plain Natural Gas Co.*, LLC, et. al., C.A. No. 1973-N, Delaware Court of Chancery.**

Chimicles Schwartz Kriner & Donaldson-Smith served as counsel in a class and derivative action asserting contract and fiduciary duty claims stemming from dropdown asset transactions to a partnership from an affiliate of its general partner. The case settled for a substantial adjustment (valued by Plaintiff's expert to be worth more than $100 million) to the economic terms of units issued by the partnership in exchange for the assets. The settlement was finally approved by the Court on January 18, 2007.

Representative Cases

Consumer Cases

***Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL, San Diego County Superior Court**

Mr. Chimicles is co-lead counsel in a nationwide class action involving fuel economy problems encountered by purchasers of Honda Civic Hybrids ("HCH"). *Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL (Super. Ct. San Diego). After nearly five years of litigation in both the federal and state courts in California, a settlement benefiting nearly 450,000 consumers who had leased or owned HCH vehicles from model years 2003 through 2009. Following unprecedented media scrutiny and review by the attorneys general of each state as well as major consumer protection groups, the settlement was approved on March 16, 2012 in a 40 page opinion by the Honorable Timothy B. Taylor of the San Diego County (CA) Superior Court in which the Court stated:

> *The court views this as a case which was difficult and risky… The court also views this as a case with significant public value which merited the 'sunlight' which Class Counsel have facilitated..*

Depending on the number of claims that are filed (deadline will not expire until 6 months after a pending single appeal is resolved), the Class will garner benefits ranging from $100 million to $300 million.

***In re Pennsylvania Baycol: Third-Party Payor Litigation*, Case No. 001874, Court of Common Pleas, Philadelphia County**.

In connection with the withdrawal by Bayer of its anti-cholesterol drug Baycol, CSK&D represents various Health and Welfare Funds, including the Pennsylvania Employees Benefit Trust Fund, and a certified national class of "third party payors" seeking damages for the sums paid to purchase Baycol for their members/insureds and to pay for the costs of switching their members/insureds from Baycol to an another cholesterol-lowering drug. The Philadelphia Court of Common Pleas granted plaintiffs' motion for summary judgment as to liability; this is the first and only judgment that has been entered against Bayer anywhere in the United States in connection with the withdrawal of Baycol. The Court subsequently certified a national class, and the parties reached a settlement (recently approved by the court) in which Bayer agreed to pay class members a net recovery that approximates the maximum damages (including pre-judgment interest) suffered by class members. The class settlement negotiated by CSK&D represents a net recovery for third party payors that is between double and triple the net recovery pursuant to a non-litigated settlement negotiated by lawyers representing third party payors such as AETNA and CIGNA that was made available to and accepted by numerous other third party payors (including the TRS). CSK&D had advised its clients to reject that offer and remain in the now settled class action. On June 15, 2006 the court granted final approval of the settlement.

Representative Cases

Consumer Cases

Shared Medical Systems 1998 Incentive Compensation Plan Litigation, Philadelphia County Court of Common Pleas, Commerce Program, No. 0885.

Chimicles Schwartz Kriner & Donaldson-Smith LLP is lead counsel in this action brought in 2003 in the Philadelphia County Court of Common Pleas. The case was brought on behalf of approximately 1,300 persons who were employees of Defendant Siemens Medical Solutions Health Services Corporation (formerly Shared Medical Systems, Inc.) who had their 1998 incentive compensation plan ("ICP") compensation reduced 30% even though the employees had completed their performance under the 1998 ICP contracts and had earned their incentive compensation based on the targets, goals and quotas in the ICPs. The Court had scheduled trial to begin on February 4, 2005. On the eve of trial, the Court granted Plaintiffs' motion for summary judgment as to liability on their breach of contract claim. With the rendering of that summary judgment opinion on liability in favor of Plaintiffs, the parties reached a settlement in which class members will receive a net recovery of the full amount of the amount that their 1998 ICP compensation was reduced. On May 5, 2005, the Court approved the settlement, stating that the case "should restore anyone's faith in class actions as a reasonable way of proceeding on reasonable cases."

***Wong v. T-Mobile USA, Inc.*, Case No. CV 05-cv-73922-NGE-VMM, United States District Court, Eastern District of Michigan.**

Chimicles Schwartz Kriner & Donaldson-Smith LLP and the Miller Law Firm P.C. filed a complaint alleging that defendant T-Mobile overcharged its subscribers by billing them for data access services even though T-Mobile's subscribers had already paid a flat rate monthly fee of $5 or $10 to receive unlimited access to those various data services. The data services include Unlimited T-Zones, Any 400 Messages, T-Mobile Web, 1000 Text Messages, Unlimited Mobile to Mobile, Unlimited Messages, T-Mobile Internet, T-Mobile Internet with corporate My E-mail, and T-Mobile Unlimited Internet and Hotspot. Chimicles Schwartz Kriner & Donaldson-Smith LLP and the Miller Law Firm defeated a motion by T-Mobile to force resolution of these claims via arbitration and successfully convinced the Court to strike down as unconscionable a provision in T-Mobile's subscription contract prohibiting subscribers from bringing class actions. After that victory, the parties reached a settlement requiring T-Mobile to provide class members with a net recovery of the full amount of the un-refunded overcharges with all costs for notice, claims administration, and counsel fees paid in addition to class members' 100% net recovery. The gross amount of the overcharges, which occurred from April 2003 through June 2006, is approximately $6.7 million. To date, T-Mobile has refunded approximately $4.5 million of those overcharges. A significant portion of those refunds were the result of new policies T-Mobile instituted after the filing of the Complaint. Pursuant to the Settlement, T-Mobile will refund the remaining $2.2 million of un-refunded overcharges.

***In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, United States District Court, Southern District of Florida.**

These Multidistrict Litigation proceedings involve allegations that dozens of banks reorder and manipulate the posting order of consumer debit transactions to maximize their revenue from overdraft fees. Settlements in excess of $1 billion have been reached with several banks. CSK&D was active in the overall prosecution of these proceedings, and was specifically responsible for prosecuting actions against US Bank (pending $55 million settlement) and Comerica Bank (pending $14.5 million settlement).

Representative Cases

Consumer Cases

***In re Apple iPhone/iPod Warranty Litig.*, No. 10-CV-01610, United States District Court, Northern District of California** .

CSK&D is interim co-lead counsel in this case brought by consumers who allege that that Apple improperly denied warranty coverage for their iPhone and iPod Touch devices based on external "Liquid Submersion Indicators" (LSIs). LSIs are small paper-and-ink laminates, akin to litmus paper, which are designed to turn red upon exposure to liquid. Plaintiffs alleged that external LSIs are not a reliable indicator of liquid damage or abuse and, therefore, Apple should have provided warranty coverage. The district court recently granted preliminary approval to a settlement pursuant to which Apple has agreed to pay $53 million to settle these claims.

***Henderson v. Volvo Cars of North America LLC, et al.*, No. 2:09-CV-04146-CCC-JAD, United States District Court, District of New Jersey.**

CSK&D was lead counsel in this class action lawsuit brought behalf of approximately 90,000 purchasers and lessees of Volvo vehicles that contained allegedly defective automatic transmissions. After the plaintiffs largely prevailed on a motion to dismiss, the district court granted final approval to a nationwide settlement in March 2013.

***In re Philips/Magnavox Television Litig.*, No. 2:09-cv-03072-CCC-JAD, United States District Court, District of New Jersey.**

This class action was brought by consumers who alleged that a defective electrical component was predisposed to overheating, causing their televisions to fail prematurely. After the motion to dismiss was denied in large part, the parties reached a settlement in excess of $4 million.

***Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation*, No. 1:10-cv-00264-CAB, United States District Court, Northern District of Ohio.**

This case was brought on behalf of a class of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA. The case settled for approximately $20 million worth of benefits to class members. CSK&D, which represented an outpatient surgical center, was the sole lead counsel in this case.

***Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB, United States District Court, District of Colorado.**

CSK&D was co-lead counsel in this consumer case in which a settlement that provided full recovery to approximately 930,000 class members was achieved.

***In re Certainteed Corp. Roofing Shingle Products Liability Litigation*, No, 07-MDL-1817-LP, United States District Court, Eastern District of Pennsylvania.**

This was a consumer class action involving allegations that CertainTeed sold defective roofing shingles. The parties reached a settlement which was approved and valued by the Court at between $687 to $815 million.

Representative Cases

Antitrust Cases

***In re TriCor Indirect Purchasers Antitrust Litig.*, No. 05-360-SLR, United States District Court, District of Delaware.**

CSK&D was liaison counsel in this indirect purchaser case which resulted in a $65.7 million settlement. The plaintiffs alleged that manufacturers of a cholesterol drug engaged in anticompetitive conduct, such as making unnecessary changes to the formulation of the drug, which was designed to keep generic versions off of the market.

***In re Flonase Antitrust Litig.*, No. 2:08-cv-3301, United States District Court, Eastern District of Pennsylvania.**

CSK&D was liaison counsel and trial counsel on behalf of indirect purchaser plaintiffs in this pending antitrust case. The plaintiffs allege that the manufacturer of Flonase engaged in campaign of filing groundless citizens petitions with the Food and Drug Administration which was designed to delay entry of cheaper, generic versions of the drug. The court has granted class certification, and denied motions to dismiss and for summary judgment filed by the defendant. A $46 million settlement was reached on behalf of all indirect purchasers a few months before trial was to commence.

***In re In re Metoprolol Succinate End-Payor Antitrust Litig.*, No. 1:06-cv-00071, United States District Court, District of Delaware.**

CSK&D was liaison counsel for the indirect purchaser plaintiffs in this case, which involved allegations that AstraZeneca filed baseless patent infringement lawsuits in an effort to delay the market entry of generic versions of the drug Toprol-XL. After the plaintiffs defeated a motion to dismiss, the indirect purchaser case settled for $11 million.

***In re Insurance Brokerage Antitrust Litigation*, No. 2:04-cv-05184-GEB-PS, United States District Court, District of New Jersey.**

This case involves allegations of bid rigging and steering against numerous insurance brokers and insurers. The district court has granted final approval to settlements valued at approximately $218 million.

EXHIBIT 4

Task	Plaintiffs' Counsel	Defense Counsel
Pre-Complaint investigation and drafting of Complaint	Extensive effort, lodestar of almost $500,000	n/a
Original Motion to dismiss	Reviewed and decided to amend	Drafted Motion and Brief
Amended Complaint	Refined Complaint to address issues raised in MTD	n/a
Motion to Dismiss Amended Complaint	Drafted opposition and prepared for argument	Tweaked original MTD and drafted Reply and prepared for argument
Motion for Interlocutory Appeal	Drafted opposition	Drafted Motion and Reply
Confidentiality and Protective Order	Reached agreement after extensive analysis of ESI order	Reached agreement after extensive analysis of ESI order
Mediation discovery	Drafted requests and analyzed documents produced and conducted including economic forensic analysis	Produced readily available documents like board minutes and board packages and attorney notes of board meetings
Mediation Briefs	Drafted extensive Brief based on review of all materials	Drafted Brief
Post-Mediation written discovery	Served interrogatories and RFPs on Defendants Responded to Defendants' interrogatories and RFPs Mapped out case-wide deposition and discovery plan including non-parties Drafted and served subpoenas with RFPs on dozens of non-parties	Served interrogatories and RFPs on Plaintiffs Responded to Plaintiffs' interrogatories and RFPs

Task	**Plaintiffs' Counsel**	**Defense Counsel**
Document collection and production	Collected all responsive documents for most of our clients	Collected some documents for some of their clients
Discovery Disputes between parties	Many meet and confers over various issues, most were resolved	Many meet and confers over various issues, most were resolved
Discovery Disputes requiring Court Involvement	Multiple meet and confers re scope of document and deposition discovery Two rounds of briefing and hearings with the Court	Multiple meet and confers re scope of document and deposition discovery Two rounds of briefing and hearings with the Court
Disputes Regarding Class Certification	Multiple meet and confers re scope of document and deposition discovery Map out class certification strategy and craft plan to defeat defendants' challenges to certification Two rounds of briefing and hearings with the Court	Multiple meet and confers re scope of document and deposition discovery Two rounds of briefing and hearings with the Court
Mediation & Negotiations	Extensive meditation & negotiation work and related research and evaluation including insurance coverage analysis	Extensive meditation & negotiation work

Task	**Plaintiffs' Counsel**	**Defense Counsel**
Settlement papering	Extensive work drafting complex set of papers while simultaneously negotiating open substantive issues and settlement amount	Extensive work drafting complex set of papers while simultaneously negotiating open substantive issues and settlement amount
Client communications	Extensive communications with named plaintiffs and various absent class members	Extensive communications with clients
Preliminary approval	Drafted the complete set of papers	Reviewed a near-final draft
Notice	Ran point with Settlement Administrator Extensive communications with class members	Provided data to Settlement Administrator Effected CAFA notice Plan office provided answers to specific questions raised by Class Counsel about specific class members
Final Approval	Drafted the complete set of papers	n/a
Objection and Reply	Drafted Reply in support of Final Approval and in response to Defendants' Objection	Drafted Objection
Final Approval Hearing	Primary presenter	Presentation likely limited to fee Objection